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Requirements for Grain Dealers

State of Colorado

Penalties

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Requirements for Grain Dealers

STATE OF COLORADO

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C.R.S.A. § 12-16-107

§ 12-16-107. Investigations, hearings, and examinations

- (1) For the purpose of enforcing the provisions of this part 1, the commissioner may receive complaints from persons against any dealer, small-volume dealer, agent, or person assuming or attempting to act as such and, upon the receipt of such a complaint, may make any and all necessary investigations relative to said complaint.
- (2) The commissioner upon his own motion may, and upon the verified complaint of any person shall, investigate any transactions involving any provisions of this part 1.
- (3)
 - (a) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, shall have free and unimpeded access to all buildings, yards, warehouses, and storage facilities owned by a licensee in which any farm products are kept, stored, handled, processed, or transported.
 - (b) The commissioner, upon consent of the licensee or upon obtaining a search warrant, shall have free and unimpeded access to all records required to be kept and may make copies of such records.
 - (c) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.
- (4) The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the farm products, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.
- (5) The commissioner shall not be required to investigate or act upon complaints regarding transactions which occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.
- (6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, small-volume dealers, or owners of farm products, together with the accounts unaccounted for or due and owing to them by said licensee, and shall request all such producers, dealers, small-volume dealers, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, small-volume dealer, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after

the date of such request, the commissioner shall thereupon be relieved of any further duty or action under this part 1 on behalf of said producer, dealer, small-volume dealer, or owner.

(7) In the course of any investigation, the commissioner may attempt to effectuate a settlement between the respective parties.

(8)

(a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated any of the provisions of this part 1, he shall notify the licensee that such complaint is valid and shall inform the licensee of his opportunity to request a hearing, in writing, on such complaint within ten days after the date of such notice.

(b) Upon the receipt of a request for a hearing from a licensee or if the commissioner determines that a hearing concerning any licensee is necessary, he shall cause a copy of the complaint or the grounds specified in section 12-16-108, together with a notice of the time and place of the hearing, to be served personally or by mail upon such licensee. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated, or in which the transactions involved allegedly occurred, or at the location deemed by the commissioner to be most convenient.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S. Thereafter, the commissioner shall enter in his office a decision specifying the relevant facts established at such hearing. If the commissioner determines from the facts specified that the licensee has not violated any of the provisions of this part 1, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this part 1, and that the licensee has not yet made complete restitution to the person complaining, he shall determine the amount of damages, if any, to which such person is entitled as the result of such violation, and he shall enter an order directing the offender to pay the person complaining such amount on or before the date fixed in the order. A copy of the decision shall be furnished to all the respective parties to the complaint.

(9) As a result of such hearing, the commissioner may also enter any order suspending or revoking the license of a licensee or may place the licensee on probation if the commissioner determines that the licensee has committed any of the unlawful acts specified in section 12-16-115 or that the licensee has violated any of the provisions of this part 1.

(10)

(a) If a person against whom an order, as specified in paragraph (c) of subsection (8) of this section, is made and issued fails, neglects, or refuses to obey said order within the time specified in the order, the commissioner may thereupon issue a further order to that person directing him to show cause why his license should not be suspended or revoked for failure to comply with said order.

(b) In such case, a copy of said order to show cause, together with a notice of the time and place of the hearing thereupon, shall be served personally or by mail upon the person involved. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated or at any convenient place designated by the commissioner.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S., and thereafter shall enter in his office an order and decision specifying the facts established at the hearing and either dismissing the order to show cause, or directing the suspension or revocation of the license held by the licensee, or making such other conditional

or probationary orders as may be proper. A copy of said order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when he is satisfied of the existence of any of the facts specified in section 12-16-115.

(11) Whenever the absence of records or other circumstances makes it impossible or unreasonable for the commissioner to ascertain the names and addresses of all persons specified in subsection (6) of this section, the commissioner, after exercising due diligence and making a reasonable inquiry to secure said information from all reasonable and available sources, shall not be liable or responsible for the claims or the handling of claims which may subsequently appear or be discovered. After ascertaining all claims, assessments, and statements in the manner set forth in subsection (6) of this section, the commissioner may then demand payment on the bond or irrevocable letter of credit on behalf of those claimants whose claims have been determined by the commissioner as valid and, in the instance of a bond, may settle or compromise said claims with the surety company on the bond and execute and deliver a release and discharge of the bond involved. Upon the refusal of the surety company to pay the demand, the commissioner may bring an action on the bond on behalf of the producer, dealer, small-volume dealer, or owner.

(12) For the purpose of this section, a transaction is deemed to have occurred:

(a) On the date that possession of farm products is transferred by a claimant;

(b) On delayed payment transactions, on the contractual date of payment or, if there is no contractual date of payment, thirty days following the transfer of title.

(13) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges is served on a licensee, unless otherwise provided by court order.

C.R.S.A. § 12-16-108

§ 12-16-108. Disciplinary powers--licenses

(1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(a) Violated any of the provisions of this part 1 or violated any of the rules and regulations promulgated by the commissioner pursuant to this part 1;

(b) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in considering a conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.;

(c) Committed fraud or deception in the procurement or attempted procurement of a license;

(d) Failed or refused to file with the commissioner a surety bond or an irrevocable letter of credit, as required by section 12-16-106;

(e) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;

(f) Failed to comply with any lawful order of the commissioner concerning the administration of this part 1;

(g) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if such cause could be the basis for the same or similar disciplinary

action in this state.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of section 12-16-107 and article 4 of title 24, C.R.S.

(3) Any previous violation of the provisions of this part 1 by the applicant or any person connected with him in the business for which he seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this part 1 by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.

C.R.S.A. § 12-16-109

§ 12-16-109. Cease-and-desist order--suit for restraining order

(1) If the commissioner determines that there exists a violation of any provision of this part 1 or of any rule or regulation promulgated under the authority of this part 1, the commissioner may issue a cease-and-desist order, which may require any person to cease functioning as a dealer or small-volume dealer, except for those functions necessary to prevent spoilage of products stored in such dealer's warehouse. Such order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all functions, except those necessary to prevent spoilage, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not any such violation has occurred. Such hearing shall be concluded in not more than ten days after such request and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(2) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours after service, the commissioner may bring a suit pursuant to section 12-16-114(2) to prevent any further or continued violation of such order.

(3) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(4) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

C.R.S.A. § 12-16-114

§ 12-16-114. Enforcement

(1) The commissioner shall be the enforcing authority of this part 1, and the commissioner or the commissioner's authorized representative shall have free and unimpeded access to all places of business and all business records of a licensee pertinent to any proper inquiry in the administration of this part 1. Any person in whom the enforcement of any provision of this part 1 is vested has the power of a peace officer as to such enforcement.

(2) Whenever, upon sufficient evidence satisfactory to the commissioner, the commissioner determines a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part 1 or of any rule or of any order promulgated under this part 1, he may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this part 1 or any rule or order pursuant to this part 1. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the

inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

C.R.S.A. § 12-16-114.5
§ 12-16-114.5. Civil penalties

- (1) Any person who violates any provision of this part 1 or any regulation enacted pursuant to this part 1 is subject to a civil penalty as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation per day.
- (2) No civil penalty may be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.
- (3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty, the commissioner may recover such amount, plus costs and attorney fees, by action in any court of competent jurisdiction.
- (4) Under circumstances where the commissioner did not have probable cause to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.
- (5) All moneys collected from civil penalties pursuant to the provisions of this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.
- (6) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

C.R.S.A. § 12-16-115
§ 12-16-115. Unlawful acts

- (1) It is unlawful and a violation of this part 1 for any person to:
 - (a) Make fraudulent charges or returns for the handling, sale, or storage or for the rendering of any service in connection with the handling, sale, or storage of any farm products. Violation of this paragraph (a) shall constitute a class 6 felony.
 - (b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for farm products received within the time and in the manner required by this part 1. Violation of this paragraph (b) shall constitute a class 6 felony.
 - (c) Intentionally make false or misleading statements as to the market conditions for farm products or false or misleading statements as to the condition, quality, or quantity of farm products received, handled, sold, or stored. Violation of this paragraph (c) shall constitute a class 6 felony.
 - (d) Engage in fictitious sales, in collusion, or in unfair practices to defraud the owners. Violation of this paragraph (d) shall constitute a class 6 felony.
 - (e) Act as a dealer, small-volume dealer, or agent without having obtained a license or act as a dealer without having filed a surety bond or an irrevocable letter of credit, as provided in this part 1. Violation of this paragraph (e) shall constitute a class 6 felony.
 - (f) Willfully convert to his own use or benefit the farm products of another. Violation of this paragraph (f) shall constitute theft, as defined in section 18-4-401, C.R.S.
 - (g) Commit fraud or deception in the procurement or attempted procurement of a license. Violation of this paragraph (g) shall constitute a class 1 misdemeanor.

(h) Fail to comply with any lawful order of the commissioner concerning the administration of this part 1. Violation of this paragraph (h) shall constitute a class 1 misdemeanor.

(i) Interfere with or hinder an authorized representative of the commissioner while performing his duties under this part 1. Violation of this paragraph (i) shall constitute a class 1 misdemeanor.

(j) If licensed as a dealer or small-volume dealer, sell farm products for less than the current market price to any person with whom such dealer has any financial connection, directly or indirectly, either as an owner of the corporate stock of a corporation, as a copartner, or in any other capacity, or sell any farm products out of the purchase price of which said dealer or small-volume dealer receives, directly or indirectly, any portion thereof other than the commission allowed in section 12-16-112. Violation of this paragraph (j) shall constitute theft, as defined in section 18-4-401, C.R.S.

(k) Act as a dealer, small-volume dealer, or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any farm products or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (k), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (k) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

(l) If acting as a dealer who has signed an affidavit in accordance with section 12-16-105(1)(a)(I), fail to make payment in cash or by one of the other means specified in section 12-16-106(1)(f) for any transaction without first complying with the bonding requirements of section 12-16-106. Violation of this paragraph (l) shall constitute a class 1 misdemeanor.

(m) If licensed as a small-volume dealer, purchase twenty thousand dollars' worth or more of farm products in one year from the owner for processing or resale or purchase two thousand five hundred dollars' worth or more of farm products in any single transaction from the owner for processing or resale. Violation of this paragraph (m) shall constitute a class 1 misdemeanor.

C.R.S.A. § 12-16-116 § 12-16-116. Penalties

(1) Any person who violates any of the provisions of section 12-16-115(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e) commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person who violates any of the provisions of section 12-16-115(1)(f) or (1)(j) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-115(1)(g), (1)(h), (1)(i), (1)(l), or (1)(m) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who violates any of the provisions of section 12-16-115(1)(k) commits fraud by check, as defined in section 18-5-205, C.R.S.

(2) Any person who violates any other provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this part 1 may be commenced and tried either in the county in which the farm products were received by the dealer,

small-volume dealer, or agent, or in the county in which the principal place of business of such dealer, small-volume dealer, or agent is located, or in the county in which the violation of this part 1 occurred. The attorney general or the district attorney for the judicial district in which a violation of any of the provisions of this part 1 occurs shall, upon the request of any enforcing officer or other interested person, prosecute such violation.