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Requirements for Grain Dealers:

New Jersey



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Requirements for Grain Dealers: New Jersey

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N.J. Rev. Stat. tit. 4, Ch. 11, Art. 2

Current with laws through L.2023, c. 256 and J.R. No. 18.

4:11-15. Definitions

As used in this article:

“Agent” means any person receiving, buying, soliciting or negotiating the sale of any perishable agricultural commodity or hay, straw or grain or any one or more of them from the grower thereof for or on behalf of any commission merchant, dealer or broker.

“Agricultural commodity” means any perishable agricultural commodity or hay, straw or grain or any one or more of them, as the case may be.

“Broker” means any person engaged in the business of soliciting or negotiating the sale of any perishable agricultural commodity or hay, straw or grain or any one or more of them on behalf of the grower.

“Commission merchant” means any person engaged in the business of soliciting or receiving any perishable agricultural commodity for sale on commission on behalf of the grower thereof.

“Dealer” means any person engaged in the business of buying any agricultural commodity from the grower thereof for the purpose of shipping or for sale, resale or manufacture.

“Eggs” means avian eggs of the kind produced and used for human food including the eggs of chickens, turkeys, ducks, geese and guineas, but not those sold or resold for purposes of laboratory or biological uses.



“Grower” means any person engaged in the business of growing or producing any agricultural commodity in this State, or any agricultural co-operative association organized pursuant to the provisions of chapter 13 of this Title.

“Perishable agricultural commodity” means any fruit or vegetable of every kind, including those frozen or packed in ice, and any poultry product.

“Poultry product” means live poultry and eggs as defined in this act, when purchased in wholesale quantities from a grower, or his agent, or a marketing association for sale or resale for human consumption or hatching purposes.

“Poultry” means domestic fowl, including all marketing classifications of chickens, turkeys, ducks, geese and guineas, not sold for show or breeding purposes.

“Secretary” means the Secretary of Agriculture.

“Board” means the State Board of Agriculture.

4:11-16. Article inapplicable to certain transactions

This article shall not apply to any transaction in which the grower receives at the time of the transaction full payment of the amount due him, or to any duly incorporated agricultural cooperative association in its dealings with its members.

4:11-17. Cooperative agricultural associations; inapplicability of article; registration; exempt agent identification cards; issuance

Nothing contained in this article shall be construed to apply to any agricultural cooperative association which deals only with its members and organized pursuant to the provisions of chapter 13 of this Title (§ 4:13-1 et seq.), or the provisions of an act entitled “An act to provide for the incorporation and regulation of cooperative agricultural associations, either with or without capital stock,” approved February 28, 1924.

Cooperative agricultural associations exempted by this section shall register with the Department of Agriculture and be issued exempt agent identification cards.

4:11-18. Necessity of license

No person shall engage in or carry on the business of commission merchant, dealer or broker unless he is duly licensed as provided in this article.

4:11-19. Application for license; fee

A person before engaging in such business shall on or before November 1 of each year, file an application for a license with the secretary, on a form prescribed by him, and pay an application fee of \$30.00 which shall not be returned if the license is not granted, for a license to transact such business.

The application shall state the nature of the business, the kinds of agricultural commodities which the applicant proposes to handle and if they be perishable



agricultural commodities then the kinds of perishable agricultural commodities which the applicant proposes to handle, the full name of the person applying for the license, and if the applicant be a firm, association, partnership, or corporation, the full name of each member of the firm, partnership or association, or officers of the corporation, and the name of the business is to be conducted, and such other facts as the secretary shall the local agent of the person, firm, association, partnership or corporation, the municipality and street address, if any, or post-office address, where prescribe.

The applicant shall satisfy the secretary of his character, financial responsibility and good faith in seeking to engage in the business.

4:11-20. Bond accompanying application; securities or letters of credit in lieu of bond; additional bond; distribution; annual assessment; Perishable Agricultural Commodity Surety Fund

a. A license shall not be issued unless and until the applicant has filed a good and sufficient surety bond executed in favor of the secretary in the secretary's official capacity, for the benefit of all growers with whom the applicant shall transact business, by a surety company duly authorized to transact business in this State in the sum of at least \$5,000 annually in accordance with a formula established by rule or regulation adopted by the Department of Agriculture. The bond shall be executed upon a form prescribed by the secretary and shall be subject to the secretary's approval as to form and sufficiency. The applicant may in lieu of the bond deposit with the secretary securities approved by the department in an amount equal to the sum secured by the bond required to be filed as herein provided; or may, in the alternative, obtain and deposit with the secretary an irrevocable letter of credit to equal the amount of the bond. The securities or letters of credit so deposited with the secretary shall constitute a separate fund and shall be held in trust for and applied exclusively to the payment of claims arising under the provisions of this article against the licensee making such deposit for the period for which the license is issued. All proceeds from surety bonds, money, or securities shall be distributed to the grower-creditors by the secretary or returned to the licensee if no claims are made. The Department of Agriculture shall establish an annual maximum for all such bonds, securities, or irrevocable letters of credit which shall not exceed \$ 150,000.

b. The secretary may require a licensee to file an additional surety after a hearing on any complaint lodged against the licensee, but the total amount of all sureties filed by the licensee shall not exceed \$300,000.

c.

(1) Each licensee shall pay, in addition to the fee required pursuant to R.S.4:11-19, an annual assessment in such amount as may be established by rule or regulation adopted by the Department of Agriculture. All monies collected from this additional assessment shall be deposited into the "Perishable Agricultural Commodity Surety Fund" established pursuant to paragraph (2) of this subsection. No additional assessment paid pursuant to



this paragraph shall be returned or otherwise refunded to a licensee for any reason.

(2) The secretary may establish a dedicated nonlapsing, revolving fund, to be known as the “Perishable Agricultural Commodity Surety Fund,” for the benefit of growers selling perishable agricultural commodities to licensees. Any interest or other investment income earned from monies deposited in the fund shall accrue and be credited to the fund. The fund shall be held by the State Treasurer and monies therefrom shall be used by the Department of Agriculture for the purposes of paragraph (3) of this section. Monies in the fund may also be used by the Department of Agriculture to pay for expenses associated with the administration of the surety program established pursuant to this section.

(3) In the event of a default by a licensee with respect to the purchase of perishable agricultural commodities from a grower, the secretary shall disburse monies from the fund to the grower-creditor in such manner and amounts as may be established by rule or regulation adopted by the Department of Agriculture.

d. To implement the provisions of this section, the secretary, with the approval of the Board of Agriculture, may:

(1) appoint an advisory board or council to advise the secretary with respect to the creation, operation, and administration of the surety program;

(2) establish procedures for the creation, operation, administration, and enforcement of the surety program;

(3) charge fees or other assessments to cover the reasonable costs and claims associated with the surety program; and

(4) adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement this section and the surety program, which rules and regulations may include, but need not be limited to, provisions concerning the investigation of claims, compliance assurance, disbursement of monies, record-keeping, and assessment of fees and penalties in addition to those established in this article.

4:11-21. Issuance of license; exceptions

Upon the filing and approval of the application and bond or securities, as the case may be, the secretary shall thereupon issue to the applicant or his agent a license entitling the applicant or the agent to conduct the business of receiving, buying, soliciting or negotiating the sale of perishable agricultural or other agricultural commodities on behalf of the grower, of the kind or kinds, and the place named in the application, which license shall expire on December 31 of the year next following its date of issuance.



4:11-22. Designation and licensing of agent

No agent shall receive, buy, solicit or negotiate the sale of any agricultural commodity in this State on behalf of any commission merchant, dealer or broker unless such agent has been designated by a duly licensed commission merchant, dealer or broker to so act and unless such commission merchant, dealer or broker has notified the secretary in his application for license or given notice in writing of such designation and has requested the secretary to issue to the agent an agent's license.

4:11-23. Investigation of record of applicant or licensee

The secretary or an assistant whom he may designate may investigate upon the verified complaint of any interested person, or upon the verified complaint of any agricultural co-operative association organized pursuant to the provisions of chapter 13 of this title (§ 4:13-1 et seq.), or of his own motion, the record of any person applying for or holding a license as commission merchant, broker, dealer or agent, and for such purpose may examine the ledgers, books of account, memoranda or other documents of any such person and may take testimony thereon under oath, but information relating to the general business of any such person, disclosed by the investigation and not relating to the immediate purpose thereof, shall be deemed of a confidential nature by the secretary or assistant.

4:11-24. Hearing by secretary when verified complaint filed

When a verified complaint is filed with the secretary, as mentioned in section 4:11-23 of this title, with respect to any person applying for or holding a license, the secretary shall conduct a hearing thereon and shall furnish such person with a copy of the complaint and a notice of the time and place of hearing, which notice shall be served either personally or by registered mail directed to his place of business or last known residence address, with postage fully prepaid, at least ten days prior to the time fixed for hearing.

In the hearing of any complaint the secretary or assistant whom he may designate may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records and memoranda as may be material for the determination of the matter alleged in the complaint.

The secretary or assistant whom he may designate shall render a decision either dismissing the complaint or specifying the facts which he deems established at the hearing.

4:11-25. Hearing before revocation of license

Before any license is revoked the secretary shall give the licensee at least ten days' notice of the time and place of hearing before the secretary and shall furnish him with a copy of the complaint against him, which complaint and notice shall be served upon the licensee in the manner provided in section 4:11-24 of this title.



At the time and place fixed for hearing the secretary shall receive evidence, administer oaths, examine witnesses and hear the testimony and shall thereafter file an order either dismissing the proceeding or revoking the license.

4:11-26. Grounds for refusing or revoking license

The secretary may refuse to grant or may revoke a license for the following causes:

- a. Where the licensee has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or is insolvent or where a money judgment has been secured against him, upon which an execution has been returned unsatisfied;
- b. Where there has been a failure to account for or make prompt settlement for any agricultural commodities received, bought, solicited or negotiated;
- c. Where any false statement has been made as to condition, quality or quantity of agricultural commodities received or bought or where the sales were negotiated or held for sale on commission when the same might have been known on reasonable inspection;
- d. Where there has been a continual course of dealings of such a nature as to satisfy the secretary of the inability or unwillingness of the licensee, or his agent, to properly conduct the business of receiving, buying, soliciting or negotiating the sale of agricultural commodities on behalf of the grower thereof;
- e. Where the licensee has been duly required to file an additional bond and has failed to do so;
- f. Where there has been a continued and persistent failure to keep the records required by the secretary or by law; or where there has been a refusal on the part of the licensee to produce books, accounts or records of transactions in carrying on the business for which such license is granted.

4:11-27. Review of refusal or revocation of license

The action of the department in refusing to grant or in revoking a license shall be subject to review by the Superior Court in a proceeding in lieu of prerogative writ. Whenever any proceeding is taken to review a revocation the license shall be deemed to be in full force and effect until the final determination of such proceeding, if the fee for the license has been paid, subject, however, to the order of the said court.

4:11-28. Filing with secretary of claims against licensee

Upon default of any licensee in the payment of any money due to any grower, the grower may file with the secretary, upon a form prescribed by him, a verified statement of his claim. If the grower has reduced his claim to judgment a transcript of the judgment shall be filed with the secretary. Such statement may be filed at any time during the period of the license and within ninety days from the termination of such period, for debts contracted during such licensed period.



4:11-28.1. Claim by grower; time of filing; contents

Each grower shall have 90 days from the date payment was due to file a claim with the Secretary of Agriculture on forms prescribed by him giving all terms of agreement and amount due. Failure to file within 90 days shall nullify the claim. All licensees may make agreements for deferred payments, but no claims shall be allowed on any such agreement payable beyond December 31 of license year.

4:11-29. Audit of claims; demand upon surety; publication of nonpayment; necessity of filing claims; action

The secretary shall audit claims properly filed and determine the amounts due all such creditors.

Whenever an audit and hearing determine a claim to be valid and there is a refusal to pay, demand shall be made upon the surety after 90 days. During the 90 days the secretary shall publish the nonpayment of the claim each week in a newspaper in the county where the licensee resides as well as in all counties where transactions may have taken place in New Jersey with a request for all claims. All claimants will be required to file claims before expiration of said 90 days and demand is made on surety. During the 90 days the license of the dealer is revoked and can only be renewed after a new application and hearing. If the surety shall not make payment of the amount so demanded, upon the expiration of 90 days from the termination of the license period, the secretary shall bring an action at law to recover from the surety on said bond the amount necessary to satisfy such claims or such part thereof as shall equal the amount of the bond, which action may be instituted by the secretary in his official capacity as such on behalf of said claimants, but without naming them as plaintiffs or defendants therein. The moneys obtained from the sale of said securities or by action against the surety shall be used for the satisfaction of such claims, and the secretary shall make distribution thereof to the claimants in accordance with the amounts determined to be due thereon, and if less than the total amount of said claims shall be so obtained, distribution shall be made ratably to the creditors according to said amounts.

If a creditor has reduced his claim to judgment, the judgment shall be presumptive proof of the amount due him.

Claims not filed during the license period or within 90 days from the termination of the license period, shall not be received, acted upon or paid and shall not participate in the proceeds of any bond, moneys or securities deposited with the secretary.

The secretary may bring an action in any court of competent jurisdiction against the licensee or surety or sureties on the bond or bonds for the recovery of any money due and owing to a grower or growers as hereinbefore provided.

4:11-29.1. Request to producer to sign statement relieving dealer or surety unlawful

It shall be unlawful for any person to request a producer to sign any statement, affidavit, assignment, or waiver of any kind which has for its purpose or intent



to relieve to any extent whatsoever a dealer, indemnitor or surety company of its full financial responsibility under this article.

4:11-30. Keeping of records

A commission merchant, dealer, broker or his agent shall keep accounts, records and memoranda which shall fully and clearly disclose all transactions involved in his business, including the true ownership of the business by stockholders or otherwise.

4:11-31. Posting of copy of license

A person licensed under the provisions of this article and conducting business under the license shall keep a copy thereof, to be furnished by the secretary, posted in a conspicuous place in or at his place of business and exposed for inspection by any person who may properly make such inspection.

4:11-32. Carrying and exhibiting agent's license

The licensee and each of his agents shall at all times when receiving, buying, soliciting or negotiating the sale of agricultural commodities carry an agent's license which shall be exhibited to growers or to the officers of any agricultural co-operative association which deals only with its members and organized pursuant to the provisions of chapter 13 of this Title (§ 4:13-1 et seq.) when negotiating business with them, or to the secretary or assistant whom he may designate, upon request.

4:11-33. Certification by secretary as to license

The secretary shall, upon request, certify whether the records kept by his department show or fail to show the issuance of a license in accordance with the provisions of this article, and such certificate whether made upon request, or made by the secretary for use in proceedings instituted under the provisions of this article, shall be prima facie evidence of the facts therein stated. The fee for the certificate shall be one dollar.

4:11-33.1. Rules and regulations

The board may make such rules and regulations as may be necessary for the proper enforcement of the provisions of this article.

4:11-34. Penalty for violations; jail for nonpayment

A person, who shall engage in the business of commission merchant, dealer or broker, as defined in section 4:11-15 of this Title, without first having obtained a license as provided in this article shall be subject to a penalty of not more than \$3,000.00 a day for each day of operation.

Any grower or producer of perishable agricultural commodities, poultry products or poultry who knowingly sells to, or utilizes the services of, any unlicensed commission merchant, dealer or broker shall be subject to a penalty of not more than \$3,000.00, or who shall violate any other provision of this article shall be subject to a penalty of \$100.00 for the first offense and \$500.00 for the second and each subsequent offense, to be sued for and recovered with costs in the name of the



department in the manner provided in article 1 of chapter 23 of Title (§ 4:23-1 et seq.) and in such proceeding the defendant may be arrested upon the commencement of the action.

If judgment is rendered for the plaintiff the court shall cause a defendant who shall fail to pay forthwith the amount of the judgment rendered against him, and all costs and charges incident thereto, to be committed to the county jail for a period of not less than 5 nor more than 90 days for a first offense and not less than 10 nor more than 200 days for the second and each subsequent offense.

4:11-34.1. Termination of unlicensed operations

The department shall have the power to stop the operation of any person operating in the State of New Jersey without a license as provided by this act. The secretary may order such operations terminated immediately but any person whose operations are stopped shall have 10 days to appeal to the Secretary of Agriculture for a hearing at which the secretary or any person duly appointed by him shall review all the circumstances of the case. The department may enforce this section by summary proceedings through courts of competent jurisdiction. The State Police, the county sheriff or any municipal police are authorized to assist the department in the enforcement of this section.

