

**COLORADO
DEPARTMENT OF
AGRICULTURE**



2013 WCHS & VinCO Conference

January 16th, 2013

FARM PRODUCTS ACT

12-16-101 C.R.S.



Farm Products Program

The Colorado Farm Products Act is law designed to protect sellers of farm products. It is a system of licensing and bonding to assist the seller in getting paid.



The Farm Products Program protects and assists the economic well-being of the agricultural community by assuring a stable distribution system for agricultural products. To accomplish this, the program conducts examinations, financial analysis and, when appropriate, investigations of warehouses, merchants and dealers of grains and farm products.



What is a Farm Product

12-16-103

(5) (a) (I) "Farm products" includes the following unprocessed products produced in Colorado or owned by any Colorado resident, dealer, or small-volume dealer:



What is a Farm Product

12-16-103

- (A) Agricultural, horticultural, viticultural, fruit, and vegetable products of the soil;
- (B) Livestock and livestock products, except livestock held by the purchaser and not resold or processed within ninety days after the purchase date;
- (C) Milk; and
- (D) Honey.



What is a Farm Product

12-16-103

(II) The term also includes ensiled corn and baled, cubed, or ground hay.

(b) "Farm products" does not include poultry and poultry products, timber products, nursery stock, or commodities.



Who is required to license as a dealer?

Any person engaged in buying any farm products from the owner for processing or resale.

- "Person" includes an individual, a firm, an association, a partnership, a corporation, or the commissioner.
- "Owner" means any person in whom legal title to any farm product is vested, whether produced by him or acquired by purchase.
- "Processing" means the operation of drying, canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a farm product for the purpose of reselling the product.



Who is required to license as a dealer?

Any person engaged in receiving and taking possession of any farm products from the owner for storage or safekeeping.



Who is required to license as a dealer?

Any person engaged in soliciting or negotiating sales of farm products between the vendor and purchaser respectively.



Who is required to license as a dealer?

Any person who receives on consignment or solicits from the owner thereof any kind of farm product for sale on commission on behalf of such owner, or

- who accepts any farm product in trust from the owner thereof for the purpose of resale, or
- who sells or offers for sale on commission any farm product or in any way handles any farm product for the account of, or
- as an agent of, the owner thereof.



Who is required to license as a dealer?

Any person engaged in buying any farm products from the owner thereof for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock.



Who is required to license as a dealer?

"Dealer" does not include bona fide retail grocery merchants or restaurateurs having a fixed or established place of business in Colorado as long as the use of farm products by any such person is directly related to the operation of the person's retail grocery or restaurant.



What to do if you're not getting paid

File a claim and complaint



Claim and complaint process

12-16-107(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.



Claim and complaint process 12-16-107(5) C.R.S.

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.



When does a transaction occur?

12-16-107 (12) (a) &(b), C.R.S.

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.



Will This Insure That I Get Paid?

No, Your claim may exceed the amount of the licensee's bond (if required).

- Small Volume Dealers and Cash Buyers are not required to be bonded.
- There may be competing claims for the bond.
- The buyer may not be licensed or bonded.



How Can I Protect Myself?

Document the transaction by obtaining evidence of sale.

- Scale tickets,
- bills of lading,
- warehouse receipts, or
- delivery receipts can be used.



Should I Use A Contract?

Yes, one of the major problems that we incur in trying to settle disputes is trying to determine what the buyer and seller agreed to.

Get a contract in writing.



What Should I Include In The Contract?

- Who Is The Buyer?
- Quantity Sold
- Quality Agreed Upon
- Sale Price
- Method Of Payment
- Where And When Does Title Transfer



Unlawful Acts

12-16-115

(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.



Unlawful Acts 12-16-115

(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.



Unlawful Acts 12-16-115

(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.



Unlawful Acts 12-16-115

(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.



Unlawful Acts 12-16-115

(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.



Unlawful Acts 12-16-115

(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.



Unlawful Acts

12-16-115

(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.



Unlawful Acts

12-16-115 (Continued)

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.



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