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HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 4 DIVISION OF MARKETING AND CONSUMER SERVICES

CHAPTER 48

RULES REGULATING DEALERS IN FARM PRODUCTS

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Historical Note: Chapter 4-48 is based substantially upon "Regulation 10. Dealers in Agricultural Farm Products," of the Division of Marketing and Consumer Services, Department of Agriculture. [Eff 12/29/72; R 5/29/81]

§4-48-1 Definitions. As used in this chapter:
"Board" means the board of agriculture.
"Branch store" means any additional store owned and operated by a person subject to licensing under chapter 145, Hawaii Revised Statutes, and this chapter, which conducts the same class of business as that

person.

"Class of business" means commission merchant, dealer, broker, agent, processor, or retail merchant.

"Effective date" means the first day of the month following the date when the applicant first became subject to chapter 145, Hawaii Revised Statutes, and this chapter.

"Head" means the manager of the commodities branch of the department, or any officer or employee of the commodities branch to whom authority has been delegated.

"Licensee" means any person who holds an unrevoked and valid unsuspended license issued under chapter 145, Hawaii Revised Statutes, and this chapter.

"Pack out basis" means that acceptance of the farm product and price or prices to be paid are based on the grade or quality of the product as determined from evaluation of representative samples drawn at the time the product is received or at completion of preliminary processing and grading operations.

"Person" means any individual, partnership, corporation, association, or separate legal entity. [Eff 5/29/81; am 1/16/84; am and comp 3/24/86; am 10/5/02] (Auth: HRS §145-15) (Imp: HRS §145-15)

§4-48-2 Application for license. (a) A separate license shall be required for each person and each branch store.

(b) Any person subject to licensing shall file an application for the required license or licenses with the department on an approved application form. This application form is available from the branch, on request, and is also available on the department's internet web site.

(c) The applicant shall furnish the following information on the application:

- (1) The name in which the business is conducted, place of business, mailing address, phone number, date business started, and banking reference;
- (2) The name and address of each branch store;
- (3) The type of farm product the applicant proposes to handle;
- (4) The class of business;
- (5) The type of business organization and:
 - (A) If the applicant is the sole owner, the applicant's name and address;
 - (B) If a partnership, the names and home addresses of all partners and an indication whether the partnership is comprised of general, limited, or

- special partners; or
- (C) If an association or corporation, the names and addresses of all officers, directors, and holders of more than ten per cent of outstanding stock, and the percentage of stock held by each; and
- (6) The date when the applicant first became subject to chapter 145, Hawaii Revised Statutes, and this chapter, and, if the business is conducted prior to filing an application for license, an explanation of the violation.
- (d) The application shall be signed by the owner of the business, or all general partners in the case of a partnership, or a duly authorized official if the applicant is an association or corporation.
- (e) Before any commission merchant or broker license is issued, the applicant shall execute and deliver to the department a surety bond in the sum of \$3,000.
- (f) The department, upon receipt and review of an application for license, shall issue either of the following to the applicant, no later than ten working days after the date of receipt:
- (1) The appropriate license, if the application for license is properly completed; or
 - (2) A written statement that the application is denied and an explanation of the reason for the denial. [Eff 5/29/81; am 1/16/84; am and comp 3/24/86; am 10/5/02] (Auth: HRS §145-15) (Imp: HRS §145-15)

§4-48-3 License fees. (a) The license fees for the different classes of business shall be as follows:

- (1) The commission merchant, dealer, processor, agent, or broker license fee shall be \$40 annually, for each classification;
 - (2) The retail merchant license fee shall be \$10 annually, provided that if the business is also licensed as a dealer, processor, agent, or broker, there shall be no fee; and
 - (3) The license fee for each branch store shall be \$5 annually, except that the initial fee may be for a period less than a year subject to the requirement in section 4-48-4(d).
- (b) No credit shall be allowed or refund made for any unused portion of the effective license period.
- (c) Any commission merchant, dealer, broker, agent, processor, or retail merchant in violation of chapter 145, Hawaii Revised Statutes, and this chapter, by having engaged in business for more than thirty days

without a license, shall obtain the required license in the following manner:

- (1) If the effective date of business is less than one year prior to the date of application, the applicant shall be licensed from the effective date and pay one year's license fee with forty per cent penalty;
- (2) If the effective date of business is one year prior to the date of application, the applicant shall be licensed from the anniversary date of the effective date and pay one year's license fee with forty per cent penalty and the current year's license fee;
- (3) If the effective date of business is greater than one year prior to the date of application and the head determines that such violation was due to inadvertence of the applicant, the applicant shall be licensed from the anniversary date of the effective date and shall pay two years' license fees with forty per cent penalty; or
- (4) If the effective date of business is greater than one year prior to the date of application and the head determines that the violation was wilful on the part of the applicant, the applicant shall be licensed from the anniversary date of the effective date and shall pay the current year's license fee with forty per cent penalty and all annual license fees accrued from the effective date with forty per cent penalty.

(d) All checks shall be made payable to "Hawaii Department of Agriculture". The head may require the fee be submitted in the form of a money order, bank draft, cashier's check, or certified check. When payments for fees or penalties covered by this chapter are by check, a service fee shall be assessed for each check that is not honored. [Eff 5/29/81; am 1/16/84; am and comp 3/24/86; am 10/5/02] (Auth: HRS §145-15) (Imp: HRS §145-2)

§4-48-4 Branch store license. (a) A license shall be required for each branch store and may be obtained by the main store or parent company.

(b) The license shall be identified by the words "BRANCH STORE".

(c) A separate application form need not be completed provided the name and address of the branch store is listed on the original application by the main store or parent company. For each additional branch

store opening after the issuance of a license to the main store or parent company, an application and proper fee shall be required.

(d) All branch store licenses expire at the same time as the main store's or parent company's license and shall be renewed together with the main store's or parent company's license. [Eff 5/29/81; comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-2)

§4-48-5 Posting of license. (a) Every licensed commission merchant, dealer, broker, agent, processor, retail merchant, or branch store shall post the required license, or a copy of the license, in a conspicuous place at the place of business at all times.

(b) Repeated violation of this section may result in the suspension or termination of a license under section 4-48-13. [Eff 5/29/81; am 1/16/84; comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-2)

§4-48-6 Termination of license; notices; renewals; penalty. (a) All commission merchant, dealer, processor, broker, agent, and retail merchant licenses shall expire one year from the effective date, unless renewed with payment of the annual license fee on or before the expiration date of the license or unless otherwise provided for in section 145-2, Hawaii Revised Statutes.

(b) A commission merchant or broker license shall be declared void on the date of cancellation of the posted surety bond.

(c) Thirty days after the expiration of a commission merchant, dealer, broker, agent, retail merchant, processor, or branch store license, the head shall notify the licensee in writing that the license may be renewed by payment of the annual fee plus a forty per cent penalty. [Eff 5/29/81; am 1/16/84; am and comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-2)

§4-48-7 Changes in address, ownership, business name, or membership; bankruptcy. (a) A licensee shall promptly notify the head in writing of any change of address, business name, officers, directors, or holders of more than ten per cent of the outstanding stock of a corporation, and the percentage of stock held by each person.

(b) A new license shall be required in the case of change of ownership of a business, an addition or withdrawal of members of a partnership, or when

business is to be conducted under a different corporate charter than that under which the license was originally issued.

(c) A licensee shall promptly notify the head in writing when the licensee, or any partner if the licensee is a partnership, is undergoing proceedings under bankruptcy laws. [Eff 5/29/81; comp 3/24/86]
(Auth: HRS §145-15) (Imp: HRS §145-2)

§4-48-8 Commission merchant requirements. (a)

The commission merchant shall establish the commission rate and other charges to be assessed with the producer-consignor prior to the handling of farm products on consignment.

(b) The commission merchant shall exercise reasonable care and diligence in selling the consigned products promptly in a fair and reasonable manner.

(c) The commission merchant may not reassign farm products to another person and incur additional commissions, charges, or expenses without the expressed consent of the producer-consignor.

(d) The commission merchant shall not purchase consigned farm products or sell to firms over which the commission merchant has direct or indirect control, without specific prior authority of the producer-consignor. The commission merchant may purchase such farm products at reasonable market value to clean up remnants of shipments to expedite accounting.

(e) Within seven days after the final sale of any lot of consigned farm products, the commission merchant shall make a written report to the producer showing the quantity sold, the selling price, and the quantity dumped or discarded. [Eff 5/29/81; comp 3/24/86]
(Auth: HRS §145-15) (Imp: HRS §§145-2, 145-4 and 145-5)

§4-48-9 Remittance to producer. (a)

Commission merchants shall remit in full the amount realized from consignment sales, including collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales, to the producer-consignor within ten days after receipt of the money, unless otherwise agreed to in writing.

(b) Every dealer, processor, agent, or retail merchant shall make payment in full to the producer for farm products purchased or if a broker, for the negotiated purchase or sale of farm products, at the time and in the manner specified in a contract or agreed to by the producer in writing. If no payment time is set by a contract or in writing at the time of

delivery, payment shall be made within thirty days from delivery or acceptance of the farm product. [Eff 5/29/81; am and comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-6)

§4-48-10 Record keeping. (a) Every commission merchant having received any farm product for sale as a commission merchant, shall promptly make and keep for one year a record indicating in detail the following with reference to handling, sale, or storage of the farm product:

- (1) The name and address of the consignor;
- (2) The commodity, quantity, and date received;
- (3) The condition and quality upon arrival;
- (4) The date of sale;
- (5) The price for which each lot was sold;
- (6) An itemized statement of the charges to be paid by the consignor in connection with the sale, including commission charges;
- (7) A lot number or other identifying mark for each consignment transaction with the number or mark appearing on all sales tags, or other essential records needed to show what the product actually sold for;
- (8) Any claim which has been or may be filed by the commission merchant against any person for overcharges or damages resulting from injury or deterioration of farm products by the act, neglect, or failure of such persons; and
- (9) The names and addresses of all purchasers, if the commission merchant has any financial interest in the business of the purchasers or if the purchasers have any financial interest in the business of the commission merchant, directly or indirectly, as holder of the other's corporate stock, as co-partner, as lender or borrower of money to or from the other, or otherwise. The interest shall also be noted following the name of the purchaser.

(b) Every broker, upon negotiating the sale of farm products, shall issue to both the buyer and seller a written memorandum of sale, indicating the commodity, price, date of delivery, quality, quantity, and other details of the transaction. A copy of this memorandum shall be retained by the broker for a period of one year.

(c) Every dealer, processor, and retail merchant purchasing any farm product from the producer shall promptly make and keep for one year, a correct record showing the following:

- (1) The name and address of the producer;

- (2) The commodity, quantity, and the date received;
- (3) The condition and quality upon arrival;
- (4) The price to be paid;
- (5) The date paid; and
- (6) An itemized statement of any charges paid by the licensee for the account of the producer. [Eff 5/29/81; comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-3)

§4-48-11 Dumping certificate requirement, exception. The dumping certificate requirements of section 145-7, Hawaii Revised Statutes, shall not apply to a processor who handles produce on a pack out basis, provided that the processor shall, promptly upon completion of the sample evaluation or the preliminary processing and grading operation of each lot or delivery of product, notify the producer of the results obtained including:

- (1) The net weight or percentage by weight of each grade or quality;
- (2) The purchase price or prices;
- (3) The deduction for processing or other charges; and
- (4) The net amount due the producer. [Eff 5/29/81; am and comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-7)

§4-48-12 Filing of complaints. (a) Complaints may be filed by any producer or organization representing producers against any licensee or person assuming or attempting to act as such.

(b) All complaints shall be verified by the department prior to conducting an investigation.

(c) All complaints shall be filed on an approved form obtained from the head.

(d) The department may, on its own motion, conduct investigations and audit records when it has reason to believe that chapter 145, Hawaii Revised Statutes, or this chapter, has been violated. [Eff 5/29/81; comp 3/24/86, am 10/5/02] (Auth: HRS §145-15) (Imp: HRS §145-9)

§4-48-13 Hearing; suspension or revocation of license. (a) All hearings shall be conducted in accordance with chapter 4-1 and may be reviewed in the manner provided by chapter 91, Hawaii Revised Statutes.

(b) Any order for the suspension or revocation of a license shall be in writing and shall cite the

reasons for the action.

(c) Any reasonable time shall be allowed between the date of issuance of suspension or revocation of a license and the date upon which the order becomes effective. During this period, the licensee shall make arrangements with some other licensed person to safeguard the interest of innocent parties whose property or business may be affected by the suspension or revocation.

(d) After the revocation of a license or during the effective period of any suspension, no person whose license has been revoked or suspended shall, either directly or indirectly, carry on the business of a commission merchant, dealer, broker, processor, agent, or retail merchant.

(e) The suspension or revocation of a license shall not prevent the licensee from collecting amounts due prior to the effective date of suspension or revocation, or from remitting to the licensee's principals and obligees.

(f) Upon the issuance of an order revoking or suspending a license, the department may give general publicity to such fact, in order that those doing business with the person whose license has been revoked or suspended may take due notice.

(g) No new license shall be issued to any person, either under the original name or another name, while that person's license is suspended or revoked, or until any fine levied under section 145-12, Hawaii Revised Statutes, or this chapter, is paid in full. [Eff 5/29/81; am 1/16/84; am and comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §§145-10 and 145-12)

§4-48-14 Special bonding requirement. (a) An applicant for a commission merchant or broker license who previously has had a commission merchant, dealer, broker, agent, processor, or retail merchant license suspended shall post a \$10,000 surety bond before the commission merchant or broker license applied for is issued. The \$10,000 surety bond requirement shall apply for a period of three years, after which time the applicant shall be subject to the bonding requirement in section 4-48-2(e).

(b) An applicant for a dealer, agent, processor, or retail merchant license who previously has had a license suspended shall post a \$5,000 surety bond before the license applied for is issued. The \$5,000 surety bond requirement shall apply for a period of three years.

(c) The surety bond required under this section shall be executed by the applicant as principal and issued by a surety company qualified and authorized to

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do business in this State as surety.

(d) Any license issued in conjunction with the surety bond required under this section shall be declared void on the date of cancellation of the posted surety bond. [Eff 1/16/84; am and comp 3/24/86]
(Auth: HRS §145-15) (Imp: HRS §145-15)

§4-48-15 Penalties. Any person who violates any provision of this chapter may be subject to the actions, procedures, and penalties provided in sections 145-10 and 145-12, Hawaii Revised Statutes. [Eff 1/16/84; comp 3/24/86] (Auth: HRS §145-15) (Imp: HRS §145-10)