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Requirements for Grain Dealers

State of California

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Requirements for Grain Dealers

STATE OF CALIFORNIA

Current with legislation from the 2014 Reg.Sess..

West's Ann.Cal.Food & Agric.Code § 56252.2

§ 56252.2. Unsound financial condition; irrevocable guarantee of licensee obligations in lieu of denying, suspending, or revoking license; action by creditor or state

- (a) If the director is not satisfied that an applicant or licensee is financially responsible, the director may, in lieu of denying, suspending, or revoking the license, accept an irrevocable guarantee of the obligations of the licensee to all California farm products creditors. The guarantee shall be for any periods and in any amounts that the director may from time to time require. The director may, as a condition of accepting and maintaining the guarantee, require the guarantor to supply financial information to the director at times and to the extent the director deems advisable.
- (b) A guarantee placed with the director pursuant to subdivision (a) shall support an action in a court of competent jurisdiction by a farm products creditor for obligations of the licensee to the creditor and by a state officer for the obligations of the licensee to the state related to transactions subject to the guarantee.

West's Ann.Cal.Food & Agric.Code § 56255

§ 56255. Accounts, records and memoranda; preparation; preservation; contents; period of retention

- (a) Every licensee shall prepare and preserve the accounts, records, and memoranda required by this chapter which shall fully and correctly disclose all transactions involved in his business. Licensees shall keep records which are adapted to the particular business that the licensee is conducting and in each case such records shall fully disclose all transactions in the business in sufficient detail as to be readily understood and audited. Minimum records required under this chapter are:
1. A record of cash received.
 2. A record of cash disbursed.
 3. A general ledger or its equivalent.
 4. A record of amounts due California producers.
 5. A record of amounts due others.
- (b) Every licensee shall prepare and preserve records and memoranda required by this chapter which shall fully and correctly disclose the true ownership and management of such business.
- (c) All records required to be kept under this chapter shall be kept for a period of four years.

West's Ann.Cal.Food & Agric.Code § 56381

§ 56381. Investigation of complaints or notifications; expanded investigations; scope

- (a) If, in the opinion of the department, there appears to be reasonable grounds for investigating a complaint or notification made under the provisions of this chapter, the department shall investigate the complaint or notification. In the course of the investigation, if the department determines that violations of this chapter are indicated other than alleged violations specified in the complaint or notification that served as the basis for the investigation, the department may expand the investigation to include the additional violations.
- (b) In the opinion of the department, if an investigation substantiates the existence of violations of this chapter, the department may cause a complaint to be issued.
- (c) The investigation may include, but shall not be construed to require, examinations and audits of the books and records of any licensee pertaining to the solvency of the licensee, or to the purchase or handling of and accounting for any farm product purchased or received on consignment from another licensee or the producer, or handled as a brokerage transaction. The department may examine and audit all pertinent books, records, weight certificates, receipts, ledgers, journals, papers, contracts, bank statements, canceled checks, and other documents of the licensee that show or tend to show facts regarding the financial condition and the number and status of accounts of growers and others who are doing business with the licensee.

West's Ann.Cal.Food & Agric.Code § 56382

§ 56382. Complaint

If the examination discloses evidence of any violation of this chapter, the department may issue a complaint detailing the charges and the discipline sought in accordance with this chapter.

West's Ann.Cal.Food & Agric.Code § 56382.5

§ 56382.5. Aggrieved growers or licensees; complaints not subject to federal acts; pleadings; settlement; alternate dispute resolution

- (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall be accompanied by two copies of all documents in the complainant's possession that are relevant to establishing the complaint, a filing fee of one hundred dollars (\$100), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.
- (b) The respondent served shall answer within 30 calendar days of service. Respondent's response shall

include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars (\$300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers in accordance with standard procedures promulgated by the American Arbitration Association or other acceptable alternative dispute resolution entities.

(2) The hearing officers shall be familiar with the type of issues presented by such claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not

include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars (\$1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent is charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

West's Ann.Cal.Food & Agric.Code § 56382.8

§ 56382.8. Expedited review and settlement procedures for complaints not subject to specified federal laws and not exceeding a specified dollar amount

(a) In addition to all other complaint procedures provided for in this chapter, any aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) and for which the claim for damages does not exceed thirty thousand dollars (\$30,000), may file a verified complaint with the department, subject to expedited review and settlement. Informal complaints may be made for damages, but not for disciplinary action, although the department may issue a complaint pursuant to Section 56382 as the basis for disciplinary action. Informal complaints must be received by the department within nine months of when the claimant ought to have reasonably known of its existence, as required under Section 56446.

(b) Complaints must be submitted to the department in writing and verified, and may be transmitted via United States mail, overnight delivery, or by facsimile transmission, setting forth the essential details of the transactions complained of, including the following:

- (1) The name and address of each party to the dispute, of the agent representing him or her in the transaction involved, if any, as well as the party's counsel, if any.
- (2) The quantity and quality or grade of each kind of produce shipped if a grade or quality is the basis of payment.
- (3) The date of shipment.
- (4) The carrier identification if a carrier was used.
- (5) The shipping and destination points.
- (6) If a sale, the date, sales price, and amount actually received.
- (7) If a consignment, the date, reported proceeds, gross, and net.
- (8) A precise estimate of the amount of damages claimed, if known.
- (9) A brief statement of material facts in dispute, including terms of applicable contracts.
- (10) The amount of damages being sought.

(c) The complaint shall also, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accountings, accounts of sale, and any special contracts or

agreements.

(d) The informal complaint shall be accompanied by a nonrefundable filing fee of one hundred dollars (\$100) as required under Section 56382.5.

(e) Upon confirmation that a complaint has been properly and timely filed, including the securing of a denial letter from the United States Department of Agriculture under the federal Packers and Stockyards Act, 1921, or the federal Perishable Agricultural Commodities Act, 1930, the department shall send a copy of the complaint to the respondent by certified mail and advise the respondent that it shall have 30 days from the department's mailing of the complaint in which to answer the complaint. The answer shall contain a brief response to the complaint, including the respondent's position with respect to the claimant's description of matters in dispute, the relevant facts, and the remedy sought, together with a description of any claims it may have against the complainant, in the same manner as claims are to be set out in the complaint. The respondent shall also include any pertinent documentation relevant to its defense with its answer.

(f) After receipt of the answer from the respondent, the department shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist the parties in reaching an expedited informal resolution of the dispute. The informal consultation process will last no longer than 60 days. The parties shall cooperate fully with the department and shall participate in the informal consultation process.

(g) If the informal consultation process provided for in this section does not result in resolution of the dispute, the complainant may then pursue arbitration against the licensee and the complaint and any counterclaim will be fully and finally adjudicated and resolved by a decision of an arbitrator under expedited arbitration procedures as follows:

(1) The complainant shall submit a fee of six hundred dollars (\$600) to the department made payable to the arbitrator, arbitration service, or payee designated by the department for the arbitration and any counterclaimant shall submit a fee of six hundred dollars (\$600) to the department for any counterclaim that is filed also made payable to the arbitrator, arbitration service, or payee designated by the department.

(2) An arbitrator from a panel of arbitrators registered with the department shall be selected by the department and confirmed by both the complainant and the respondent or counterclaimant after the prospective arbitrator has certified that he or she has no known conflict of interest in the dispute and after each party has had an opportunity to lodge an objection for cause to the appointment of the named arbitrator within five days of its receipt of the notice of appointment of the arbitrator. The notice of appointment shall be in writing and may be transmitted via overnight delivery or by facsimile transmission.

(3) Upon confirmation of the appointment of the arbitrator the department will transmit to the arbitrator the verified complaint, the statement of defense, and the statement of counterclaim, if one is filed.

(4) The complainant shall have 30 days after receipt of the notice of appointment of the arbitrator to submit to the department in writing sworn declarations by witnesses and any other documentary evidence not previously submitted, as well as legal authorities and arguments.

(5) Within five days of the department's receipt of the complainant's written submission the department shall transmit a copy of the complainant's written submission to the respondent. The respondent shall have 30 days from the receipt of the complainant's written submission to submit to the department in writing responsive declarations by witnesses or other documentary evidence not previously submitted, as well as any legal authorities and arguments. The respondent's written submission in support of its counterclaim, if any, must be sent to the department at the same time as the responsive submission.

(6) If there is a counterclaim filed, within five days of the department's receipt of the counterclaimant's written submission the department shall transmit a copy of the counterclaimant's written submission to the complainant. The complainant shall have 10 days from the receipt of the counterclaimant's written submission to submit any witness statements, evidence, or legal authorities and arguments in reply.

(7) Once all periods for submission of evidence and arguments have expired and the department has transmitted all written submissions to the arbitrator, the case and all evidence to be considered by the arbitrator shall be deemed to be submitted.

(8) The arbitrator may, in the interest of justice, briefly extend the time periods for written submissions by either party.

(9) The arbitrator shall issue his or her arbitration decision and award in writing within 30 days after the case has been submitted for a decision. This time period may be extended by the arbitrator if, in his or her judgment, clarification of the evidence submitted is required from either the complainant, the respondent or counterclaimant, or both.

(10) No hearings or live testimony shall be conducted under the expedited arbitration procedures.

(11) The arbitrator shall award interest at the legal rate to be paid in addition to any damages that are awarded and the arbitrator may award the recovery of costs to one party to the arbitration or apportion costs between the parties as he or she deems appropriate. Costs may include filing fees, mediation fees and expenses, fees or expenses incurred by the department, and fees paid to expert witnesses, auditors, or inspectors, but not attorney's fees, unless there has been an agreement by the parties that the prevailing party in any dispute shall be entitled to recover reasonable attorney's fees as part of any award for damages, and in that case, the arbitrator may award reasonable attorney's fees to the prevailing party.

(h) Either party to an expedited arbitration proceeding conducted pursuant to this section may bring an action in any California court of competent jurisdiction to enforce any awards for damages made pursuant to this section. If an enforcement action is necessary to secure payment of awards for damages, the party initiating the enforcement proceeding shall be entitled to recover all additional expenses, costs, and attorney's fees incurred in connection with that proceeding.

(i) The department shall retain jurisdiction, as provided for under Section 56445, over any matter in which a licensee refuses to pay or otherwise comply with an arbitrator's decision conducted pursuant to the expedited arbitration procedures as set forth herein, and may immediately commence an action to revoke the license of the licensee.

(j) A complainant may enforce his or her rights through the verified complaint and expedited arbitration process as provided herein, or by a civil action brought in any court of competent jurisdiction. This section shall in no way abridge, preclude, or alter other remedies available to the parties now existing under common law or by statute, and the provisions set forth herein are in addition to those other remedies.

West's Ann.Cal.Food & Agric.Code § 56383

§ 56383. Obstructing examination or audit; grounds for suspension or revocation of license

The failure or refusal of any licensee to produce and make available to the director any such books or records, or otherwise to obstruct such examination or audit, is a good and sufficient ground for the suspension or revocation of his license.

West's Ann.Cal.Food & Agric.Code § 56442
§ 56442. Items subject to examination or inspection

In furtherance of any such investigation, examination, or inspection, the director may examine the ledgers, books, accounts, memoranda and other documents, farm products, scales, measures, and other articles and things which are used in connection with the business of the person.