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## **Requirements for Grain Dealers**

### **State of California**

*Penalties*

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## Requirements for Grain Dealers

### STATE OF CALIFORNIA

*Current with legislation from the 2014 Reg.Sess..*

#### **West's West's Ann.Cal.Food & Agric.Code § 56441** **§ 56441. Subjects of investigation**

The director on his own motion may, or upon the verified complaint of any interested party shall, investigate, examine, or inspect any of the following:

- (a) Any transaction which involves solicitation, receipt, sale, or attempted sale of any farm product by any person that is acting or assuming to act as a licensee.
- (b) Failure to make proper and true account of sales and settlement of sales as required by this chapter.
- (c) The intentional making of false statements as to condition and quantity of any farm product which is received or in storage.
- (d) The intentional making of false statements as to market conditions.
- (e) The failure to make payment for any farm product within the time which is required by this chapter.
- (f) Any and all other injurious transactions.

#### **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.

#### **West's Ann.Cal.Food & Agric.Code § 56443** **§ 56443. Bona fide disputes; election of alternative dispute procedures; jurisdiction of department**

Except as otherwise provided in Section 56444 or 56445, if the complaint is a bona fide dispute that involves any of the following, the department has no jurisdiction to act upon the complaint if the licensee or complainant, within 10 calendar days after receiving notice of the filing of the verified complaint, has notified the department of his or her election to submit the dispute to alternative dispute procedures in accordance with the provisions of a written contract:

- (a) The rejection of any farm product.
- (b) The failure or refusal to accept and pay for any farm product that is bought or contracted to be bought from a producer or by a licensee.
- (c) The failure or refusal by the licensee to furnish or provide boxes or other containers, or hauling, harvesting, or any other services that are contracted to be done by the licensee in connection with the

acceptance, harvesting, or other handling of the farm product.  
(d) The terms and conditions of the written contract.

**West's Ann.Cal.Food & Agric.Code § 56444**

**§ 56444. Restoration of jurisdiction; failure to adjudicate through alternative dispute procedures**

The jurisdiction that is otherwise reserved to the department in this chapter is, however, restored for the purposes of this chapter if the authorities responsible for the alternative dispute procedures, without reasonable cause, fail, refuse, or neglect to adjudicate the matter in dispute within 90 days from the date of notification to the department.

**West's Ann.Cal.Food & Agric.Code § 56445**

**§ 56445. Failure to comply with alternative dispute resolution award; jurisdiction**

The department also has jurisdiction over any complaint or dispute if the licensee has failed to perform in accordance with any alternative dispute procedure award that is made in accordance with the terms of the written contract.

**West's Ann.Cal.Food & Agric.Code § 56446**

**§ 56446. Time for filing complaint**

Any verified complaint filed with the department pursuant to this chapter shall be filed not later than nine months from the date a complete account of sales was due.

This period, however, does not include the length of time it takes to secure a written letter of denial from the federal agencies responsible for administering 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.).

**West's Ann.Cal.Food & Agric.Code § 56447**

**§ 56447. Licensee's failure to pay farm products creditors; verified statement of creditors' claims**

If a licensee fails to pay farm products creditors for any farm product that is received on consignment from the creditors, or fails to pay farm products creditors for any farm product purchased from the creditors, the department shall ascertain the names and addresses of all farm products creditors of that licensee together with the amounts due and owing to them by the licensee, and shall request all those farm products creditors to file a verified statement of their respective claims with the department. The request shall be addressed to each known farm products creditor at his or her last known address.

**West's Ann.Cal.Food & Agric.Code § 56501**  
**§ 56501. Certification of facts to superior court**

If any person in any proceedings before the director disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place of the hearing as to obstruct the proceeding, the director shall certify the facts to the superior court in and for the county where the proceedings are held.

**West's Ann.Cal.Food & Agric.Code § 56502**  
**§ 56502. Order to show cause**

The court shall thereupon issue an order which directs the person to appear before the court and show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter.

**West's Ann.Cal.Food & Agric.Code § 56503**  
**§ 56503. Procedure**

The same proceedings shall be had, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

**West's Ann.Cal.Food & Agric.Code § 56602**  
**§ 56602. Fraud**

It is a violation of this chapter if the applicant or licensee has made any fraudulent charges or returns for the handling, sale, or storage of, or for rendering any service in connection with the handling, sale, or storage of any farm product.

**West's Ann.Cal.Food & Agric.Code § 56603**  
**§ 56603. Failure to account; nonpayment or tardy payment**

It is a violation of this chapter if the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement on the sales, or to pay for any farm product which is received, within the time and in the manner which are required by this chapter.

**West's Ann.Cal.Food & Agric.Code § 56604**  
**§ 56604. False statement of condition, quality or quantity**

It is a violation of this chapter if the applicant, or licensee, has made any false statement as to the condition, quality, or quantity of any farm product which is received, handled, sold, or stored by him.

**West's Ann.Cal.Food & Agric.Code § 56605**  
**§ 56605. Purchase of consigned product for own account; exception**

It is a violation of this chapter if the applicant, or licensee, directly or indirectly, has purchased for his, or its, own account any farm product which is received by him upon consignment without prior authority from consignor together with the price fixed by the consignor or without promptly notifying the consignor of such purchase. This does not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots of parcels of any farm product which remains unsold, if such commission merchant forthwith enters such transaction on his account of sales.

**West's Ann.Cal.Food & Agric.Code § 56606**  
**§ 56606. False or misleading statements as to market conditions**

It is a violation of this chapter if the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any farm product.

**West's Ann.Cal.Food & Agric.Code § 56607**  
**§ 56607. Fictitious sales; collusion**

It is a violation of this chapter if the applicant or licensee has made any fictitious sale or has been guilty of collusion to defraud a producer or another licensee.

**West's Ann.Cal.Food & Agric.Code § 56608**  
**§ 56608. Reconsignment; multiple charges**

It is a violation of this chapter if a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant or employed a broker to effect the sale for the consignor and has deducted more than one charge for effecting the sale without the written consent of the consignor.

**West's Ann.Cal.Food & Agric.Code § 56609**  
**§ 56609. Fraud or deception in procurement of license**

It is a violation of this chapter if the licensee was intentionally guilty of fraud or deception in the procurement of such license.

**West's Ann.Cal.Food & Agric.Code § 56610**  
**§ 56610. Failure to file schedule of charges**

It is a violation of this chapter if the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with any farm product which is handled on account of, or as an agent of, another.

**West's Ann.Cal.Food & Agric.Code § 56611**  
**§ 56611. Unfair practices**

It is a violation of this chapter if the applicant, or licensee, has indulged in any unfair practice.

**West's Ann.Cal.Food & Agric.Code § 56612**  
**§ 56612. Unjustified refusal to accept product; device to defer acceptance**

It is a violation of this chapter if the licensee:

- (a) Has rejected without reasonable cause or has failed or refused to accept without reasonable cause, any farm product which the licensee has bought or contracted to buy from another licensee or a producer.
- (b) Has failed or refused without reasonable cause to provide boxes or other containers, or hauling, harvesting, or any other service which is contracted to be done by the licensee in connection with the acceptance, harvesting, or handling of such farm product.
- (c) Has used any device to avoid acceptance or unreasonably defer acceptance of such farm product.

**West's Ann.Cal.Food & Agric.Code § 56613**  
**§ 56613. Violation of provisions of chapter**

It is a violation of this chapter if the licensee has otherwise violated any provision of this chapter.

**West's Ann.Cal.Food & Agric.Code § 56614**  
**§ 56614. Employment of unlicensed agent**

It is a violation of this chapter if the licensee has knowingly employed an agent, without causing the agent to comply with the licensing requirements of this chapter which are applicable to agents.

**West's Ann.Cal.Food & Agric.Code § 56615**  
**§ 56615. Fraud, deceit or willful negligence in handling product**

It is a violation of this chapter if the applicant or licensee has in the handling of any farm product been guilty of fraud, deceit, or willful negligence.

**West's Ann.Cal.Food & Agric.Code § 56616**  
**§ 56616. Refusal to permit investigation, examination or audit; concealing records**

It is a violation of this chapter if the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examinations, or audits as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers which are necessary to any such investigations, examinations, or audits, or has otherwise obstructed them.

**West's Ann.Cal.Food & Agric.Code § 56617**  
**§ 56617. Breach of contract**

It is a violation of this chapter if the licensee without reasonable cause has failed or refused to execute or carry out a lawful contract with a producer or another licensee.

**West's Ann.Cal.Food & Agric.Code § 56618**  
**§ 56618. Failure to keep records**

It is a violation of this chapter if the licensee has failed or refused to keep and maintain the records as required by this chapter.

**West's Ann.Cal.Food & Agric.Code § 56619**  
**§ 56619. Taking product without contract**

It is a violation of this chapter if a dealer has obtained title to or possession, control, or delivery of any farm product from another licensee or a producer of the farm product without having executed a contract of purchase and sale, or a contract agreeing to purchase the farm product at a designated price to be paid by the dealer.

**West's Ann.Cal.Food & Agric.Code § 56619.5**  
**§ 56619.5. Time payment by cash buyer**

It is a violation of this chapter for a person licensed as a cash buyer to buy or otherwise take title to or possession of any farm product from a licensee or a producer of such product, except by cash payment of the full agreed price to the licensee or producer at the time of obtaining such possession or control.

**West's Ann.Cal.Food & Agric.Code § 56620**  
**§ 56620. Delinquent payments on contracts; late charge; waiver**

Under a contract for the purchase or handling of any farm products, any delinquent payment of money under this chapter shall also include a late charge of 5 percent per month of the unpaid balance calculated on a daily basis for the period of the delinquency for the first month and an additional 1 percent per month of the unpaid balance calculated on a daily basis for the remaining period of the

delinquency. Any such late charge shall be payable to the person from whom the farm product was purchased, unless the person waives, in writing, his right to such payment. Such waiver shall be valid and effective only when given after a delinquency has occurred.

This section does not affect the time of payment provided for in this chapter or in any contract for the purchase or handling of any farm product.

**West's Ann.Cal.Food & Agric.Code § 56621**  
**§ 56621. Failure, neglect, or refusal to collect or remit assessments**

It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Chapter 3 (commencing with Section 65500) of Part 2 of Division 22, Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Chapter 9.5 (commencing with Section 71000), Article 6 (commencing with Section 72101) of Chapter 10, Chapter 12.6 (commencing with Section 74701), Chapter 12.7 (commencing with Section 74801), Article 6 (commencing with Section 75131) of Chapter 13, Article 6 (commencing with Section 76141) of Chapter 14, Chapter 15 (commencing with Section 76201), Chapter 16.5 (commencing with Section 77001), Chapter 17 (commencing with Section 77201), Chapter 17.5 (commencing with Section 77401), Chapter 19 (commencing with Section 77701), Chapter 20 (commencing with Section 77901) of Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

**West's Ann.Cal.Food & Agric.Code § 56623**  
**§ 56623. Unlawful disposition of funds**

It is a violation of this chapter if any commission merchant who collects or receives funds in connection with the sale of consigned farm products has made any use or disposition of these funds in his or her possession or control that endangers or impairs faithful and prompt payment to the consignor of the product or to any other person having a financial interest therein.

**West's Ann.Cal.Food & Agric.Code § 56631**  
**§ 56631. Punishment for misdemeanor; liability for investigative costs**

(a) Except as specified in Section 56632, any misdemeanor which is prescribed in this article is punishable by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached.



Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

**West's Ann.Cal.Food & Agric.Code § 56632**  
**§ 56632. Acting without license; penalty**

It is a misdemeanor for any person to assume or attempt to act, or to act, as a licensee or agent without a license and is punishable by a fine of not less than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

**West's Ann.Cal.Food & Agric.Code § 56632.2**  
**§ 56632.2. Underpayment of annual application fees; penalty**

It is a misdemeanor for any person subject to this chapter to pay license fees in an amount less than that amount established under subdivision (b) of Section 56571. Any person who pays less than the amount established under subdivision (b) of Section 56571 for two or more consecutive years shall pay to the director treble the amount of the license fees due pursuant to this chapter.

**West's Ann.Cal.Food & Agric.Code § 56632.5**  
**§ 56632.5. Time payment by cash buyer**

It is a misdemeanor for any person licensed as a cash buyer to buy or otherwise take title to, or possession of, any farm product from a licensee or a producer of such product, except by cash payment of the full agreed price to the licensee or producer at the time of obtaining possession or control.

**West's Ann.Cal.Food & Agric.Code § 56633**  
**§ 56633. False charges**

It is a misdemeanor for any person to impose any false charge for handling or services in connection with any farm product.

**West's Ann.Cal.Food & Agric.Code § 56634**  
**§ 56634. Failure to account; settlement of accounts**

It is a misdemeanor for any person to fail to account promptly, correctly, fully, and properly and to make settlement of accounts as provided in this chapter.

**West's Ann.Cal.Food & Agric.Code § 56635**  
**§ 56635. False statement of market conditions**

It is a misdemeanor for any person to intentionally make any false or misleading statement as to market conditions.

**West's Ann.Cal.Food & Agric.Code § 56636**  
**§ 56636. Fictitious sale; collusion**

It is a misdemeanor for any person to make any fictitious sale or be guilty of collusion to defraud a producer or licensee.

**West's Ann.Cal.Food & Agric.Code § 56637**  
**§ 56637. Purchases for own account**

It is a misdemeanor for any person to directly or indirectly purchase for his own account, goods which are received by him upon consignment without prior authority from the consignor, or to fail to promptly notify the consignor of such purchases, if any, on his own account. This section does not, however, prevent any commission merchant from taking to account of sales, in order to close the day's business, any miscellaneous lot or parcel of any farm product which remains unsold, if such commission merchant forthwith enters such transaction on his account of sales.

**West's Ann.Cal.Food & Agric.Code § 56638**  
**§ 56638. False statement of grade, etc.**

It is a misdemeanor for any person to intentionally make any false statement regarding the grade, conditions, markings, quality, or quantity of any goods which are shipped or packed in any manner.

**West's Ann.Cal.Food & Agric.Code § 56639**  
**§ 56639. Noncompliance with chapter**

It is a misdemeanor for any person to fail to comply in every respect with the provisions of this chapter.

**West's Ann.Cal.Food & Agric.Code § 56651**  
**§ 56651. Injunction**

The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order which is made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur.

There may be enjoined in one proceeding any number of defendants that are alleged to be violating the same provisions or orders, although their properties, interests, residences, or places of business may be

in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

**West's Ann.Cal.Food & Agric.Code § 56652**  
**§ 56652. Civil penalty; action; liability for investigative costs**

(a) Any person that violates any provision of this chapter is liable civilly in the sum of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) for each and every violation. This sum shall be recovered in an action by the secretary in any court of competent jurisdiction. All sums which are recovered pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.