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## Requirements for Grain Dealers: *California*



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**A National Agricultural Law Center Research Publication**  
**Requirements for Grain Dealers: California**

**Fast find:**

- 1) Licensing: [Cal. Food & Agric. §§ 56133.5; 56181 to 56194; 56252.2 to 56253; 56301](#)
- 2) Bonding: [Cal. Food & Agric. §§ 56133.5; 56189.5](#)
- 3) Auditing: [Cal. Food & Agric. §§ 56255; 56381 to 56383; 56441 to 56442](#)
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- 8) Lien:

**Cal. Food & Agric. Div. 20, Ch. 7, Art. 1-20**

*Current with urgency legislation through Ch. 3 of 2020 Reg. Session.*

**§ 56101. Effect of definitions**

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

**§ 56102. Agent**

“Agent” means any person who on behalf of any licensee receives on consignment, contracts for, or solicits for sale on commission, any farm product from a licensee or producer of such product, or who negotiates the consignment or purchase of any farm product on behalf of any licensee.

**§ 56103. Broker**

“Broker” means any person that negotiates the purchase or sale of any farm product. A broker may not, however, handle either the farm product which is involved or the proceeds of a sale.

**§ 56103.5. Cash**

“Cash” means coin or currency of the United States, and does not include a check or money order.

**§ 56104. Cash buyer**

“Cash buyer” means any person who obtains title to, possession or control of, or buys or agrees to buy any farm product from a licensee or a producer by paying to the seller the full agreed price in cash at the time of obtaining possession or control, or at the time of contracting for title to, or possession or control of any farm product.

**§ 56105. Commission merchant**

“Commission merchant” means any person, as follows:

(a) Who receives on consignment or solicits any farm product from a licensee or producer of the product.

(b) Who accepts any farm product in trust from a licensee or the producer of the product for purposes of sale.

(c) Who sells any farm product on commission.

(d) Who handles any farm product in any way for the account of or as an agent of the consignor of the product. Any person who accepts a farm product from a licensee or the producer of such product for the purpose of sale or resale is a commission merchant, unless the person has bought, or agreed to buy, the farm product by a contract which designates the price to be paid to the seller.

**§ 56106. Consignor**

“Consignor” includes any person that ships or delivers to any commission merchant or dealer any farm product for handling, sale, or resale.

**§ 56107. Dealer**

“Dealer” means any person who obtains title to, or possession, control, or delivery of, any farm product from a licensee or producer at a designated price for the purpose of resale, or who buys or agrees to buy any farm product from a licensee or the producer of the farm product at a designated price.

**§ 56108. Established place of business**

“Established place of business” means any permanent warehouse, building, or structure which is owned in fee or leased, at which the owner or lessee carries on a legitimate permanent business in good faith, and at which a stock of any farm product is stored or kept in quantities which are usually carried and reasonably adequate to meet the requirements of the business. It does not mean any tent, temporary stand, or other temporary structure, or permanent structure which is occupied pursuant to a temporary arrangement.

### **§ 56109. Farm product**

“Farm product” includes every agricultural, horticultural, viticultural, and vegetable product of the soil, poultry and poultry products, livestock products and livestock not for immediate slaughter, bees and apiary products, hay, dried beans, honey, and cut flowers. It does not, however, include any timber or timber product, flower or agricultural or vegetable seed, any milk product that is subject to the licensing and bonding provisions of Chapter 2 (commencing with Section 61801) of Part 3 of Division 21, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.).

### **§ 56109.5. Licensee**

“Licensee” means any person licensed under this chapter as a broker, cash buyer, commission merchant, or dealer.

### **§ 56110. Producer**

“Producer” means any person that is engaged in the business of growing or producing any farm product.

### **§ 56131. Legislative declaration**

The marketing of agricultural commodities within this state is hereby declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

### **§ 56132. Lists of licensees**

The director may publish in pamphlet form as often as he thinks necessary a list of all licensees and agents that are licensed pursuant to this chapter together with all necessary regulations which concern the enforcement of this chapter.

### **§ 56133. Expenditure of funds**

Any money in the Department of Food and Agriculture Fund which was derived pursuant to this chapter or Chapter 6 (commencing with Section 55401) may be expended for the administration and enforcement of these chapters and Chapter 7.5 (commencing with Section 56701), notwithstanding any other provision of law which limits the expenditure of any such money to the specific purposes or to the administration or enforcement of each of the chapters separately.

### **§ 56133.5. Employment as agent; criteria for disqualification; surety bonds; criminal records; exemptions; hearings; records**

(a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ any person as an agent, or who previously was an agent, who meets any of the following criteria:

(1) Whose license has been revoked or is currently suspended.

- (2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 6 (commencing with Section 55401).
- (3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 6 (commencing with Section 55401).
- (4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve employment of any person covered by subdivision (a) if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the department, but that shall not be less than ten thousand dollars (\$10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due farm products creditors. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department. If the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or person's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe a person or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the person by a written notice. This written notice shall set out the charges against the licensee or person, prohibit employment or revoke or deny the license effective if and when any rights to an administrative hearing have been exhausted, and set out the licensee's or person's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

- (1) There has been a mistake of fact or identity.
- (2) The present role of the person provides no opportunity for a repeat of the prior behavior.
- (3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or person can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e)(1) A licensee or person who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an exemption by the department shall be afforded a hearing upon the licensee's or person's request under this chapter. The licensee or person shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or person's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, "convicted of a crime" includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of court in which a finding is made concerning any of the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

#### **§ 56134. Venue**

Civil suits and criminal prosecutions which arise by virtue of any provision of this chapter may be commenced and tried in any of the following:

- (a) The county where the product was received by the licensee or agent.
- (b) The county in which the principal place of business of such licensee or agent is located.
- (c) The county in which the violation of this chapter occurred.

#### **§ 56134.5. Rights, remedies and penalties; conflicting provisions**

The rights, remedies, and penalties that are provided for in this chapter are in addition to any other rights, remedies, or penalties that are provided for by law, and supercede provisions of law in conflict therewith.

#### **§ 56134.75. Rules of practice**

Except as otherwise provided in this chapter, Part 2 (commencing with Section 307) of the Code of Civil Procedure is applicable to, and constitutes the rules of practice in, the proceedings that are mentioned in this chapter except as insofar as they are inconsistent with the provisions of this chapter.

#### **§ 56135. Severability**

If any clause, sentence, paragraph, or part of this chapter is for any reason, adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part of this chapter which is directly involved in the controversy in which such judgment is rendered.

#### **§ 56136. Control of business; authorized persons; penalties**

(a) No person, other than a corporate officer, licensed and employed as an agent, shall control the business of the licensee, as determined by the director.

(b) For purposes of this section, "control" includes, but is not limited to, possession, either direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee.

(c) Violation of this section shall, after notice and opportunity for hearing, constitute grounds for license revocation of either, or both, the licensee or agent by the director.

#### **§ 56161. Excluded persons and firms**

This chapter does not apply to or include any of the following:

(a) Any nonprofit cooperative association organized and operating pursuant to Chapter 1 (commencing with Section 54001), any nonprofit cooperative association organized and operating pursuant to any similar law of any other state, the District of Columbia, or the United States, or the agents of these organizations, except as to the activities of these organizations or agents which involve the handling of, or dealing in, any farm product of a nonmember of the organization.

(b) Any person or exchange that buys, receives, or otherwise handles any farm product as a processor, as defined in Section 55407.

(c) Any retail merchant who has a fixed or established place of business in this state. This exemption does not, however, apply to retail merchants who are also engaged in the business of selling, at wholesale, any farm product purchased from a licensee or producer. This exemption also does not apply to any transaction wherein possession of any

farm product is obtained from a licensee or producer, and the farm product is sold to another person without being handled in the regular course of a retail business which is conducted at a fixed and established place.

- (d) Any person who buys any farm product for his or her own use or consumption.
- (e) Any person licensed as a distributor or handler under Chapter 2 (commencing with Section 61801) of Part 3 of Division 21 who purchases farm products from a dealer, broker, or commission merchant. However, this chapter applies to any such licensed person who purchases farm products from a producer.
- (f) Any person licensed as a landscape contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.
- (g) Any person, not otherwise required to be licensed pursuant to this chapter, that buys or otherwise acquires possession of any farm product from, and processed by, a nonprofit cooperative association to which subdivision (a) is applicable.
- (h) For the purpose of trading in cattle, any person engaged in the business of buying or selling cattle who is bonded under the federal Packers and Stockyard Act, 1921 (7 U.S.C. Sec. 181, et. seq.).

#### **§ 56162. Distribution or sale to mobile vendors for direct sale to consumers**

This chapter does not apply to any person that buys, receives, or otherwise handles any farm product for human consumption whose business is the distribution or sale of the farm product to persons who regularly operate mobile vehicles, mobile food preparation units, or vending machines on routes and who sell the farm product directly to the consumer. However, this chapter applies to any such person who purchases farm products from a producer.

#### **§ 56181. Necessity**

Except as otherwise provided in Section 55610, any person engaged in the business of buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale of farm products from a licensee or producer for resale shall be licensed as provided in this chapter.

#### **§ 56182. Applications; filing; fee**

Any person required by Section 56181 to be licensed shall file an application with the director for a license to transact business before engaging in such business. The application shall be accompanied by the application fee which is provided in Article 17 (commencing with Section 56571) of this chapter.

#### **§ 56182.5. Change of legal entity; notice to director; new license; petition**

(a) It is unlawful for a licensee that has changed its legal entity to do any of the following:

- (1) Continue to operate after the change.



(2) Purchase or handle any farm product from a person who had a farm product contract with the former licensee at the time of the change in entity without notifying that person, in writing, of the change in entity.

(3) Use any invoice, contract, or other document associated with the purchase, consignment, or brokerage of any farm product that identifies the former licensee unless the new entity is conspicuously identified on the same invoice, contract, or other document as the entity responsible for the transaction.

(b) The new entity shall notify the director in writing of the change in legal entity within 15 days of the change. The new legal entity shall, before it conducts business that requires a license, obtain a new license for the business.

(c) Notwithstanding subdivision (b), if a licensee conducts business without a new license as a result of a change of legal entity, it may, within 120 days of the change, upon a showing of no substantial change in financial resources and liabilities, petition the director to grant a new license retroactive to the first day of the month during which the change occurred, and the director may grant the license with retroactive effect upon a finding that doing so would be consistent with the purposes of this chapter. Upon granting the petition, the director shall (1) require the licensee to pay an additional fee in an amount that will cover the expenses of the department in the matter, but not to exceed the fee for a new license, (2) place conditions on the license that are consistent with the purposes of this chapter as the director deems appropriate, and (3) require the licensee to pay an amount, for deposit in the Farm Products Trust Fund, equal to the amount that would have been required had the license been obtained in accordance with subdivision (b).

**§ 56182.6. Suspension or forfeiture of corporate status; notice to director; reissuance of license; petition**

(a) If the Secretary of State suspends the corporate status of any licensee or if the corporate status is forfeited, the license is revoked by operation of law. The former licensee shall provide written notice of the suspension or forfeiture to the director, and to each person with whom it has a farm product contract, within 15 days of the date the Secretary of State mails the notice of suspension or forfeiture.

(b) The former licensee, may, upon a showing of no substantial change in financial resources and liabilities, and within 90 days of the suspension or forfeiture of corporate status, petition the director for an order to reissue its license formerly held under this chapter. If the corporate status has been reinstated by the Secretary of State, the director may reissue the license if the director finds that doing so would be consistent with the purposes of this chapter. As a condition

to reissuing the license, the director may (1) require the former licensee to undertake such financial guarantees, including the filing and maintaining of bonds, as the director deems necessary to protect the interests of contracting parties and (2) impose other conditions on the license that are consistent with the purposes of this chapter as the director deems appropriate.

**§ 56183. Application; general contents**

The application shall in each case state all of the following:

- (a) Every class of farm products which the applicant proposes to handle.
  
- (b) The full name of the person that is applying for such license. If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm, or the names of the officers of the exchange, association, or corporation shall be given in the application.
  
- (c) The principal business address of the applicant in this state and elsewhere.
  
- (d) The name of each person authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

**§ 56183.5. Initial application; contents; confidentiality; regulations**

(a) An initial application, at a minimum, shall include the following:

(1) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

- (A) The applicant's files with credit reporting agencies.
  
- (B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(2) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete it within 60 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

(c) The department shall adopt regulations that specify the proper and necessary information and supporting documentation the department requires for an application to be considered complete.

#### **§ 56184. Application; requirements for particular class**

In addition to the general requirements which are applicable to all applications as set forth in this article, the following requirements shall apply to each applicant who engages in the designated activity:

(a) Each applicant who intends to engage in business as a commission merchant shall include a complete schedule of commissions, together with an itemized listing of all charges for all services. Such designated commissions and charges shall not be changed or varied except by written contract between the parties. If changed by a written contract, such charges shall be clearly set forth in detail in such written contract. Any services which are rendered for which charges are made, if not listed in the schedule on the application, shall be rendered on a strictly cost basis.

(b) Each application for an agent's license shall include such information as the director may consider proper or necessary, and shall include the name and address of applicant, and the name and address of the licensee that is represented or sought to be represented by the agent, and the written endorsement or nomination of such licensee.

#### **§ 56185. Acceptance or denial of application; deadline; grounds for denying, conditioning, suspending or revoking license**

The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or upon repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or upon repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department upon learning of the violation.

(c) Upon the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a disciplinary action under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

**§ 56185.5. Alternative forms of discipline; factors in assessing level of discipline**

(a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 56185 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

(1) The relative isolation or infrequency of the conduct.

(2) Whether the conduct was a part of a pattern or practice.

(3) Whether the actor had been warned before.

(4) Whether the actor considered the consequences of the conduct.

(5) Whether the actor reasonably relied on others.

(6) The severity of the consequences.

(7) The mens rea of the actor.

(8) In the case of a criminal conviction, evidence of rehabilitation.

(9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

(1) The social or economic contributions of the applicant or holder.

(2) General testimonials as to good character and worthiness to be licensed.

(3) Economic hardship on the licensee.

(4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.

(5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

**§ 56185.75. Consideration of new application for license following revocation or denial; period of prohibition**

(a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until 30 days have elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

**§ 56186. Character, responsibility and good faith**

The department shall require the applicant to make a showing of character, responsibility, and good faith in seeking to carry on the business that is stated in the application, and may make investigations, hold hearings, and make determinations respecting such matters.

**§ 56186.5. Forfeiture by operation of law**

A license is forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The holder surrenders the license to the department.
  
- (b) The holder dies.
  
- (c) The partnership holder dissolves.
  
- (d) The holder of a significant financial interest in a corporation transfers his or her interest to another person or entity, regardless of relationship.
  
- (e) The holder files for bankruptcy under provisions other than those permitting and governing reorganization under bankruptcy.

**§ 56186.75. Authority of department**

(a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding against the applicant or to enter an order denying the license, unless the department consents in writing to such a withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of ownership of the business that is a party to the action, except with the written consent of the department.

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but not be limited to, the authority to order payment of amounts determined owing, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

**§ 56189. Period of ineligibility of person with forced collection of claims**

Any person who is adjudicated liable for payment of a claim for farm products that arose out of the conduct of a business licensed or requiring a license under this chapter or Chapter 6 (commencing with Section 55401), and who has not made full settlement with all producer-creditors, shall not be licensed by the director as a principal for four years from the date of the adjudication.

**§ 56189.2. Affidavit**

In addition to the other requirements of this chapter, each application for a license, except for a cash buyer's license, shall include an affidavit in which the applicant affirms that he or she is current in making all payments required under undisputed contract agreements, and that he or she will do all of the following:

(a) Abide by all provisions of this chapter and Chapter 6 (commencing with Section 55401).

(b) Will prepare and retain financial records adequate to document all transactions with suppliers.

(c) Will prepare and retain current financial information, including, but not limited to, profit-and-loss statements and a balance sheet that presents fairly the financial condition as of the applicant's most recent yearend.

The affidavit shall be on a form prescribed by the secretary and shall be submitted under penalty of perjury.



**§ 56189.5. Bond**

(a) Licensees or applicants for a license shall be required to furnish and maintain a surety bond in a form and amount satisfactory to the director, if within the preceding four years the director determines that they have done any of the following:

(1) Engaged in conduct which demonstrates a lack of financial responsibility including, but not limited to, delinquent accounts payable, judgments of liability, insolvency, or bankruptcy.

(2) Failed to assure future financial responsibility unless a surety bond is posted.

(3) Otherwise violated this chapter which resulted in license revocation.

(b) The bond shall not be less than ten thousand dollars (\$10,000) or 20 percent of the annual dollar volume of business based on farm product value returned to the grower, whichever is greater, as assurance that the licensee's or applicant's business will be conducted in accordance with this chapter and that the licensee or applicant will pay all amounts due farm products creditors.

(c) The director, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time as specified by the director. If the licensee fails to do so, the director may, after notice and opportunity for hearing, suspend or revoke the license of any licensee.

**§ 56190. Notice of decision to bring charges to deny, suspend or revoke license; defense; proceedings**

(a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny, suspend, or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant or holder's last known address.

(3) Except where the license has been temporarily suspended, the notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense, except where the license has been temporarily suspended. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed. A temporary suspension shall not be stayed

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. Third party intervention shall not be permitted. The disputes, claims, and interests of third parties shall not be within the jurisdiction of the proceedings. However, nothing in this paragraph prohibits any interested party from submitting an amicus brief if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

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

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

**§ 56193. Display**

Each licensee shall post his license or a copy of it in his office or salesroom in plain view of the public.

**§ 56194. Identification cards**

The director shall issue to any individual or member of a partnership, a card which specifies that he or his firm is licensed. The licensee shall show such card upon the request of any interested person.

**§ 56195. Identification cards for agents; display of void or expired card; offense**

The director may also issue to each agent a separate card for each principal which the agent represents, which shall bear the signature of the agent. Any agent shall show the card upon the request of any interested person. Any agent that displays a void or expired license card is guilty of a misdemeanor, punishable as provided in Section 56631 of this chapter.

**§ 56196. Indicia of possession of license as state property**

All indicia of the possession of a license are at all times the property of this state. Each licensee is entitled to the possession of them only for the duration of the license.

### **§ 56251. Restrictions**

A licensee that finances, lends money, or otherwise makes advances of money or credits to another licensee may not deduct from the proceeds of any farm product which is marketed, sold, or otherwise handled by him on behalf of or for the account of the licensee to whom such money, loans, advances or credits are made, an amount which exceeds a reasonable commission or brokerage, together with the usual and customary selling charges or costs of marketing, or both. He may not otherwise divert to his own use or account or in liquidation of such loans, advances, or credits the moneys, returns, or proceeds accruing from the sale, handling, or marketing of any farm product which is handled by him on behalf of or for the account of the licensee to whom or for whom such loans, advances, or credits are made.

### **§ 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.

### **§ 56253. Financial statement of licensee; form; failure to file; penalty**

The secretary may require a licensee to file a balance sheet or statement of financial position that presents fairly the financial condition of such licensee. Such financial statement, if not prepared by a public accountant or certified public accountant, shall be on a form prescribed by the secretary and shall be submitted under penalty of perjury. Any balance sheet submitted that does not provide the information required by the secretary shall not meet the requirements of this section. Failure of a licensee to file a financial statement pursuant to this section shall be sufficient grounds for license revocation.

### **§ 56254. Confidential nature of financial statements**

Any financial statement submitted to the director pursuant to the provisions of this article is confidential and shall not be divulged except if necessary for the proper determination of any court proceedings or hearing before the director.

**§ 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.

**§ 56271. Records**

Every commission merchant, that receives any farm product for sale as a commission merchant, shall promptly make and keep a correct record which shows in detail all of the following with reference to the handling, sale, or storage of such farm product:

- (a) The name and address of the consignor.
- (b) The date it was received.
- (c) The condition and quantity upon arrival.

(d) Date of such sale for the account of the consignor.

(e) The price for which it was sold.

(f) An itemized statement of the charges to be paid by the consignor in connection with the sale. Any services rendered for which charges are made, if not filed with the director, shall be charged at cost if not covered by a written contract. Cost-supporting data shall be available for verification.

(g) 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 copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in such records following the name of any such purchaser.

(h) A lot number or other identifying mark for each consignment, which number or mark shall appear on every sales tag and every other essential record which is needed to identify each consignment from receipt through final sale. When requested by the consignor, as provided by Section 56281, a lot number shall appear on each individual farm product container. When containers are on pallets, then only the exposed containers shall be marked. When stamping or otherwise identifying each container is impractical due to the type of packaging, the container need not be marked.

(i) Any claim which has been or may be filed by the commission merchant against any person for overcharges or for damages which result from the injury or deterioration of such farm product by the act, neglect, or failure of such person. Such records shall be open to the inspection of the director and the consignor of the farm product for whom such claim is made.

#### **§ 56272. Report of sale**

When requested by his consignors, a commission merchant shall, before the close of the next business day following such request, transmit to the consignor a true written report of the quantity sold and the selling price.

#### **§ 56273. Remittance**

The full amount which is realized from the sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of

sales, as provided in Section 56273.1, shall be remitted to the consignor within 10 days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing.

**§ 56273.1. Complete account of sale; information required; documentation**

(a) For purposes of this chapter, an account of sales shall be deemed complete if it consists of all of the following information:

(1) The date of shipment.

(2) The terms of the original sale concerning where and when title passes.

(3) The commodity, variety, size, and grade.

(4) The quantity shipped.

(5) The quantity disposed of in a manner other than sale by the buyer, if applicable.

(6) The original selling price.

(7) The adjusted selling price, if applicable.

(8) The reason for adjustment, if applicable.

(9) Any inspection certificate required to be obtained as stated in Section 56280.

(10) Amounts billed and collected from the buyer for services rendered to the buyer by the commission merchant.

(11) The gross and net returns received from the buyer.

(12) Any authorized commission merchant charges.

(13) Any additional amounts paid to the consignor by the commission merchant to support the original price.

(14) The net amount due the consignor.

(b) The consignor and the commission merchant may agree on the documentation necessary to support the information required by subdivision (a). The agreements shall be made, in writing, prior to the shipping season of the particular farm product.

**§ 56274. Record of sales on pooled basis**

In the account, the names and addresses of purchasers need not be given. Where a commission merchant has entered into a contract with two or more producers or consignors which contract provides that the returns for farm products sold for the account of such producers or consignors shall be pooled on a definite basis as to size or grade, or both, during a certain period of time, then a commission merchant shall obtain the written consent of the consignors and shall be required to render an account of sales, showing the net average pool return on each size or grade, or both, from sales made and shall keep a correct record of such sales, showing in detail all information as required in Section 56271.

**§ 56275. Copy of records**

Every licensee operating as a commission merchant shall retain a copy of all records which cover each transaction, which copy shall at all times be available for, and open to, the confidential inspection of the director, consignor, or the authorized representative of either.

**§ 56276. Certificate establishing condition, quality, grade, pack, quantity or weight**

If there is any dispute or disagreement between a consignor and a commission merchant which arises at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of any farm product, the department shall furnish, upon the payment of a reasonable fee for it by the requesting party, a certificate which establishes the condition, quality, grade, pack, quantity, or weight of such lot, shipment, or consignment.

**§ 56277. Certificate as prima facie evidence**

Such certificate is prima facie evidence of the truth of the statements contained therein. The presumption established by this section is a presumption affecting the burden of proof, but it does not apply in a criminal action.



**§ 56278. Sale below market to one having financial connection; rebuttable presumption of fraud**

Proof of any sale of any farm product which is made by a commission merchant for less than the current market price to any person with whom he has any financial connection, directly or indirectly as owner of its corporate stock, as copartner, or otherwise, or any sale out of which such commission merchant receives, directly or indirectly, any portion of the purchase price, except the commission which is named in the licensee's application or in a specific contract with the consignor, establishes a rebuttable presumption of fraud within the meaning of this chapter. This presumption is a presumption affecting the burden of proof.

**§ 56279. Burden of proof; correctness of accounting**

The burden of proof shall be upon the commission merchant to prove the correctness of any accounting required to be performed by the commission merchant pursuant to this chapter as to any transaction which may be questioned.

**§ 56280. Breach of contract; charge against account; inspection certificate or substitute**

(a) A commission merchant shall notify each consignor with whom he or she does business of this section. The notice shall be given in writing prior to the shipping season of the particular farm product.

(b) No charge shall be made against a consignor's account for a downward price adjustment or a reduction in quantity of farm products delivered due to a breach of contract, unless the commission merchant has, in his or her files, a federal-state inspection certificate, issued pursuant to the United States Agricultural Marketing Act of 1946, (7 U.S.C. 1621, et seq.), indicating the type and the extent of the substandard condition of the lot involved in the breach of contract, thereby supporting the amount charged against the consignor's account. The commission merchant need not obtain a federal-state inspection certificate unless the lot involved is of a substandard condition.

(c) Notwithstanding Section 56281, this section does not preclude a consignor from agreeing to a downward price adjustment or a reduction in the quantity of farm products delivered and waiving the right to inspection when the agreement was made prior to the shipping season of the particular farm product and was in writing.

(d) The federal-state inspection certificate may be substituted by a private third-party inspection, based on the standards prescribed under the United States Agricultural Marketing Act of 1946, if the director determines, to his or her satisfaction, that a federal-state inspection certificate could not reasonably be obtained. If the director determines, to his or her satisfaction, that neither a federal-state inspection certificate nor private, third-party inspection, can be reasonably obtained, a signed statement of two or more disinterested, or otherwise independent parties, who have sufficient knowledge, acquired through education or experience, to evaluate

the farm product involved, may be used as substitute for the federal-state certificate or third-party inspection, in order to make a statement as to the quality and condition of the lot of farm product at the time of inspection.

(e) Where the condition of the lot is not substandard but for other reasons, including a decline in market demand, there is a downward price adjustment, the commission merchant shall affirm, in writing, that the lot was at least of standard quality at the time of sale. The affirmation shall be attached to, or made part of, the records of the consignment.

(f) As used in this section, "lot" means the farm product identified by the procedure set forth in subdivision (h) of Section 56271.

**§ 56280.5. Agreement waiving guaranteed rights; quote of code provision; inspection; validity**

Any agreement waiving any right guaranteed by this chapter shall set forth in exact language the provision of this code being waived. Upon request by the secretary, the commission merchant shall make the agreement available for inspection. Any agreement that does not comply with this section, or that is not made available to the secretary for inspection upon the secretary's request, is void.

**§ 56281. Adjustments on transactions; notice to consignor; contents; record**

A commission merchant shall notify each consignor with whom he or she does business of the provisions affecting the consignor that are contained in Sections 56271, 56272, 56273, 56280, 56282, and 56351, and this section. The notice shall be given in writing prior to the shipping season of the particular farm product. The notice shall include a form whereby the consignor may request notice of any adjustment by the commission merchant. The form shall also include a provision whereby the consignor may request that lot numbers be affixed on each individual farm product container as provided in subdivision (h) of Section 56271. Each commission merchant shall keep the records necessary to prove that the notices were given to each consignor in accordance with this section. A licensee operating as a commission merchant shall notify the consignor of any adjustment on a transaction, and provide reasons for the adjustment, within 48 hours.

If the commission merchant is unable to contact the consignor by telephone or in person, the notification shall be immediately provided by mail.

**§ 56282. Disallowance of adjustments; waiver or agreement; criteria**

(a) Pursuant to this chapter, upon the verified complaint of the consignor, the secretary may disallow to a commission merchant, all or part of, any adjustment charged back to any

consignor similarly situated, if the secretary determines that there is insufficient justification of the condition or circumstances requiring the adjustment.

(b) In determining whether there is insufficient justification for an adjustment, the secretary shall first determine if any waivers or agreements have been entered into pursuant to this chapter. If a waiver or agreement has been entered into and the secretary determines that the waiver or agreement complies with Section 56280.5 and does not otherwise violate this chapter, the secretary's inquiry in determining this adjustment shall be governed by the terms and conditions of the waiver or agreement.

(c) If there is no waiver or agreement, or if the waiver or agreement violates this chapter, as determined by the secretary, in determining whether there is insufficient justification for an adjustment, the secretary shall consider, among other things, the following:

(1) The certificate issued pursuant to Section 56280 or 56351 does not support breach of contract.

(2) The perishability of the farm product involved and the timely issuance of the certificate pursuant to Section 56280 or 56352.

(3) Market reports or other market evidence does not support a downward price adjustment in accordance with Section 56279.

#### **§ 56283. Merchant's duty of care**

Every commission merchant who receives any farm product for sale on consignment shall exercise reasonable care and diligence in disposing of the product in a fair and reasonable manner.

#### **§ 56301. Records**

Every licensee operating as a dealer who purchases any farm product from the producer of the farm product or from any licensee for the purpose of resale, shall promptly make and keep a correct record which shows in detail all of the following:

(a) The name and address of the producer or licensee.

(b) The date received.

(c) The price to be paid.

(d) An itemized statement of any charges paid by the dealer for the account of the seller.

**§ 56302. Time for payment**

Every dealer shall pay for any farm product purchased by him at the time and in the manner specified in the contract with the producer or licensee. If no time for payment is set by such contract or made at the time of the delivery, the dealer shall pay for the farm product within 30 days from the delivery or taking possession of such farm product.

**§ 56302.5. Notice to sellers; burden of proof**

Upon the following, a licensee operating as a dealer shall notify the seller on a form to be prescribed by the department, as to the requirements set forth in Sections 56302 and 56620:

(a) Upon delinquency of a contract.

(b) If payment is not made within 30 days when the contract does not specify time of payment or if there is no contract.

(c) If payment is not made within 30 days when the contract is oral, irrespective of the agreed time of payment.

The dealer shall have the burden of proof as to the timely delivery of such a notice.

Such a notice shall only be required as to the first contract between any particular seller and dealer during any one calendar year.

**§ 56331. Memorandum of sale**

(a) Every licensee operating as a broker, upon negotiating the sale of farm products, shall issue to both buyer and seller a written memorandum of sale, before the close of the next business day, showing price, date of delivery, quality, and all other details concerned in the transaction.

(b) The memorandum required by subdivision (a) shall have an individual identifying number printed upon it. The numbers shall be organized and printed on the memoranda so that each memorandum can be identified and accounted for sequentially. Unused or damaged memoranda shall be retained by the broker for accounting purposes.

**§ 56332. Alteration of terms; consent of parties; corrected memorandum of sale**

A licensee operating as a broker shall not alter the terms of the transaction as specified on his original memorandum of sale without the consent of both parties to the transaction. Upon making such change, the broker is required to issue a clearly marked corrected memorandum of sale, which shall clearly indicate the date and time when such adjustment or change was made, and shall transmit such corrected memorandum to both buyer and seller before the close of the next business day.

**§ 56351. Necessity of certificate by public officer as to damage, etc.; substitute**

A claim may not be made against the seller of any farm product by a licensee pursuant to this chapter, and no credit may be allowed to such licensee against another licensee or a producer of any farm product by reason of damage to or loss, dumping, or disposal of any farm product which is sold to such licensee, in any payment, accounting, or settlement which is made by the licensee to the producer or other licensee, unless the licensee has secured and is in possession of a certificate issued by a county agricultural commissioner, a county health officer, the director, a duly authorized officer of the State Board of Health, or by some other official now or hereafter authorized by law. The certificate shall state that the farm product which is involved has been damaged, dumped, destroyed, or otherwise disposed of as unfit for human consumption or as in violation of the fruit and vegetable standards which are contained in Division 17 (commencing with Section 42501) of this code.

A private third-party inspection based on the standards prescribed in the United States Agricultural Marketing Act of 1946<sup>1</sup> may be substituted for such certificate if the director determines that an inspection certificate cannot be reasonably obtained. Where the director determines that neither an inspection certificate nor a private third-party inspection can be reasonably obtained, the signed statement of two or more disinterested or otherwise independent parties who have sufficient knowledge acquired through education or experience to evaluate the farm product involved may be used to describe the type and extent of the quality and condition factors present upon inspection.

**§ 56352. Time of issuance of certificate**

The certificate is not valid as proof of a proper claim, credit, or offset unless it is issued within 24 hours of the receipt by the licensee of the farm product which is involved.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 56411. Receipt of complaint; investigation**

For the purpose of enforcing this chapter, the director may receive verified complaints from producers or licensees against any person licensed pursuant to this chapter or Chapter 6 (commencing with Section 55401) or any person who acts or attempts to act as a licensee.

Upon receipt of any verified complaint, the director may make any and all necessary investigations relative to the complaint. The director shall, within 30 days, commence to investigate any verified complaint alleging that a licensee may be insolvent or in an unsound financial condition.

**§ 56412. Oaths**

The director may administer oaths of verification on the complaints.

**§ 56413. Right of access**

He shall have free and unimpeded access at all times to any building, yard, warehouse, or storage or transportation facility in which any farm product is kept, stored, handled, or transported.

**§ 56414. Powers of director**

He may do all of the following:

(a) Administer oaths and take testimony under oath.

(b) Issue subpoenas which require the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments.

(c) Compel the disclosure by such witnesses of all facts which are known to them relative to the matters under investigation.

**§ 56415. Contempt**

All parties disobeying the orders or subpoenas of the director are guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.).

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 56571. Application fees**

(a) Except as otherwise provided in this article or Section 55863, each applicant for a license shall pay to the department a fee in accordance with the schedule in subdivision (b), except that an agent shall pay fifty-five dollars (\$55) for each license period of the principal.

(b) The amount of the fee due each year shall be determined by the annual dollar volume of business based on farm product value returned to the grower or licensee, as follows:



(1) For a dollar volume of less than twenty thousand dollars (\$20,000), the fee shall be one hundred thirty-six dollars (\$136).

(2) For a dollar volume of twenty thousand dollars (\$20,000) and over, but less than fifty thousand dollars (\$50,000), the fee shall be two hundred dollars (\$200).

(3) For a dollar volume of fifty thousand dollars (\$50,000) and over, but less than two million dollars (\$2,000,000), the fee shall be three hundred dollars (\$300).

(4) For a dollar volume of two million dollars (\$2,000,000) and over, the fee shall be four hundred dollars (\$400).

(c) The department may reevaluate the fee structure based on operating costs. The fees shall adequately cover the costs to fully administer and operate the program in an effective and efficient manner.

**§ 56571.5. Maximum fees; fixing fees at lesser amount; adjustment; advisory committee**

The fees provided by Section 56571 are maximum fees. The secretary may fix those fees at a lesser amount, and may adjust those fees from time to time, whenever the secretary finds that the cost of administering this chapter can be defrayed with those below-maximum fees. The secretary may appoint an advisory committee of producers and licensees to provide guidance in establishing those fees or may rely on input from any similar advisory committee already assembled by the secretary.

**§ 56572. Penalty for tardy renewal; failure to pay penalty; delay in completing application**

(a)(1) If any licensee does not apply for the renewal of a preexisting license on or before the date of the expiration of the license, a penalty of twenty-five dollars (\$25) shall be added to the fee provided for under Section 56571 or 56571.5. That penalty shall be paid within 30 days immediately following the license expiration date. Payment of the penalty shall entitle the applicant to 60 days from the date of the penalty payment to complete the application. If the application is not completed within such time, the application shall be denied and all fees retained by the department.

(2) If the penalty described in paragraph (1) is not paid within the 30-day period, any application for renewal of a preexisting license shall be treated as a new application.

(b) A new applicant shall have 60 days from the date of filing the application form and payment of the fee to complete the application. After the 60-day period has elapsed, if the application remains incomplete, the application may be denied and the application fee retained by the department.

**§ 56573.5. Operating business without a license; failure to pay fee; penalties**

(a) If any person is found to be operating a business without the license required by Section 56181 or failed to pay the fee in accordance with the schedule in subdivision (b) of Section 56571, that person shall pay to the director double the amount of the license fee due pursuant to this chapter.

(b) In addition to subdivision (a), if any person is found to be operating a business within the past five years without a license required by Section 56181, or failed to pay the fees in accordance with the schedule in subdivision (b) of Section 56571, that person shall pay to the director an amount equal to that portion of the fees which were not paid for the last five years the business has operated.

**§ 56574. Processors; conjunctive license; fees**

Any person who has obtained a license pursuant to this chapter may secure a license pursuant to Chapter 6 (commencing with Section 55401) by filing an application accompanied by a fee determined by the dollar volume of business based on farm product value returned to the grower, as follows:

(a) For a dollar volume of less than fifty thousand dollars (\$50,000), the fee shall be fifty dollars (\$50).

(b) For a dollar volume of fifty thousand dollars (\$50,000) and over, but less than two million dollars (\$2,000,000), the fee shall be one hundred forty-five dollars (\$145).

(c) For a dollar volume of two million dollars (\$2,000,000) and over, the fee shall be two hundred dollars (\$200).

This license shall be known as a “conjunctive license.”

**§ 56574.5. Agent licensed as produce dealer; license as agent for conjunctive processor**

Any person who has applied for and obtained a license as agent, in the manner and upon the payment of the fee which is set forth in Section 56571, whose principal has applied for and

obtained a conjunctive processor's license, pursuant to Section 56574, shall be deemed to be licensed to represent his principal under Chapter 6 (commencing with Section 55401) of this division, and no other fee shall be required of such agent.

**§ 56576. Disposition of fees**

All license fees which are collected pursuant to this chapter shall be paid into the State Treasury monthly and shall be credited to the Department of Agriculture Fund and, except as otherwise provided in Section 56133, shall be expended in carrying out this chapter.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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<sup>1</sup>.

**§ 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.

**§ 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.

**§ 56611. Unfair practices**

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

**§ 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.

**§ 56613. Violation of provisions of chapter**

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

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 56639. Noncompliance with chapter**

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

**§ 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.

**§ 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.

