

§ 1701. Application.

(a) Applicants shall use the Department's preprinted form.

(1) Applicants shall obtain an application for license package from the Department's Market Enforcement Branch. This package includes, as a minimum, the Department's preprinted forms (Application for License [28-003 (Rev. 04/00~~12~~)]; Application for Agent's License [28-004 (Rev. 04~~08~~/00~~12~~)]; ~~Market Enforcement License Affidavit [28-003B (Rev. 04/00)]/Cash Buyers Statement [28-016 (Rev. 04/00)], a two-sided form; Notice of Review of Criminal Information [28-003C (Est. 1/98)]/Notice of Review of Credit Information [28-003D (Est. 3/98)], a two-sided form), a copy of the applicable statutes, and a copy of these regulations. The statutes and regulations shall only be sent to first-time applicants. An applicant should read both the regulations and the statutes prior to completing the application.~~

(b) Applicants shall submit the completed application to the Department's Market Enforcement Branch.

Note: Authority cited: Sections 407, 55483(c) and 56183.5(c), Food and Agricultural Code.
Reference: Sections 55483, 55522 and 56182, Food and Agricultural Code.

§ 1701.1. Application for Sole Proprietor, Partnership or Agent's License.

(a) The first-time applicant shall supply the following information:

(1) The business name, address, telephone number, mandatory social security number, birth date, and driver's license(s)/identification number(s) of the applicant;

(2) The names, addresses, and telephone numbers of principal creditors of the business, if any;

(3) The principal place of business and telephone number in California;

(4) The date of submission;

~~(5)~~ (5) Self-disclosure of any bankruptcy filings by owner, partner, or agent within the past four years;

~~(5)~~ (6) Self-disclosure of previous license revocation(s) or suspension(s), convictions for financial crimes as described in Section 1702.1(a)(5);

~~(6)~~ (7) A description of the business to be licensed.

~~(7)~~ (8) If the application is for an agent's license only, the name, address and telephone number of the person whom the agent represents and the signature of the person's authorized officer or principal endorsing the application;

(b) The first-time applicant shall attach the following documents prior to submission:

(1) A list of any current licenses and/or licenses from the previous five years issued by the Department for the applicant;

(2) A list by an individual of any current licenses and/or licenses from the previous five years issued by the Department for a partner or affiliate of a partnership applicant;

(3) A list by an individual of any current licenses and/or licenses from the previous five years issued by the Department for any agent of the applicant;

(4) A signed acknowledgment that the applicant has been informed of the Department's authority to obtain financial information concerning the applicant from credit reporting agencies, creditors, or financial institutions;

(5) A signed acknowledgment that the applicant has been informed of the Department's authority to obtain criminal record information concerning the applicant or its agent(s);

(6) ~~The affidavit, required by~~ A signed acknowledgment that the applicant is required to abide by all provisions of Division 20, Chapters 6 and 7, of the Food and Agricultural Code, including section 56189, if any;

(7) A Schedule of Charges if the applicant is acting as a broker and/or commission merchant;

(8) Full payment of all fees required on the application;

(9) A list of California commodities handled;

(10) For Cash Buyers and Cash Buying Processors, a statement of understanding that all transactions shall be made in cash;

(11) A list of farm products creditors owed sums that are delinquent, if any, including their names, addresses, and amounts owed; and,

(12) A copy of the formal fictitious name statement for an applicant who notes a "doing business as" (d.b.a.). This is the statement on file with the county in which the applicant does business.

Note: Authority cited: Sections 407, 55483(c) and 56183.5(c), Food and Agricultural Code.
Reference: Sections 404, 5484.75, 55485, 55523, 55524.75, 55525, 56183.5, 56186, 56189 and 56571.7, Food and Agricultural Code.

§ 1701.2. Application for Limited Liability Company or Corporation.

(a) The first-time applicant shall supply the following information:

(1) The business name, business address, telephone number, and taxpayer identification number of the limited liability company or corporation. In addition, the birth date and driver's license(s)/identification number(s) of any chief executive officer/president or chief financial officer/treasurer of any California based limited liability company or corporation. For any non-California based limited liability company or corporation, the birth date and driver's license(s)/identification number(s) of the agent for service of summons listed with the Secretary of State;

(2) Other information required for all applicants in Section 1701.1(a)(2) through 1701.1(a)(~~6~~8) of these regulations.

(b) The application shall be signed by an authorized representative.

(c) The first-time applicant shall attach the following documents prior to submission:

(1) A list by an individual of any current licenses and/or licenses from the previous five years issued by the Department for any member of a limited liability company, corporate officer, or significant shareholder of a corporate applicant;

(2) For corporations or partnerships, an acknowledgment of criminal record access signed by the authorized company representative and each agent;

(3) A limited liability company or corporation not registered with the California Secretary of State shall attach its Articles of Incorporation and registration with its State or County of incorporation;

(4) Other attachments required for all applicants by Section 1701.1(b)(3) through Section 1701.1(b)(12).

Note: Authority cited: Sections 407, 55483(c) and 56183.5(c), Food and Agricultural Code.
Reference: Sections 404, 5484.75, 55485, 55523, 55524.75, 55525, 56183.5, 56186, 56189 and 56571.7, Food and Agricultural Code.

§ 1702. Reasonable Grounds for Investigation.

(a) The Act authorizes the Department to investigate a Verified Complaint submitted (including but not limited to complaints submitted to initiate Alternate Dispute Resolution (ADR) as described in Section 1703 of these regulations) and requires that the Department investigate if, "in the opinion of the Department," there appears to be "reasonable grounds" to investigate.

(1) "In the opinion of the Department" means the Department has some discretion. This discretion is limited by case law, practice, The Act, and these regulations.

(2) "Reasonable grounds" means the Department has information which a reasonable and trained investigator would recognize as supporting, although not necessarily proving, the essential elements of a flagrant or repeated violation of a licensing requirement. Gossip, innuendo, or unverified and anonymous tips are insufficient to constitute reasonable grounds.

(3) The Department may investigate the financial stability of an agent or individual with a significant financial interest during the course of an investigation. A signed release authorizing the Department to obtain financial information concerning an agent or an individual with a significant financial interest from credit reporting agencies, creditors, or financial institutions shall be requested by the Department in the event of such an investigation.

(4) These principles apply not only to the initial decision to investigate or not to investigate, but to decisions to keep an investigation going or to close it.

(5) Complainants may obtain Verified Complaint forms [28-012 (Rev. ~~11/98~~09/11)] at the Market Enforcement headquarters office.

Note: Authority cited: Sections 407, 55483(c) and 56183.5(c), Food and Agricultural Code.
Reference: Sections 404, 408, 55721, 56381 and 56382.5, Food and Agricultural Code.

§ 1703.2. Instituting Department's Alternative Dispute Resolution Procedure.

(a) Submission of a Verified Complaint, written denial of federal jurisdiction, two copies of relevant documents in the complainant's possession, and payment of ~~\$60~~100 trigger the jurisdiction of the Department's ADR process, subject to the reservations set out in Section 1703(a).

(1) The Department shall notify the respondent and demand relevant records within five business days of the receipt of a Verified Complaint by sending a notice and demand by certified mail. A Verified Complaint shall consist of either a copy of complainant's PACA complaint or a completed Department form-complaint form. The Department shall enclose one copy of the complainant's documents with the notice and demand. The respondent shall deliver two sets of the records demanded within thirty (30) calendar days of the date on the notice and demand letter.

(A) The Department shall determine which records are relevant based upon the complaint and specify those records in its notice and demand letter.

(B) Exercise of a party's election to pursue a contract ADR process, as described in Section 1703.1, does not cut off this requirement. Respondent shall turn over two sets of the records regardless of

whether or not a contract ADR process is pursued. The Department shall use the records to decide whether they provide a reasonable basis for discipline. The Department shall retain them in case ADR jurisdiction is restored.

(C) The Department shall send one copy of the records to the complainant and shall retain one copy for its own purposes.

(D) Willful failure to deliver the records to the Department is cause for discipline as a flagrant violation of The Act. It is also cause for civil penalties and possible criminal prosecution. The Department shall issue a second notice by registered mail if the respondent fails to deliver the records on time. Failure to deliver following a second notice establishes a rebuttable presumption the failure is willful.

(E) Multiple simple failures to deliver records to the Department is also cause for discipline as repeated violations of The Act.

(F) If the Department establishes the charge at hearing, the hearing Administrative Law Judge may not rule "de minimus" either a willful failure or repeated failures, but shall impose discipline at the next step in severity due under the doctrine of "Progressive Discipline."

(2) The Department shall issue a summary based upon a reading of the records received. The Department may attempt to verify the accuracy of the records received through investigation.

Note: Authority cited: Sections 407, 55721 and 56183.5(c), Food and Agricultural Code. Reference: Sections 404 and 56382.5, Food and Agricultural Code; and Section 6250 et seq., ~~and 15376,~~ Government Code.

§ 1703.3. Request for ~~Formal Alternative Dispute Resolution~~ Expedited Review and Settlement.

(a) If parties have not achieved a settlement within thirty (30) days after the summary has been issued, as described in Section 1703.2, either the complainant or the respondent may initiate formal ADR expedited review and settlement by submitting to the Department's payment of \$600 and the prescribed form "Request for ~~Formal ADR~~ Expedited Review and Settlement" form [28-013 (Rev. 11/99 02/08)]. ~~If the Department receives such a request, it shall provide all parties with a listing of acceptable alternative dispute resolution entities in order for ADR to commence~~ Requests will be processed within ninety (90) calendar days of receipt as provided by Food and Agricultural Code Section 56382.8.

(1) If the Department does not receive such a request within sixty (60) calendar days from the date it mails its summary, the Department shall close the file.

~~(2) Both parties must agree to a mutually acceptable ADR entity.~~

~~(A) If the Respondent refuses, neglects, or fails to participate in the ADR process, the Department shall take appropriate disciplinary action against the license held by the Respondent.~~

~~(B) If the complainant refuses, neglects, or fails to participate in the ADR process, the Department shall no longer pursue the matter.~~

~~(3) ADR entities shall conduct proceedings in accordance with standard procedures promulgated by the American Arbitration Association or other alternative dispute resolution entity acceptable to both parties.~~

~~(A) It is the responsibility of parties to deal with the ADR entity directly to complete arrangements and notify the Department if parties need the Department's assistance (including financial under subparagraph (c), following).~~

~~(b) Parties may wish to seek the advice of counsel.~~

~~(c) If the ADR entity's hearing officer orders an audit, an act in his or her sole discretion, the Department shall, upon notification, advance the costs. The ADR hearing officer shall apportion all costs (including those of the audit) at the close of the hearing.~~

~~(1) The Department may not absorb these costs. The Department shall pursue all available remedies to collect reimbursement of these costs once they are apportioned by the ADR hearing officer. The Department may not forgive the debt.~~

~~(2) The Department shall require the parties to sign a promissory note prior to advancing the costs of an audit. The promissory note shall require the parties to repay as ordered by the ADR hearing officer and shall notify the parties of the possibility of enforcement measures.~~

Note: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 404, 55722.5 and 56382.5, [56382.8](#), Food and Agricultural Code; and Section 6250 et seq., Government Code.

~~§ 1703.4. AAA Hearing.~~

~~(a) The AAA hearing officer shall render a written decision and furnish the Department with a copy at the time he or she sends it to the parties.~~

~~(1) The Department shall not interfere with the independent judgment or process of the AAA hearing officer.~~

~~(2) Determinations that conditions of licensure have been violated are not within ADR's jurisdiction. Any purported findings of such violations, whether express or implied, may not be construed res judicata or collateral estoppel, nor in any other way binding or persuasive authority in the Department's imposition of licensing discipline.~~

~~(3) The Department shall consider this decision in its independent consideration of what discipline, if any, may be appropriate.~~

~~(4) If the Department determines that a party did not participate in good faith during the dispute resolution process, that party shall be subject to license discipline. Examples of a failure to negotiate in good faith include, but are not limited to, failure to abide by the terms of the agreement reached during the dispute resolution process, and failure to pay the required costs incurred during the process, either to AAA or to the Department.~~

~~(b) The AAA hearing officer may not order the decision or record sealed. Parties may not agree to seal them. However, as an investigative tool being used in an investigation in progress, neither the decision nor the record shall be construed to be a public record subject to public disclosure unless and until it leads in some way to the filing of an action to impose discipline.~~

Note: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 404, 55744, 56382.5 and 56445, Food and Agricultural Code; and Section 6250 et seq. and 15376, Government Code.

~~§ 1703.5. What If I Filed A Verified Complaint Prior to January 1998?~~

~~(a) Beginning January 1, 1998, the Department shall offer complainants who filed Verified Complaints prior to January 1, 1998, and respondents the opportunity to use the new Alternate Dispute Resolution process instead of the settlement and hearing process in effect when the complaints were filed. This offer shall be in writing and served by registered mail at the last known address of complainant first. If the complainant agrees in writing within thirty (30) calendar days from receipt,~~

~~the Department shall extend the offer to the respondent (again in writing and served by registered mail at respondent's last known address). Unless the respondent objects in writing within thirty (30) calendar days from date of receipt, the Department shall convert the pre-January 1, 1998 case to the post-January 1, 1998 system and notify parties of the next step due under that process.~~

~~(b) Whether or not complainant elects to use the new process for resolving the private dispute, licensing hearings shall be conducted according to the procedure described in these regulations no matter when the issues arose or how they came to the attention of the Department.~~

~~(1) The substantive law which applies to complaints filed prior to January 1, 1998 shall continue to be the pre-January 1, 1998 law.~~

~~(2) A complainant's decision to continue under the old process for resolving private disputes may result in the joint conduct of a licensing hearing and a private dispute hearing. In that circumstance, the presiding Administrative Law Judge shall hold a pre-hearing conference to work out order of hearing and related issues.~~

~~Note: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 404, 55483(c), 55485.75, 55488, 55525.75, 55528, 55721, 55722.5, 56185.5, 56186.75, 56190 and 56382.5, Food and Agricultural Code; and Chapter 4.5 (commencing with Section 11400); and Chapter 5 (commencing with Section 11500), Government Code.~~