

**DEPARTMENT OF FOOD AND AGRICULTURE
Title 3, California Code of Regulations**

**INITIAL STATEMENT OF REASONS
Policy Statement Overview**

**Division 3, Economics/Chapter 2.2, Market Enforcement
Subchapter 1, Licensing
Article 2, The Application Process/Article 3, Investigations/Article 4, Private
Disputes/Article 5, Discipline of Licensees/Article 6, Dismissals,
Range of Discipline, and Settlements.**

Description of the Problem, Administrative Requirement, or Other Condition or Circumstance
the Regulation is intended to Address

The regulations being proposed for amendment and/or elimination currently provide an administrative framework for the Department of Food and Agriculture (Department) to carry out its responsibilities under certain sections of the Produce Dealers Act and the Processors Law. The regulations, as existing, codify the administrative procedures affecting farm product producers and processors in their relationship with the Department and address the subjects of licensing, investigations, private disputes, discipline of licensees, and settlements of disputes. Statutory language changes have affected the corresponding regulations by establishing a simplified license application process, increasing the fees the Department may charge for complaint processing, and streamlining that complaint resolution process.

Necessity

The Market Enforcement Branch (Branch) was established in 1928 with the enactment of the Deciduous Fruit Dealers Act. In 1932 the Deciduous Fruit Dealers Act was repealed and replaced by the present Produce Dealers Act (PDA), being Division 20, Chapter 7 of the Food and Agricultural Code (FAC). The PDA covers all farm products grown or produced in California with the exception of milk, timber, cattle, and vegetable seed sold between dealers.

In 1935, the Processors Law (PL) was added as Division 20, Chapter 6 to the FAC. It regulates all persons who purchase California farm products from growers for the purpose of processing.

Since their inception, Chapters 6 and 7 have undergone significant amendments. These amendments have been geared to maintain the FAC's relevance with California's ever-changing agricultural industry.

Effective January 1, 1998, Statutes of 1997, Chapter 696 (Senate Bill 1198), amended the Food and Agriculture code affecting changes to the licensing, investigative and settlement activities of the Branch. The benefit of the changes is the streamlining of certain enforcement functions performed by the Department. Specifically, the statute 1) reduced the complexity of information the license applicants submit to the Department and 2) simplified the Department's role in processing complaints received from producers and processors.

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Effective January 1, 2006, Statutes of 2005, Chapter 613 (Assembly Bill 1061), amended the Food and Agriculture code affecting changes related to the Department's complaint process for licensees. The benefit of the changes is in providing licensees with a complaint meeting certain requirements, the option for an expedited complaint resolution process.

Specific Purpose and Factual Basis

The specific purpose of this proposed action is to align the regulations with the statutes by requiring 1) that applicants make certain disclosures for the purpose of licensing, 2) that applicants remit certain fees for dispute resolution services, and 3) that the Department administer an updated and revised complaint settlement process. Other non-substantial changes to the text of the regulations are being proposed to allow for deletion of Sections no longer in effect.

The factual basis or the determination by the Department that the amendment or deletion of Sections within Articles 2, 3, and 4 is necessary is based upon:

Existing state law provides that the Department shall prevent fraud and deception in the packing, labeling, or in any phase of marketing, of any agricultural product governed by the FAC, Section 402. The Department may adopt such regulations as are reasonably necessary to carry out the provisions of the FAC, Section 407. The Department may also, by rule or regulation, provide for issuance and renewal of licenses, setting the fee not to exceed twice the annual fee for issuance or renewal set by statute. (FAC, Section 409).

The specific purpose of each section being proposed for amendment is as follows:

Article 2. The Application Process

Section 1701. Application. Establishes that applicants must use the Department's preprinted form(s) and provides that the Branch supply a copy of the relevant statutes and regulations to first-time applicants. While the statutes provide authority for the Department to collect information from applicants "as the department may consider proper and necessary," the forms required of applicants for use by the Branch have been redesigned in the interest of creating efficiencies and reducing or eliminating use of paper. Specifically, forms eliminated include Market Enforcement License Affidavit (28-003B Rev. 04-00), Cash Buyers Statement (28-016 Rev. 04/00), Notice of Review of Criminal Information (28-003C Est. 1/98), and Notice of Review of Credit Information (28-003D Est. 3/98).

Section 1701.1 Application for Sole Proprietor, Partnership or Agent's License. Sets forth the specific information required from applicants and adds the requirement that applicants self-disclose any bankruptcy filings by owner, partner, or agent within the previous four years. While the statute provides authority for the Department to collect information from applicants "as the department may consider proper and necessary," this requirement is being made consistent with authority given by statutes amended through Senate Bill 1198 (statutes of 1997),

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specifically, to obtain information relevant to “applicant’s files with credit reporting agencies, banks, savings and loan associations or any other financial institutions with whom the applicant has done business.” Further simplifies the application process by combining several forms into one while retaining the requirement the applicant promises to abide by all provisions of Division 20, Chapters 6 and 7, including Section 55401 of the Food and Agricultural Code.

Article 3. Investigations

Section 1702. Reasonable Grounds for Investigation. Provides definitions related to the Department’s authority to investigate certain complaints. A specific reference is made to the required “verified complaint” form. The form has been revised effective September 2011.

Article 4. Private Disputes

Section 1703.2. Instituting Department’s Alternative Dispute Resolution Procedure. Prescribes the filing requirements for complainants and respondents including setting the fee consistent with the FAC and further describes the Department’s role and responsibilities. Establishes circumstances leading to violation of the Act (FAC Chapters 6 and 7, Title 20, beginning with Section 55401). In the first sentence (a) increase the fee charged to \$100 from \$60 to align with the FAC (Division 20, Chapter 6, beginning with Section 55722.5).

Section 1703.3. Request for Expedited Review and Settlement. Prescribes the option in the case of complaints for less than \$30,000, among other limitations established by statute, for the parties to proceed directly to arbitration. Also institutes a Branch-imposed total time limitation based on logical procession of intermediate steps required of parties to a complaint. Establishes the fee for parties to enter into expedited arbitration at \$600 consistent with the FAC (Division 20, Chapter 7, beginning with Section 56382.8).

Section 1703.4. AAA Hearing. Provided in the past the roles and responsibilities for the Department and the American Arbitration Association as appropriate. This Section is being proposed for deletion for the fact it was replaced in the FAC by “Expedited Review and Settlement.” (Division 20, Chapter 7, beginning with Section 56382.8).

Section 1703.5. What if I Filed a Verified Complaint Prior to January 1998? Differentiated in the past between two forms of dispute resolution when the second method later became available. The Section is being proposed for deletion for the fact the second method of complaint resolution was replaced by Expedited Review and Settlement. (FAC, Division 20, Chapter 6, beginning with Section 55722.5).

Economic Impact Analysis

The CDFA Market Enforcement Branch (Branch) processes approximately five thousand to six thousand applications for license per year. Verified complaints received by the Branch number between 100 to 160 per year. Verified complaints that are referred by the Branch for expedited arbitration number from none submitted to 3 per year.

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Regulations currently in effect require applicants for license complete a number of preprinted forms. The number of forms required has been reduced down to one with the formerly required affidavit being replaced by a single line in the preprinted application form. Eliminating the affidavit saves the license applicant an unknown amount of time in completing an application due to the reduced opportunity for misplacement of the affidavit and/or the filing of an incomplete application. The savings in time for Branch staff in not having to contact applicants with incomplete applications is minor as is the resulting reduction in paper consumption.

Verified complaints are used to resolve disputes between producers and licensees ranging from breach of contract to non-payment issues involving farm products. Increasing the fee for a verified complaint from \$60 to \$100, results in an increased cost to the applicant but is not expected to reduce the overall number of complaints. This is because the amount in dispute is typically sufficiently large enough to more than offset the filing fee. Disputed amounts range from \$1,000 up to \$250,000 with an average value ranging from \$10,000 to \$25,000. The Branch sees a positive outcome for filers in approximately 80 percent of cases.

The increase in total revenue available to be captured by the Branch for processing verified complaints at the \$100 rate is approximately \$4,000 to \$10,000. The following shows the smaller number of expected complaints for a given year at the lower rate versus the highest expected number of complaints at the higher proposed rate:

100 verified complaints x \$60 filing fee =	\$ 6,000
versus	
100 verified complaints x \$100 filing fee =	\$10,000 or
160 verified complaints x \$100 =	\$16,000

In the case of a dispute not exceeding \$30,000 in value, expedited arbitration is an option. Increasing the fee for expedited arbitration is as follows:

At the current rate:	
3 expedited arbitrations x \$300 filing fee =	\$ 900
versus	
3 expedited arbitrations x \$600 filing fee =	\$1,800.
the difference equals:	
\$900 in increased fees passed on by the Branch to the arbitrator.	

Amending the existing regulations as proposed would therefore create an economic impact ranging from \$4,000 to \$10,900 per year for complaint resolution services being sought out by licensees on a discretionary basis. The economic impact related to the streamlined application process involves minor savings in Branch staff time and materials.

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California's agricultural output for the 2011 crop year was estimated to be valued at more than \$43 billion per year. The annual budget of the department was approximately \$229 million from all fund sources for fiscal year 2011-2012. An economic impact of \$4,000 to \$10,900 should be considered minimal given the discretionary nature of complaint resolution requests, the approximately 80% rate at which the department secures a positive outcome for the filer, and the relatively low number of complaints filed in a given year.

Based on the above, it is not anticipated the proposed amended regulations governing licensing application or dispute resolution services currently provided by the department will affect to any significant degree:

- 1) The creation or elimination of jobs in California
- 2) The creation of new businesses or the elimination of existing businesses within California
- 3) The expansion of businesses currently doing business in California

The benefits of the proposed amended regulations to the health and welfare of California residents, worker safety, and the state's environment have been determined will remain consistent with benefits currently derived from the existence of the subject regulations. The subject regulations thereby maintain part of an existing licensing and enforcement protocol for dealers and producers of certain agricultural products and serve to effectuate the orderly and effective marketing of those products consistent with state law.

Statements of Determination

Alternatives Considered: The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

Local Mandate Determination: The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (beginning with Section 17500) of Division 4 of the Government Code.

Economic Impact Statement: The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California

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2. The creation of new businesses or the elimination of existing businesses within the State of California
3. The expansion of businesses currently doing business within the State of California.

Effect on Small Businesses: The Department has determined that the proposed regulations would not affect small businesses.

Housing Costs Determination: The Department has made the determination that the proposed regulations would have no impact on housing costs.

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)]

Information Relied Upon

The following reference material was used in the preparation of the proposed regulations:

- “*Senate Bill No. 1198*”, Chapter 696, Statutes of 1997, approved by the Governor October 4, 1997, filed with the Secretary of State October 6, 1997.
- “*Assembly Bill No. 1061*”, Chapter 613, Statutes of 2005, approved by the Governor October 6, 2005, filed with the Secretary of State October 6, 2005

A copy of Senate Bill No. 1198 and Assembly Bill No. 1061 are included in the rulemaking package.