

DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking  
45-Day Notice**

Notice is hereby given that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this notice as the contact person beginning February 8, 2013, and ending at 5 p.m. on March 25, 2013. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 407 of the Food and Agricultural Code, the director may adopt such regulations as are reasonably necessary to carry out the provisions of this Food and Agricultural Code. Accordingly, the Department proposes to amend Sections 1701, 1701.1, 1701.2, 1702, 1703.2, 1703.3, and delete sections 1703.4, 1703.5, of the California Code of Regulations, Division 3, Title 3, Chapter 2.2, Subchapter 1, Articles 2, 3, and 4.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department proposes to amend sections 1701, 1701.1, 1701.2, 1702, 1703.2, 1703.3, and delete sections 1703.4, 1703.5, which pertain to applications for license, private disputes, expedited arbitration, hearings, and complaints filed prior to January 1998. This proposal will provide for amending the regulations to align with the code and result in a streamlined and more efficient application process for both licensing and expedited review and settlement of verified complaints.

Existing state law provides that the Department, for the purposes of issuance of a license, may adopt regulations that specify the information to be collected for issuance of that license. In section 1701, with regard to the Department's application for license, this proposal will allow for substitution of a signed acknowledgement in place of an affidavit.

In section 1701.1, with regard to information to be supplied by applicants for a license, the Department proposes to require self-disclosure of bankruptcy filings and is substituting a signed acknowledgment for an affidavit.

In section 1703.2, "Instituting Department's Alternative Dispute Resolution Procedure," aligning the regulation with the code requires the charges for the filing of a "verified complaint" be increased from \$60 to \$100.

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In Section 1703.3, "Request for Formal Alternative Dispute Resolution," aligning the regulation with the code requires substitution of "Expedited Review and Settlement" for "Formal Alternative Dispute Resolution" and an increase in the filing fee from \$300 to \$600.

Sections 1703.4 and 1703.5 are being deleted as the sections "AAA Hearing" process and "Complaints Filed Prior to January 1998" are no longer applicable.

This proposed regulatory action amends specific regulatory codes with the corresponding statutes being Chapters 6 and 7 of Division 20 of the Food and Agricultural Code, also known as the Processors Law (1935) and Produce Dealers Act (1932).

The benefit of the changes is the alignment of the regulations with the FAC of certain enforcement functions the Department performs. This alignment benefits producers and processors by streamlining transactions with the Department.

Based on an initial evaluation, the Department does not believe that the proposed regulations are inconsistent or incompatible with existing state or federal regulations.

**FISCAL IMPACT STATEMENTS/DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Fiscal impact on public agencies including costs or savings to state agencies or cost/savings in federal funding to the state: The Department has determined that the proposed regulations would not have a significant statewide economic impact on public agencies or federal funding to the state.

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The Department has made an initial determination that no statewide adverse economic impact will occur affecting the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that a relatively small number of requests are made by affected businesses seeking the Department's assistance in complaint resolution.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, a representative private person or business would incur costs of \$100 per verified complaint submitted to the Department and \$600 to participate in the expedited arbitration process should they request these services. The

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Department processes approximately 100-140 verified complaints and between 1 and 3 expedited arbitrations per year.

Significant effect on housing costs: None.

Small Business Determination: The Department has determined that the proposed regulations may affect small businesses; however, the Department does not maintain data to determine if any of its licensed producers or dealers are “small businesses” as defined in Government Code Section 11342.610.

Other Non-Discretionary Cost or Savings Imposed Upon Local Agencies: The Department has made a preliminary determination that no non-discretionary cost or savings will be imposed upon local agencies by this regulation.

**ALTERNATIVES CONSIDERED**

The Department must determine 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 the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

**RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

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 maintain part of a 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.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

**CONTACT**

The agency officer (the “contact”) to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public

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hearing may be directed to is: Agatha d'Esterhazy, Department of Food and Agriculture, Market Enforcement Branch, 1220 N Street, Sacramento, California 95814, (916) 900-5016, FAX (916) 900-5342, E-mail: [adesterhazy@cdfa.ca.gov](mailto:adesterhazy@cdfa.ca.gov). In her absence, you may contact David Hillis, Marketing Division at (916) 900-5011. Questions regarding the substance of the proposed regulation should be addressed as follows:

Agatha d'Esterhazy  
Department of Food and Agriculture  
Marketing Enforcement Branch  
1220 N Street  
Sacramento, CA 95814  
[adesterhazy@cdfa.ca.gov](mailto:adesterhazy@cdfa.ca.gov)  
916-900-5016  
916-900-5342 (FAX)

Written comments should include the author's name and U.S. Postal Service mailing address in order for the department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

**INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet Web site ([www.cdfa.ca.gov/mkt/regulations.html](http://www.cdfa.ca.gov/mkt/regulations.html)).

**AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said proposed regulations prior to the date of adoption by contacting the contact named herein.