

In Title 3, California Code of Regulations, Division 4, Chapter 7, adopt:

**Subchapter 2. Appeals to the Secretary**

**§ 4700. General Provisions.**

(a) The appellant may appeal to the Secretary the imposition of an action or order by a California County Agricultural Commissioner (Commissioner) pursuant to Title 3, California Code of Regulations, Division 4, Chapter 3 or Chapter 4 or Chapter 5 or Chapter 6 or Chapter 7, by requesting a hearing within 5 business days of such action or order.

(b) Failure to file an appeal within the time specified shall constitute a waiver of the appeal and the Department shall deny the request for hearing.

(c) All appeals shall be written and shall be sent to California Department of Food and Agriculture, Attention: Director, Division of Plant Health and Pest Prevention Services, 1220 N Street, Suite 220, Sacramento, CA 95814. All written appeals filed shall be date stamped upon receipt and an appeal is considered "filed" when it is received. If an appeal is sent via facsimile or email before or after normal business hours, 8 AM to 5 PM, Monday through Friday, it shall be considered filed the next business day.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

**§ 4701 Effect of Commissioner's Action or Order of Required Action.**

The Commissioner's action or order shall be suspended after the appeal has been filed with the Director with the exception that if any articles, containers, means of conveyance, farm machinery or farm implements or plant material or any other thing is on hold due to being infested, contaminated or associated with a quarantine pest of concern to the commissioner or Department, the hold shall remain in effect during the appeal period and pending the outcome of the hearing.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

**§ 4702 Conduct of Hearings**

(a) Hearings shall be presided over and conducted by a Hearing Officer designated by the Secretary.

(b) Hearings may be based upon the written record or telephonic or oral testimony and hearings not held solely on the written record shall be recorded.

(c) The appellant may file any documentation or evidence in support of their objections by facsimile, e-mail, personal delivery or U.S. mail. It is the responsibility of the appellant to ensure that the materials are sent in a manner so as to arrive prior to the hearing.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

**§ 4703 Sole Issue of Hearings under this Section.**

The only issue before the Hearing Officer shall be whether, when the Commissioner imposed the specified action or order there was reason to believe, upon any basis reasonably supportable by standard epidemiological evidence or credible scientific research or facts or regulation or statute, that demonstrates the action or order was legally and biologically appropriate based upon the evidence presented. The appropriateness of the action(s) (including its time and place and method) required by the action or order is not before the Hearing Officer, but only whether or not there was an adequate basis for imposition of the action or order.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4704 Form of Decision**

(a) The decision of the Hearing Officer shall be in writing. The decision shall be in minute order form, containing only a brief statement of the conclusion and findings to support the conclusion. It may be handwritten.

(b) The decision shall be issued within 10 business days after the conclusion of the hearing.

(c) The written decision shall be mailed within 10 business days to all appellants who did not consent to the action or order by the Commissioner. The written decision may contain an explanation of the Commissioner's warrant and abatement authority.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4705 Effective Date of Decision**

The Hearing Officer's decision shall be effective immediately upon its first articulation under section 4704.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4706 Judicial Review**

The appellant may challenge the Hearing Officer's decision by filing a writ of administrative mandamus within 90 days of the date the written decision is mailed to the appellant in the appropriate court pursuant to Code of Civil Procedure section 1094.5. Such proceedings shall not stay the action or order specified by the Commissioner.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4707 Continuance**

(a) A request for continuance of a hearing, by the appellant, must be filed to the Director as soon as practicable prior to the scheduled hearing.

(b) A request for a continuance may be granted if good cause exists. Such request shall be granted upon a determination by the Director of Plant Health and Pest Prevention Services that such continuance is epidemiologically feasible and not inconsistent with the public health safety and welfare.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4708 Burden of Proof**

The standard of proof to be applied by the Hearing Officer shall be the preponderance of the evidence. The burden of proof shall be on the appellant.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

### **§ 4709 Evidence**

(a) All evidence related to the issue of the hearing will be admitted regardless of any civil rule which would otherwise bar its admission.

(b) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

Note: Authority: Section 407, Food and Agricultural Code.

Reference: Sections 407, 5103 and 5104, Food and Agricultural Code.

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