

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
STOP QIP CHAPTER 3.5 PETITION PUBLIC HEARING PROCEDURES**

QUESTIONS and ANSWERS

On May 8, 2020, the California Department of Food and Agriculture published formal notice calling a public hearing to consider the immediate suspension of Chapter 3.5 of the Food and Agricultural Code (sections 62750 *et seq*). The hearing is called in response to a verified Petition submitted by the STOP QIP Tax Coalition [Petitioners] on January 29, 2020.

On May 18, 2020, the Department published a notice intended to expand and clarify the hearing procedures provided in the May 8, 2020 Notice.

Since publication of that notice, the Department has received clarifying questions. Following is additional information in response to those questions with the intent to clarify any ambiguities in either the May 8, 2020 or May 18, 2020 publications.

Call of the Hearing

Q: Would the Department consider expanding the call of the hearing to include the procedures that the outcome of the referendum to be considered at this hearing would be determined specifically pursuant to FAC section 62755(a).

A: No. The Department provided the call of the hearing exactly as presented from the STOP QIP Petition and therefore deems it improper to expand on it for purposes of this public hearing. Any organization or individual that wishes to provide testimony and evidence regarding the relevant statute to be applied to the outcome of the referendum may do so.

Virtual Format of Hearing

Q: Does participation in the hearing require access to video-speed internet?

A: No. Any person may participate by simply dialing into a telephone number in the same way they would join a conference call. Person's that teleconference in will have complete access to the Hearing including the ability to provide comments.

Video Access Link: [Join Microsoft Teams Meeting](#)

Teleconference access information:

Call in number: (916) 245-8850
Conference ID: 923 784 401 #

Questioning of Commenters

Q: What is the procedure for submitting proposed questions to the Hearing Officer and Deputy Attorney General?

A: Any person may submit proposed questions to the Department's Legal Office no later than June 8, 2020 at 6:00 pm. Proposed questions will not be accepted once the

Hearing has commenced. Submission of a question does not guarantee it will be used by either the Hearing Officer or Deputy Attorney General.

Testimony by Petitioners and Dairy Producer Organizations

Q: Will all submissions received by the Department be publicly available five (5) days prior to the Hearing?

A: Yes. All written statements, evidence, and proposed questions, timely received, will be made publicly available five (5) business days prior to the Hearing. Submissions not timely received will be posted as time allows.

Testimony by Individuals

Q: How will the Department determine the order of testimony for individual commenters to testify live?

A: Individual commenters may pre-register to testify on a first come, first served basis. Persons wishing to pre-register must submit their full name and phone number to the Department's Legal Office no later than Monday, June 8, 2020 at 6:00 pm. The Legal Office general mailbox is CDFA.LegalOffice@cdfa.ca.gov. The Legal Office will confirm receipt of the request and assign a number in the queue. Those who wish to comment but do not pre-register, will be called on by the Hearing Officer when it is their opportunity to speak. These commenters will be called in a random order.

Q: Will the Department accept video or audio recorded statement in lieu of live testimony?

A: No. The Department will not accept video or audio recorded statements.

Exchange of Exhibits and Deadlines

Q: The Office of Administrative Hearing [OAH] published its Order Setting Remote Public Hearing for this matter, OAH No. 2020020788. In its Order, OAH states, "Prior to the hearing, the parties shall exchange all exhibits/reference materials that may be offered into the records and ensure that the Administrative Law Judge (ALJ) has copies," and "At least seven (7) days prior to the public hearing (by Tuesday, June 2, 2020, at 5:00 p.m.), the parties shall file their pre-marked exhibits/reference materials with OAH . . ."

This has created confusion as the OAH submission date does not coincide with the deadlines provided by the Department's instructions.

A: The OAH is required to publish such an order prior to all its formal administrative hearings, pursuant to the Administrative Procedures Act [APA], Government Code section 11500 *et seq.* While an Administrative Law Judge has been retained by the Department to serve as the Hearing Officer, the APA does not apply in this matter as the Department is calling the Hearing in accordance with its authority under FAC 62752. As a result, the deadlines for submissions, and all other requirements set forth in the Departments Hearing Procedures govern, including but not limited to:

- All submissions are due to the Department's Legal Office on or before Tuesday, June 2, 2020 at 6:00 pm
- The "exchange" of submissions occurs via the Department's posting to its website. All interested parties are responsible for accessing that website.
- The Department will forward all submissions to the ALJ prior to the Hearing.

Q: May commenters present exhibits into the record as part of his or her testimony?

A: No. Once the Hearing is convened, commenters may not supplement their testimony with exhibits. They may submit written statements and/or exhibits via the Department's Legal Office general mailbox, but those documents will not be before the Hearing Officer at the time of testimony unless submitted on or before June 2, 2020 at 6:00 pm. Commenters are encouraged to submit exhibits into the record via the Department's Legal Office in advance of the Hearing at: CDFA.LegalOffice@cdfa.ca.gov.

Q: If a person submits exhibits to the Department prior to the Hearing, will the Department designee present them to the Hearing Officer, or must the witness do so the day of the Hearing?

A: Written statements and exhibits submitted via the Department's Legal Office on or before June 2, 2020 at 6:00 pm, will be forwarded to the Hearing Officer prior to the Hearing. Written submissions will only be accepted via the Departments' Legal Office at CDFA.LegalOffice@cdfa.ca.gov.

Q: How should exhibits be marked?

A: The Department has no preference or requirement for the marking of exhibits.

Questioning of Witnesses

Q: Will the Department be identifying its witnesses in advance of the Hearing and the topics on which those witnesses will testify?

A: The Department will not be presenting witnesses at the Hearing.

Written Statements

Q: Does the Department view "written statements" or "supporting documents" to include legal briefs submitted in advance of the Hearing?

A: Yes. Any written document will be accepted by the Department so long as it is timely submitted to the Legal Office.

Q: Must all written statements be provided under oath?

A: If written statements are provided without, or separate from, oral testimony, the Department will assume the submitter is providing true and accurate information.

Q: Can written statements that are emailed be electronically signed?

A: Yes. The Department will accept electronic signatures so long as the signatory also provides his or her name, in writing, that clearly identifies the commenter.

Q: Will the Department accept written statements in lieu of live testimony?

A: Yes. The Department will accept all written statements submitted up to the conclusion of the Hearing with or without oral testimony by the commenter. THE CONCLUSION OF THE HEARING IS A HARD DEADLINE. Once the Hearing is convened [June 9, 2020 at 9:00 am], all written statements may only be submitted to the Department at CDFA.LegalOffice@cdfa.ca.gov. Submissions received after the Hearing Officer closes the Hearing or submitted anywhere other than the Legal Office general mailbox WILL NOT be considered – without exception.

Q: If written statements and/or exhibits are submitted during the Hearing, will they be made publicly available immediately? If so, how?

A: No. Statements and/or exhibits, whether submitted prior to or during the Hearing, will not be immediately published.

Written statements may be delivered or emailed any time up to the conclusion of the hearing. Written statements should be addressed to:

California Department of Food and Agriculture
Legal Office
1220 N Street, Suite 315
Sacramento, California 95814
CDFA.LegalOffice@cdfa.ca.gov

Post Hearing Briefs

Q: Does the Department view “post-hearing briefs” as the appropriate vehicle for legal briefs submitted after the hearing?

A: Post-hearing briefs will only be accepted pursuant to the Hearing Officers pre-approval of the submission – during the Hearing. The form, page length and deadline for submission of post-hearing briefs will be provided by the Hearing Officer at that time.

Hearing Transcripts

Q: How soon will written copies of the transcript be made available by the Department's Legal Office?

A: Unknown

Reference Materials

All documents referenced in this document may be found on the Department's website at:
https://www.cdfa.ca.gov/dairy/dairy_hearings_matrix.html