

COUNTY OF SAN DIEGO
DEPARTMENT OF AGRICULTURE,
WEIGHTS AND MEASURES

HEARING PROCESS OUTLINE

You have requested and been granted an administrative hearing regarding alleged violations. The objective of the hearing is to provide you the opportunity to present testimony and evidence to refute the violations alleged in the Notice of Proposed Action. Your hearing will be before a hearing officer who will make a decision based on all testimony and evidence presented. The role of the hearing officer is to determine if the violation(s) occurred and whether the penalty is imposed at an appropriate level. It is not the role of the hearing officer to negotiate to whom the Notice of Proposed Action should be issued.

Please come prepared to present all evidence and testimony at the time of the hearing. Additional evidence and testimony may not be introduced after the hearing has concluded. Evidence submitted will be evaluated by the hearing office for its credibility, relevance, and tendency to prove an issue. All hearings are recorded for purposes of appeal.

The formal hearing provisions of Chapter 5 of the Administrative Procedure Act (Government Code sections 11500-11529) do not apply to this hearing.

BEFORE THE HEARING

Immediately before the hearing, you will have an opportunity to meet with the agency representative and the hearing officer. At that time, you may be able to reach some agreement regarding specific facts and violations concerning all or part of your case. The prehearing meeting will include:

1. Introductions and signing appearance sheet.
2. The hearing officer asks if there are any procedural objections.
3. You and the agency discuss the violations in the Notice of Proposed Action. Any violation that you agree did occur will be stipulated to and included as part of the hearing.
4. Evidence from both you and the agency is submitted. You will need to bring any material evidence you have to support your case. Evidence is testimony, writings, material objects or other things that are offered to prove the existence or non-existence of a fact. Examples include documents, labels, records, equipment, etc. Please bring three (3) copies of any documents.

HEARING

During the hearing, the violations not agreed to in the prehearing meeting will be discussed. During the hearing, you should clearly state your objective (for example: you want charges dismissed, or fines reduced.) and present evidence to support your request.

➤ HEARING STARTS

1. Hearing officer turns on the tape recorder, states date and time.
2. All persons present identify themselves and spell their names for the record.
3. Hearing officer states, "Prior to the hearing, we had a prehearing meeting and the parties stipulated to the following... Is that correct?"

➤ **OPENING STATEMENTS**

An opening statement is a summary of your objective for your case. An opening statement is optional.

4. Agency.
5. Respondent.

➤ **AGENCY PRESENTS CASE**

6. Hearing officer administers oath to witness.
7. Direct examination of witness by agency. Direct examination is the first examination of a witness.
8. Cross examination of witness by respondent. Cross-examination is the examination of a witness by a party other than the direct examiner.
9. Rebuttal by agency.
10. Cross examination of rebuttal by respondent.
11. Call additional witnesses.
(Steps 6 – 10 are repeated in regard to each witness)

➤ **RESPONDENT PRESENTS CASE**

6. Hearing officer administers oath to witness.
7. Direct examination by respondent.
8. Cross-examination by agency.
9. Rebuttal by respondent.
10. Cross-examination of rebuttal by agency.
11. Additional witnesses testify.
(Steps 6 – 10 are repeated in regard to each witness)

➤ **CLOSING ARGUMENTS**

Summarize the evidence you presented to support your case. A closing argument should be brief and to the point. At the close, hearing officer should be told exactly what you are requesting.

12. Agency.
13. Respondent.

➤ **CLOSE HEARING**

NOTICE OF DECISION

The hearing officer will submit in writing a Notice of Proposed Decision to the Commissioner/Sealer (AC/S). The AC/S reviews and adopts the Proposed Decision. You will receive a copy within approximately 45 days. The notice includes appeal procedures.

The AGENCY is the Department of Agriculture, Weights and Measures. The person who presents the case for the Agency is called the ADVOCATE.

The RESPONDENT is the person or business charged with the violation.

The RESPONDENT is entitled to:

- ◆ Be represented by his/her own counsel;
- ◆ Review the agency's evidence;
- ◆ Cross-examine witnesses on relevant matters;
- ◆ Produce evidence on his/her behalf.
- ◆ Full and fair consideration of the relevant evidence by an impartial hearing officer.
- ◆ Assurance that penalties or fines taken against the respondent are based upon sufficient competent evidence contained in the record;
- ◆ Request of an appeal.

If you have any questions regarding your hearing date or time, please call (858) 694-2749.

If you wish to review the Department's evidence, please call (858) 694-3976.

NOTE:

Any changes to your hearing date must be requested in writing and received by this department at least five working days prior to your scheduled hearing date. Changes to hearing dates will be granted only in cases of emergency.