

Section 6.2

CAC Changes to a Hearing Officer's Proposed Decision

**Guidance
changes
June 2012**

This guidance applies to administrative hearings authorized by Food and Agricultural Code sections 12999.5, 15204 and 15204.5, and in some respects, to Business and Professions Code sections 8617 and 8662. It supersedes previous guidance on this subject.

The June 2012 version of Hearing Officer Roundtable Project's "Section 6.2 - Changes to a Hearing Officer's Proposed Decision," is a minor revision of the June 2006 version, entitled, "Section 6.2 - Commissioner's Discretion to Change a Decision," which replaced the May 2004 version, entitled, "Section 6.2 - County Recourse for Hearing Officer's Decision."

The most recent changes are to clarify previous statements within the guidance and to add a list of "review standards."

**Question posed
and response**

- Does the county agricultural commissioner (CAC) have any recourse if he or she disagrees with the Hearing Officer's proposed decision?
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**Hearing
process
provides due
process**

If requested by the Respondent, the CAC must provide a hearing before levying a penalty. The hearing establishes the facts of the case and provides due process to the Respondent (an opportunity to review and respond to the county's evidence).

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CAC should be able to agree with the adopted decision

The CAC, not the Hearing Officer, has the authority and responsibility to levy penalties. The CAC is not required in all cases to adopt the Hearing Officer's decision in its entirety, *but the CAC should basically agree with the decision he or she adopts*. The CAC may decline to adopt an error in the Hearing Officer's proposed decision and issue its own decision and order based on the hearing record, within certain limits (described in "*Due process limits. . .*")

This is a legitimate exercise of the CAC's authority that may avoid reversal on appeal and may be the only opportunity to correct a Hearing Officer's error. The Respondent may appeal the CAC's decision and order to the Director of the Department of Pesticide Regulation (Director) or the Disciplinary Review Committee (DRC), as appropriate.

Due process limits the CAC's discretion relating to findings of facts

The Respondent's right to due process of law limits the CAC's discretion to reject a finding of fact in the Hearing Officer's proposed decision.

The CAC may overrule a Hearing Officer's findings of fact only if there is no substantial evidence, in the hearing record, to support it. The hearing creates the administrative record and provides the Respondent with an opportunity to review and respond to the county's evidence before an impartial arbiter as required by principles of due process. The hearing record is the sole source of facts in the case. The CAC must only rely on evidence admitted at the hearing as the basis of its decision to levy a penalty. Furthermore, deference is given to the Hearing Officer as the finder of fact. The CAC must accept the Hearing Officer's judgments about the relative weight and credibility of conflicting evidence.

Where a CAC's decision overrules a Hearing Officer's finding of fact that is supported by substantial evidence in the record, the Director of DPR or the DRC will overturn that decision.

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CAC's independent judgment limited to application of law

The CAC may use his or her independent judgment when overriding a Hearing Officer's interpretation of the law.

The CAC need not defer to the Hearing Officer's interpretation of the law if it is incorrect. When the CAC believes the Hearing Officer incorrectly interpreted the law, then he or she should correct that error in his or her final decision and order to levy the penalty. If the Respondent appeals the CAC's decision on that basis, then the Director or DRC would exercise *their* independent judgment in resolving that purely legal question.

CAC must review record and articulate reasoning

Consider these points when reviewing the Hearing Officer's decision:

- The "substantial evidence" standard is not a high standard. The standard is whether any reasonable person could come to that conclusion of fact based on the evidence in the record. The CAC should review the entire record before making this determination.
- Whenever the CAC overrules a Hearing Officer's legal interpretation or finding of fact, he or she should carefully explain its reasoning in the final decision. Letting the Respondent know the basis of the CAC's action respects the Respondent's procedural rights and can avoid unnecessary expense for everyone involved. An explicitly reasoned order helps the Respondent make an informed decision about whether to appeal and, if the Respondent decides to appeal, facilitates that process.

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Review standards

1. The CAC must personally review the hearing record before changing a Hearing Officer's proposed decision. The record of the hearing is the sole source of facts in the case. The CAC must only rely on evidence admitted at the hearing and cannot rely upon another person's interpretation of what happened and what was said at the hearing, or insert their own knowledge of the facts (that may or may not have been presented at the hearing.)
2. As a matter of law, deference must be given to the Hearing Officer as the "finder of fact." The CAC must accept the Hearing Officer's judgments about the relative weight and credibility of conflicting evidence.
3. The CAC may overrule a Hearing Officer's "finding of fact" only when there is no substantial evidence (in the hearing record) to support the finding.
4. The CAC may decline to adopt a Hearing Officer's error or misinterpretation of law in the Hearing Officer's proposed decision and instead issue his or her own decision, about the application of that rule or law, based on the hearing record. The CAC may only use his or her independent judgment to override a Hearing Officer's interpretation of the law, i.e., to resolve a legal question. However, it must be understood that if the Respondent appeals the CAC's decision on that basis, then the Director or DRC would exercise *their* independent judgment in resolving that legal question.
5. When a CAC's decision overrules a Hearing Officer's finding of fact that is supported by substantial evidence in the hearing record, the Director of DPR or the DRC will overturn that decision.

Reference

Food and Agricultural Code sections 12999.5, 12999.5, 15204 and 15204.5
Business and Professions Code sections 8617 and 8662

Questions

CACs or staff should contact their Enforcement Branch Liaison.
