

Section 6.2.1

Hearing Officer Changes to CAC Fines

Introduction Occasionally, Hearing Officers wish to change a fine previously set by the County Agricultural Commissioner (CAC) in the Notice of Proposed Action.

Applicable codes Title 3, California Code of Regulations (3 CCR), section 6130, specifically identifies the CAC as the person responsible for setting fines in administrative civil penalty actions initiated pursuant to the authorities of Food and Agricultural Code (FAC) section 12999.5, 15204 and 15204.5.

In addition, Title 16, California Code of Regulations (16 CCR), section 1922, specifically identifies the CAC as the person responsible for setting fines in structural civil penalty actions initiated pursuant to the authority of Business and Professions Code (BPC) section 8617.

Fines should not be changed unless there is an identifiable mistake CACs carefully consider facts and the evidence when determining fine classes and amounts before the CAC issues a Notice of Proposed Action (NOPA).

A Hearing Officer may lower a fine amount set by the CAC when he/she makes a written determination that:

- The CAC made a mistake in determining the fine class; or,
- The CAC did not include sufficient facts in the NOPA to support the fine class; and,
- During the hearing, evidence was not presented to support the fine class determined by the CAC.

If the Hearing Officer then believes it is necessary to lower the fine, his/her proposed written decision must state the specific lack of factual allegations in the NOPA (pertaining to the fine) and also note any specific lack of evidence (supporting a violation) in the hearing record.

In addition, if a Hearing Officer determines the CAC was not correct in setting the fine class (articulating the reasoning in the proposed decision) and decides to reset the class, he/she must then apply the fine class in accordance with applicable fine regulations; and, to the greatest extent possible, follow the CAC's stated logic for setting the fine amount within the chosen class.

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Hearing Officer Changes to CAC Fines, Continued

Additional guidance that may help hearing officer relative to fine reduction

Here is additional guidance to follow if a Hearing Officer decides it is necessary to reduce a fine:

- When the NOPA contains facts to support the fine class, the county must still prove those facts, by a preponderance of the evidence, at the hearing. If, at the hearing, the CAC does not provide facts necessary to support a particular fine class, then the Hearing Officer has discretion to reduce the fine in his/her written proposed decision for the CAC.
- When the CAC does not prove, by a preponderance of the evidence, that a violation took place, the Hearing Officer has an obligation to dismiss that violation instead of reducing the fine. In effect, the Hearing Officer will reduce the fine to zero because he/she will make a finding in the written proposed decision that there wasn't sufficient evidence showing the Respondent committed the violation.
- When a Hearing Officer adjusts a fine amount in any way, he/she must state the reasons in the written proposed decision for the CAC. The Hearing Officer's written proposed decision must provide adequate reasoning so that the CAC, and others, can understand why the fine amount differs from the fine amount previously set by the CAC in the NOPA.

Things a hearing officer must not do

- A Hearing Officer must never set a higher fine amount or fine classification than what is stated in the NOPA.
- A Hearing Officer must not use a fine adjustment to punish or reward either party for poor or good performance at the hearing.

Questions

If you are a Hearing Officer, please direct questions to the CAC engaging your services.

CACs or staff should contact their Enforcement Branch Liaison.
