

Section 3.4

Hearing Officer and CAC Discretion in Relation to Fines

Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- What discretion does the Hearing Officer have in reducing the fine amount and/or fine classification after considering mitigating circumstances?
 - Does the violation (count) have to be dismissed if the Hearing Officer finds that the fine class was not correct?
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Presumptions

It can be presumed that a county agricultural commissioner (CAC) intends to propose a correct fine amount after first consulting Title 3, California Code of Regulations (3CCR) section 6130 (Civil Penalty Actions By Commissioners) and then considering the circumstances of the violation.

It can also be presumed that the CAC wishes to be fair to the Respondent and would prefer to have the Hearing Officer or Director make adjustments to the fine amount(s) if the fine amount cannot be supported by the evidence in the record.

Amending the Notice of Proposed Action (NOPA)

The CAC has the option to change a proposed fine before the hearing is held in two situations:

- When the CAC realizes he/she has proposed a fine in excess of authority (e.g., states in the Notice of Proposed Action [NOPA] that the violation was a Class B [formerly *moderate*] violation and the NOPA proposed a fine greater than allowed) and the hearing has not yet been held, the CAC can send a letter withdrawing the initial NOPA. The CAC could then issue a new NOPA with an appropriate proposed fine.
 - When the CAC realizes he/she has misclassified a violation (e.g., the violation was noticed as Class B [moderate] with a proposed a fine of \$1,500, but should have been classified as Class A [formerly *serious*] with a higher fine), the CAC could send a letter withdrawing the action and issue a new NOPA reclassifying the violation as serious and proposing a new fine within the appropriate fine range.
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Amending the NOPA during the hearing

The CAC has an option if he/she needs to change a proposed fine and the hearing is imminent or in progress:

- If either of the above-noted scenarios exist, the CAC could direct the Advocate to point out the county's error at the hearing and request that, if the Hearing Officer finds the particular violation occurred and that it fits within a particular classification, the Hearing Officer order a fine within the proper range for that classification of violation.
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Hearing Officer adjustments to the fine amount

In the absence of a finding that the CAC's application of the fine guidelines was in error, a Hearing Officer's decision to lower a fine is discouraged. There are limits to the Hearing Officer's authority to adjust fine amounts. For example:

- Once a Hearing Officer determines the appropriate class for the violation, he/she may not order a fine lower than that allowed by the fine guidelines for that class.
 - The fine ordered by the Hearing Officer cannot ever be higher than the fine(s) proposed in the NOPA. The Hearing Officer cannot raise a fine under any circumstances.
 - There are no circumstances where the CAC or Hearing Officer can lower the fine below the minimum amount of a Minor (Class C) fine.
 - The CAC or Hearing Officer cannot consider violations that occurred outside of the County initiating the action in determining the proposed penalty.
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Does the Hearing Officer have to dismiss the violation if the fine is incorrect?

No. The Hearing Officer does not need to dismiss the entire violation (count) or the case if the CAC's proposed fine amount is incorrect. If the proposed fine amount is incorrect, but the evidence supports a Finding that each element of the violation has occurred, the CAC can remedy the problem of an incorrect fine by making a Finding of the proper classification of the violation or the proper fine range, and applying those in determining the new fine amount.

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Mitigating factors

There is no requirement in law that the Hearing Officer must consider “mitigating factors” in determining the fine amount. In other words, the Hearing Officer could find that there were “mitigating factors” but decide not to consider them in determining the fine amount.

If the Hearing Officer decides to take into account “mitigating factors” when deciding the amount of the fine, he/she can consider anything he/she finds the violator did to alleviate the violation(s) or prevent repeating the violation(s).

It is not possible to provide a list of “mitigating factors” as they will be unique to the circumstances of each case. Despite the presence of mitigating factors, the Hearing Officer cannot lower the fine below the range established for that classification of violation.

The CAC or Hearing Officer cannot consider “economic loss to the Respondent” in deciding the fine amount for the same respondent. Economic loss to the respondent caused by his or her own violation of a pesticide law or regulation is not a “mitigating factor.”

Hearing Officer deviates from the fine guidelines

When the CAC or Hearing Officer deviates from the fine guidelines, they have acted outside the scope of his/her authority and the fine amount will be modified if there is an appeal to the Director.

Can the CAC change the Hearing Officer’s fine?

No. If the CAC did not act as the Hearing Officer, the CAC must adopt the Hearing Officer’s decision, including the fine amount.

References

The following references were used to answer the questions shown above:

- 3CCR section 6130, Civil Penalty Actions by Commissioners
 - FAC section 12999.5
 - Hearing Officer Sourcebook, Second Edition, May 1995
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