

Section 4.1

What Constitutes a Complete NOPA?

**Question posed
at the
Roundtable**

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

- What constitutes a complete Notice of Proposed Action (NOPA)?
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Background

Before a civil penalty is levied, the person charged with the violation(s) must be given a written notice of the proposed action that will ensure that due process requirements are met. At the most basic level, this means that the person must be notified of the violation he/she is being charged with, the amount of the fine and how it was determined, and be provided with the means to review and answer to the evidence against him/her.

**The complete
NOPA package**

The complete NOPA package sent by certified mail to the Respondent must contain the following:

1. **Notice of Proposed Action, Grounds Therefore and Opportunity to be Heard** (the NOPA). To meet due process requirements, this must include the following information:
 - A statement of the code or regulation section(s) alleged to have been violated.
 - A brief description of the specific acts which constitute the violation (usually giving the time, date, place, persons involved, and particular actions or inactions constituting the violation).
 - The amount of the proposed penalty and classification of the violation (giving notice of the fine range and how the fine amount was determined).
 - An offer to allow the Respondent to review the county agricultural commissioner's (CAC's) evidence establishing the violation.
 2. **Request for Hearing** form for Respondent to sign and submit to request a hearing.
 3. **Order** of the CAC directing payment of the fine (effective **only** in conjunction with the **Stipulation and Waiver to Order**, described below **or** when the Respondent "waives" his or her right to a hearing).
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What Constitutes a Complete NOPA?, Continued

The complete NOPA package (continued)

4. **Stipulation and Waiver to Order** for the Respondent to sign and submit as an alternative to the Request for Hearing, waiving the right to a hearing and to any appeal from the Order directing the payment of the proposed fine amount.
 5. **Optional:** Copies of the text of the regulation setting forth the penalty guidelines applicable in the specific case (Title 3, California Code of Regulations [3CCR] section 6130 or Title 16, California Code of Regulations [16CCR] section 1922) and the text of the code or regulation section(s) alleged to have been violated.
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Cite the authority for the levy of an administrative civil penalty

The NOPA should contain a citation to the authority of the CAC to levy an administrative civil penalty. Set forth the authority for the NOPA as the introductory sentence of the NOPA. Two examples are provided below:

Example: “Pursuant to Food and Agricultural Code (FAC) section 12999.5, in lieu of civil prosecution by the Director of the Department of Pesticide Regulation, the County Agricultural Commissioner may levy a civil penalty against a person for violating certain provisions of Division 6 and Division 7 of the FAC, or regulations adopted pursuant to those provisions. You are hereby notified that the Commissioner proposes to fine you \$_____ for violations of”

Example: “Pursuant to Business and Professions Code (B&P Code) section 8617, the County Agricultural Commissioner may levy a civil penalty against companies registered by or licensees of the Structural Pest Control Board for violations of certain provisions of the B&P Code or certain provisions of Division 7 of the Food and Agricultural Code and regulations adopted pursuant to those provisions. You are hereby notified that the Commissioner proposes to fine you \$_____ for violations of”

Details to check

Each NOPA sent to a Respondent must contain the following and mailed certified, return receipt requested:

1. Name and address of the respondent.
 2. File number assigned to the case (county abbreviation, fiscal year, and the case number).
 3. The date and signature of the CAC.
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What Constitutes a Complete NOPA?, Continued

Hearing request

The Department of Pesticide Regulation is of the opinion that the Respondent must request a hearing. If the CAC mails the NOPA by way of certified mail and the Respondent does not request a hearing in a timely manner, the CAC may determine the Respondent wishes to waive their right to a hearing on the matter and write an **Order** of the Commissioner, directing payment of the fine, and mailing it certified, return receipt requested, to the Respondent.

“Boilerplate” statements

The table below provides standard boilerplate statements that must appear in each NOPA or some part of the NOPA package:

Part	Standard Boilerplate Statement
Review evidence statement	“You are entitled to review the evidence supporting these charges during regular business hours at the County Agricultural Commissioner’s office, located at (address).”
Failure to request hearing or appear statement	“Failure to request a hearing within the allotted time is a waiver of the right to a hearing, and the County Agricultural Commissioner may take the action proposed in this notice without a hearing. Failure to request or appear at a hearing is also a waiver of the right to appeal the Order taking the action proposed by this notice.”
Stipulation offer	“If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate to the enclosed order by dating, signing, and returning the Stipulation and Waiver Order within 10 days of this notice.”

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What Constitutes a Complete NOPA?, Continued

Helping the Respondent prepare for the hearing

The NOPA should include information that the Respondent can use to properly prepare for the hearing, such as providing:

- The Hearing Process Outline brochure
- A list of what to bring to the hearing, e.g., exhibits and witnesses

Exhibits that are or contain chemicals or compounds that could be dangerous because they have the potential to contaminate the hearing site, should not be allowed at the hearing. If a Respondent indicates they wish to bring this type of item, or any other item that may have been contaminated with chemicals or pesticides, ask them to bring a good quality photograph of the container or item that makes the point the Respondent wishes to convey in the hearing. The Hearing Officer can make a determination about the credibility of the photograph.

References

- 3CCR section 6130, Civil Penalty Actions by Commissioners
 - 16CCR section 1922, Civil Penalty Actions by Commissioners
 - B&P Code sections 8616.4, 8616.7
 - FAC section 12999.5
 - Hearing Officer Sourcebook, Second Edition, May 1995
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