

Section 5.5

Taking Official Notice

Questions posed at the Roundtable

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

- As a Hearing Officer, is it appropriate to “take official notice?”
 - Does the Director consider the fairness of the “official notice?”
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Definition

Official notice - the acceptance of the existence of a relevant fact or law without requiring formal proof because the fact or law cannot reasonably be disputed. Official notice can be taken of facts that are universally known to be true or can easily be verified by resorting to sources whose accuracy cannot reasonably be questioned. Official notice can be taken of all constitutional, decisional, and statutory law.

Examples:

- June 4, 2003, fell on a Wednesday.
 - The sun is high in the sky at 12:00 p.m.
 - Blythe is located in Riverside County.
 - FAC section 11701 requires that a pest control business be licensed.
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Official notice cannot be used to establish facts which can reasonably be disputed

Hearing Officers cannot “officially notice” facts which are not common knowledge, not easily verified by resorting to reliable sources, or which can reasonably be disputed. If the situation warrants, the Hearing Officer may want to ensure fairness and provide notice to the Respondent that he/she intends to officially notice a particular fact or law.

Director’s review on appeal of Hearing Officer’s official notice

During an appeal, if the Hearing Officer took official notice of a specific fact or law, the Director may consider whether it was proper for the Hearing Officer to do so, that is, whether existence of the fact or law cannot be reasonably disputed. The Director may also consider the relevance of the law or fact to the case and whether the inferences drawn from it by the Hearing Officer were reasonable. If the fact or law “officially noticed” was critical to the reasoning of the decision, the Director could reverse or modify the county agricultural commissioner’s decision based on those determinations.

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References

- California Evidence Code Sections 450 and 451
 - Federal Rules of Evidence, Section 201
 - Jefferson's California Evidence Benchbook, Section 47
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