

Preparation, Submittal and Review of Decision Reports

Background

Violations are classified pursuant to Title 3, California Code of Regulations (3CCR) section 6130 or Title 16, California Code of Regulations (16CCR) section 1922. After classification, 3CCR section 6128(c)(2)(C) allows a county agricultural commissioner (CAC) to respond to a Class B or Moderate violation with a compliance action and Decision Report (DR) in lieu of an enforcement action or referral to a District Attorney if certain conditions are met. In order for the CAC to pursue this response, the CAC must submit a DR to DPR for approval. If DPR does not concur with the CAC's decision, then the CAC must take an enforcement action.

Previous guidance

This supersedes the guidance to CACs contained in ENF 07-30.

Definitions in 3CCR section 6128(b)

- **Compliance action:** an action that documents that certain behavior or an act is in violation of the law or regulations.
 - **Decision Report (DR):** a written record of the basis for a commissioner's decision not to take an enforcement action.
 - **Enforcement action:** an action with the potential to impose a monetary penalty or loss of a right or privilege initiated by a Notice of Proposed Action.
 - **Incident:** an occurrence in which one or more violations are discovered. An incident may be a single inspection or audit, a set of two or more inspections or audits related to the occurrence, or a pesticide episode investigation
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Determining need for a decision report

After classifying the violation, the CAC must review the criteria outlined in 3CCR section 6128(c)(2) for Class B or Moderate violations to determine the appropriate action to be taken, i.e., referral, enforcement action, or compliance action with a DR. The only time a Class B or Moderate violation can be responded to with a compliance action with a DR is if the violator has not had any Class A, B, Serious, or Moderate violations in the two years prior to the current violation.

Role of the two year violation history

Not having a violation within the past two years is not sufficient justification by itself for responding to Class B or Moderate violations with a compliance action and DR. The lack of a history of prior violations allows the CAC the flexibility to consider mitigating circumstances when responding to a violation. These circumstances shall be explained in the DR and serve as the justification for taking a compliance action instead of an enforcement action.

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Elements of a complete Decision Report

The DR must contain sufficient information for DPR to concur with the CAC's decision to pursue a compliance action. Section 6128(d) describes the information that must be contained in a DR.

A DR must be **brief and stand on its own merits** yet provide sufficient information to justify the CAC's decision. This means basic questions such as "who, what, when, where, why, and how" must be answered in the "County Justification" section. In addition, any follow-up actions taken, including actions taken to prevent such violations in the future, by the county and/or the person cited must be described. Merely referencing the inspection or investigation reports is not sufficient to meet this requirement.

CalPEATS Decision Report Detail

This page captures the information required by 3CCR section 6128(d):

- Respondent- This lists the respondent's name and contact information.
- Violation – This lists the sections violated and classification from the Enforcement Response module.
 - Do not include Class C or Minor violations on the DR
- Justification Type - General categories for not pursuing an enforcement response (check all that apply). Each option requires the CAC to describe specifics below.
- County Justification – This is the narrative section to provide both the summary of the incident and the details for the circumstances that justify not taking an enforcement action.
- Preparer/Reviewers- captures the date and agency responsible for the decision.

The page also currently includes the following sections:

- Reviewers' Comments- Section for DPR staff to comment.
- Attachments- supportive documents that are not already part of the investigation or inspection record.
- Respondent Violation History- Lists respondent's CalPEATS violation history.

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County Justification

The Justification must answer the basic questions:

- **Who?** (Who was the inspected party? Who was the supervisor/licensee? Who was responsible?)
 - **What?** (What was the problem? What was the non-compliance?)
 - **Where?** (Where did the incident occur? In the field, in the office?)
 - **When?** (What day and time did the incident occur? When did any follow up conversation(s) or inspection(s) take place?)
 - **Why?** (Why were they not following the law or regulation in question?)
 - **How?** (How will they ensure the violation does not happen again?)
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Writing the justification narrative

A DR **must stand on its own merits**. This report documents the justification for the CAC to not take an enforcement action in response to this incident.

Write the Justification in chronological order

- Start with discovery of the violation. Include the date and time of the violation, a concise description and whether it was corrected at the time it was discovered.
- Next, explain who you talked with about the violation and identify their authority (e.g. property operator, PCB supervisor, FLC licensee, etc.). Discuss what they said and did to correct the violation and ensure the violation will not happen again.
- Then explain your follow up to ensure that the non-compliance was corrected, and what you found when you did.
- Include a sentence summarizing the responsible party's violation history.
- Finish with a statement explaining why no enforcement action is warranted.

Keep the Justification in chronological order. If you do the follow-up inspection before talking to the responsible party, you would write the sequence of events in that order.

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Decision Report timeline 3CCR section 6128(d) requires the CAC to submit a DR to DPR within *60 days of the date of the initial compliance action*. This includes noting a noncompliance (*i.e.* a violation) on an inspection form.

A DR is required to be submitted to DPR within 60-days of the date of the initial compliance action. All required follow-ups must also be done within that 60 day limit. DRs shall be submitted to your Regional Office through CalPEATS. Timely submission of DRs is taken under consideration as part of CAC performance evaluations. If there are circumstances which you believe may prevent you from being able complete a DR within this timeframe, contact the EBL assigned to your county for guidance.

Decision Report submission CAC's shall use CalPEATS to submit a decision report to DPR.

DPR review process DPR Regional Office Managers are responsible for reviewing and either accepting or denying DRs. If a Regional Office Manager denies a DR, CAC's will be notified via CalPEATS of the denial. If DPR does not notify the CAC of denial within 30 days of submitting the DR in CalPEATS, then DPR concurs with CAC's decision.

Return of incomplete decision reports If a DR is either incomplete or has insufficient justification for not taking an enforcement action, DPR will notify the CAC to rescind submittal of the DR in CalPEATS, returning the DR to the CAC for correction and resubmittal. If the CAC does not return a corrected DR to DPR within the original 60-day period, the DR is considered denied by DPR and the CAC must take an enforcement action.

CAC notification of denial In CalPEATS when DPR denies a DR, DPR will set the status of the DR to "Denied." DPR will provide the CAC with specific reasons for the denial. If a DR is denied, then the CAC must take an enforcement action.

Questions If you have any further questions, please contact the EBL assigned to your county.
