

Preparation, Submittal, and Review of Decision Reports

Purpose This document provides additional guidance on the preparation, submittal, and review of decision reports by the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CACs).

Section interpreted Title 3, California Code of Regulations (3CCR) section 6128.

Effective date This guidance, dated November 1, 2007, supplements and in case of any conflict supercedes previous interpretations and responses provided by DPR on the subject of decision reports.

Background DPR conducted workshops in late 2006 throughout the state for the CACs and their staff on the enforcement response regulations. The workshops primarily focused on an overview of the proposed regulations and a discussion on how to classify a violation. In addition, DPR published CAC letter ENF-2007-10 that provided written responses to questions that arose during the workshops. Over the course of the past year, additional questions have arisen and staff has identified continuing areas of concern.

Definition **Compliance action:** “an action that documents that certain behavior or an act is in violation of the law or regulations” in 3CCR section 6128(b). Noting a noncompliance on an inspection form is considered a compliance action under this section.

Determining need for a decision report A noncompliance observed during an inspection is a violation of a law or regulation. The county should review the criteria outlined in 3CCR section 6128(c)(1-3) to determine the appropriate action to be taken, i.e., enforcement action or compliance action, and when a decision report is required. The enclosed Enforcement Response Flowchart may assist in providing guidance and interpreting the criteria.

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Submittal time lines for decision reports

As required by 3CCR section 6128(d), decision reports must be submitted to DPR within 30 days of the date of the compliance action.

DPR's response to question 8 in the Enforcement Response Workshop Question and Answers states, "When a HQ/records inspection is considered a follow-up inspection, the CAC may submit the decision report after the HQ/records inspection is completed. The HQ/records inspection is required to be performed in a *timely manner*."

As a result of not defining *timely manner*, there has been confusion as to when the 30-day period commences and ends. In some instances, the follow-up inspection is conducted months after the initial inspection. As a result, some decision reports have been submitted to DPR several months after the noncompliance was first noted.

In summary, the CAC may consider a noncompliance on an inspection form **and** a follow-up inspection, such as a HQ/inspection, **as one incident as long as the follow-up inspection is conducted in a *timely manner***. DPR will adhere to the following criteria regarding submittal of decision reports:

- If a follow-up inspection is not performed within the 30-day period following the first noncompliance noted on the initial inspection, a decision report is due if required for that compliance action within the initial 30-day period.
- If a follow-up inspection is performed within the 30-day period following the noncompliance, the 30-day clock **may restart** on the date of the follow-up inspection.

DPR will be date stamping all decision reports the day they are received.

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Elements of a complete decision report

The decision report should be **brief and stand on its own merit** as written by the county and should contain the information outlined in section 3CCR section 6128(d). It should provide sufficient information to confirm and support the county's decision. This could mean basic questions such as "who, what, when, where, and why" are answered in the decision report. In addition, any follow-up action taken by the county and/or the person cited should be included. Therefore, you may not need to send enclosures, i.e., inspection forms, investigation reports, or other documents.

Tracking decision reports

To facilitate communication between DPR and the county and tracking of decision reports, it is recommended counties sequentially number the decision reports and include that number in the "Other Tracking Information" box on the decision report. As an example only, an annual tracking system could be "County - FY - DR- ##" (i.e., 01-07/08-DR-1).

Submittal of decision reports

To ensure decision reports are reviewed and approved/denied within the timelines established in regulation and in this guidance, please submit decision reports to your regional office by:

- e-mail electronic copy (preferred method)
 - fax
 - mail (least preferred method)
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DPR review

The regional office supervisors will review the decision reports to determine the acceptance, need for additional information, or denial. The regional office will notify the CAC upon approval of decision reports, no later than 30 days after receipt of the decision report.

Return of incomplete decision reports

DPR will return decision reports that do not provide a clear picture of the circumstances of the noncompliance and/or does not address the follow-up actions taken to correct the noncompliance. DPR will return incomplete decision reports within **two weeks of receipt** of the decision report. If a decision report is not returned to DPR with the additional information within the original 30-day period (from date of original receipt of the decision report in the regional office), the decision report is considered denied and the county shall take an enforcement action.

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**Denial of
decision reports**

The regional office will notify the CAC of its denial of a decision report within 30 days of receiving the complete decision report.

The three regional office supervisors must concur on any decision in which DPR disagrees with the county's decision not to take an enforcement action (i.e., DPR denies the decision report).

**Decision Report
Form**

The Decision Report, Form DPR-ENF-161 and a Supplemental Page, DPR-ENF-161A are available on DPR's website at <http://www.cdpr.ca.gov/docs/enfcmpli/prenffrm/prenfmnu.htm>

Questions

If you have any further questions regarding 3CCR section 6128 or issues covered in this document, please contact the Enforcement Branch Liaison assigned to your county.
