

## **Chapter 6**

### **Decision Reports**

---

#### **Table of Contents**

<b>Section 6.1 Determining the Need for a Decision Report .....</b>	<b>6-2</b>
<b>Section 6.2 Decision Report Preparation .....</b>	<b>6-3</b>
<b>Section 6.3 Decision Report Submittal and Review .....</b>	<b>6-5</b>
<b>Section 6.4 How to Write a Decision Report.....</b>	<b>6-6</b>
<b>Section 6.5 Example Decision Report Justifications .....</b>	<b>6-7</b>
<b>Section 6.6 Decision Report Transmittal Letter .....</b>	<b>6-11</b>

---

## Section 6.1

### Determining the Need for a Decision Report

---

**Background** A Decision Report (DR) is a written record of the basis for a Commissioner’s decision not to take an enforcement action. (3 CCR section 6128(a))

For Class B or Moderate violations, if certain conditions are met 3 CCR section 6128(c)(2)(C) allows a CAC to respond with a compliance action and DR in lieu of an enforcement action or referral to DPR/SPCB/District Attorney. To pursue this response, the CAC must submit a DR in CalPEATS to DPR for approval. If DPR does not concur with the CAC’s decision, then the CAC must take an enforcement action.

---

**Role of the two-year violation history** The **only** time a Class B or Moderate violation can be responded to with a compliance action and 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.

Not having a Class A/B/Serious/Moderate violation within the past two years is not sufficient justification for responding to Class B or Moderate violations with a compliance action and DR. Rather, the lack of a history of prior violations is a *qualification* which allows the CAC the discretion to consider mitigating circumstances when responding to a violation. These mitigating circumstances must be explained in the DR and serve as the justification for a CAC taking a compliance action instead of an enforcement action.

---

**DR not required when NOPA is taken** When there are multiple non-compliances documented in a single incident, for example, an inspection with several Class B violations, and an enforcement action is taken by issuing a NOPA for one or more violations, a DR is not required for the violations not included in the NOPA. The CAC does not have to provide a justification for not taking action for the other non-compliances.

Additionally, a DR is not required when a compliance action is taken in addition to an enforcement action for the same incident. For example, if an incident resulted in violations by both a certified applicator and the company, and the CAC takes an enforcement action on only the certified applicator with an VN or WL to the company. The county should follow-up as they would in any case to ensure future compliance.

---

## Section 6.2 Decision Report Preparation

---

**Who may write Decision Reports** Any county staff may prepare a DR. However, per 3 CCR section 6128(d)(7) the DR requires “The name of the Agency official responsible for the decision.” This may be either the Commissioner or their designee.

---

**Elements of a complete Decision Report** The DR must contain sufficient information for DPR to concur with the CAC’s decision to not pursue an enforcement action/referral. Section 6128(d) describes the information that must be contained in a DR.

A DR must be **brief and stand on its own merits** and 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, describe in the Justification any follow-up actions taken, including actions taken to prevent such violations in the future by the County and/or the person cited. Merely referencing the inspection or investigation report is not sufficient to meet this requirement.

---

**CalPEATS Decision Report Detail** The CalPEATS DR form captures the information required by 3 CCR section 6128(d):

- Respondent - The Respondent’s name, license, address, and phone number.
- Violations - 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 action (check all that apply). Each option requires the CAC to describe specifics below.
- Decision Report Justification - This is the narrative section for a summary of the incident and the details for the circumstances that justify not taking an enforcement action.
- Preparer/Reviewers - captures those individual’s names and the date.

A CalPEATS DR also currently includes the following sections:

- Reviewers’ Comments - Section for DPR staff to comment.
  - Attachments - supportive documents not already part of the record.
  - Respondent Violation History - Lists Respondent’s CalPEATS violation history.
- 

*Continued on next page*

## Decision Report Preparation, Continued

### CalPEATS Decision Report Form

**Respondent**

Name:	Address:
Permit:	State:
	Zip:
	Phone:

**Violations**

Section	Title	Severity	
			View

◀ 1 ▶
10 Items per page
1 - 1 of 1 items

**Justification Type**

- Alleged violation(s) could not be proven by a preponderance of the evidence necessary for an administrative civil penalty hearing. Describe specifics below - include section numbers and/or evidence issues.
- Investigation limited due to non-cooperation of complainant(s). Describe specifics below.
- Follow-up conducted/scheduled. Describe specifics below.
- Mitigation measures to prevent future incidents have been adopted. Describe specifics below
- Other. Describe specifics below.

**Decision Report Justification/Reviewers' Comments**

County Justification for a Decision Report Instead of taking an Enforcement Action

Reviewers' Comments

**Preparer/Reviewers**

Name	Date
County Preparer:	
EEL Reviewer:	
Supervisor Reviewer:	

Generate PDF
Close

**Attachments**

If you want to save the original attachment, click on the preview icon. Some attachment types will prompt you to save the file locally; if the attachment displays in a new browser tab instead, right-click in the display window and select "Save as..." (the exact wording of the menu item varies by browser).

**Respondent Violation History**

My County
All Counties

Incident Date	Response Number	County	Code Section	Severity	Actions	Fines

◀ 0 ▶
20 Items per page
No items to display

*Continued on next page*

## Section 6.3

### Decision Report Submittal and Review

---

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

If one or more follow-up actions by CAC staff are required to complete the DR (e.g., headquarters inspections to review training records, a phone call or meeting with the party to discuss how the violation will not happen again, etc.), those actions must also be done to complete the DR within that 60 day limit. If there are circumstances that may prevent completion of a DR within 60 days, contact the county EBL for guidance.

DRs must be submitted to the appropriate Regional Office through CalPEATS. Timely submission of DRs is taken under consideration during CAC performance evaluations.

---

**Decision Report Tracking and submittal** DRs are assigned a unique identifier by CalPEATS. CACs must use CalPEATS to submit a DR to DPR.

---

**DPR review process** DPR has 30 days to review a DR submitted in CalPEATS. DPR Regional Office Managers are responsible for reviewing and either accepting or denying DRs. If a Regional Office Manager denies a DR, the commissioner will be notified via CalPEATS of the denial. If DPR does not notify the CAC of denial within 30 days then DPR concurs with the 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** When DPR denies a DR, in CalPEATS the status of the DR is "Denied." DPR will provide the CAC with specific reasons for the denial. If a DR is denied, per 3 CCR section 6128(d) then the CAC must instead take an enforcement action.

---

*Continued on next page*

## Section 6.4

### How to Write a Decision Report

---

#### County Justification section

The County 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?)
- 

#### Writing the justification narrative

A DR **must stand on its own merits**. As noted in 3 CCR section 6128, this report documents the justification for the CAC to not take an enforcement action in response to an incident.

Write the County Justification and related items 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 was interviewed 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.
- As necessary, outline follow-up actions (by either the CAC or the inspected party) to ensure the non-compliance was corrected.
- Include a sentence summarizing the responsible party's violation history as a qualification for the DR.
- Finish with a statement explaining why no enforcement action is warranted.

Keep the Justification in chronological order. If a follow-up headquarters inspection occurs before talking to the responsible party, write the sequence of events in that order.

---

## Section 6.5

### Example Decision Report Justifications

---

**Disclaimer**

Every situation is different. These examples of actual DRs are a guide, not templates. DO NOT copy and paste these into your DR.

---

**Example DR  
Justification –  
3 CCR section  
6674**

On Friday, March 17, 2023, Agricultural Biologist Marty Major conducted a Headquarter and Employee Safety Inspection at Somewhere Farms, LLC. Authorized Representative Sally Jones (PAC 99-00000) was present during the inspection.

During the inspection, empty 2.5 gallon containers of Kilamide DF (EPA Registration No. 000-22) which bear the signal word “warning” were found in a locked yellow caged trailer. The storage area was not posted with warning signs. Jones stated she did not know that the pesticide storage area needed to be posted with warning signs. By failing to post a storage area where pesticide containers labeled with the signal word “warning” are stored, Somewhere Farms, LLC violated 3 CCR section 6674.

Major explained to Jones the specific wording that is required to be on the pesticide storage area where containers that hold, or have held, pesticides with the signal words “warning” or “danger” are stored, and each sign shall be of such size that it is readable at a distance of 25 feet.

On April 3, 2023, a follow-up inspection was conducted with Jones. The empty pesticide container storage area was properly posted with signs bearing the required information and legible at a distance of 25 feet.

This is Somewhere Farms LLC’s first Class B violation in the past two years. No injuries or illnesses occurred because of this violation, and the violations have been corrected. No enforcement action will be pursued at this time.

---

*Continued on next page*

## Example Decision Report Justifications, Continued

---

**Example DR  
Justification –  
violations of 3  
CCR section  
6739(a, d, & e)**

On February 8, 2023, Agricultural Biologist Marty Major conducted a Headquarter and Employee Safety Inspection on Golf Course Links, LLC (GCL) . Superintendent Anthony Collins (QAL 123456) and Assistant Superintendent John Smith (QAL 654321) were present during the entire inspection. Both Collins and Smith are newly licensed and new to GCL.

A review of GCL’s 2022 pesticide use reports showed GCL employees applied Mightomil Action (EPA Registration No. 999-1364-ZZ) three times and Icarus 6L (EPA Registration No. 98765-43-ZZ) one time. A review of the product labels showed that both pesticides require applicators and other handlers to wear a NIOSH approved respirator with an organic vapor cartridge or canister with an N, R, P or HE prefilter. During the inspection it was confirmed that the employees were provided the appropriate respirators when handling these pesticides. When asked for his written respiratory protection program, Collins said he was not aware that he needed one. By failing to have a written respiratory program in place GCL violated 3 CCR section 6739(a)(2).

Additionally, when asked, Collins said that employees were not medically evaluated or fit-tested prior to wearing a NIOSH-approved respirator. Collins said he was not aware that his employees needed to be fit-tested and medically evaluated prior to wearing respirators. By failing to have their employee-handlers medically evaluated and fit-tested prior to using a respirator, GCL violated 3 CCR section 6739(d) and (e).

Major explained to Collins and Smith what the components of a written respiratory protection program are, the requirement that all pesticide handlers be medically evaluated prior to working with pesticides that require a respirator, and the requirement that all pesticide-handlers be fit-tested annually. Also, they were provided a copy of 3 CCR section 6739(a-e), and a template of a written respiratory protection program.

On March 17, 2023, a follow-up inspection showed Collins had implemented the written respiratory protection program, which was found to be complete. In addition, on March 16, 2023 all three employee-handlers were medically evaluated and fit-tested. Collins said he would assure that employees were annually fit-tested in the future.

This is GCL’s first Class B violation in the past two years. No injuries or illnesses occurred because of these violations, and the violations have been corrected. No enforcement action will be pursued at this time.

---

*Continued on next page*

## Example Decision Report Justifications, Continued

---

**Example DR  
Justification –  
violation of 3  
CCR 6734(b)**

At about 10:50 a.m. on April 4, 2019, Deputy Agricultural Commissioner Tristin Banks began a pesticide use monitoring inspection on two of Smith Vineyard Management's (SVM's) trained employee-handlers. The employees' supervisor, Stu Pervisor, was present during the entire inspection. The employees were applying Kanga DF (EPA Registration No. 000-11-ZZ), Around (EPA Registration No. 000-1234-ZZ) and Z-99 Spreader-Activator (CA Registration No. 1234-50000-ZZ) to wine grapes on Severo Vineyard site 6 using air-blast sprayers pulled behind an enclosed-cab tractor.

While at the mix and load site, Banks asked to see where the decontamination materials were. There was adequate clean water at the mix/load site and from a hose at a nearby house about 80 feet to the north. Parked about 60 feet north from the mix/load site was one employee's personal vehicle. After looking in the company truck for a couple of minutes, Pervisor was able to find two bottles of dish soap, but no single use towels. In addition, no extra coveralls were available because Pervisor stated "one of the tractors got stuck in the vineyard that morning and the employees had gotten muddy getting the tractor out". The extra coveralls had been used by the employees that morning. Banks observed Pervisor assisting the employees to get a spray rig unstuck prior to us initiating the inspection, so this is plausible. However, by failing to make certain that sufficient single-use towels were available at the mix/load site and within ¼ mile of the handlers, SVM violated 3 CCR section 6734(b).

On April 11, 2019, a follow-up inspection on SVM noted small clear plastic totes containing the required decontamination materials (soap, paper towels, disposable coveralls, and eyewash water) which were available with sufficient water at each mixing and loading site.

This is SVM's first Class B violation in the past two years. No injuries or illnesses resulted from this violation, and the violation has been corrected. No enforcement action will be pursued at this time.

---

*Continued on next page*

## Example Decision Report Justifications, Continued

---

**Example DR  
Justification –  
FAC 12973**

At about 11:30 a.m. on March 31, 2017, Agricultural Biologist Marty Major began a Pesticide Use Monitoring Inspection on Jim Smith Vineyards' trained handler-employee Franco Worker. Worker was applying Kanga DF (EPA Registration No. 000-210-98765), Sneazy 75WG (EPA Registration No. 48142-4) and Z-99 Spreader-Activator (CA Registration No. 1234-50000) to wine grapes on the Smith-3 Vineyard at 1234 Flat Road using an over-the-vine boom sprayer.

When asked what the application rate was, Worker directed Major to the shop area to talk to his supervisor, John Jones. Jones informed Major of the rates of the pesticides used and Major reviewed the labels at the mix/load site. Jones stated that Z-99 was added to the tank mix at a rate of 8 ounces per 50 gallons of water per acre. The Z-99 label stated that the recommended use rate is "2 to 4 ounces per 100 gallons of water." By applying Z-99 at a rate that exceeded the rate listed on the registered label available at the use site, Jim Smith Vineyards violated the requirements of the Z-99 Spreader-Activator label and therefore violated FAC 12973.

On April 8, Major spoke with Safety Officer Joceline Ryley about the incident and explained the situation. Later that day, she emailed a statement from Jim Smith Vineyard Manager Taylee Batison. Batison stated that the use of Z-99 was new to the vineyard this season. The old adjuvant, Q-spread, could be used between 2-32 ounces per 100 gallons of water. They did not thoroughly read the Z-99 label and assumed that the rate was the same. To make sure this does not happen again, the issue has been brought up to all the managers and everyone was reminded to thoroughly read the product labels before use.

This is Jim Smith Vineyards' first Class B violation in the past two years. No injuries or illnesses were created as a result of this violation, and the violation has been corrected. No enforcement action will be pursued at this time.

---

## Section 6.6

### Decision Report Transmittal Letter

---

**Communica-  
ting to the non-  
compliant party**

A well-written Decision Report justifying why the county is not taking an enforcement action takes time to write and time to review. To follow up on this time investment the Commissioner may wish to communicate, in writing, to the party who received the non-compliance, the consequences of the current incident AND a future Class B or Moderate violation within the next two years. The following example letter is optional but may be used as a template.

If the text of the violated code section is included (either on one of the existing attachments or as a separate attachment) this template would meet the minimum requirements to also be considered a Warning Letter (See Section 5.3). Provided the CAC has not previously issued a Warning Letter to the violator on the noted violations, CACs can consider the sending of this transmittal letter as the equivalent to sending a Warning Letter.

---

*Continued on next page*

## Decision Report Transmittal Letter, Continued

---

[*County letterhead*]

[*Date*]

**TO:** [*Property Operator / Company Name, etc.*]  
Attn: [*Permittee / Agent / Operator, etc.*]  
[*Address*]

RE: Inspection/Notice of Violation Number: [*Number*]

Enclosed is a copy of a compliance action issued to you on [*date*], for a Class B violation of [*Title 3, California Code of Regulations, Food and Agricultural Code, etc.*] section(s) [*list section(s)*].

A “Class B” violation is a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects. A “Class A” violation is a violation that caused a health, property, or environmental hazard.

When a person or company has not received a Class A or Class B violation within two years of the current violation, California pesticide regulations give the Commissioner the discretion to issue a compliance action for Class B violations and document the reason we decided not to take an enforcement action in a Decision Report (DR). The regulations also require that we submit all DRs to the Department of Pesticide Regulation (DPR) for review and approval. If DPR does not agree, the Commissioner must take an enforcement action for the violation.

This is your first Class B violation within the last two years. At this time, we have decided not to pursue an enforcement action. Enclosed is a copy of the DR sent to DPR on [*date*].

You should be aware that any additional Class B violations within the next two years will result in an enforcement action. The most common enforcement actions are administrative civil penalty fines. The fine range for Class B violations is \$XXX- \$XXXX.

Please take this opportunity to evaluate your pesticide program to identify and correct any potential problem areas. If you have any questions please contact our office at [*phone number*].

Sincerely,

*Signature Block*  
*Printed name of staff*  
*Title of staff*

Enclosures: Decision Report  
[*Inspection Report/Violation Notice*]

---