# Chapter 4
# Classifying the Violation and Determining Enforcement Response

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# Section 4.1
# Chapter Overview

**Introduction**

The investigation or inspection report is complete, the elements of the violation are documented, and there is a preponderance of evidence that one or more violations of pesticide laws or regulations occurred. The next steps are to classify the violation and determine the enforcement response. This chapter will discuss how to classify violations (as to severity) and choose the appropriate enforcement response (compliance action or enforcement action).

Two code sections set forth the violation class and associated fine range when taking an administrative civil penalty action: 16 CCR section 1922 (Structural), and 3 CCR section 6130 (Agricultural). Generally, the most challenging aspect is applying the unique facts of each case to determine the appropriate violation classification.

After the violation has been classified, Commissioners must use 3 CCR section 6128 (Enforcement Response to Violations) to determine the appropriate enforcement response for each violation of law or regulation related to agricultural or structural use of pesticides, or any use of a fumigant. There are two categories for enforcement responses in 3 CCR section 6128:

- a **Compliance Action** or
- an **Enforcement Action**

Section 6128 expressly outlines the conditions and justifications for choosing a compliance action versus an enforcement action. For example, when a CAC chooses to respond to a Class B or Moderate violation with a compliance action, the CAC must submit a **Decision Report** (DR) to document why an enforcement action was not taken. DRs are not required for compliance actions for Class C or Minor violations.

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## Overview, Continued

**Definitions**

Definitions from 3 CCR section 6128(b):

- **Compliance action**: An action that documents that certain behavior or an act is in violation of the law or regulations, but does not directly impose a monetary penalty. Compliance actions include: a violation notice, warning letter, documented compliance interview, or a noncompliance noted on an inspection form. Compliance actions also include public protection actions such as cease and desist orders, seize or hold product or produce orders, and prohibit harvest orders.
- **Decision Report (DR)**: A written record of the basis for a Commissioner's decision not to take an enforcement action. Under 3 CCR section 6128(c), this definition is applicable only on Class B or Moderate violations.
- **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 (NOPA). Enforcement actions include administrative civil penalties (fines) or disciplinary actions to refuse, suspend, or revoke a county registration, certificate, or permit.
- **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.

Other definitions:

- **Agricultural use**: This is California's broad legal definition found in FAC section 11408; further interpreted in Compendium Volume 7 Section 1.1. Agricultural use includes all pest control (including pesticide use) while excluding the following: pest control in home, industrial, or institutional settings; and pest control by structural pest control licensees, by certain vector control districts or agencies, or by or under the written prescription of a veterinarian within the scope of their practice. Many of these exemptions are defined in 3 CCR section 6000.
- **Structural use**: Use requiring a license from the Structural Pest Control Board (SPCB). (3 CCR section 6000)
- **Notice of Proposed Action (NOPA)**: formal notice of a Commissioner's decision to initiate an enforcement action for an alleged violation of a pesticide law or regulation and the proposed penalty (e.g. civil penalty fine or disciplinary action). The NOPA is sent to the person or business (Respondent) that allegedly violated the law or regulation.

# Section 4.2
# Classifying Violations

**Introduction**

This section reviews the violation classes for pesticide use violations, and then provides four examples of how to apply these classes.

**Violation classes**

Violation classes for most pesticide use violations are detailed in 3 CCR section 6130 (Class A, B, or C). For structural pesticide use violations, the classes are detailed in 16 CCR section 1922 (Serious, Moderate, or Minor). The following table summarizes criteria associated with each violation class:

| Agricultural Violations (3 CCR 6130) | Structural Violations (16 CCR 1922) |
|---|---|
| **Class A Violation**<br>1. The violation caused a health, property, or environmental hazard.[1]<br>2. A Class B violation that was elevated to Class A per one of the aggravating circumstances.<br>3. A violation of a lawful order of the CAC issued pursuant to several FAC sections. | **Serious Violation**<br>• A repeat of a Moderate violation, or<br>• A violation which created an actual health or environmental hazard. |
| **Class B Violation**<br>A violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects that is not designated as Class A. | **Moderate Violation**<br>• Repeat of a Minor violation, or<br>• A violation which poses a reasonable possibility of creating a health or environmental effect. |
| **Class C Violation**<br>A violation of a law or regulation that does not mitigate the risk of an adverse health, property, or environmental effect, including, but not limited to 3 CCR sections 6624 through 6628 or FAC sections 11732, 11733, and 11761. | **Minor Violation**<br>A violation that did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect. |

[1] Note: No actual damage has to occur. See the Glossary for definition of "Hazard".

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# Classifying Violations, Continued

**Classifying Violations Case Study: 3 CCR section 6680**

**3 CCR section 6680. Prohibited Containers for Pesticides.**
In no case shall a pesticide be placed or kept in any container of a type commonly used for food, drink, or household products.

**What constitutes a violation of 3 CCR section 6680?**

Placing any pesticide in any container commonly used for food, drink, or household products is expressly prohibited by 3 CCR section 6680.

Per Administrative Docket No. 096, a Director's Decision which involved 3 CCR section 6680, there is no exemption for altered (label removed, etc.) food, drink, or household product containers and the prohibition of this regulation still applies. A pesticide handler who places a pesticide in a container commonly used to hold a food, drink, or household product, whether altered or not, is in violation of 3 CCR section 6680.

**Facts to consider for classifying a violation of 3 CCR section 6680**

Section 6680 mitigates the risk of adverse health, property, or environmental effects because it is intended to prevent potential adverse health risks that can occur from a person mistakenly consuming a pesticide. There are multiple examples of persons storing a pesticide in a beverage container and later they, or someone else, drinks the pesticide, mistaking it for a beverage. Since this regulation may be interpreted as intending to mitigate the risk of adverse health effects, it cannot be classified as a Class C violation, it must be a Class A or Class B violation.

A relevant factor for the violation to be considered a Class A violation is: did the violation cause a health hazard? A non-exhaustive list of potential issues to consider with 3 CCR section 6680 violations are:

- Amount of control the handler had over the container
- Proximity of non-handlers to the container
- Types of non-handlers present
- Location of the container relative to other food, drink, or household product containers
- Appearance of the container
- Toxicity of the pesticide concentrate
- Concentration and amount of pesticide present
- Appearance of the contents

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# Classifying Violations, Continued

**Facts to consider in a Class A violation of 3 CCR section 6680**

The following example describes Facts that, when taken together, may allow an average person to determine a violation of 3 CCR section 6680 created a health hazard. The Facts and facts listed below are for illustration purposes only. There may be other facts that may support a determination that the violation of 3 CCR section 6680 created a health hazard. Additionally, there does not need to be a supporting fact for each factor listed below to determine there was a health hazard. The point here is decision makers should consider the totality of the circumstances when classifying the violation (i.e., even though some Facts may not be applicable, other Facts, supported by strong evidence, could sufficiently demonstrate there was a health hazard).

| Example Factor | Potential Supporting Facts |
|---|---|
| Container control | The applicator was over 200 yards from the container and facing away from the container. |
| Proximity and types of non-handlers | Several young children were observed near the container without the knowledge of the applicator. |
| Container location | The contaminated beverage container was on a picnic table, about 100 feet away from the equipment and pesticide sheds, where the employees routinely ate lunch. |
| Container appearance | The beverage container was not altered or marked to indicate its current use or contents and looked exactly like the product available at the local grocery store. |
| Pesticide toxicity | The precautionary statements on the pesticide label required immediate medical attention following exposure. |
| Pesticide concentration and quantity | The beverage container held approximately 12 ounces of pesticide concentrate. |
| Contents - appearance | The pesticide concentrate appeared similar to the normal contents of the beverage container. |

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## Classifying Violations, Continued

**Classifying Violations Case Study: 3 CCR section 6602**

**3 CCR section 6602. Availability of Labeling:**
A copy of the registered labeling that allows the manner in which the pesticide is being used shall be available at each use site.

For failure to have a copy of the labeling (including required supplemental labeling or special local needs registration) covering the use at the use site, it would generally be appropriate to classify this violation as at least Class B, depending on the circumstances. Continuation of an application without reviewing the pesticide label may pose a reasonable possibility of creating a health or environmental effect. For example: Is adequate personal protective equipment being used? Is the mix rate and dilution in accordance with the rates listed on the label? Is the treatment site listed on the label? Does the label have any additional restrictions (e.g. closed system requirements, wind speed restrictions, etc.)?

**Classifying Violations Case Study: 3 CCR section 6761**

**3 CCR section 6761. Hazard Communication for Fieldworkers:**
(a) Whenever employees are working as fieldworkers in a treated field, the employer shall display at the worksite and all permanent decontamination facilities and decontamination facilities servicing 11 or more fieldworkers, a copy of a completed written Hazard Communication Information for Employees Working in Fields (Pesticide Safety Information Series leaflet A-9). …

It is the employer's responsibility to complete (fill in) the appropriate spaces in the Pesticide Safety Information Series leaflet A-9 displayed at the worksite. DPR considers this regulation to be a safety-related regulation because it provides workers with important pesticide safety and medical-related information. This means a blank posted A-9 is generally classified as at least a Class B violation.

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## Classifying Violations, Continued

**Classifying Violations Case Study: 3 CCR section 6726**

**3 CCR section 6726. Emergency Medical Care:**
(b) … The employer shall post in a prominent place at the work site, or work vehicle if there is no designated work site, the name, address and telephone number of a facility able to provide emergency medical care whenever employees will be handling pesticides and, if the identified facility is not reasonably accessible from that work location, procedures to be followed to obtain emergency medical care.

Posting emergency medical care information at the worksite or in the work vehicle is an important requirement to assure employee protection. Failure to post this information at the worksite or work vehicle violates a regulation that mitigates the risk of an adverse health effects to employees handling pesticides. Generally, a violation of 3 CCR section 6726 is classified as at least a Class B violation.

**Classifying Violations Case Study: 3 CCR section 6726(c) and 6766(c)**

**3 CCR section 6726 and 6766. Emergency Medical Care:**
(c) When there is reasonable grounds to suspect that an employee has a pesticide illness or when an exposure to a pesticide has occurred that might reasonably be expected to lead to an employee's illness, the employer shall ensure that the employee is taken to a physician immediately.

The purpose of subsection (c) addresses how an employer must react if it should suspect an employee was exposed to a pesticide and is, or will be, sick. Generally, a violation of 3 CCR section 6726(c) or 3 CCR section 6766(c) is classified as a Class A.

In most scenarios, these violations are Class A violations due to critical need for timely medical care to protect worker's health. Delay or failure to provide transportation to receive prompt medical attention may cause symptoms to develop or further worsen for those exposed, requiring more extensive treatment and available treatment options. This is consistent with Administrative Docket 167 and Administrative Docket 174.

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**Classifying Violations Case Study: 3 CCR section 6726(c) and 6766(c)**

Administrative Docket 167, a Director's Decision, found that for a Class A violation, a health hazard is not necessarily a serious or acute illness; it can also include violations that create the *risk* of an adverse health effect. In this decision, the Commissioner offered supporting evidence that workers were working near a recently fumigated field, reported symptoms were consistent with the pesticide being used, and the employer was, or should have been, familiar with symptoms and possibility of pesticide induced illness, but did not take all employees to medical care. The employer created a risk of an adverse health effect and therefore created a health hazard.

In Administrative Docket 174, the Director upheld the Commissioner's Class B classification for a violation 6766(c) because failure to ensure immediate medical care created a reasonable likelihood of a health hazard. However, the Director states the record actually supports a Class A violation since an actual health hazard was created. The Commissioner provided witness statements and a Fire Department Incident Report that establishes workers were exposed to a pesticide, exhibited symptoms consistent with pesticide exposure, and supports the time between knowledge of the possible exposure and provision of medical care was not immediate. Since the Appellant did not contest the violation classification, the Director did not change it.

**Facts to consider for classifying a violation of 3 CCR section 6726(c) or 6766(c)**

Section 6726(c) and 6766(c) mitigates the risk of adverse health, property, or environmental effects because it is intended to prevent potential adverse health risks that can occur from a person getting sick from pesticide exposure and delayed medical care. Since this regulation may be interpreted as intending to mitigate the risk of adverse health effects, it cannot be classified as a Class C violation, it must be a Class A or Class B violation.

A relevant factor for the violation to be considered a Class A violation is: did the violation cause a health hazard? A non-exhaustive list of potential issues to consider with 3 CCR section 6726(c) or 6766(c) violations are:

- Proximity to a pesticide by employees
- Toxicity of the pesticide
- Reported symptoms by employees
- Weather conditions
- Employer with fieldworkers and handlers is knowledgeable of pesticide hazards
- Immediately taken to medical care

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**Facts to consider for classifying a violation of 3 CCR section 6726(c) or 6766(c)**

The example below outlines Facts to consider when determining whether a violation of 3 CCR section 6726(c) or 6766(c) created a health hazard. These Facts arenot independently considered; a health hazard or risk of a health hazard may be established based on the totality of the circumstances.

| Example Factor | Potential Supporting Facts |
|---|---|
| Proximity to a pesticide | Employees were working in an area recently treated with pesticides; there is a pesticide application adjacent to fieldworkers; or a handler is handling a pesticide. |
| Pesticide toxicity | The precautionary statements on the pesticide label required immediate medical attention following exposure. |
| Symptoms | Fieldworkers and/or handlers report systems consistent with labeling Precautionary Statements; employees start feeling sick after working with or near pesticides; employees feel symptoms while working in or near a treated field but symptoms subside once moved away from the treated field. |
| Weather | Weather conditions favor possible pesticide drift or pesticide exposure. |
| Employer knowledge | The employer must evaluate the circumstances of any suspected pesticide exposure to determine if an employee has or could have a pesticide related illness. |
| Immediately taken to medical care | Once the employer concludes such grounds exist, the next action is to take the employee to medical care. |

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# Section 4.3
# Determining the Enforcement Response to Violations

**Improved compliance is the primary goal**

The primary goal of the pesticide enforcement program is compliance with pesticide use requirements. This is achieved by applying enforcement tools in a program using graduated steps to change behavior. The tools include, but not limited to, outreach, continuing education, use monitoring inspections or investigations, and compliance actions. Based on the circumstances and consequences of the violation, an enforcement action or other civil or criminal action may be necessary to safeguard human health and the environment and deter future violations.

**Enforcement Response**

After classifying a violation, 3 CCR section 6128(c) dictates the following options for an enforcement response:

(1) Class A or Serious Violation:
- (A) A **formal referral*** to the District Attorney, City Attorney, Circuit Prosecutor; to the Director or SPCB for a statewide licensing action; or the Director for the reasons in FAC section 12999.6.
- (B) An **enforcement action**. If the enforcement response initially selected was a formal referral but the referral was declined, then the commissioner shall proceed with an enforcement action.

(2) Class B or Moderate Violation:
- (A) A **formal referral*** to the District Attorney, City Attorney, Circuit Prosecutor; to the Director or SPCB for a statewide licensing action; or the Director for the reasons in FAC section 12999.6.
- (B) An **enforcement action**. If the enforcement response initially selected was a formal referral but the referral was declined, then the Commissioner shall proceed with this enforcement response.
- (C) A **compliance action with a DR**, provided there has not been a violation in Class A or B within two years of the current violation.

(3) Class C or Minor Violation:
- (A) An **enforcement action**; or
- (B) A **compliance action**.

*Note: a formal referral to the District Attorney is required for incidents that meet the requirements in 3 CCR section 6128(e). See Section 3.8.

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# Determining the Enforcement Response to Violations,
Continued

**Sample Enforcement Goals and Actions**

These are example enforcement options that the CAC could take depending on the desired enforcement goal. Note these options are not mutually exclusive, for example a prohibit harvest order does not just prevent immediate harm, but it also could deter future violations/change behavior.

| Desired outcome | Enforcement Options Available to CAC |
|---|---|
| Behavior change | • Follow-up inspections<br>• Violation Notice, Warning Letter, Documented Compliance Interview<br>• An Administrative Civil Penalty<br>• County permit or registration suspension<br>• Refer to Director or SPCB for licensing actions (e.g., probation, suspension) |
| Mitigate or prevent immediate harm | • Cease and Desist Order<br>• Prohibit Harvest Order<br>• Refuse, suspend, or revoke a County permit or registration |
| Punishment (Civil) | • Refer case to District Attorney<br>• Refer case to DPR for action under FAC section 12999.6<br>• Refer to Director or SPCB for licensing actions (e.g., suspend or revoke license) |

**CalPEATS and compliance history**

CalPEATS enables CACs to search closed inspections, investigations, and enforcement responses (including Decision Reports and NOPAs) from CACs statewide.

Under 3 CCR section 6130(b)(1)(B)1. and (d), the CAC can use the Respondent's history of violations to elevate a Class B violation to a Class A violation.

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## Determining the Enforcement Response to Violations,
Continued

**Option 1 – CAC manages the enforcement response**

For incidents where the CAC is not required to refer the case to the District Attorney, when considering enforcement response CACs should first consider using the tools that allow them fuller control over the implementation and outcome of an enforcement response, e.g. administrative civil penalties or county disciplinary action.

For repeat violations, progressive discipline, where the CAC's enforcement response increases in severity, may be appropriate.

Under FAC sections 11897 and 13102, if the violation or violator poses a significant threat to people, the environment, or property, the CAC is authorized to stop or prohibit the action immediately and can determine if and when it is appropriate for the action to resume. For more information on Cease and Desist Orders and their use, see Compendium Volume 4, Chapter 1.

Further, if the violation is so egregious that the CAC cannot adequately protect health, environment, or property using the regulatory and enforcement tools available, then the CAC should consider referring the issue to an external enforcement agency (District Attorney, City Attorney, Circuit Prosecutor) or to the Director or SPCB.

**Option 2 – CAC refers the case to DPR or SPCB for more severe enforcement response**

The CAC may refer a case to DPR or SPCB when the available county-level enforcement responses are:

- not effective in changing violator behaviors,
- not effective in mitigating or preventing harm,
- addressing high priority incidents, or
- addressing violations committed in multiple jurisdictions.

The FAC (for DPR) and the B&PC (for the SPCB) allow the State to engage in civil prosecutions, levy civil penalties, and take licensing actions against licensees. The Director or Board may also refer the case to the Attorney General.

Although DPR manages/controls the case when it is referred, DPR engages with the CAC on case development and enforcement response. CACs are encouraged to discuss concerns about the lack of effectiveness of a county level action and the possibility of referring a case to DPR early in case development.

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# Determining the Enforcement Response to Violations,
Continued

**Option 3 – CAC refers the case to higher authority**

When faced with egregious and/or criminal acts, or when required by 3 CCR section 6128(e) (Reportable Incident investigations), CACs can formally refer cases to external enforcement agencies that are well equipped with respect to legal and penalty authority. This can result in:

- Criminal prosecution resulting in fines and/or imprisonment; or
- Civil prosecution of up to $75,000 per violation.

When a case is referred to the Attorney General, District Attorney, City Prosecutor, or City Attorney, both DPR and the CACs no longer control the investigation, prosecution, or penalty. Except for cases required to be referred by 3 CCR section 6128(e), when considering a formal referral CACs may discuss the case and their concerns with DPR and/or their County Counsel to be certain that "in-house" enforcement options have been explored (e.g., County Counsel may have experience in revoking a county business license as a method of punishing repeat violators).

**Enforcement-Compliance Options Chart**

The Enforcement-Compliance Options Chart (DPR-ENF-072, Rev 07/24) <https://www.cdpr.ca.gov/wp-content/uploads/2024/11/dpr-enf072.pdf> on the following pages lists the types of enforcement, compliance, and public protection actions, who is subject to the actions (affected party), which agency initiates the actions, what the penalties are, and under whose authority. Public Protection Actions are compliance actions.

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