

Questions Regarding Revision to 3CCR section 6130(a)(1), Civil Penalty Actions by Commissioners

Introduction Title 3, California Code of Regulations (3CCR) section 6130 is used by county agricultural commissioners to determine the violation class and fine amount when taking civil penalty actions pursuant to Food and Agricultural Code (FAC) section 12999.5.

Background This section was amended and became operative on May 26, 2004.

Two major revisions include a renaming of the violation class to Class A, Class B, and Class C and overlapping fine ranges to allow greater flexibility for county agricultural commissioners when levying fines.

Question 1 A non-compliance occurred prior to the new fine ranges becoming operative (May 26, 2004). The Notice of Proposed Action was written after May 26, 2004. Which civil penalty action fine ranges should I use, those in effect at the time the non-compliance occurred or those in effect at the time the Notice of Proposed Action was written?

Answer to Question 1 The Department of Pesticide Regulation, Office of Legal Affairs advises that the fine ranges in effect prior to May 26, 2004, be used for civil penalty actions being taken for non-compliances that occurred prior to May 26, 2004.

Civil penalty actions, under FAC authority, taken for non-compliances that occurred on and after May 26, 2004, will be subject to the revised fine ranges.

Question 2 Can the revised fine ranges be used when taking a civil penalty action for non-compliance(s) that occurred after May 26, 2004, in structural activities?

Answer to Question 2 Yes, provided the civil penalty action is being taken pursuant to FAC section 12999.5. In addition, a civil penalty action taken under FAC authority would carry the ACP prefix, rather than the SCP prefix.

Investigative time expended toward civil penalty actions taken under FAC section 12999.5, are **not reimbursable** (Business and Professions Code sections 8616.5 and 8505.17).
