

March 31, 1999

MEMORANDUM

**SUBJECT:** Issuance of Revised Enforcement Response Policy for TSCA §§ 8,12 & 13

**FROM:** Jesse Baskerville, Director  
Toxics and Pesticides Enforcement Division

**To:** Regional Division Directors for TSCA §§ 8, 12 & 13  
Regional Enforcement Directors for TSCA §§ 8, 12 & 13

Attached is EPA's Enforcement Response Policy (ERP) for the Toxic Substances Control Act Sections 8, 12 and 13 which becomes effective June 1, 1999. This revision of the ERP takes into account the Agency's "Audit Policy" (formally referred to as the policy on "Incentives for Self-Policing: Discovery, Correction and Prevention of Violations," 60 Fed. Reg. 66706 (December 22, 1995)) in determining the appropriate response to self-disclosures. Two of the principle changes made in this revision are the deletion of the Notice of Noncompliance for all first time violators of Sections 12(b) and 13 as well as the deletion of adjustments to the Circumstance Level from level 1 to level 4 for self-disclosure. Because the Audit Policy supercedes any other enforcement policy on matters relating to self-disclosure, all self-disclosed violations covered under the TSCA §§ 8, 12 & 13 ERP will first be reviewed to determine if they are eligible for mitigation of the gravity based penalty as set forth in the Audit Policy.

Among the modifications to this revised ERP are: new charts which incorporate the adjusted penalties published at 61 Fed. Reg. 69360, December 31, 1996, under the Federal Civil Penalties Inflation Adjustment Act of 1990; revised examples for calculating penalties which reflect the changes discussed above; and addition of a penalty calculation worksheet to assure that all the statutory factors are taken into account in determining the appropriate penalty.

This policy supercedes prior TSCA §§ 8, 12 and 13 policies and their amendments. Use this policy for TSCA §§ 8, 12 and 13 penalty calculations for violations discovered or disclosed after June 1, 1999.

Special thanks to Dan Kraft and his staff in Region 2 for taking the lead in working with the other Regions to update this ERP.

Attachment

cc: Office of Compliance  
TSCA Conference Call Addressees (via e-mail)

**THE ENFORCEMENT RESPONSE POLICY**

FOR

**REPORTING AND RECORDKEEPING  
RULES AND REQUIREMENTS**

FOR

**TSCA SECTIONS 8, 12 AND 13**

TOXICS AND PESTICIDES ENFORCEMENT DIVISION  
OFFICE OF REGULATORY ENFORCEMENT  
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Revised March 31, 1999  
Effective June 1, 1999

Enforcement Response Policy (ERP)  
for  
**Reporting and Recordkeeping  
Rules and Requirements**  
for  
TSCA Sections 8, 12 and 13

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# INTRODUCTION

Section 8 of the Toxic Substances Control Act (TSCA) authorizes EPA to require persons engaged in the manufacture (manufacture includes import for purposes of TSCA), processing and distribution in commerce of chemical substances to keep certain records and report certain information. The TSCA § 12(b) rule requires chemical exporters to submit to EPA certain information about chemical exports. The TSCA § 13 rule requires chemical importers to submit certification statements concerning import shipments of chemical substances. These reporting and recordkeeping provisions impose similar types of requirements, and therefore, failure to comply leads to similar types of violations. For this reason, this Enforcement Response Policy addresses all of these provisions as TSCA reporting and recordkeeping requirements.

Failure to comply with the recordkeeping and/or reporting provisions of TSCA is a violation of TSCA §§ 15(3)(A) and 15 (3)(B) and is thus subject to the remedies in TSCA § 16.

## Requirements or Rules Covered<sup>1</sup>

TSCA § 8(a) Inventory Update Rule - (51 FR 21438, 40 CFR Part 710)

TSCA § 8(a) Preliminary Assessment Information Reporting Rule (PAIR) -  
(47 FR 26992, June 22, 1982, 40 CFR Part 712)

TSCA § 8(a) Chemical Specific Recordkeeping and Reporting Rules -  
(40 CFR 704 Subpart B)

TSCA § 8(c) Allegations of Significant Adverse Reactions Recordkeeping and Reporting Rules - (48 FR 38178, August 22, 1983, 40 CFR Part 717; amended 50 FR 46766, November 13, 1985, 40 CFR Part 717)

TSCA § 8(d) Health and Safety Studies Submission Requirement -  
(47 FR 38780, September 2, 1982, 40 CFR Part 716 amended September 15, 1986, 51 FR 32720)

TSCA § 8(e) Substantial Risk Information Reporting Requirement -  
(Policy Statement, 43 FR 11110, March 16, 1978 and Reporting Guidance, June 1991 available from the TSCA Hotline )

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<sup>1</sup> TSCA § 8(b) Notice of Commencement Requirement (NOC) - the NOC requirement is so closely related to the §5, PMN provision of TSCA that any penalty determinations related to this violation are covered in the TSCA Section 5 Enforcement Response Policy issued on August 5, 1988.

TSCA § 12(b) Exports Notification Rule - (40 CFR Subpart D)

TSCA § 13 Import Certification Rule - (48 FR 34734, August 1, 1983, 19 CFR §§12.118 through 12.127 and 127.28, as amended, and 40 CFR Subpart B )

Additional Rules - refer also to 40 C.F.R. Part 766 for additional chemicals and reporting requirements under §§ 8 and 12(b).

FUTURE TSCA RULES or REQUIREMENTS - This policy also covers all future rules promulgated under TSCA §§ 8, 12(b), 13 or amendments to the above rules and policies.

## **DETERMINING THE LEVEL OF ACTION**

Enforcement alternatives include a notice of noncompliance, a civil penalty, injunctive relief, criminal action, or some combination of these actions. Each is described below along with a discussion of when each enforcement action would be an appropriate response.

[Note: Many instances of reducing penalties for Voluntary Disclosure (see Page 15 of this ERP), which had been included in prior versions of this policy, are now superceded by the “Audit Policy.” The application of the Audit Policy for self-disclosures has eliminated the use of the Notice of Noncompliance for first time violators of TSCA §§ 12(b) and 13, since 100% mitigation of the gravity based penalty is now guided by the conditions enumerated in the Audit Policy. To bring this ERP in line with other Agency policies for self-disclosure, adjustments to the Circumstance Level for self-disclosure, which had also been included in prior versions of this policy, are no longer an appropriate response.]

### **Notice of Noncompliance**

A Notice of Noncompliance (NON) is appropriate for minor violations of TSCA where the impact on the Agency’s regulatory and decision making process is minimal and the violator has not received a previous NON for a violation of that particular subsection.

Violations of TSCA § 8 which warrant NONs include:

- Minor technical omissions, i.e., failure to supply required noncritical information (such as the phone number of a technical contact);
- Failure to use certified mail in making a notification (as required by a rule);
- Report sent to an incorrect EPA address but correctly identified as a specific TSCA § 8 submission;
- Report sent to correct EPA address but not properly identified as a specific TSCA § 8 submission.

## **Administrative Civil Penalties**

An administrative civil penalty is the appropriate response for most violations of the covered regulations.

Nationally Significant Issues - Authority to take enforcement action under TSCA was delegated to Headquarters Enforcement and the Regions by the Assistant Administrator for Enforcement and Compliance Assurance on June 6, 1994. Civil penalties are to be assessed according to this policy. Regional enforcement personnel must follow the procedures set out in the memorandum regarding Nationally Significant Issues which was issued by the Office of Regulatory Enforcement on November 1, 1994. In some instances this requires written consultation with TPED prior to issuing and resolving TSCA cases.

## **Injunctive Action**

Injunctive action under TSCA may be appropriate in certain circumstances. Although Section 17 of TSCA can be a very effective tool in obtaining compliance, it is also more resource intensive than a civil penalty action. In addition, it has been the Agency's experience that a civil penalty action is usually sufficient to obtain compliance. For these reasons, the Agency believes that the use of TSCA § 17 remedies generally should be limited to those instances where a civil penalty action would not result in sufficiently swift compliance to protect human health or the environment. For example, injunctive action could be used to require a company to maintain records where the attitude of the violator indicates that this would not be done otherwise or where there is a repeated history of failure to keep records.

## **Criminal Sanctions**

Criminal sanctions pursuant to TSCA § 16 (b) are the most serious sanctions available for violations of the recordkeeping/reporting rules. If the case involves false statements submitted to the government or false statements submitted through the U.S. mail, then other criminal statutes may apply. EPA must establish knowing and willful conduct to impose criminal sanctions. Accordingly, criminal sanctions may be sought in situations that -- when measured by the nature of the conduct, the compliance history of the subject (s) or the gravity of the health or environmental consequences -- reflect the most serious cases of misconduct.

Several factors distinguish criminal cases from administrative or civil actions. First, criminal sanctions will ordinarily be limited to cases in which the prohibited conduct is accompanied by evidence of "guilty knowledge" or intent on the part of the prospective defendant(s). TSCA imposes criminal penalties only for violations of the Act which are committed "knowingly or willfully".

A second factor to consider is the nature and seriousness of the offense. As a matter of resource allocation, EPA will investigate and refer only the most serious forms of misconduct. Of primary importance to this assessment is the extent of environmental contamination or human health hazard that resulted from, or was threatened by, the prohibited conduct. Also of significance is the impact, real or potential, on EPA's regulatory functions.

Third, the compliance history of the individual(s) or person(s) for a potential criminal case is important. Criminal sanctions become more appropriate as incidents of noncompliance increase. While not a prerequisite, a history of noncompliance will often indicate the need for criminal sanctions to achieve effective individual deterrence.

## **Multiple Remedies**

There may be unusual instances where a particular situation will present facts that suggest that more than one final action should be taken. TPED does not encourage the use of multiple remedies except as discussed below. The purpose of this Section is to outline when multiple remedies are appropriate.

**Criminal Sanctions** - Simultaneous civil and criminal enforcement proceedings are legally permissible and, on occasion, are clearly warranted. (See United States v. Kordel, 397 U.S. 1, 11 (1970).) Note also that the Supreme Court considered the double jeopardy clause in Hudson v. U. S., 522 U.S. 93 (December 10, 1997), and held that an administrative proceeding is not a bar to later criminal prosecution since administrative proceedings are civil, not criminal. Thus, there may be situations where an administrative action precedes a criminal prosecution. When parallel proceedings are contemplated, please refer to the Office of Enforcement and Compliance Assurance, Parallel Proceedings Policy of June 22, 1994 and the Coordinated Settlement of Parallel Proceedings: Interim Policy and Procedures of June 9, 1997.

**Notice of Noncompliance** - In general, a notice of noncompliance should not be used in conjunction with any other final remedy. Where a particular situation presents several violations, some of which would merit a notice of noncompliance, while others would merit civil penalties, no notice of noncompliance should be sent. Instead, an administrative penalty action should be initiated, pleading all violations, with no penalties for minor infractions which would otherwise warrant an NON.

**Civil Administrative Penalties and Specific Enforcement** - The criteria outlined in this section anticipate that civil penalties and specific enforcement (injunctive action) will be used sequentially. There may, however, be instances where the concurrent use of these remedies is appropriate. If the Region deems this to be appropriate in any case, it should consult with TPED before bringing either action.

# **ASSESSING A CIVIL ADMINISTRATIVE PENALTY**

## **I. Statement of the Penalty Policy**

**Background** - The TSCA Civil Penalty Policy, published in the Federal Register on September. 10, 1980, establishes a system for determining penalties in administrative actions brought pursuant to TSCA § 16. EPA believes that the system is a reasonable interpretation of the statutory penalty factors in TSCA section 16. Under that system, penalties are determined in two stages: (1) determination of a "gravity based penalty" (GBP), and (2) adjustments to the gravity based penalty.

To determine the gravity based penalty, TSCA § 16(a)(2)(B) requires the Agency to take into account the statutory factors of "Nature", "Circumstances", "Extent", and "Gravity." This policy takes those factors into account in the following manner:

1. **Nature**: The "nature" of all record keeping and reporting violations discussed in this policy is "hazard assessment."
2. **Circumstances**: The "circumstances" of the violation is evaluated through an assignment of levels for each situation;
3. **Extent**: The "extent" of harm to the Agency's ability to assess the risk posed by a chemical substance which could occur from a given violation is evaluated as major, significant or minor;
4. **Gravity**: The "gravity" of the violation is taken into account in this policy as a "dependent variable" so that the evaluation of "nature", "circumstances", and "extent" determines the gravity.

[Note: Since the statutory factor of "nature" is a constant throughout this policy, and the statutory factor of "gravity" is a "dependent variable", the gravity based penalty is determined by applying a matrix with "circumstances" on the vertical axis and "extent" along the horizontal axis.]

These factors are incorporated in a matrix which allows determination of the appropriate gravity based penalty.



Once the gravity based penalty has been determined, upward or downward adjustments to the penalty amount are made by taking into account the following factors with respect to the violator:

- Degree of Culpability;
- History of prior such violations;
- Ability to pay;
- Ability to continue in business; and
- Such other matters as justice may require (economic benefit from violation etc.).

While the TSCA Civil Penalty Policy system provides an overarching framework for the development of penalties, this document sets forth Agency policy to assess penalties for specific violations of TSCA §§ 8, 12, 13 and regulations promulgated pursuant to these sections, consistent with the statutory factors of TSCA section 16.

### Applicability

This policy supersedes all prior Enforcement Response Policies for §§ 8, 12, and 13. This policy applies to all administrative penalty calculations for violations concerning TSCA §§ 8, 12, and 13 violations which are discovered by EPA or disclosed to EPA on or after the effective date of this policy. Violations which were discovered by EPA or disclosed to EPA prior to the effective date of this policy are to apply the ERP effective at the time of such disclosure or discovery unless this policy would result in a reduction of the penalty. Ongoing cases issued prior to the date of this policy should be reviewed to determine whether the penalty calculated under this policy is lower than the penalty in the civil complaint. If this policy yields a lower penalty, either an amendment to the complaint should be made to substitute the lower penalty, or the revised lower penalty should be fully considered and documented in settlement of the action.

This policy sets forth factors for consideration that will guide the Agency in the exercise of its prosecutorial discretion under TSCA § § 8, 12, and 13. EPA believes that this policy is a reasonable interpretation of TSCA section 16. This policy does not constitute rule making by EPA. It may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or equity, by any person.

## Calculation of the Gravity Based Penalty

Penalties for TSCA §§ 8, 12 and 13 violations vary depending on the date of violation, extent, circumstances, whether penalties are to be calculated as one day assessments versus per day assessments, and by capping the number of days for which a violation may be assessed as appropriate. In establishing each of these, the Agency considered the following factors in a comparative manner:

- ✓ Impact on the Agency's ability to assess the hazards and/or risks to human health and the environment;
- ✓ Relative degree of harm to human health, the environment and the regulatory process caused by the failure to comply;
- ✓ Time frames in which the Agency decision making process generally occurs;
- ✓ Time to generate information not reported;
- ✓ Relative costs of studies;
- ✓ Likelihood that sufficient information is available from other sources;
- ✓ Type of information involved, i.e., human exposure versus animal toxicity studies and allegations versus actual data.

The Gravity Based Penalty (GBP), a function of the nature, circumstances and extent of each violation, is to be determined by using one of the following matrices, depending on when the violation occurred. The first matrix is used for violations that occurred on or before January 30, 1997. This matrix is based on the penalties set forth in TSCA when it was enacted in 1976.

The Federal Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA) requires Agencies to adjust penalties for inflation, with a maximum increase of 10% at any one time. On December 31, 1996, EPA promulgated the civil penalty inflations adjustment rule, 61FR 69359, and thereby increased the statutory penalty provisions for TSCA by ten percent (10%). The rule became effective January 30, 1997. Accordingly, the second matrix, which increases the original penalties by ten percent (10%), is used for violations that occurred after January 30, 1997.

**Penalty Matrix For Violations Occurring On or Before January 30, 1997.**

CIRCUMSTANCES ↓↓↓	◀EXTENT▶		
	A Major	B Significant	C Minor
LEVELS 1 High Range	\$25,000	\$17,000	\$5,000
2	\$20,000	\$13,000	\$3,000
3 Mid Range	\$15,000	\$10,000	\$1,500
4	\$10,000	\$6,000	\$1,000
5 Low Range	\$5,000	\$3,000	\$500
6	\$2,000	\$1,300	\$200

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**Penalty Matrix For Violations Occurring After January 30, 1997**

CIRCUMSTANCES ↓↓↓	◀EXTENT▶		
	A Major	B Significant	C Minor
LEVELS 1 High Range	\$27,500	\$18,700	\$5,500
2	\$22,000	\$14,300	\$3,300
3 Mid Range	\$16,500	\$11,000	\$1,650
4	\$11,000	\$6,600	\$1,100
5 Low Range	\$5,500	\$3,300	\$550
6	\$2,200	\$1,430	\$220

After determining the initial or "base penalty" from the matrix for the first day of violation, additional per day penalties are to be determined, where applicable. Whether a penalty is to be assessed as a one day assessment or as a continuing violation on a per day basis is specified in the Circumstances section. Days of violation are based on calendar days and includes weekends and holidays.

### Nature

A violation may be classified as either chemical control, control-associated data gathering, or hazard/risk assessment in nature. For purposes of assessing a penalty, the nature of a record keeping or reporting violation is "hazard assessment." For all penalty assessments under this policy for record keeping and reporting violations, the nature of the violation is "hazard/risk assessment."

### Circumstances

The first step in selecting the base penalty is to determine which level on the circumstances axis applies to the violation.

Non reporting violations under TSCA § 8 occur when information, studies, or reports are not submitted to EPA. Reports that are submitted more than 30 days after the due date are considered grossly late. Such reports are considered non-reporting for purposes of this policy. Late reporting under TSCA § 8 occurs when information, studies, or reports are provided late to EPA, but within 30 days from the due date.

The circumstances axis of the GBP matrix reflects the probability that harm will result from a particular violation. For recordkeeping and reporting rules, violations rank as follows on the circumstances axis:

<b>CIRCUMSTANCE LEVEL</b>		<u>Violation Assessed</u>
<b>LEVEL 1</b>	Non reporting for TSCA § 8(e)	Per day
	Non reporting for TSCA § 8(e) Emergency Incident of Environmental Contamination (EIEC)	One day
	Non reporting for TSCA § 8(d)	Per day
	Non reporting for TSCA § 8(c)	Per day
	Non reporting for TSCA § 8(a) Chemical Specific Rules	Per day
	Non reporting for TSCA §8(a) PAIR	Per day
	Non reporting for Inventory Update	One day
	Failure to establish/keep records; or False/incorrect/misleading reporting	
	TSCA § 8(a) Chemical Specific, § 8(a) PAIR, § 8(d), § 8(e)	Per Day
	Failure to record section 8(c)	One Day
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<b>LEVEL 2</b>	Failure to maintain records/report in a manner that meets the standard required in the rule. All except TSCA § 8(c).	One day
	Failure to report under TSCA § 8(d) involving omission of a study in a list of studies which a manufacturer knows of but which is not in his possession.	One day
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<b>LEVEL 3</b>	Failure to maintain TSCA § 8(c) records/report in a manner that meets the standard required in the rule. Assess one violation where all allegations are filed but not in the manner prescribed.	One day
	Failure to report completely after EPA has requested missing information or a correction of erroneous information. TSCA § 8(a) Chemical Specific, § 8(a) PAIR, § 8(d), § 8(e)	Per Day
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<b>LEVEL 4</b>	Late reporting violations under § 8.	Per day
	All TSCA § 12(b) violations.	One day
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<b>LEVEL 5</b>	No violations are level 5 in the TSCA §§ 8, 12, and 13 ERP. (This level is retained to keep the policy parallel with § 5 ERP)	
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<b>LEVEL 6</b>	TSCA § 8 report sent to incorrect office and not identified as a specific TSCA § 8 submission as required.	One day
	TSCA § 8 report properly identified but sent to incorrect office after a company received a previous notice of noncompliance for a violation of the same subsection.	One day
	TSCA § 8 report sent to correct office but not properly identified after a company received a previous notice of noncompliance for a violation of the same subsection.	One day
	Failure to keep records showing that the manufacturer is not subject to reporting under the TSCA § 8(a) Inventory Update Rule.	One day
	TSCA § 13 violations involving a negative or no certification when the chemical is subject to TSCA and is in compliance with all other TSCA requirements (e.g. has a PMN).	One day
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**VARIABLE LEVEL** TSCA § 13 violations involving a positive/negative, or no certification when the chemical does not comply with TSCA §§ 5, 6 or 7 will have the same circumstance level as the TSCA § 5, 6 or 7 violation. Per day

However, the penalty for a TSCA § 13 violation shall not exceed the amount of a Circumstance Level 3, Significant Extent violation (either \$10,000 or \$11,000 depending on date of violation) per count.

## Extent

The second step in selecting the base penalty for a specific violation from the matrix is to determine its position on the extent axis.

This axis of the GBP matrix reflects the extent of potential harm caused by a violation. In the case of record keeping/ reporting rules, harm is defined as the inability of the Agency to carry out its risk assessment responsibilities under TSCA.

## **EXTENT LEVEL**

### **MAJOR**

Violations of TSCA §§ 8(c), 8(d), or 8(e) which directly interfere with the Agency's ability to address situations involving potential imminent hazard, unreasonable risks, or substantial endangerment to health or the environment. (This determination must have written concurrence from OPPTS.)

Violations of TSCA §§ 8(d) and 8(e) involving human data. (Note that 8(e) determinations must have OPPTS written concurrence.)

Violations of TSCA § 8(e) involving information on emergency incidents of environmental contamination (EIEC). (Note that 8(e) determinations must have OPPTS written concurrence.)

All TSCA § 8 Circumstance Level 6 violations.

### **SIGNIFICANT**

Violations of TSCA §§ 8(d) and 8(e) involving animal/aquatic studies, environmental monitoring, workplace monitoring (non invasive human monitoring), and any other study not addressed in the major or minor extent category.

Level 1, 2, 3, or 4 violations of the TSCA Inventory Update, § 8(a) PAIR, § 8(a) chemical specific, or § 8(c) rules, except major 8(c) violations.

All Violations of TSCA § 12(b).

TSCA § 13 violations involving a negative or no certification when the chemical is subject to TSCA and is in compliance with all other TSCA requirements (e.g. has a PMN).

#### **MINOR**

Violations of TSCA § 8(d) involving physical chemical properties or environmental fate data.

§ 8(a), failure to keep records showing that a manufacturer is not subject to reporting under the Inventory Update Rule

#### **VARIABLE**

Violations of TSCA § 13. The extent category of a TSCA § 13 violation involving a chemical that does not comply with TSCA §§ 5, 6 or 7 will vary with the extent category of the TSCA § 5, 6 or 7 violation.

However, the penalty for a TSCA § 13 violation shall not exceed the amount of a Circumstance Level 3, Significant Extent violation (either \$10,000 or \$11,000 depending on date of violation) per count.

### Per Day Assessments

Where per day assessments are specified in the Circumstances Level section, the base penalty is calculated for the first day of violation and per day penalties are assessed for each subsequent day of violation based on the following formula:

- 1) TSCA 8(c), 8(d), 8(e)  
when there is OPPTS written determination that the violation disrupts the Agency's ability to address situations which involve Potential Imminent Hazard/Substantial Endangerment Situations/Unreasonable Risks

$$\begin{array}{l} \text{Base} \\ \text{Penalty} \end{array} \quad \times \quad \# \text{ of days in violation} = \text{Penalty}$$

2) TSCA § 8(e)

$$\frac{\text{Base Penalty} + (\# \text{ of days of violation} - 1) \times \text{base penalty}}{30} = \text{Penalty}$$

3) TSCA § 8(a) Chemical Specific

$$\frac{\text{Base Penalty} + (\# \text{ of days of violation} - 1) \times \text{base penalty}}{360} = \text{Penalty (1 yr. cap)}$$

4) All others

$$\frac{\text{Base Penalty} + (\# \text{ of days of violation} - 1) \times \text{base penalty}}{180} = \text{Penalty (Not to exceed cap)}$$

Caps on Number of Days for Penalty to be Assessed Per Violation

TSCA § 8(e)	No cap
TSCA § 8(d)	5 year cap Major Extent Violations 3 year cap Significant Extent Violations 1 year cap Minor Extent Violations
TSCA § 8(c)	1 year cap
TSCA § 8(a) Chemical Specific	1 year cap
PAIR	1 year cap

Determining Number of Violations - Multiple penalties are to be used if there is more than one violation of the same rule or violations of different rules. Violations will be determined as follows:

TSCA § 8(a) Inventory	Per Chemical
TSCA § 8(a) Inventory Update	Per Chemical Per Site



TSCA § 8(a) PAIR	Per Chemical Per Site
TSCA § 8(a) Chemical Specific Rules	Per Chemical (Per Chemical Per Site if Site-Specific Reporting Is Required)
TSCA § 8(c) Failure to Keep Records	Per Allegation Submitted to Company and Not Filed
TSCA § 8(c) Failure to Maintain Records as Required	Per Requirement Not Met Per Firm
TSCA § 8(c) Report	Per Allegation Not Reported
TSCA § 8(d)	Per Study Per Chemical
TSCA § 8(e)	Per Type of Reportable Effect or Event Per Chemical
TSCA § 12(b)	Per Chemical Per Country Per Year (§ 4 limited to 1st year only)
TSCA § 13	Per chemical per day (Multiple shipments of the same chemical on the same day is one violation. Multiple chemicals in only one shipment is one violation. Multiple shipments of different chemicals on the same day are multiple violations; one violation for each different chemical in a separate shipment.)

### Determining the Gravity Based Penalty

Since the category for nature is “hazard/risk assessment” for all penalty assessments under this policy, the circumstances level and the extent category for each violation will define the gravity based penalty in the matrix. See The TSCA Civil Penalty System for its description of the penalty factor of gravity as a “dependent variable” factor.

For those violations designated as per day in the circumstances matrix, calculate the gravity based penalty as indicated under per day assessments, taking into account the caps on the number of days the penalty is to be assessed. Refer to the Penalty Calculation Worksheet, appendix 3, and adjust the gravity based penalty by taking into account the factors discussed in the TSCA Civil Penalty System and this policy.

## Adjustment Factors

The TSCA Civil Penalty System discusses adjustment factors EPA uses to take into account the statutory factors of TSCA section 16. Below is additional explanation of the adjustment factors for the gravity based penalty specific to this policy.

### **Voluntary Disclosure (Other Factors as Justice May Require)**

Facilities that conduct an audit and voluntarily self-disclose any violations of TSCA §§ 8, 12 or 13 under the Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations Final Policy Statement, 60 Fed. Reg. 66,706 (December 22, 1995), may be eligible for a 100% reduction in the gravity-based penalty, if they meet the nine criteria established in the policy.

If a facility self-discloses violations that do not qualify under the Agency's Self-Policing Policy, the penalty amount may still be reduced for such a voluntary self-disclosure under this policy. To be eligible for such a reduction, a facility must submit a signed statement of voluntary disclosure to EPA describing the alleged violations.

Voluntary disclosure of a violation will result in a 25% reduction of the gravity based penalty. To encourage immediate disclosure, an additional 25% reduction will be given for voluntary self-disclosures made within 30 days of having reason to believe that a violation occurred.

The reduction for voluntary disclosure and immediate disclosure may be made prior to issuing the administrative complaint. The complaint should state the original penalty and the reduced penalty and the reason for the reduction.

For voluntary disclosure of Section 8, 12 and 13 violations, the gravity based penalty is to be adjusted downward as follows:

Voluntary Self -Disclosure . . . . .	25%
+	
Voluntary Self -Disclosed within 30 days . . . . .	25%
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Total GBP reduction for voluntarily disclosing w/in 30 days . . . . .	50%

As a further incentive, EPA will not consider a regulated entity's prior history of violation in determining the penalty for a violation that is disclosed voluntarily under this ERP. However, if a regulated entity has received penalty mitigation for the violations under another policy for self-disclosing the particular violation, there is no adjustment for self-disclosure of the

same violations under this policy.

The Agency will not consider a disclosure voluntary if the disclosure is received after the company has been notified of a scheduled inspection or an investigation has begun. Information received after these events will be considered as failure to report. However, if the disclosed violations are clearly outside the scope of the investigation, then the self-disclosure reductions may apply. If additional violations are disclosed after an Administrative Complaint has been issued, this situation may be addressed through: 1) an amendment to the original complaint; 2) an additional complaint; or 3) by including additional charges in the Consent Agreement and Consent or Final Order.

### **Economic Benefit (Other Factors as Justice May Require)**

In no case should the final penalty imposed be less than the economic benefit. In those cases where the initial gravity based penalty is less than the economic benefit derived from noncompliance, EPA reserves the right to impose penalties up to the statutory maximum of \$25,000 per day (or \$27,500 per day for violations that occurred after January 30, 1997) to assure that the penalty is not less than the economic benefit.

### **Exposure Reduction (Other Factors as Justice May Require)**

In cases warranting per day assessments of the base penalty (e.g. those involving potential imminent hazard, etc.), if the Respondent provides EPA with credible evidence that demonstrates, for example, exposure has ceased by all routes of exposure, environmental and/or commercial; that evidence may be considered to mitigate the penalty. That evidence must be submitted in the form of an affidavit or other means that provides EPA with a reasonable certainty of truthfulness. In those cases, the penalty will be assessed at the maximum base penalty per day during the duration of the exposure presenting imminent hazard/substantial endangerment/unreasonable risk and assessed as a violation not presenting the potential hazard/risk/endangerment during the time that the hazard/risk/endangerment had ceased to exist.

### **Attitude**

In assessing the violator's attitude, the Agency will look at the following factors: whether the violator is making good faith efforts to comply with the appropriate regulations; the promptness of the violator's corrective actions; and any actions taken to minimize harm to the environment caused by the violation.

This adjustment applies equally to companies that voluntarily disclose violations and to those that do not. A company would generally qualify for a downward adjustment of a maximum of 15% if it immediately halts the violative activity and takes steps to rectify the situation. An upward adjustment of a maximum of 15% may be justified where company officials continue the violative activity after being notified to stop, do not act in good faith, hinder EPA's progress, cause increased government expenditures, or are otherwise uncooperative.

For TSCA § 13 violations, for example, if the company had a system in place to track import certifications and comply with TSCA § 13 requirements, and a chemical "slips through", a 15% good attitude reduction may be given as provided for in the TSCA Penalty Policy. Larger reductions are inappropriate in that companies are required to comply with certification requirements and credit should not be given for attempting to comply with the law. If a company experiences numerous occasions where chemicals "slip through" their system, a good attitude reduction is no longer appropriate.

## **Supplemental Environmental Projects**

To further the goals of the EPA to protect and enhance public health and the environment, certain environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be included in the settlement.

SEPs are environmentally beneficial projects which a respondent agrees to undertake in settlement of an environmental enforcement action, but which the defendant is not otherwise legally required to perform. In return, some percentage of the cost of the SEP is considered as a factor in establishing the final penalty to be paid by the respondent. EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform a SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The commitment to perform a SEP may indicate a respondent's new or extraordinary efforts to be a good environmental citizen.

While SEPs may not be appropriate in settlement of all cases, they are an important part of EPA's enforcement program. Whether to include a SEP as part of a settlement of an enforcement action is within the sole discretion of EPA. EPA must ensure that the inclusion of a SEP in settlement is consistent with the Agency's SEP Policy effective May 1, 1998 unless revised.

## **History of Previous Violation**

The GBP Matrix is designed to apply to first offenders. Where a violator has demonstrated a history of "prior such" violations as stated in TSCA, the penalty will be adjusted upward to increase his motivation to comply.

If the "prior such" TSCA violation is not related to a Section 8, 12(b), or 13 TSCA provision or regulation, then the penalty should be upwardly adjusted 25 percent for the first repetition and 50 percent for additional repetitions of the violation. If the "prior such" violation is of any corresponding TSCA Section 8, 12(b), or 13 provision or regulation, the penalty should be upwardly adjusted by 50 percent for the first repetition and 100 percent of the second repetition. However, the penalty may not be increased beyond the statutory maximum.

The Agency will consider all prior violations. These include both self-disclosed and non self-disclosed violations.

## II. Explanation of the Penalty Policy

### Nature

The ERP is one of several documents that, together, define the national TSCA Enforcement Program. This ERP must be read in conjunction with the Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substance Control Act (September 10, 1980).

As discussed before, the nature of a record keeping or reporting violation is "hazard/risk assessment." For all penalty assessments under this policy for record keeping and reporting violations, the nature of the violation is "hazard/risk assessment."

TSCA §§ 8 and 12(b) require that information concerning chemicals be reported to EPA or kept at the company and made available to the Agency. TSCA § 13 requires importers to certify that chemicals imported are either not subject to TSCA or are in compliance with TSCA.

Section 8 information is used by the Agency to evaluate the potential risks associated with the manufacture, process, distribution and use of a chemical. This data gathering often occurs at the early stages of regulatory decision making. Therefore, complete and accurate information is essential. Incomplete and inaccurate information will have far-reaching effects on the Agency's risk assessment, regulatory priority setting, and regulation development processes. Some information such as TSCA § 8(e) information may affect the Agency's ability to initiate immediate action necessary to protect health and the environment, e.g., seeking injunctive relief. In addition, reports under the original Inventory Reporting Rule establish the basis for what is an "existing" chemical versus a "new" chemical under § 5, the latter being those for which a premanufacture notice must be filed and the chemical reviewed by the Agency.

Section 12(b) collects information about the export of chemicals subject to certain proposed or final testing or regulatory requirements under TSCA §§ 4, 5, 6, or 7. The Agency provides this information to the government of an importing country to allow that country to initiate its own risk assessment process.

The section 13 rule describes procedures for certifying that imported chemical substances subject to TSCA are in compliance with TSCA. This information permits the Agency to determine if importers of chemicals are complying with applicable TSCA regulations.

### Circumstances (Harm from Non-compliance)

The circumstances axis of the GBP matrix reflects the probability for harm resulting from a particular violation. For the reporting rules, the potential harm is to the Agency's ability to assess hazard/risk to human health and the environment.

## High Range Violations - Level 1

Non reporting/failure to report and failure to keep records are extremely serious violations of these rules. The Agency will have to proceed with chemical assessment and priority setting, and perhaps, even regulation development, especially for TSCA § 4 test rules, without critical information or without the knowledge that such information even exists. This is true even if a company reports some information but does not report each study or under-reports the extent of health effects or number of allegations for a particular effect. Thus, each report omitted or incompletely reported will be treated as a separate non reporting violation.

False/incorrect/misleading reporting of information is equally harmful because the Agency is misled in its analysis of the potential risks posed by the chemical or in the amounts or types of information available.

TSCA § 8(a), the Inventory Update Rule (IUR) requires chemical manufacturers and importers to provide, once every four years, chemical production volume and location information. The updated Chemical Substances Inventory then provides EPA with a significant tool for identifying, prioritizing, and evaluating toxic chemicals, and for developing a profile of the chemical industry in the United States. The IUR provides for the collection of information regarding commercially produced chemicals so that the exposure to a chemical and its total impact on health and the environment can be monitored and evaluated. The data in the inventory are considered the only reliable source of national production/importation volume information for organic chemicals. The Chemical Substances Inventory data are used to justify testing and regulatory actions taken by the Agency including TSCA § 4 test rule decisions. The data are also provided to other federal and state agencies to assist in establishing an integrated toxic substances program. Moreover, international organizations use the data base's information to establish international chemical testing priorities. Failure to report under IUR undermines the data base used in the Agency decision making process.

TSCA § 8(c) violations in level 1 include failure to keep records and failure to report if the Agency has requested that the information be submitted. Thus, if a company has received TSCA § 8(c) allegations, but does not maintain TSCA § 8(c) records, and the Agency requests that TSCA § 8(c) allegations be submitted and the company fails to make a submission, there are two violations - one for the failure to keep records and another for the failure to report. Even if a company submits most allegations but not all, each failure to submit an allegation shall be separately charged and assessed as a failure to report.

TSCA § 8(d) level 1 violations include the following:

- Failure to submit unpublished studies in the possession of a subject person;
- Failure to notify EPA of unpublished studies the subject person knows of but is not in possession of;

- Failure to notify EPA of ongoing studies which the subject person initiated or sponsored. Includes future studies required to be reported if they are initiated during the reporting time frame;
- Failure to send EPA the final report of a study which was listed as an ongoing study. Includes future studies required to be submitted;
- Failure to submit underlying data to EPA on EPA's request.

Failure to comply with the TSCA § 8(e) reporting requirements can be the most serious violation of TSCA § 8. These reports alert the Agency to new information which may have a bearing on the Agency's chemical hazard/risk assessment and chemical control efforts. This ERP reflects the seriousness the Agency attaches to violations of TSCA § 8(e) by not placing caps on the penalties assessed for these violations.

### **High Range Violations - Level 2**

Failure to maintain records or report in a manner that meets the standard required by the rule has effects similar to falsified information. Both mislead the Agency and are difficult to detect. Failure to report in a manner that meets the standard refers to those cases where reporting is essentially complete and the missing/incorrect information does not impact the report in such a manner as to mislead the Agency. An example is the failure to report one ongoing TSCA § 8(d) study when another similar study is reported by the company. Another example is a small error in reporting production volume, i.e., less than an order of magnitude (a factor of 10).

Level 2 also includes a TSCA § 8(d) violation involving the failure to report a study which a manufacturer knows of but which is not in his possession. The Agency considers this violation to have less potential harm than other failure to report violations since the Agency may learn of this study from other persons reporting.

### **Mid Range Violations - Level 3**

Failure to report completely after EPA has requested missing information is a significant violation. Such a violation denies the Agency access to information necessary to its analysis of chemical risks. This type of violation is not as serious as the high range violations because it is usually relatively easy to detect and therefore easy to remedy. A form, for instance, will have blank spaces where answers are expected. Even though the Agency does not have the information, it knows that an information gap exists, and therefore, is less likely to be misled into making invalid chemical risk assessments. However, the withholding of information is a serious impediment to risk assessment, and if it becomes a widespread practice, it could significantly affect the Agency's chemical risk assessment processes. Thus, this violation, while not as serious as a total failure to report or false or misleading reporting, is still of sufficient severity to be treated in the higher level of the mid range.

For TSCA § 8(c) files, the failure to maintain reports as required in the rule, e.g., files which are present but which are not cross-indexed or which are not kept in one location, is a level 3 violation. In those cases where the company maintains files of § 8(c) information, but does not submit information when requested by EPA because it was unable to retrieve the information during its file search, the failure to submit is a level 1 violation. The company may also be charged with a level 3 violation. Please note that failure to file an allegation under TSCA § 8(c) although other allegations are filed constitutes a level 1 failure to keep records violation.

#### **Mid Range Violations - Level 4**

Reports which are late (those documents submitted less than 30 days after the original due date) can slow or disrupt the Agency's decision making process. The submission deadlines vary for each rule. Lateness is classified in the lower level of the Mid Range Circumstances level because the disruption caused by the untimely submission of information is corrected within a short period of time.

Most TSCA § 12(b) violations are categorized as level 4. The Agency considers TSCA § 12(b) reporting to be important to its ability to notify other countries to which chemicals subject to certain TSCA rules are being exported. The potential harm is that the violation prevents the Agency from fulfilling its statutory obligation to notify other countries that EPA has a concern with the chemical and has issued proposed rule under §§ 5, 6, or 7 or an order or final rule under §§ 4, 5, 6, or 7.

**Low Range Violations - Level 5** None for §§ 8, 12(b), or 13 of TSCA.

#### **Low Range Violations - Level 6**

Level 6 violations include minor technical omissions which do not affect the Agency's ability to follow up the information either by contacting someone in the company or consulting outside references. They are among the least serious because the violation is readily detected, does not affect initial risk assessment and may only slightly hinder the Agency's decision making process. In such cases, a notice of non-compliance rather than a penalty may be appropriate for the first violation. However, if a company repeats this type of violation, the Agency will assess a penalty.

A second level 6 violation is the failure on the part of a manufacturer to keep records showing that he is not subject to reporting under the TSCA § 8(a) Inventory Update Rule, which requires persons who produce less than 10,000 lbs. of a substance to maintain records documenting that fact.

Other low range violations include the submission of TSCA § 8 information which is not specifically identified. Also, submitting the information to the incorrect office or not correctly identifying the information after a previous Notice of Noncompliance has been issued for a



violation of that Subsection warrants a level 6 assessment. Although the Agency receives the information, it may take some time to reach the correct office or to be placed into the review process, and therefore, the Agency's decision making is delayed or impeded.

The Agency considers TSCA § 13 violations that do not occur with violations of TSCA §§ 5, 6 or 7, to be low range level 6 violations. The violation reflects the importer's failure to assure full compliance with TSCA. Failure to certify or filing a false import certification circumvents the purpose of TSCA § 13 and could lead to the importation of chemicals which violate other provisions of TSCA.

### **Variable Range for § 13 Violations**

Where a violation of TSCA § 13 involves a chemical substance that is also in violation of a TSCA §§ 5, 6, or 7 requirement, the Circumstance Level of the § 13 violation will vary. TSCA § 13 is designed to assure that an importer takes affirmative responsibility in assuring that his shipments comply with TSCA §§ 5, 6, or 7. Accordingly, where §§ 5, 6, or 7 violations are found, a TSCA § 13 violation will be assessed at the same circumstance level as the TSCA §§ 5, 6, or 7 violation. However, the penalty for a TSCA § 13 violation is capped so it may equal the penalty assessed for the TSCA § 5, 6, or 7 violation but not exceed the penalty assessed for a Circumstance Level 3, Significant Extent violation.

### **Extent**

This factor reflects the extent of potential harm to EPA's hazard/risk assessment process. The Agency relies on information gathered under §§ 8(a), 8(c), 8(d), and 8(e) to perform risk assessments. The Agency uses TSCA §§ 12(b) and 13 in a different way. TSCA § 12(b) information is used in order to notify foreign governments. TSCA § 13 is used to assure that importers verify and certify compliance with TSCA.

For risk assessment, information may be related to toxicity or exposure, both important in determining risk. In examining the extent of potential harm, the type of information is important, i.e., human effects data, human exposure data, animal data, environmental effects, actual environmental contamination information. Also, scientific studies versus allegations typically differ in their importance.

### **Major Extent**

Violations which directly interfere with the Agency's ability to address potential imminent hazards, unreasonable risks, or substantial endangerment to health/environment are placed in the major extent category. TSCA §§ 8(c), 8(d), and 8(e) are designed to help the Agency address these scenarios. Examples of such violations include: 1) information on injury to humans where continued manufacture or use poses a potential imminent hazard; or 2)

information on a spill/release which is covered by TSCA § 8(e) and which poses an imminent hazard or results in widespread environmental contamination from which persons exhibit serious health effects. In the second case, two violations are possible, one for the failure to report the spill and another for the failure to report the health effects.

Other major extent violations include TSCA §§ 8(d) and 8(e) violations involving information on human effects. Such information can weigh heavily in the Agency's decision making process.

Violations involving emergency incidents of environmental contamination reportable under TSCA § 8(e) are also considered to be of major extent since the Agency needs such information immediately. Otherwise, the opportunity to provide adequate protection may be lost.

All TSCA § 8 level 6 violations are placed in the major extent category.

### **Significant Extent**

The Agency places slightly less importance on animal studies as opposed to data reporting effects in humans. Nonetheless, such information is critical to the Agency's decision making process. Such tests may be expensive, may take a long time to conduct, and require rule making by the Agency to obtain them. For example, if a company fails to report a study it has, the Agency may decide that such data are needed and proceed to do unnecessary rule making under TSCA § 4. Given the time/costs for such rule making and the time/costs needed to conduct tests and submit results to the Agency, the violation results in a major delay in the Agency's risk assessment of the chemical and an unnecessary expenditure in resources, both EPA's and industry's. Please note that failure to report a study which is required to be reported but which indicates no adverse effects of the chemical still results in this harm.

The Agency has also decided to place violations involving exposure related data in the significant extent category when the EPA has made a decision that it needs such information for a specific chemical. Thus, TSCA §§ 8(d) and 8(e) violations involving exposure related information as well as violations of the PAIR, and TSCA § 8(a) chemical specific rules, all of which involve exposure related information, are considered to be significant extent violations. Although exposure information is critical to any risk assessment, the impact on the Agency's decision making if one company fails to report and all other companies comply is less than if one company fails to submit a toxicity study since it is less likely that another company will submit the same study. This distinction is reflected in the establishment of caps for different types of violations.

TSCA § 8(c) involves allegations and not actual test data. However, such information is important to the Agency's decision making process in that it involves patterns of human health or environmental effects. Therefore, these violations are categorized as significant extent.

Violations of TSCA § 8(a) Inventory Update Rules are also designated as significant in extent. Although information under these rules is not required as a result of the Agency

identifying a specific need for information on specific chemicals, this information provides exposure related information which is important to the overall decision making of the Agency in terms of setting its priorities and deciding whether rule making should be pursued.

TSCA § 12(b) violations are also considered significant in extent since § 12(b) reporting is necessary for EPA to fulfill its statutory responsibility to notify other countries of chemicals for which EPA has taken certain actions under TSCA §§ 4, 5, 6 or 7. TSCA § 13 violations are significant in extent since they hinder EPA/Customs' ability to monitor chemical substance imports for compliance with TSCA.

### **Minor Extent**

Two types of violations fall into the minor extent category, i.e., violations of TSCA § 8(d) involving physical/chemical properties or environmental fate data; and violations of TSCA § 8(a), failure to keep records showing that a manufacturer is not subject to reporting under the Inventory Update Rule.

### **Variable Extent**

Where a violation of TSCA § 13 involves a chemical substance that is also in violation of a TSCA § 5, 6, or 7 requirement, the extent category of the § 13 violation will vary. TSCA § 13 is designed to assure that an importer takes affirmative responsibility in assuring that his shipments comply with TSCA. Accordingly, where other TSCA violations are found, a TSCA § 13 violation will be assessed at the same extent category as the TSCA § 5, 6, or 7 violation. However, the penalty for a TSCA § 13 violation is capped so it may equal the penalty assessed for the TSCA § 5, 6, or 7 violation but not exceed the penalty assessed for a Circumstance Level 3, Significant Extent violation.

### **Per Day Penalties or One Day Assessments**

The Agency has determined that a one day penalty assessment is appropriate for violations involving the failure to report under a requirement dealing with the manufacture or processing of a chemical that falls within a class of chemicals meeting certain criteria. (e.g. the IUR requirements). In other words, one day assessments are appropriate in cases where the Agency uses the information to set priorities and may use it as the need arises on a specific chemical evaluation but has not affirmatively identified a particular chemical for which specific information is needed.

In contrast, a per day penalty assessment is appropriate when the violation involves either a chemical which EPA has specifically identified in a rule as requiring certain reporting information or a violation which is a continuing impediment to the Agency's decision making process. For example, in a situation where EPA has published a rule which lists a specific chemical(s), per day assessments are appropriate because the Agency has identified a need for the information for risk identification, risk assessment, or risk management purposes. Per day

assessments also apply to any TSCA § 8(e) information (except EIEC's that do not present an imminent hazard). Although the §8(e) information is not being requested for a specific chemical, it is likely to be used immediately for hazard/risk assessment purposes.

A one day assessment is appropriate for a failure to list a TSCA § 8(d) study which a company knows of but which is not in its possession. Level 2 and level 6 violations are to be assessed as one day penalties. TSCA § 12(b) violations are considered to be one day violations for each chemical per country. TSCA § 13 is considered one violation for each day of importing a particular chemical despite multiple shipments during that day. However, multiple days of importing a chemical are counted as separate violations. As with TSCA § 8(e) violations dealing with an EIEC, violations of these rules do not impede the Agency's regulatory decision making process in that such information would not normally result in rule making. However, such information is necessary for more immediate actions such as injunctive relief or seizing chemicals which are otherwise in violation of TSCA, e.g., a TSCA chemical imported in violation of TSCA §5.

Violations involving TSCA § 8(c) files, i.e., failure to record information, are treated as one day violations because the effect on the Agency's decision making is not critical until the Agency requests the submission of TSCA § 8(c) information. Once the information is requested, the Agency has a specific need for the information to make its decisions. Therefore, "failure to report" violations under TSCA § 8(c) are assessed on a per day basis due to their adverse impact on the Agency's ability to assess hazard/risk.

### Per Day Assessment Calculation

For violations involving TSCA § 8(e) information which directly disrupts the Agency's ability to address situations involving potential imminent hazard, unreasonable risk, or substantial endangerment to health/environment, the base penalty is to be assessed for each day of violation. These are the most serious violations, and therefore, warrant the highest penalties provided for by the statute.

For other TSCA § 8(e) violations, the base penalty is to be used for the first day of violation. For each day thereafter, the per day penalty is the base penalty divided by 30. This adjustment was selected for the following reasons: 1) these violations involve significant adverse effects; 2) the Agency has an immediate need for the information in order to protect the public and environment, as reflected in the statute's language to "immediately notify"; and 3) the timing of the Agency's decision making process once such data is received.

For TSCA § § 8(c) and (d) violations, for which per day assessments are to be made, the base penalty is to be used for the first day of violation and for each day thereafter, the per day penalty is the base penalty divided by 180. For TSCA § 8(a) Chemical Specific violations the per day penalty is the base penalty divided by 360. This method was selected in order to provide

further distinction between types of violations and their impact on the Agency's decision making process and its mission to protect the public and the environment.

## Caps

In establishing caps for some violations, the Agency took into account factors such as the length of time that a violation continues, the timing of the Agency's decision making process, the relative costs of studies and the length of time needed if unnecessary studies are conducted. Please note that the cap does not refer to a limitation on the time elapsed since the violation occurred - only a limit on the number of days for which a penalty is assessed even though a violation continues for a longer period.

There is no cap on TSCA § 8(e) violations. The harm continues as long as the violation continues.

For TSCA § 8(d) studies, which often relate directly to TSCA § 4 rule making, the caps depend on the type of study, the length of time to conduct the study, the relative costs of the studies, and the timing of the Agency's decision making.

For other TSCA § 8 violations for which per day assessments are to be made, a one year cap is set based on the estimated time of the Agency's decision making process. This decision also reflects the fact that TSCA § 8(a) requirements are more exposure oriented than toxicity oriented, and therefore, the quality of the information is sensitive to time. As indicated in the discussion on extent categories, exposure information is important but one company's failure to report may not have as much of an impact as non reporting of toxicity information because the exposure information is used in the context of total exposure. Therefore, these violations are capped at one year.

A chart is provided in Appendix I which indicates the caps per violation and their maximum assessments. Caps refer to maximum penalties for each separate violation; they are not cumulative caps for multiple violations.

## Determining Number of Violations

The number of violations depends on the requirements which are in each rule. Multiple violations are to be assessed whenever more than one rule is violated and for each violation within a rule. The Inventory Update rule requires reporting for each chemical and for each site. Therefore, TSCA § 8(a) Inventory Update violations are assessed per chemical per site.

Violations of PAIR are assessed per chemical per site. TSCA § 8(a) Chemical Specific Rules violations depend on the information required by the rule. If the rule requires site specific information, then violations are assessed per chemical per site. If the rule requires aggregate information for each company, then violations are assessed for each chemical not

reported/otherwise in violation.

TSCA § 8(c) violations are determined depending on the violation. TSCA § 8(c) "failure to keep records" violations and "failure to report" violations are assessed per allegation not maintained/reported. This is because the omission of any allegation may impact the Agency's decision making process, especially if there is significant under-reporting of allegations. However, a "failure to keep records as required" under TSCA § 8(c) is assessed per plant site because these violations involve files not maintained as prescribed but for which the information is available. An allegation consists of each report (i.e., one or more pieces of paper) whereby an individual/group submits an allegation to a company. If one person alleges that six chemicals produced ten effects in the same report, and the company fails to file the allegation, this is assessed as one violation. If two persons file separate reports regarding the same health effect, and the company does not file the allegations, this constitutes two violations. If a union files a report for 100 persons regarding an allegation, and the company does not file the allegation, this is assessed as one violation.

TSCA § 8(d) violations are assessed for each required study. The omission of a single study even if others are submitted may have a serious impact on the Agency's decisions regarding a specific chemical. TSCA § 8(e) violations are assessed per type of effect per chemical not reported. Omission of one significant adverse effect even if other effects are reported impedes the Agency's risk assessment.

TSCA § 12(b) violations are assessed per chemical per country per year not reported. This decision was based on the determination that the export notification requirement is a one-time requirement per year for each chemical and for each country of export. That is, the first time a chemical is exported in a calendar year to a particular country, the exporter must notify the country if data requirements or rules apply under §§ 5, 6, or 7. For chemicals with §4 data requirements, notice must be given only for the first export to a particular country. Subsequent exports of the same chemical during the same calendar year to the same country do not require notification.

For the most part, TSCA § 13 violations are assessed one violation per chemical per day, irrespective of the number of shipments or the number of ports through which a chemical enters on the same day. EPA's concern is entry of chemicals into the United States each day. If the same chemical is imported on the same day to one or more ports in three separate shipments, this is one violation. If the same chemical is imported once a week over a period of 5 weeks, this is 5 separate violations, one for each day in which there was an import. If 6 different chemicals are imported in 6 separate shipments on the same day, 6 separate violations would be assessed, one for each chemical in a different shipment. However, if two or more chemicals are imported on the same day in only one shipment, then only one violation would be assessed.

## Adjustment Factors

### **Voluntary Disclosure**

The Agency considers it important to foster voluntary disclosures of violations for TSCA §§ 8, 12(b), and 13. Most disclosures of TSCA § 8 violations will either receive full mitigation of the gravity based penalty under the Audit Policy or they will receive 50% reduction under the ERP in order to provide a voluntary disclosure incentive. For TSCA §§ 12(b) and 13 violations, explicit reductions for voluntary disclosure are also provided. If violations of TSCA §§ 12(b) and 13 are brought to the Agency's attention, it can act to remedy the situation, e.g., foreign countries can be notified or imports in violation of other sections of TSCA can be identified and appropriate action taken.

As a further incentive for the voluntary disclosure of violations, the Agency has decided to forego the imposition of penalty increases for a previous history of noncompliance in assessing penalties for voluntarily disclosed violations.

However, a voluntarily disclosed violation does constitute a history of violation and is to be used to increase penalties for future violations which the Agency discovers.

### **History of Prior Violation**

The GBP Matrix is designed to apply to first offenders. Where a violator has demonstrated a history of “prior such” violations as stated in TSCA, the penalty will be adjusted upward to increase his motivation to comply. Also, repeat violators are penalized more severely because additional enforcement resources are spent on the same violator.

The Agency's policy is to consider only prior violations of TSCA or its rules, even though a violator could have a history of violations of other EPA statutes, or remedial statutes in general (e.g., OSHA, CPSC). Congress did not expressly state that it wanted the Agency to go beyond TSCA Section 15 prohibited acts in determining violation history.

The following considerations apply when evaluating a history of “prior such” violations:

(a) In order to constitute a prior violation, the prior violation must have resulted in: a final order, either as a result of an uncontested complaint, or as a result of a contested complaint which is finally resolved against the violator; a consent order, resolving a contested or uncontested complaint by the execution of a consent agreement; the payment of a civil penalty by the alleged violator in response to the complaint, whether or not the violator admits to the allegations of the complaint.

Violations litigated in the Federal courts, under the Act's imminent hazard (Section 7), specific enforcement and seizure (Section 17), and criminal (Section 16(b)) provisions, are part of a violator's “history” for penalty assessment purposes, as are violations for which civil penalties have been previously assessed. However, a notice of noncompliance does not constitute a prior violation for the purposes of penalty assessment, since no opportunity has been

given to contest the notice.

(b) To be considered a “prior such” violation, the violation must have occurred within five years of the present violation. This five-year period begins on the date of a final order, consent order, or payment of a civil penalty.

(c) Both EPA discovered and voluntarily disclosed violations qualify as candidates for consideration as “prior such” violations.

(d) Generally, companies with multiple establishments are considered as one when determining history. If one establishment of a company commits a TSCA violation, it counts as history when another establishment of the same company, anywhere in the country, commits another TSCA violation. In most cases of violations by wholly-or partly-owned subsidiaries, the history of the parent corporation shall apply to its subsidiaries, and the subsidiaries to the parent, particularly when the parent has a majority share of ownership. The exception would be where two companies are held by the same parent corporation. The companies may not necessarily affect each other’s history if they are in substantially different lines of business, and they are substantially independent of one another in their management, and in the functioning of their Boards of Directors.

(e) If the “prior such” violation is of a non-Section 8, 12(b), or 13-related TSCA provision or regulation, then the penalty should be upwardly adjusted 25 percent of a first repetition and 50 percent for a second repetition of the violation,. If the “prior such” violation is of any corresponding TSCA Section 8, 12(b), or 13 provision or regulation, the penalty should be upwardly adjusted by 50 percent for the first repetition and 100 percent of the second repetition.

Attachments (3)



# APPENDIX 1

## CAPS FOR PER DAY VIOLATIONS

## Caps for Per Day Violations

All Caps are per Violation

Section or Subsection TSCA	Violation <b>on or before</b> January 30, 1997	Violation <b>after</b> January 30, 1997
§ 8(e)	<b>no caps</b>	<b>no caps</b>
§ 8(d) non or false reporting Major, level 1 (5 year cap)	<b>\$278,333</b>	<b>\$306,166</b>
§ 8(d) non or false reporting Significant, level 1 (3 year cap)	<b>\$120,322</b>	<b>\$132,354</b>
§ 8(d) non or false reporting Minor, level 1 (1 year cap)	<b>\$15,111</b>	<b>\$16,622</b>
§ 8(d) late reporting Major, level 4 (5 year cap)	<b>\$111,333</b>	<b>\$122,466</b>
§ 8(d) late reporting Significant, level 4 (3 year cap)	<b>\$42,467</b>	<b>\$46,714</b>
§ 8(d) late reporting Minor, level 4 (1 year cap)	<b>\$3,022</b>	<b>\$3,324</b>
§ 8(c) non or false reporting Significant, level 1 (1 year cap)	<b>\$51,378</b>	<b>\$56,516</b>
§ 8(c) Late Reporting Significant, level 4 (1 year cap)	<b>\$18,133</b>	<b>\$19,946</b>
§ 8(a) Chemical Specific Rules non or false reporting Significant, level 1 (1 year cap)	<b>\$34,189</b>	<b>\$37,608</b>
§ 8(a) Chemical Specific Rules Late Reporting Significant, level 4 (1 year cap)	<b>\$12,067</b>	<b>\$13,273</b>
§ 13 Imports	flexible penalty not to exceed Circumstance level 3, Significant Extent <b>(\$10,000)</b>	flexible penalty not to exceed Circumstance level 3, Significant Extent <b>(\$11,000)</b>

## APPENDIX 2

### EXAMPLES Of APPLYING THIS POLICY

## EXAMPLES

Note: Penalties in the following examples were determined on the assumption that the violations occurred on or before January 30, 1997.

### TSCA § 8(a) Chemical Specific Rules (PAIR, etc.)

**Example 1** - A company fails to report. EPA discovers the violation. Failure to report, level 1, significant.

Discovered after 181 days - \$25,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,500$$

Discovered after 361 days - \$34,000

Discovered after 1,095 days - \$34,189 (1 yr. cap)

**Example 2** - A company discovers what it has reason to believe is a violation of TSCA § 8(a) and immediately and voluntarily self reports that it failed to report. If the disclosure does not meet the Audit Policy for penalty reduction, then apply this policy as follows: Non reporting, level 1, significant, with 25% reduction for voluntary disclosure and 25% additional reduction for disclosing immediately.

Report 181 days late - \$12,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,000 - (50\% \text{ reduction for self disclosure}) = \$12,500.$$

Report 361 days late - \$17,000

Report 1,095 days late - \$17,095 (1 yr. Cap reduced 50% for self disclosure)

**Example 3** - A company reports under the rule. EPA later discovers that the information was falsely reported. False reporting, level 1, significant.

Discovered after 181 days - \$25,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,500$$

Discovered after 361 days - \$34,000

Discovered after 1,095 days - \$34,189 (1 yr. cap)

**TSCA § 8(a) Inventory Update**

**Example 1-** A company fails to report 1 chemical at 4 different sites for the Inventory Update. Six months later, the company is bought by another company who, upon checking records, discovers the failure to report and immediately notifies the Agency. (Assume for this example that the disclosure does not meet the conditions of the Audit Policy.)

Non-reporting, level 1, significant, 4 counts, one-time penalty and voluntary self disclosure outside the audit policy.

Self disclosed non-reporting, 4 counts - \$34,000

\$17,000 x 4 = \$68,000	
Voluntary Disclosure	50% (25% for Voluntary Self-Disclosure and 25% if immediately disclosed w/in 30 days of reason to believe violation exists)

Total penalty - \$34,000

**Example 2 -** Use the facts from example 1 except that the company self discloses 4 IUR form U reports less than 30 days after the due date and that the self disclosure does not meet the conditions of the Audit Policy.

Late reporting, level 1, significant, 4 counts with a reduction for voluntary self disclosure.

Self disclosed late reporting, 4 counts - \$12,000

\$ 6,000 x 4 = \$24,000	
Voluntary Disclosure	50%

Total penalty - \$ 12,000

**Example 3 -** Use the facts from example 1 except that after EPA issues the complaint, EPA agrees to settle the case by reducing the penalty by 5% for good attitude.

Full 55% reduction is from GBP before adjustment. \$30,600

GBP before adjustment for self disclosure	\$68,000
25% voluntary disclosure + 25% w/in 30 days + 5% attitude = 55%	- \$37,400
Settlement payment	<u>\$30,600</u>



**Example 4** - An inspector visited a company and asked to see the company's TSCA § 8(c) files. The company informed the inspector that any allegations by workers were kept in the individual workers personnel files. Failure to keep files in a manner prescribed by the rule, level 3, significant, one day assessment, no per day penalty. \$10,000

**Example 5** - An inspector visits a company and when inspecting their TSCA § 8(c) file discovers that the files are organized by the health effect rather than by the cause of the health effect. The files are otherwise in compliance with the rule. Failure to keep files in a manner prescribed in the rule. Failure to keep files in a manner prescribed in the rule, level 3, significant, one day penalty. \$10,000

**TSCA § 8(d)**

**Example 1** - A company submits a list of ongoing studies they are sponsoring but fails to list a study involving humans. EPA discovers the violation. Failure to report, level 1, major.

Discovered after 365 days - \$75,556

$$\$25,000 + \frac{364 \times \$25,000}{180} = \$75,556$$

Discovered after 1,095 days - \$176,944

Discovered after 2,000 days - \$278,333 (5 yr. cap)

**Example 2** - A company submits an animal study 365 days after the initial reporting period. Assume the company does not meet the Audit Policy. Non reporting, level 1, significant.

Self disclosure reported to EPA after 365 days - \$25,674

$$\$17,000 + \frac{364 \times \$17,000}{180} = \$51,378$$

$$\$51,378 - \$25,674 \text{ (25\% self disclosed + 25\% immediately disclosed)} = \$25,674$$

Reported to EPA after 1,825 days - \$60,161 (3 yr. cap minus 50% for self disclosure)

**Example 3** - A company submits a list of 9 ongoing animal studies and two weeks later submits a 10<sup>th</sup> study. Late reporting (less than 30 days after due date) of one study, level 4, significant, voluntary self disclosure.

Submitted to EPA 14 days after list submitted - \$3,217

$$\$6,000 + \frac{13 \times \$6,000}{180} = \$6,433 - (50\% \text{ for self disclosed immediately}) = \$3,217$$

**Example 4** - A company submits a list of studies known to them but not in their possession. The Agency discovers that the company failed to list a study they had knowledge of. Failure to report a study the manufacturer knows of but is not in his possession, level 2, one day assessment, no per day penalty -

- \$20,000 - if human study (major)
- \$13,000 - if animal or aquatic study (significant)
- \$ 3,000 - if environmental fate (minor)

### **TSCA § 8(e)**

**Example 1** - A company learned or obtained information from a spill incident which reasonably supported the conclusion that a substance presents a substantial risk and did not report within the time period prescribed in the policy. EPA discovers the violation. Failure to report, level 1, major, one-time assessment - \$25,000

**Example 2** - A company failed to report information obtained through a spill incident within the time period prescribed in the policy. The company reports their failure to EPA a year after the spill occurs. Assume the self disclosure does not meet the Audit Policy. Self disclosed failure to report, level 1, major, one-time assessment - \$12,500

$$\$25,000 - \$12,500 (25\% \text{ self-disclosed} + 25\% \text{ w/30 days}) = \$12,500$$

**Example 3** - A company fails to report a study showing human health effects. EPA discovers the violation. Failure to report, level 1, major.

Discovered after 361 days - \$325,000

$$\$25,000 + \frac{360 \times \$25,000}{30} = \$325,000$$

Discovered after 1,081 days - \$925,000

Discovered after 3,601 days - \$3,025,000



**Example 4** - A company fails to report a study showing animal effects not previously reported. The company later submits it to the Agency. Assume the self disclosure does not meet the Audit Policy. Self disclosed failure to report, level 1, significant.

Reported after 361 days - \$110,500

$$\$17,000 + \frac{360 \times \$17,000}{30} = \$221,000$$

$$\$221,000 - \$110,500 \text{ (25\% self disclosed + 25\% w/in 30 days)} = \$110,500$$

Reported after 1,081 days - \$314,500

Reported after 3,601 days - \$1,028,500

**Example 5** - A company submits a study to EPA showing new animal effects. An inspector conducting an inspection of the company later discovers reportable information which was omitted from the study. False reporting, level 1, significant.

Discovered after 1,825 days - \$1,050,600

$$\$17,000 + \frac{1,824 \times \$17,000}{30} = \$1,050,600$$

Discovered after 365 days - \$223,267

Discovered after 3,650 days - \$2,084,767

### **TSCA § 12(b)**

**Example 1** - EPA learns through an inspection that an exporter exports 1 chemical to 30 countries with no § 12(b) notifications. Failure to notify. Level 4, significant. -\$6,000 per count.

$$\$6,000 \times 30 = \$180,000.$$

**Example 2** - An exporter exports one chemical to one country 30 times during one calendar year with no § 12(b) notifications. A competitor to the exporter informs the EPA which investigates and finds a violation. Failure to notify, level 4, significant. - \$6,000.

**Example 3** - An exporter exports one chemical to one country 30 times during one calendar year, notifying EPA that 5 shipments had already occurred. Failure to notify, level 4, significant, voluntary disclosure, more than 30 days since discovery, 25% reduction. - \$4,500

**Example 4** - An exporter exports a chemical with §4 requirements to one country on 30 separate occasions over 3 years with no § 12(b) notifications. Failure to notify, 1 count, level 4, significant. - \$6,000. Section 4 chemicals only require 1 report.

**Example 5** - An exporter exports 3 separate chemicals with § 4 requirements to each of 30 countries (total of 90 separate shipments) within the same year with no § 12(b) notifications. Failure to notify, 90 counts, level 4, significant. - \$540,000

### **TSCA § 13**

**(NOTE:** For those § 13 examples below which are dependent on §5 penalty calculations, the July 1, 1993 §5 Penalty Policy was used.)

**Example 1** - An importer imports a chemical with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant: 1 count, \$1,300.

**Example 2** -An importer imports a chemical into 2 different ports on the same day (e.g. New York and Philadelphia each receive separate shipments) with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant, 1 count, \$1,300.

**Example 3** - An importer imports a chemical in 3 separate shipments in the same day to the same port with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant, 1 count - \$1,300

\*\* if the 1 chemical was imported on shipments arriving on 3 separate days, - 3 counts - \$3,900

\*\* if 5 chemicals were imported on 1 shipment, - 1 count - \$1,300

\*\* if 5 chemicals per shipment were imported on 10 separate days, - 10 counts - \$13,000

**Example 4** -An importer imports and further distributes 1000 lbs. of a chemical substance on three (3) separate days, through a single port of entry either without a TSCA § 13 certification or with an incorrect certification. The chemical substance is not on the TSCA Inventory and a TSCA §5 Premanufacture Notice had not been submitted to EPA. The chemical substance is not otherwise subject to §5(e) or §5(f) and is not a polymer that would qualify under the polymer exemption (40 C.F.R. 723.250). Since the TSCA §5 violations will be assessed at a Circumstance Level 3 and Significant

Extent, the §13 violations will be assessed at the same Extent and Circumstance Level; in this case, 3 counts @ Circumstance Level 3 and Significant Extent.

$$\begin{array}{r}
 \text{\$5 PMN level 3, significant } \$10,000 \times 3 = \$30,000 \\
 + \\
 \text{\$13 Cert. level 3, significant } \$10,000 \times 3 = \$30,000 \\
 \hline
 \text{Total penalty } \$60,000
 \end{array}$$

**Example 5** - An importer imports and further distributes 1,000 lbs. of a chemical through one port of entry and 7000lbs. of the same chemical through a second port of entry on the same day either without a TSCA § 13 certification or with an incorrect certification. The chemical substance is not on the TSCA Inventory and a TSCA §5 Premanufacture Notice had not been submitted to EPA. The TSCA § 5 violation will be assessed as one count, Level 3, Major Extent (See the August 5, 1988 TSCA § 5 ERP). The § 13 violation will be assessed as one count, Level 3, Significant Extent - \$10,000. In this case the §13 violation is assessed at the same circumstance level (level 3) as the § 5 violation, but its extent category is limited to significant, even though the § 5 penalty is major in extent.

$$\begin{array}{r}
 \text{\$5 PMN (8,000 lbs total one day) level 3, major } \$15,000 \\
 \text{\$13 Certification limited to level 3, significant } \$10,000 \\
 \hline
 \text{Total penalty } \$25,000
 \end{array}$$

**Example 6** -An importer imports and further distributes a chemical product that contains six chemical substances on one day in six separate shipments of 600 lbs. each either without a TSCA § 13 certification or with an incorrect certification. None of the six chemical substances are on the TSCA Inventory and no TSCA §5 Premanufacture Notices had been submitted to EPA for these chemical substances. The chemicals are all present at equal concentration in the product. Three of the chemical substances are not otherwise subject to §5(e) or §5(f), but three would have been subject to §5(e) if PMNs had been submitted. None of the chemicals are polymers that would qualify under the polymer exemption (40 C.F.R. 723.250). In this case, six TSCA §5 violations will be assessed, three at Circumstance Level 1, Minor Extent and three at Circumstance Level 3, Minor Extent. Since there were six separate shipments, six §13 violations can be assessed, one for each of the chemical substances in a separate shipment. In this case the Circumstance Level and Extent Category for the §13 violations would be the same as the corresponding §5 violations.

$$\begin{array}{r}
 \text{Identical calculation for § 13 as for §5 PMN} \\
 \text{3 chemicals at Level 1, minor } \$5,000 \times 3 = \$15,000 \\
 + \\
 \text{3 chemicals at Level 3, minor } \$1,500 \times 3 = \$ 4,500 \\
 \text{\$5 PMN } = \$19,500 + \\
 \text{(Repeat above calculation for § 13) } \text{\$13 Cert. } = \underline{\$19,500} \\
 \text{Total penalty : } \$39,000
 \end{array}$$

## APPENDIX 3

### Penalty Calculation Worksheet

## Penalty Calculation Worksheet

Statutory factors taken into account with respect to the violation:

1) Nature: All TSCA §§ 8, 12, & 13 violations are for record keeping and reporting. Therefore, for 8, 12, & 13 penalty calculations, “nature” is always a constant - “Hazard/Risk Assessment”, Thus, the statutory factor of taking into account the “nature” of the violation has been built into the “record keeping and reporting” policy.

2) Circumstances: From ERP enter Level 1 thru 6 .....

3) Extent: From ERP enter “Major”, “Significant”, “Minor” .....

4) Gravity: Gravity is taken into account through the evaluation of “Nature”, “Circumstances” & “Extent”. Through the matrix in this Policy (Nature), the circumstance level and Extent level arrive at a Gravity based penalty (GBP) ... \$ \_\_\_\_\_

Reduction for Voluntary Self-Disclosure

- (i) 25% reduction for Voluntary Self-Disclosure .....% \_\_\_\_\_
- (ii) 25% additional reduction if (i) occurs w/in 30 days ..... % \_\_\_\_\_

Statutory factors taken into account with respect to the violator’s conduct:

- a. Degree of Culpability (if willful, adjust upward; if lacked control, adjust downward) . . . . % \_\_\_\_\_
- b. History of prior such violations .....

5) Add the percentages of lines (i) & (ii) & a. & b. then multiply total percentage with GBP from item 4 to determine the adjustment upward or downward:  
( i \_\_\_\_\_+ ii\_\_\_\_\_ (+/-) a\_\_\_\_\_ (-) b\_\_\_\_\_)% X GBP\_\_\_\_\_ = Adjustment \$ \_\_\_\_\_

6) **Adjusted Gravity Based Penalty** .....\$ \_\_\_\_\_  
(Add/Subtract line 5 to/from line 4.)

7) Reasonable estimations based on information available at time of calculation:

- ✓ Economic benefit from violation(s). \$ \_\_\_\_\_  
(Assure that line 6 captures the economic benefit.)
- ✓ Violator able to pay & stay in business
- ✓ Other matters as justice may require

8) Statutory Maximum penalty for violation(s). \$ \_\_\_\_\_  
(Total penalty must not exceed statutory maximum)

\*\*\*\*\* **Final Proposed Penalty** \$ \_\_\_\_\_