



## Section 1018 - Disclosure Rule Enforcement Response Policy

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The policies and procedures set forth herein are intended solely for the guidance of employees of the EPA. They are not intended to, nor do they constitute a rulemaking by the EPA. They may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person.

# Chapter 1: Introduction to the Statutory and Regulatory Authority

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The U.S. Congress has found that low-level lead poisoning is widespread among American children, affecting as many as three million children under the age of six. The Center for Disease Control has established the level for lead poisoning at 10 micrograms/deciliter. The latest National Health and Nutrition Examination Survey (NHANES) data indicates that there are approximately 890,000 American children with levels above 10 micrograms/deciliter. In addition, minority and low income children are disproportionately affected. Lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems. The health of children living in as many as 4 million homes in the United States is endangered by lead-based paint and/or lead-based paint hazards. In response to this national crisis, Congress enacted *Title X: Residential Lead-Based Paint Hazard Reduction Act of 1992*, 42 United States Section Code 4851 ("U.S.C.")("Title X").

Section 1018 of Title X requires the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Housing and Urban Development ("HUD") to promulgate joint regulations for the disclosure of lead-based paint in pre-1978 housing ("target housing") which is offered for sale or lease. EPA and HUD jointly promulgated regulations. These regulations were published on March 6, 1996, at 61 FR 9064, and are codified at 40 Code of Federal Regulations ("C.F.R.") Part 745, Subpart F and 24 C.F.R. Part 35, Subpart H ("Disclosure Rule").

This Enforcement Response Policy (sometimes referred to herein as "ERP") addresses violations of the Disclosure Rule and provides procedures to determine the appropriate enforcement response to such violations.

Violations of the Disclosure Rule are subject to civil penalties under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) ("TSCA"). Section 1018(b)(5) specifically states:

*" It shall be a prohibited act under Section 409 of the Toxic Substances Control Act for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act, the penalty for each violation applicable under Section 16 of that Act shall be no more than \$10,000."*<sup>1</sup>

Therefore, violations of the Disclosure Rule are prohibited acts under Section 409 of TSCA. Section 16 of TSCA states that any person who violates a provision of Section 409 shall be liable to the United States for a civil penalty.

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<sup>1</sup> Pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule* all of EPA's civil monetary penalties were increased by ten-percent, thus increasing the maximum penalty for violations of the Disclosure Rule to \$11,000 per violation 40 Code of Federal Regulations Part 19 (1998).

## Chapter 2: Summary of Rule and Requirement

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The purpose of the Disclosure Rule is to ensure that individuals and families receive the information necessary to protect themselves and their families from lead-based paint and/or lead-based paint hazards. This information will help families and individuals make informed housing decisions to reduce their risk of exposure to lead hazards.

The Disclosure Rule requires that sellers, lessors and agents must comply with certain requirements when selling or leasing target housing. For purposes of the Disclosure Rule, "Seller" is defined as any entity that transfers legal title to target housing, in whole or in part. The Disclosure Rule defines "Lessor" as any entity that offers target housing for lease, rent, or sublease. "Purchaser" is defined as an entity that enters into an agreement to purchase an interest in target housing under the Disclosure Rule. "Lessee" is defined as any entity that enters into an agreement to lease, rent, or sublease target housing. Finally, the Disclosure Rule defines "Agent" as any party who enters into a contract with a seller or lessor, including any person who enters into a contract with a representative of the Lessor or Seller, to sell or lease target housing.

The Disclosure Rule requires that before a Purchaser or Lessee is obligated under any contract to purchase or lease target housing, certain requirements must be met. These requirements include the following:

- Sellers and Lessors must disclose the presence of any known lead-based paint and/or lead-based paint hazards to the Purchasers and Lessees and to any Agent;
- Sellers and Lessors must provide Purchasers and Lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards in the target housing;
- Sellers and Lessors must provide Purchasers and Lessees with an EPA-approved lead hazard information pamphlet;
- Sellers must grant Purchasers a 10-day period to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
- Sellers and Lessors must complete a Disclosure Form certifying compliance with the Disclosure requirements;
- Sellers and Lessors must retain a copy of the Disclosure Form for at least three years from completion of the transaction; and
- Each Agent involved in any transaction to lease or sell target housing must ensure compliance with all requirements of the Disclosure Rule.

## **C**hapter 2: Summary of Rule and Requirement

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The Disclosure Rule contains exclusions for the following transactions:

- Sales of target housing at foreclosure;
- Leases of target housing that have been found to be lead-based paint free by the appropriate inspector;
- Short term leases of 100 days or less;
- Lease renewals where previous disclosure has occurred;
- The purchase, sale or servicing of mortgages;
- The sale or lease of 0-bedroom dwellings; and
- Housing for the elderly or persons with disabilities (unless any child under six (6) years of age resides or is expected to reside in such target housing).

### **I. Consultation with EPA Headquarters**

In the implementation of this enforcement program, EPA Headquarters is requiring that EPA Regional Lead Coordinators (“Regions”) consult with Headquarters on a specified number of enforcement actions to ensure consistency and to address any unique issues. Therefore, each region must receive concurrence from Headquarters on the initial six (6) civil administrative complaints and notices of noncompliance before issuance. The Regions must also contact and consult with EPA Headquarters on the use of TSCA subpoenas to enforce the Disclosure Rule. These consultation and concurrence efforts will help ensure national consistency and address issues that arise during implementation of the Disclosure Rule enforcement program.

### **II. Enforcement Response Policy Applicability**

This Disclosure Rule Enforcement Response Policy is immediately applicable and will be used to determine the enforcement response and to calculate penalties in administrative enforcement actions concerning violations of the Disclosure Rule.

### **III. Applicability to Federal Facilities**

As discussed in Section III below, the Disclosure Rule defines “Seller” and “Lessor” to include government agencies. Thus, when a Federal facility or government agency is the Seller or Lessor of target housing as defined in the statute and the rule, the requirements of Section 1018 and the Disclosure Rule apply to such facility or agency.

Section 1018(b)(5) makes a violation of the Disclosure Rule a prohibited act under Section 409 of TSCA and the facility or agency is then subject to EPA enforcement authority under Section 16 of TSCA. Section 408 of TSCA subjects each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government to all Federal, State, interstate, and local requirements, both substantive and procedural, respecting lead-based paint, lead-based paint activities, and lead-based paint hazards. The Federal, State, interstate, and local substantive and procedural requirements referred to in Section 408 of TSCA include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of

## Chapter 2: Summary of Rule and Requirement

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whether such penalties or fines are punitive or coercive in nature. The Disclosure Rule contains Federal requirements respecting lead-based paint, lead-based paint activities, and lead-based paint hazards. Therefore, Federal facilities are subject to the Disclosure Rule requirements.

EPA thus has express penalty authority over Federal facilities. In assessing penalties against Federal agencies, EPA will apply the Disclosure Rule Enforcement Response Policy. Before a penalty order becomes final, Section 16(a)(2) of TSCA requires the Administrator to provide the Federal agency with notice and an opportunity for a formal hearing on the record in accordance with the Administrative Procedures Act. 40 C.F.R. Part 22, sets forth EPA's general rules of administrative practice governing the assessment of administrative penalties. The Consolidated Rules of Practice also require that before a final order of the Environmental Appeals Board issued to a Federal agency becomes effective, the head of the department, agency or instrumentality of the United States to which the order was issued can request a conference with the Administrator [40 C.F.R. § 22.31(e)].

## Chapter 3: Responsible Party/Appropriate Respondent

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The individuals who must comply with the Disclosure Rule are sellers, lessors and agents who are involved in the selling or leasing of target housing. The Disclosure Rule specifically addresses the responsibilities of agents by requiring them to ensure compliance with the provisions of the law. Agents fulfill this requirement by informing sellers and lessors of their obligations and by making sure that these activities are completed by the seller, lessor, or the agent personally. Accordingly, the Disclosure Rule also identifies the affirmative duty of the sellers and lessors to disclose to their agents any known lead-based paint or lead-based paint hazards in target housing.

EPA reserves the right to exercise its enforcement prosecutorial discretion when issuing enforcement actions against the potentially responsible party or parties. In determining the appropriate respondent for the enforcement response, consideration must be given to the person who has direct control over the practices for disclosure and who should be aware of the requirement of the Disclosure Rule.

For purposes of this Enforcement Response Policy, the term “property management firm” shall mean any entity who enters into a contract with a seller or lessor to act as their representative for the purpose of selling or leasing target housing. For violations under the Disclosure Rule, any notice of noncompliance issued to a property management firm must name the agent and the property management firm as the violators. For any civil administrative complaints, the property management firm that employs the agent generally should be named as the sole respondent in that complaint. Notwithstanding the foregoing, EPA reserves the right to issue a Notice of Noncompliance to a property management firm, and to name an agent as the sole respondent in a complaint.

See Appendix A for definitions of “Responsible Party” and a chart of the most common scenarios for both purchase and lease transactions.

## Chapter 4: Determining the Level of Action

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The intent of the Disclosure Rule is to help to prevent exposure to lead-based paint and/or lead-based paint hazards by requiring disclosure and notification. Once a violation has been established with credible evidence to support a prima facie case, a determination must be made by the Agency concerning which of the following enforcement actions may be taken: a notice of noncompliance, a civil administrative complaint, a criminal referral, injunctive relief, or some combination of these actions.

### I. Notices of Noncompliance

In lieu of a civil administrative complaint, EPA may issue a notice of noncompliance (“NON”) as determined on a case-by-case basis when justice would best be served. Such facts and circumstances may occur where a violator has essentially complied with the requirements of the Disclosure Rule and timely notification has been made. For example, an agent provided the purchaser with the 10-day opportunity to conduct an inspection and a copy of the lead pamphlet but failed to sign the disclosure form. A NON is typically the appropriate enforcement action under these circumstances. In addition, if the proposed penalty is \$1,000 or less following the application of downward adjustment factors provided in this policy, the appropriate enforcement response is the issuance of a NON to the responsible party.

The NON should require the violator to take corrective action to comply with the Disclosure Rule. The type and nature of the corrective action will depend upon the specific violations. The NON may also require that action should be taken by a certain date and that proof of its completion be promptly submitted to EPA.

### II. Civil Administrative Complaints

A civil administrative complaint will generally be the appropriate response to violations of the Disclosure Rule. Violators may be subject to civil sanctions pursuant to TSCA Section 16. On September 10, 1980, EPA published the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*. 45 FR 59771 (1980). This penalty system provides the general framework for civil penalty assessments under TSCA. It establishes standardized definitions and applications of factors that TSCA requires the Administrator to consider in proposing to assess a civil penalty. The TSCA penalty system also states that as regulations are developed, specific penalty guidelines will be developed adopting in detail the application of the general penalty system to the new regulation.

## **C**hapter 4: Determining the Level of Action

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A civil administrative complaint may contain a “gravity based penalty” as the proposed penalty. In the alternative, in cases where information relevant to proposing an appropriate penalty cannot be obtained before issuing the complaint and there are nonetheless reasons to proceed with the action, the civil administrative complaint may be a “notice” pleading. That is to say, pleading “up to the statutory maximum amount” for each violation alleged. This notice pleading approach would not eliminate the need to make a definite penalty proposal, but would postpone it until full information about the case, including violations and respondent’s defenses, are known, so that the Agency can produce better informed penalty proposals. The property management firm generally should be named as the Respondent, and not the employee (i.e., agent), when a civil enforcement action involves an employee of the firm. Penalties shall be calculated in accordance with the matrices in Appendix B herein.

A violator can generally expect to pay the maximum civil penalty if a child with an elevated blood level (“EBL”) is present in target housing where notification has not been provided, or where a previous order to abate lead hazards from a federal, state, or local authority has been ignored by the responsible party. EPA may also seek maximum civil penalties where it has been determined that a pregnant woman or child under six years of age have been exposed to lead-based paint or its hazards. Penalties may be reduced where lead-based paint is present but no pregnant woman or child under six lived in the target housing during the period of noncompliance. In addition, under certain circumstances, the appropriate enforcement response generally is to issue a civil administrative complaint with an adjusted penalty as provided in Chapter 7, Section IV. Such adjusted penalty is available if the target housing is certified to be lead-based paint free by the responsible party. A violator may mitigate the proposed penalty by providing the Agency with evidence that pregnant women or children were not present in the target housing unit at the time of the violation.

Before a penalty order becomes final, Section 16(a)(2) of TSCA requires the Administrator to provide the Respondent with notice and an opportunity for a formal hearing, on the record, in accordance with the Administrative Procedures Act. 40 C.F.R. Part 22 sets forth EPA’s general rules of administrative practice governing the assessment of administrative penalties.

### **III. Criminal Sanctions**

In addition to being subject to the various types of civil sanctions, any person who knowingly or willfully violates any provision of 15 U.S.C. § 2689 is subject to misdemeanor criminal sanctions. *See*, 15 U.S.C. § 2615(b). These sanctions include imprisonment for not more than one year, as well as a criminal fine of not more than \$25,000 for each day of violation under TSCA. As modified by the Alternative Fines Act, 18 U.S.C. § 3571, an individual could be fined up to \$100,000 for a violation that does not result in death, or an amount calculated according to the loss to a victim or the gain by the defendant, whichever is greater. Organizations may be fined up to \$200,000 per count. When violations of the Disclosure Rule come to the attention of the Agency which are especially egregious in nature - in terms of the threat of harm, or the level of culpability, or both, the matter should be brought to the attention of EPA’s Criminal Investigation Division. This Division will determine whether to exercise its discretion to pursue a criminal investigation and, where appropriate, to refer the matter to DOJ for a prosecutorial determination.

### IV. Injunctive Relief

The EPA may obtain injunctive relief by enlisting the legal support of the U.S. Department of Justice ("DOJ"). DOJ may make an application for injunctive relief in U.S. district court under TSCA Section 17(a) to direct a violator to comply with the Disclosure Rule. In addition to requesting such relief, DOJ may also request on EPA's behalf that the court use its general equity powers to compel a violator of the Disclosure Rule to abate the lead-based paint and/or lead based-paint hazard in the target housing. A region may make a referral only after first consulting with EPA Headquarters.

### V. Multiple Remedies

There may be circumstances where the violation(s) require that more than one enforcement response should be taken. Multiple remedies should be used only after consultation with Headquarters:

**Criminal Sanctions:** The law is well settled that simultaneous civil and criminal enforcement proceedings are legally permissible. The Regions may conduct parallel proceedings where appropriate.

**Civil Administrative Penalty and Injunctive Relief:** There may be instances in which the concurrent filing of a civil administrative complaint and a request for injunctive relief is appropriate.

The use of multiple remedies depends on the facts and circumstances of each case. To preserve uniformity and fairness, the Regions are required to consult with EPA Headquarters before using any combination of multiple remedies for a particular case.

## Chapter 5: Assessing the Gravity-Based Penalty

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The Gravity-Based Penalty for violations of the Disclosure Rule is assessed pursuant to the general framework described in the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*. 45 FR 59771 (1980), (“TSCA Civil Penalty Guidelines”). Regions are advised to consult the TSCA Penalty Guidelines because only a summary is presented below. Under the TSCA Civil Penalty Guidelines, penalties are determined in two stages:

- 1) The first stage is the determination of a “Gravity-Based Penalty” (“GBP”). Gravity refers to the overall seriousness of the violation. To determine the gravity-based penalty, the following factors are considered:
  - the “nature” of the violation;
  - the “circumstances of the violation”; and
  - the “extent” of harm that may result from a given violation.

These factors are incorporated into a penalty matrix that specifies the appropriate gravity-based penalty. Once the gravity-based penalty has been determined, upward or downward adjustments may be made to that penalty amount as described below.

- 2) The second stage involves upward or downward “adjustments” to the gravity-based penalty. Adjustments to the penalty amount are made by considering factors including the following:
  - the violator’s ability to pay/ability to continue in business;
  - history of prior violations;
  - degree of culpability;
  - such other factors as justice may require; and
  - voluntary disclosure.

### I. Nature

The TSCA Civil Penalty Guidelines discuss the “nature” of the violation as the essential character of the violation, and incorporate the concept of whether the violation is of a chemical control, control-associated data gathering, or hazard assessment nature. The requirements of 40 C.F.R. Part 745, Subpart F, are most appropriately characterized as “hazard assessment” in nature. The Disclosure Rule requirements are designed to provide potential Purchasers and Lessees of target housing with information that will permit them to weigh and assess the risks presented by the actual or possible presence of lead-based paint or lead-based hazards in the target housing they might purchase or lease. This information is vital to Purchasers and Lessees to make an informed decision about whether to reside in target housing because young children and/or pregnant women may be put at risk when residing in that target housing. The risk is caused by lead which was added to paint prior to 1978. The “nature” of the violation will have a direct effect on the measure used to determine which “circumstances” and “extent” categories are selected on the GBP matrix *Appendix B*.

## II. Circumstances

The “circumstances” reflect the probability of harm resulting from a particular type of violation. For a Disclosure Rule violation, the harm is associated with the failure to disclose information on lead-based paint or lead-based paint hazards. Therefore, the primary circumstance to be considered is the Purchaser’s and Lessee’s ability to properly assess and weigh the factors associated with human health risk when purchasing or leasing target housing. The greater the deviation from the regulations (such as no disclosure), the greater the likelihood that the Purchaser and Lessee will be uninformed about the hazards associated with lead-based paint and, consequently, the greater the likelihood of a child being exposed to lead-based paint hazards.

The following system ranks potential violations using six levels which factor in compliance with the disclosure requirements and the level of potential harm associated with the buyer’s or lessee’s lack of knowledge of lead-based paint and lead-based paint hazards. The specific violations of the Disclosure Rule have been characterized with levels ranging from:

- Levels 1 and 2: Violations having a high probability of impairing the ability to assess the information required to be disclosed.
- Levels 3 and 4: Violations having a medium impact of impairing the ability to assess the information.
- Levels 5 and 6: Violations having only a low impact on the ability to assess the information required to be disclosed.

## III. Extent

“Extent” is used to consider the degree, range, or scope of the violation. In the context of the Disclosure Rule, the measure of the “extent” of harm will focus on the overall intent of the rule, which is to prevent childhood lead poisoning. For example, the potential for harm from the failure to disclose known lead-based paint and lead-based paint hazard information to the Purchaser or Lessee of target housing would be considered “major” if risk factors are high for exposure. TSCA Civil Penalty Guidelines provides the following definitions for the three extent categories:

- Major: Potential for “serious” damage to human health or for major damage to the environment.
- Significant: Potential for “significant” amount of damage to human health or the environment.
- Minor: Potential for a “lesser” amount of damage to human health or the environment.

## Chapter 5: Assessing the Gravity-Based Penalty

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Therefore, specific violations of the Disclosure Rule requirements have been characterized as “major,” “significant,” or “minor” in extent. Under the Disclosure Rule, the extent factor is based upon two measurable facts:

- 1) the age of any children who live in target housing; and
- 2) whether a pregnant woman lives in the target housing.

1. Age of child(ren) living in target housing: Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards based on habits (e.g., play and eating) and vulnerability due to their physical development. As children mature into adults, they are less affected by the presence of lead. The age factor will be determined by the age of the youngest child at the time the violation occurred. The harmful effects that lead can have on children under the age of six warrant a major extent factor. Children above the age of six can also be harmed by exposure to lead-based paint and lead-based paint hazards; therefore, the extent factor takes this fact into consideration as well. With regard to transactions to sell or lease target housing, the Agency shall propose the maximum civil penalty when evidence of the occupant’s age is not provided to the Agency before the complaint is issued. However, a violator may mitigate the proposed penalty by providing the Agency with evidence that pregnant women or children were not present in the target housing unit at the time of the violation.
2. Pregnant women living in target housing: Pregnant women are also very susceptible to the dangers of lead-based paint and lead-based paint hazards. Lead exposure before or during pregnancy can alter fetal development and cause miscarriages. If EPA determines that a pregnant woman occupied the target housing during the period of noncompliance, then a “major” extent is appropriate.

EPA will reduce civil penalties in an enforcement action if the responsible party provides EPA with documentation that no child under the age of eighteen or pregnant woman (which affects the violation’s extent level) was present in the target housing at the time of the Section 1018 violation(s).

## Chapter 6: Determining the Number of Violations

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Each requirement of the Disclosure Rule is a separate and distinct requirement from the other requirements. In order to determine whether a violation of the Disclosure Rule has occurred, the applicable requirements must be reviewed to determine which regulatory provisions have been violated. For instance, the following are the Disclosure Rule requirements for a lessor leasing target housing:

- Provide Lessee EPA-approved lead hazard information/pamphlet.
- Disclose to Lessee presence of any known lead-based paint and/or lead-based paint hazards.
- Disclose to each agent, presence of any known lead-based paint and/or lead-based paint hazards, and the existence of any available records or reports pertaining to lead-based paint.
- Provide to Lessee any records or reports available pertaining to lead based-paint and/or lead-based paint hazards in the target housing.
- Include as an attachment, or within the contract to lease target housing, the Lead Warning Statement.
- Include as an attachment, or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards.
- Include as an attachment, or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information and failed to indicate that no such list exists.
- Include in the contract for lease a statement by the Lessee affirming receipt of the information.
- Include in the contract, as an attachment, a statement by the agent(s) involved in the transaction to lease target housing that the agent(s) has informed the Lessor of the Lessor's obligations and that the agent(s) is aware of his/her duty to ensure compliance. This only applies if agent(s) are involved in the transaction.
- Include in the contract for lease signatures and dates of the Lessors, agents and Lessee certifying to the accuracy of their statements.
- Retain a copy of the completed disclosure records for no less than three years from the completion date of the lease.

## Chapter 6: Determining the Number of Violations

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After determining what the applicable requirements are, the next step is to determine the number of real estate transactions in which violations occurred. The number of real estate transactions involved in a particular case is determined by the number of lease agreements or sales contracts. For instance, if three (3) leases are being reviewed by the Agency for compliance in an apartment complex that is target housing and has 100 apartment units, then the Region is reviewing three (3) real estate transactions in that complex. For purposes of the Disclosure Rule, a “Real Estate Transaction” is defined as the business dealings that results in an agreement between either a lessor/agent and a lessee or a seller/agent and purchaser for target housing. Given that each real estate transaction is a “stand alone” transaction, the penalty for each violations found in each individual transaction must be assessed separately.

A violator may be involved in numerous transactions in which violations of the Disclosure Rule occurred in each transaction. For instance, if a Lessor owns eight target housing units in an apartment building and fails to comply with the Disclosure Rule when leasing each of these units, the Lessor will be held liable for violating the Disclosure Rule in all eight transactions. Each transaction “stands alone” and thus the penalty will be assessed as individual counts in the Complaint. When the civil administrative Complaint is filed against the Lessor, all eight (8) transactions will be included in the same Complaint. The total gravity-based penalty will be the sum of the penalties for violations of all eight (8) transactions. See *Appendix C* for examples of multiple transaction penalty calculations.

## **C**hapter 7: Adjustment Factors

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Section 16(a)(2)(B) of TSCA describes the factors that EPA must also consider in determining the amount of the civil penalty amount. With respect to the violator, these factors include: the ability to pay/ability to continue in business, history of prior such violations, degree of culpability, and other factors as justice may require. Other factors as justice may require include: (A) risk of exposure; (B) attitude; (C) supplemental environmental projects (SEPs); (D) audit policy; (E) voluntary disclosure; (F) the size of business; (G) adjustment for small independent owners/lessors; and (H) economic benefit derived from noncompliance.

This Enforcement Response Policy acknowledges that no two cases are exactly alike. Unique circumstances other than those taken into account by the factors discussed in the previous sections may be significant in determining the appropriateness of a penalty.

### **I. Ability to Pay/Continue in Business**

Section 16 of TSCA requires that the violator's ability to pay the proposed civil penalty be considered as a statutory factor in determining the appropriateness of the penalty. Absent proof to the contrary, EPA can establish a respondent's ability to pay with circumstantial evidence relating to a company's size and sales. The TSCA Penalty Policy states that the EPA generally will not request penalties that are clearly beyond the financial means of the violator.

To determine the appropriateness of the proposed penalty in relation to a person's ability to pay, the case team should review Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission (when appropriate) or other available financial reports before issuing the complaint. In determining appropriate penalties for violators not found in the above reports, relevant facts obtained from the sales contract or lease (such as the sale or lease amount of the dwelling) or the number of dwellings owned or leased by the violator, may demonstrate the violator's ability to pay the penalty.

If a violator raises the ability to pay argument as a defense in its answer, or in the course of settlement negotiations, EPA should request the following types of information:

- The last three years of tax returns;
- Balance sheets;
- Income statements;
- Statements of changes in financial position;
- The Statement of operations;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual and quarterly reports to shareholders and the SEC, including 10K reports; and
- Statements on assets and liabilities.

EPA reserves the option, in appropriate circumstances, to seek a penalty that might prevent a company from continuing in business. For example, even when there is an inability to pay, it is unlikely that EPA would reduce a penalty when a Seller, Lessor, or Agent has refused to correct a serious violation or when a Seller, Lessor, or Agent has a long history of violations. This long history would demonstrate that a less severe measure (i.e., a penalty reduction) is ineffective.

### II. History of Prior Such Violations

When a violator has a history of prior such violations of the Disclosure Rule, the penalty should be adjusted upward in accordance with the TSCA penalty policy by a maximum of 25%. The need for such an upward adjustment derives from the violator not having been sufficiently motivated to comply with the Disclosure Rule by the penalty assessed for the previous violation(s).

For the purpose of this policy, EPA interprets “prior such violations” to mean any prior violation(s) of the Disclosure Rule. The following rules apply in evaluating the history of such violations:

(1) To constitute a prior violation, the prior violation: (1) must have resulted in a consent agreement and final order or consent order (CAFO), consent decree, default judgment, non-consensual civil judgment or criminal conviction; and (2) must have been entered by or executed within five (5) calendar years prior to the issuance of the subsequent complaint. Receipt of payment made to the U.S. Treasury can be used as evidence constituting a prior violation, regardless of whether a respondent admits to the violation or enters into a CAFO. Issuance of a Notice of Noncompliance does not constitute a prior violation for purposes of this policy. A prior violation refers collectively to all the violations which may have been described in one prior CAFO.

(2) A corporation owned by or affiliated with the same parent corporation may not necessarily effect each other's history (such as with independently-owned franchises), if they are substantially independent of one another in their management, and in the functioning of their Boards of Directors. The EPA reserves the right to request, obtain, and review all underlying and supporting financial documents that form the basis of these records to verify their accuracy. If the violator fails to provide the necessary information, and the information is not readily available through other sources, then EPA is entitled to rely on the information it does have in its control or possession.

(3) In the case of wholly-owned subsidiaries, the parent corporation's history of violation shall apply to all of its subsidiaries. The history of violation for a wholly-owned subsidiary will apply to the parent corporation.

### III. Degree of Culpability

The two principal criteria for assessing culpability are: (a) the violator's knowledge of the Disclosure Rule, and (b) the degree of the violator's control over the violative condition. For penalty purposes, when the violator intentionally commits an act which he knew would be a violation of the Disclosure Rule or hazardous to health, or has been issued a prior NON the proposed penalty may be increased by up to 25%.

### IV. Other Factors as Justice May Require

#### A. No Known Risk of Exposure

EPA will adjust the proposed penalty downward 80% if the responsible party provides EPA with appropriate documentation (e.g. reports for lead inspection conducted in accordance with HUD guidelines) that the target housing is certified to be lead-based paint free by an accredited inspector.

#### B. Attitude

EPA may reduce the proposed civil penalty by a maximum amount of 30% for attitude, if the circumstances warrant. The Attitude adjustment has three components: (1) cooperation; (2) immediate steps taken to comply with the Disclosure Rule; and (3) early settlement.

- (a) The EPA may reduce the base penalty up to 10% based on a respondent's cooperation throughout the entire compliance, case development, and settlement process.
- (b) The EPA may also reduce the base penalty up to 10% for a respondent's immediate good faith efforts to comply with the Disclosure Rule and the speed and completeness with which it comes into compliance.
- (c) The EPA may reduce the base penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents.

#### C. Supplemental Environmental Projects (SEPs)

Supplemental Environmental Projects (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, the cost of the SEP reduces the amount of the final penalty 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. EPA must ensure that the inclusion of a SEP in settlement of an enforcement action is consistent with the SEP Policy in effect at the time of the settlement. The SEP policy, effective May 1, 1998, defines categories of projects that may qualify as SEPs, procedures for calculating the cost of a SEP, and the percentage of that cost which may be applied as a mitigating factor in establishing an appropriate settlement amount. Additional information about the Agency's SEP Policy may be obtained at the following website: <http://es.epa.gov/oeca>.

## D. Audit Policy

A Seller, Lessor, or Agent who conducts an audit and voluntarily self-discloses any violations of the Disclosure Rule under the *Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations*, 60 FR 66706, December 22, 1995 ("Audit Policy") may be eligible for a 100% reduction in the gravity-based penalty if the nine criteria established in the Audit Policy are met. The Audit Policy is for settlement purposes. Additional information about the Agency's Audit Policy may be obtained at the following website: <http://es.epa.gov/oeca>. Reference should be made to that document to determine whether a regulated entity qualifies for additional penalty mitigation.

## E. Voluntary Disclosure

If a violator self-discloses a violation of the Disclosure Rule, but not under the Audit Policy, the proposed civil penalty amount may still be reduced for such a voluntary disclosure. The EPA wants to encourage voluntary disclosure for Disclosure Rule violations. In order to do this, an automatic penalty reduction may be made. To be eligible, the violator must make the disclosure before EPA notifies him of a pending inspection, or before EPA receives information relating to the alleged violation. Voluntary disclosure of a violation will result in a 25% reduction of the penalty. An additional 25% penalty reduction may be given to those violators who report the potential violation to EPA within 30 days of discovery. Under these circumstances the penalty reductions are as follows:

Voluntary disclosure . . . . .	25%
Immediate disclosure within 30 days of discovery . . . . .	25%
Total . . . . .	up to 50%

The reduction for voluntary disclosure and immediate disclosure may be made prior to issuing the Civil Complaint. The Civil Complaint should state the original penalty, the reduced penalty and the reason for the reduction pursuant to this Enforcement Response Policy.

## F. Size of Business

Given the universe of parties covered by the Disclosure Rule, a violator may request assistance under the *EPA's Policy on Compliance Incentives for Small Business* ("Small Business Policy") (June 10, 1996). The Small Business Policy states that a business with fewer than 100 employees is eligible for elimination of the entire civil penalty if the violator participates in the compliance assistance program or conducts a voluntary self-audit and meets all four criteria listed in the Small Business Policy. The four criteria are: 1) the violator has made a good faith effort to comply with the applicable environmental requirements; 2) the violator has violated the applicable environmental requirement for the first time; 3) the violator has remedied the violation within a specified time; and (4) the violation does not present a significant health or environmental threat and does not involve criminal conduct. Regions are advised to consult the Small Business Policy to determine a respondent's eligibility.

### G. Adjustment for Small Independent Owners and Lessors

The proposed civil penalty shall be adjusted downward by 50% for individuals who own one target housing unit for lease or one target housing unit which is "for sale by owner." However, such reduction shall only apply if no Agent was involved in the transaction and the person has no history of prior violations. Such Sellers and Lessors are generally not engaged in the selling or leasing of property as a business and lack the level of knowledge and awareness of the Disclosure Rule shared by Agents and property management owners.

### H. Economic Benefit of Noncompliance

A Seller, Lessor or Agent who has violated the Disclosure Rule may not profit from his violative acts. Congress has stated that a violator should not be allowed to profit from delays in compliance. Assessing a penalty amount that reflects a violator's economic benefit of noncompliance serves two purposes which are vital to an effective enforcement program. First, the penalty deters violators by taking away the economic incentive to violate the law; thus, ensuring that violators do not reap economic benefit by failing to comply. Second, for a penalty to be effective the fines must be as great as the economic gain in not complying or the penalty will not have deterrent value. Consideration of economic benefit as part of the penalty maintains a "level playing field" by ensuring that violators do not obtain an economic advantage over competitors who made the necessary investments in environmental compliance.

The Disclosure Rule's ability to prevent harm to public health and the environment is severely weakened whenever an economic incentive exists to violate the law. The penalty system attempts to eliminate, or at least reduce, economic incentives by adding an estimate of economic gains from noncompliance to the base penalty. If the EPA determines that the gravity-based penalty has not adequately captured the economic benefit, the EPA reserves the right to seek the economic benefit from the violator and will make that determination on a case by case basis.<sup>2</sup>

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<sup>2</sup> Section 1018 of Title X also allows the Purchaser or Lessee to bring a civil action for damages, and the court may award treble damages, court costs, reasonable attorneys fees, and expert witness fees if that party prevails.

# **APPENDIX A**

**Responsible Party Definitions  
and  
A Table of Scenarios**

# A ppendix A: Responsible Party Definitions and a Table of Scenarios

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**Responsible Agent Parties in Sales Transactions:** In sales situations, the Listing Agents, Selling Agents, and Buyer Agents (if paid by the Seller or through a cooperative agreement with the listing agent) are "Agents" and are responsible for ensuring compliance under this rule. For the purposes of this Enforcement Response Policy, Real Estate Agencies, Contract Service Providers and Property Management Firms are "Agents."

**Listing Real Estate Agency (Listing Agent):** Traditionally, the real estate agency enters into a direct contract with the Seller or Lessor for the right (exclusive or otherwise) to represent the Seller. The contract states the terms of compensation in the amount of a set percentage of the sales price in consideration of the time and effort expended by the Broker (real estate agency) on behalf of the Seller, and in further consideration of the advice and counsel provided to the Seller. Thus, Real Estate Agencies are Agents under the Disclosure Rule, and are responsible for ensuring compliance with the Disclosure Rule.

Since the Sales Associate and the Real Estate Agency and/or Broker are in a contractual relationship for the purpose of selling or leasing target housing, a signature from either party is sufficient to satisfy the Disclosure Rule.

**Selling Real Estate Agency (Selling Agent):** The residential real estate sales contract traditionally is *brokered* between a Listing Real Estate Agency that represents the Seller, and a Selling Real Estate Agency that represents the Purchaser. Both agencies are generally paid its commission by the Seller. The Listing and Selling Real Estate Agencies generally have sales associates who share their sales commission with the real estate agency. The following chart describes the typical "splitting of fees" between the Sales Associate and the Brokers, but the actual percentage figures may vary from situation to situation.

Commission 6% of sales price - paid 100% by Seller

Listing Sales Associate	1.5%
<u>Listing Real Estate Agency</u>	<u>1.5%</u>
Subtotal	3.0%
Selling Sales Associate	1.5%
<u>Selling Real Estate Agency</u>	<u>1.5%</u>
Subtotal	3.0%
Total	6.0%

**Buyer's Agent:** If the Selling Real Estate Agency is compensated totally by the Purchaser, the Selling Real Estate Agency is not an Agent for the purposes of the Disclosure Rule, and therefore, is not liable for violations of the Disclosure Rule.

**Contract Service Provider:** Another situation which may arise is when a Seller does not use the services of a Real Estate Agency, but instead handles the transaction personally with the help of a Contract Service Provider. The Contract Service Provider ensures that all the proper documents are used, completed and signed.

## **A**ppendix A: Responsible Party Definitions and a Table of Scenarios

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***Property Management Firm:*** The Property Management Firm acts as an Agent for a Lessor by entering into a contract with a Seller or Lessor for the purpose of leasing or selling target housing. These duties generally entail showing the target housing to prospective Purchasers or Lessees and ensuring that all sales and leases are properly executed by the parties. Thus, Property Management Firms are Agents for the purposes of the Disclosure Rule.

***Resident Manager:*** In a situation when a Resident Manager performs the same duties as described above for Property Management Firms, but the Resident Manager is an Independent Contractor, the Resident Manager is still an Agent for the purposes of the Disclosure Rule.

***Responsible Party Table:*** The Responsible Party Table attempts to chart the most common scenarios for both purchase and lease transactions. A leasing situation may involve a variety of relationships. This Table may be revised as more examples are discovered during the course of an investigation. EPA reserves the right to exercise its enforcement discretion when issuing enforcement responses against any Potentially Responsible Party or Parties.

# A ppendix A: Responsible Party Definitions and a Table of Scenarios

## RESPONSIBLE PARTY TABLE

PART I--SELLING SITUATIONS	
Parties Involved in the Selling Situations:	Potential Responsible Parties:
<u>Scenario A:</u> Owner of Property -> Purchaser	(1) SELLER - Owner of the Property
<u>Scenario B:</u> Owner of Property -> Contract Service Provider -> Purchaser	(1) SELLER - Owner of the Property (2) AGENT- Contract Service Provider
<u>Scenario C:</u> Owner of Property-> Contract Service Provider -> Employee of Contract Service Provider -> Purchaser	(1) SELLER - Owner of the Property (2) AGENT- Contract Service Provider
<u>Scenario D:</u> Owner of Property-> Contract Services Provider -> Selling Real Estate Agency -> Agent -> Purchaser	(1) SELLER - Owner of the Property (2) AGENT - Contract Service Provider (3) AGENT- Selling Real Estate Agency*  *Selling Real Estate Agency compensated by the Seller
<u>Scenario E:</u> Owner of Property -> Listing and Selling Real Estate Agencies -> Listing and Selling Sales Associates -> Purchaser	(1) SELLER - Owner of Property (2) AGENT- Listing Real Estate Agency*  * Listing Real Estate Agency compensated by the Seller; Selling Real Estate Agency compensated by the Purchaser
<u>Scenario F:</u> Owner of Property ->Listing and Selling Real Estate Agencies ->Listing and Selling Sales Associates -> Purchaser	(1) SELLER - Owner of Property (2) AGENT- Listing and Selling Real Estate Agencies*  * Listing and Selling Real Estate Agency both compensated by the Seller

**Note:** Within the table, the symbol " -> " denotes "contracts with." For example, in Scenario C, the Owner of Property "contracts with" Contract Service Provider who "contracts with" Employees of a Contract Service Provider who "contracts with" Purchaser.

# A ppendix A: Responsible Party Definitions and a Table of Scenarios

## RESPONSIBLE PARTY TABLE

PART II--LEASING SITUATIONS	
Parties Involved in the Leasing Action:	Potential Responsible Parties:
<u>Scenario A:</u> Owner of Property -> Lessee	(1) LESSOR - Owner of Property
<u>Scenario B:</u> Owner of Property -> Property Management Firm -> Employee of Property Management Firm -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Property Management Firm
<u>Scenario C:</u> Owner of Property -> Real Estate Agency (who handles leasing transaction) -> Sales Associate -> Lessee	(1) LESSOR - Owner of Property (2) AGENT- Real Estate Agency
<u>Scenario D:</u> Owner of Property Management Firm -> Property Management Firm as Owner of Property -> Employee of Property Management Firm -> Lessee	(1) LESSOR - Owner of Property Management Firm
<u>Scenario E:</u> Property Management Firm as Owner of Property -> Employee of Property Management Firm -> Lessee	(1) LESSOR - Property Management Firm as Owner of Property
<u>Scenario F:</u> Owner of Property -> Resident Apartment Manager -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Resident Apartment Manager
<u>Scenario G:</u> Owner of Property -> Contract Service Provider -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Contract Service Provider
<u>Scenario H:</u> Owner of Property -> Contract Service Provider -> Employee of Contract Service Provider -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Contract Service Provider
<u>Scenario I:</u> Real Estate Agency as Owner of Property -> Sales Associate -> Lessee	(1) LESSOR - Real Estate Agency as Owner of Property

# A ppendix A: Responsible Party Definitions and a Table of Scenarios

## RESPONSIBLE PARTY TABLE

PART II--LEASING SITUATIONS	
Parties Involved in the Leasing Action:	Potential Responsible Parties:
<u>Scenario J:</u> Owner of Property -> Locator Service -> Lessee	(1) LESSOR - Owner of Property
<u>Scenario K:</u> Owner of Property -> Locator Service -> Employee of Locator Service -> Lessee	(1) LESSOR - Owner of Property
<u>Scenario L:</u> Owner of Property -> Locator Service -> Property Management Firm -> Employee of Property Management Firm -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Property Management Firm
<u>Scenario M:</u> Owner of Property -> Locator Service -> Employees of Locator Service -> Property Management Firm -> Employee of Property Management Firm -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Property Management Firm
<u>Scenario N:</u> Owner of Property -> Locator Service -> Real Estate Agency -> Sales Associate -> Lessee	(1) LESSOR - Owner of Property (2) AGENT - Real Estate Agency
<u>Scenario O:</u> Owner of Property -> Locator Service -> Employee of Locator Service -> Real Estate Agency -> Agent	(1) LESSOR - Owner of Property (2) AGENT - Real Estate Agency

**Note:** Within the table, the symbol " -> " denotes "contracts with." For example, in Scenario C, the Owner of Property "contracts with" Contract Service Provider who "contracts with" Employees of a Contract Service Provider who "contracts with" Purchaser.

# **APPENDIX B:**

## **Penalty Matrices:**

**Circumstances Level Matrix**  
**Extent Category Matrix**  
**Gravity-Based Penalty Matrix**

# A ppendix B: Penalty Matrices

## CIRCUMSTANCE LEVEL MATRIX

Circumstance Level	Disclosure Rule Violation	FTTS Code
<b>Components of Full Disclosure</b>		
Level 1	Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information/pamphlet pursuant to 40 C.F.R. § 745.107(a)(1)	L8D
Level 1	Seller, Lessor and Agent Requirement: Failure to disclose to Purchaser or Lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 745.107(a)(2)	L8D
Level 1	Seller, Lessor and Agent Requirement: Failure to disclose to each Agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing and the existence of any available records or reports pertaining to lead-based paint pursuant to 40 C.F.R. § 745.107(a)(3)	L8D
Level 1	Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing as cited 40 C.F.R. § 745.107(a)(4)	L8D
<b>Warning Statements</b>		
Level 2	Seller and Agent Requirement: Failure to include, as an attachment to a contract to purchase target housing, the Lead Warning Statement pursuant to 40 C.F.R. § 745.113(a)(1)	L8I
Level 3	Seller and Agent Requirement: Failure to include, as an attachment in the contract, a statement by the Seller disclosing the presence of known lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 745.113 (a)(2)	L8I
Level 2	Lessor and Agent Requirement: Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement pursuant to 40 C.F.R. § 745.113(b)(1)	L8I
Level 3	Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards. pursuant to 40 C.F.R. § 745.113 (b)(2)	L8I

# A ppendix B: Penalty Matrices

## CIRCUMSTANCE LEVEL MATRIX

Circumstance Level	Disclosure Rule Violation	FTTS Code
<b>Opportunity to Conduct Inspection</b>		
Level 3	Seller and Agent Requirement: Failure to permit the Purchaser a 10-day period to conduct a reassessment or inspection for the presence of lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 745.110(a)	L8T
<b>Certification and Acknowledgment</b>		
Level 4	Seller and Agent Requirement: Failure to include in the contract as an attachment a statement by the Purchaser of an opportunity to conduct risk assessment or inspection or to waive an opportunity to do so pursuant to 40 C.F.R. § 745.113(a)(5)	L8I
Level 5	Seller and Agent Requirement: Failure to include in the contract a list of any records or reports available to the Seller that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 745.113(a)(3)	L8I
Level 4	Seller and Agent Requirement: Failure to include in the contract a statement by the Purchaser affirming receipt of the information required by 40 C.F.R. §§ 745.113(a)(2) and (a)(3) and the lead hazard pamphlet required under 15 U.S.C. §2696 as specified in 40 C.F.R. § 745.113(a)(4)	L8I
Level 5	Seller and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to sell target housing that the Agent(s) has informed the Seller of the Seller's obligations and that the Agent(s) is aware of his duty to ensure compliance, pursuant to 40 C.F.R. § 745.113(a)(6)(i) and (ii)	L8I
Level 5	Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 745.113(b)(3)	L8I
Level 4	Lessor and Agent Requirement: Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. §2696 as specified in 40 C.F.R. § 745.113(b)(4)	L8I
Level 4	Lessor and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to lease target housing that the Agent(s) has informed the Lessor of the Lessor's obligations and that the Agent(s) is aware of his duty to ensure compliance, pursuant to 40 C.F.R. § 745.113(b)(5)	L8I

# A ppendix B: Penalty Matrices

## CIRCUMSTANCE LEVEL MATRIX

Circumstance Level	Disclosure Rule Violation	FTTS Code
<b>Failure to Retain Records/Signatures and Dates</b>		
Level 6	Seller and Agent Requirement: Failure to include in the contract signatures of the Sellers, Agents and Purchasers certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 745.113(a)(7)	L8I
Level 6	Lessor and Agent Requirement: Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 745.113(b)(6)	L8I
Level 6	Failure to retain a copy of the completed disclosure records for no less than three years from the completion date of the lease or sale pursuant to 40 C.F.R. § 745.113(c)(l).	L8R

# A ppendix B: Penalty Matrices

EXTENT CATEGORY MATRIX			
	Pregnant woman, a child under 6 years of age, or age of occupant not provided	Child over 6 years of age but less than 18 years of age	Occupant is over 18 years of age
EXTENT	<i>Major</i>	<i>Significant</i>	<i>Minor</i>

## GRAVITY-BASED PENALTY (GBP) MATRIX<sup>3</sup>

The GBP, a function of the nature, circumstances and extent of each violation, is determined by using the following matrix:

CIRCUMSTANCE	MAJOR	SIGNIFICANT	MINOR
	EXTENT	EXTENT	EXTENT
HIGH			
Level 1	\$11,000	\$6,600	\$2,200
Level 2	\$8,800	\$5,500	\$1,320
MEDIUM			
Level 3	\$6,600	\$4,400	\$660
Level 4	\$4,400	\$2,750	\$440
LOW			
Level 5	\$2,200	\$1,430	\$220
Level 6	\$1,100	\$550	\$110

<sup>3</sup> Matrix takes into consideration the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19 (1998).

# **APPENDIX C:**

## **Civil Penalty Worksheet Examples**

(These scenarios do not take into consideration all adjustments available under the ERP)

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #1:

A property management firm failed to comply with the Disclosure Rule when, acting in the capacity as an agent, it leased a target housing apartment unit to a lessee. There is evidence that no child under six (6) nor a pregnant woman is present in the target housing when the lease was entered into by the parties. In addition, an EPA/HUD Disclosure Rule compliance inspection revealed that records were available showing that no lead-based paint or lead-based hazard was in the target housing under the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazard in Housing. The lead inspection was conducted after the leases were signed.

### VIOLATIONS

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §107(a)(1) **Level 1- Minor: \$2,200**
- 2 Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing as cited 40 C.F.R. § 107(a)(4) **Level 1- Minor: \$2,200**
- 3 Lessor and Agent Requirement: Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement pursuant to 40 C.F.R. §745.113(b)(1) **Level 2- Minor: \$1,320**
- 4 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 113(b)(2) **Level 3- Minor: \$660**
- 5 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 113(b)(3) **Level 5- Minor: \$220**
- 6 Lessor and Agent Requirement: Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696 as specified in 40 C.F.R. § 113(b)(4) **Level 4- Minor: \$440**
- 7 Lessor and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to lease target housing that the Agent(s) has informed the Lessor of the Lessor's obligations and that the Agent(s) is aware of his duty to ensure compliance pursuant to 40 C.F.R. § 113(b)(5) **Level 5- Minor: \$220**
- 8 Lessor and Agent Requirement: Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(b)(6) **Level 6- Minor: \$110**

**(80% reduction for no lead)**

Proposed Penalty: \$7,370 (-\$5,896)

Total Proposed Penalty after 80% (\$5,896) reduction for no LBP/LBPH: \$1,474

Lowest Possible Penalty under the ERP for "Attitude" adjustments (30% or \$442.20)

**Total Adjusted Penalty = (\$1,031.80)**

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #2:

A real estate agent, acting as an agent for 10 sellers of target housing, failed to comply with the Disclosure Rule when it sold each of the 10 target housing units. A child under six (6) resides in each of the 10 target housing units. During an EPA/HUD Disclosure Rule compliance inspection records were obtained showing that lead-based paint inspections were conducted according to HUD guidelines after the target housing was sold. The reports indicate that there was no lead-based paint in the housing.

### VIOLATIONS

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information/pamphlet pursuant to 40 C.F.R. § 107(a)(1) **Level 1- Major: \$11,000**
- 2 Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 107(a)(4) **Level 1- Major: \$11,000**
- 3 Seller and Agent Requirement: Failure to include as an attachment to a contract to purchase target housing the Lead Warning Statement pursuant to 40 C.F.R. § 113(a)(1) **Level 2- Major: \$8,800**
- 4 Seller and Agent Requirement: Failure to include as an attachment in the contract a statement by the Seller disclosing the presence of known lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 113(a)(2) **Level 3- Major: \$6,600**
- 5 Seller and Agent Requirement: Failure to permit the Purchaser a 10-day period to conduct a reassessment or inspection for the presence of lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 110(a) **Level 3- Major: \$6,600**
- 6 Seller and Agent Requirement: Failure to include in the contract as an attachment a statement by the Purchaser of an opportunity to conduct a risk assessment or inspection or to waive an opportunity to do so pursuant to 40 C.F.R. § 113(a)(5) **Level 4- Major: \$4,400**
- 7 Seller and Agent Requirement: Failure to include in the contract a list of any records or reports available to the Seller that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 113(a)(3) **Level 5- Major: \$2,200**
- 8 Seller and Agent Requirement: Failure to include in the contract a statement by the Purchaser affirming receipt of the information required by 40 C.F.R. § 745.113(a)(2) and (a)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696 as specified in 40 C.F.R. § 113(a)(4) **Level 4- Major: \$4,400**
- 9 Seller and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to sell target housing that the Agent(s) has informed the Seller of the Seller's obligations and that the Agent(s) is aware of his duty to ensure compliance pursuant to 40 C.F.R. §113(a)(6)(i) & (ii) **Level 5- Major: \$2,200**
- 10 Seller and Agent Requirement: Failure to include in the contract signatures of the Sellers, Agents and Purchasers certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(a)(7) **Level 6- Major: \$1,100**

# A ppendix C: Civil Penalty Worksheet Examples

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## Scenario #2 Penalty Calculation:

**(80% reduction for no lead)**

Total Proposed penalty: \$605,000  
(For 10 units: \$60,500 per unit)

After 80% reduction (\$484,000) for no LBP or LBPH: \$121,000

Lowest Possible Penalty under the ERP for "Attitude" adjustments (30%)  
(\$121,000 x 30%) = \$36,300

**Total Adjusted Penalty** for 10 units: \$84,700

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #3:

An owner of target housing, leased the target housing but failed to comply with the Disclosure Rule for all 50 leases. No agent was involved in the transactions. Evidence exists that children over six but under 18 reside in the 50 target housing apartment units. After the leases were executed, a local health agency conducted a lead inspection showing the presence of lead-based paint within the target housing complex. Evidence was available showing that the lessor did not know that lead-based paint was present. The local health agency referred the matter to EPA and HUD for investigation.

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information/pamphlet as pursuant to 40 C.F.R. § 107(a)(1), **Level 1- Significant: \$6,600**
- 2 Lessor and Agent Requirement: Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement as pursuant to 40 C.F.R. § 113(b)(1), **Level 2- Significant: \$5,500**
- 3 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards as pursuant to 40 C.F.R. § 113(b)(2), **Level 3- Significant: \$4,400**
- 4 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists as pursuant to 40 C.F.R. § 113(b)(3), **Level 5- Significant: \$1,430**
- 5 Lessor and Agent Requirement: Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. Section 2696 as specified in 40 C.F.R. § 113(b)(4), **Level 4- Significant: \$2,750**
- 6 Lessor and Agent Requirement: Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(b)(6), **Level 6- Significant: \$550**

**(Lead present -- no 80% reduction lead)**

Total Proposed penalty: \$1,061,500  
(For 50 units: \$21,230 per unit)

Lowest Possible Penalty under the ERP for "Attitude" adjustments (30%)  
(\$1,061,500 - 30%) = \$318,450

**Total Adjusted Penalty: \$743,050**

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #4:

A property management firm, acting as an agent for a lessor/owner who owns target housing, leased the target housing to 15 lessees (mainly families), but failed to comply with the Disclosure Rule. Evidence exists that children under six (6) reside in 5 target housing apartment units. An EPA inspection revealed that records were available showing the presence of lead-based paint within each unit, and that the property management firm was aware of these records, and knew that lead-based paint was present in the 15 target housing apartment units when they were rented.

### VIOLATIONS

#### 5 units with children under six (6) years old:

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information pamphlet as pursuant to 40 C.F.R. §107(a)(1) **Level 1- Major: \$11,000**
- 2 Seller, Lessor and Agent Requirement: Failure to disclose to Purchaser or Lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 107(a)(2), **Level 1- Major: \$11,000**
- 3 Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing as cited 40 C.F.R. § 107(a)(4), **Level 1- Major \$11,000**
- 4 Lessor and Agent Requirement: Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement as pursuant to 40 C.F.R. §745.113(b)(1) **Level 2- Major: \$8,800**
- 5 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards as pursuant to 40 C.F.R. § 113(b)(2), **Level 3- Major: \$6,600**
- 6 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 113(b)(3) **Level 5- Major: \$2,200**
- 7 Lessor and Agent Requirement: Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696 as specified in 40 C.F.R. § 113(b)(4) **Level 4- Major: \$4,400**
- 8 Lessor and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to lease target housing that the Agent(s) has informed the Lessor of the Lessor's obligations and that the Agent(s) is aware of his duty to ensure compliance, as pursuant to 40 C.F.R. § 113(b)(5) **Level 5- Major: \$2,200**
- 9 Lessor and Agent Requirement: Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(b)(6), **Level 6- Major: \$1,100**

**PROPOSED PENALTY PER UNIT: \$58,300**

**Proposed Penalty X 5: \$291,500**

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #4 - Violations continued

### 10 units without children under six (6) years of age (but less than 18 years or over):

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §107(a)(1) **Level 1- Significant: \$6,600**
- 2 Seller, Lessor and Agent Requirement: Failure to disclose to Purchaser or Lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 107(a)(2), **Level 1- Significant: \$6,600**
- 3 Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing as cited 40 C.F.R. § 107(a)(4), **Level 1- Significant: \$ 6,600**
- 4 Lessor and Agent Requirement: Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement as pursuant to 40 C.F.R. §745.113(b)(1) **Level 2- Significant: \$5,500**
- 5 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards as pursuant to 40 C.F.R. § 113(b)(2), **Level 3- Significant: \$4,400**
- 6 Lessor and Agent Requirement: Failure to include as an attachment or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 113(b)(3) **Level 5- Significant: \$1,430**
- 7 Lessor and Agent Requirement: Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696 as specified in 40 C.F.R. § 113(b)(4) **Level 4- Significant: \$1,430**
- 8 Lessor and Agent Requirement: Failure to include in the contract as an attachment, a statement by the one or more Agents involved in the transaction to lease target housing that the Agent(s) has informed the Lessor of the Lessor's obligations and that the Agent(s) is aware of his duty to ensure compliance, as pursuant to 40 C.F.R. § 113(b)(5) **Level 5- Significant: \$2,750**
- 9 Lessor and Agent Requirement: Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(b)(6), **Level 6- Significant: \$550**

**PROPOSED PENALTY PER UNIT: \$35,860.00**

**Proposed Penalty X 10: \$358,600.00**

### Case Scenario #4 – Penalty Calculations:

**(No 80% reduction)**

TOTAL PROPOSED PENALTY: \$650,100  
(\$291,500 for 5 units with children + \$358,600 10 units without children)

Proposed Penalty: \$650,100

Lowest Possible Penalty under the ERP for "Attitude" adjustment (30%):  
(\$650,100 X 30%) = \$455,070 Total Adjusted Penalty

# A ppendix C: Civil Penalty Worksheet Examples

## Case Scenario #5:

EPA conducted an inspection of an owner of a 10 unit target housing. The inspection revealed that the owner leased the units, but failed to comply with the Disclosure Rule for all 10 leases. No agent was involved in the transactions. No evidence exists that a child under six years old or a pregnant woman resides in any of the 10 target housing apartment units. In addition, no lead inspection reports were available for the target housing complex. The appropriate enforcement response would be the issuance of a civil administrative complaint based on the violations stated below. *(In cases in which there is no evidence to the contrary, there is a presumption that the unit contains lead-based paint and a child/or pregnant woman, so in this case the presumption is that these factors exist in each of the 10 units)*

### VIOLATIONS

- 1 Seller, Lessor and Agent Requirement: Failure to provide Purchaser or Lessee EPA-approved lead hazard information/pamphlet pursuant to 40 C.F.R. § 107(a)(1) **Level 1- Major: \$11,000**
- 2 Seller, Lessor and Agent Requirement: Failure to provide to Purchaser or Lessee any records or reports available to the Lessor pertaining to lead based-paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 107(a)(4) **Level 1- Major: \$11,000**
- 3 Lessor and Agent Requirement: Failure to include as an attachment to a contract to lease target housing the lead Warning Statement pursuant to 40 C.F.R. § 113(a)(1) **Level 2- Major: \$8,800**
- 4 Seller, Lessor and Agent Requirement: Failure to include as an attachment in the contract a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards pursuant to 40 C.F.R. § 113(a)(2) **Level 3- Major: \$6,600**
- 5 Seller, Lessor and Agent Requirement: Failure to include in the contract a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate that no such list exists pursuant to 40 C.F.R. § 113(a)(3) **Level 5- Major: \$2,200**
6. Seller, Lessor and Agent Requirement: Failure to include in the contract a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(a)(2) and (a)(3) and the lead hazard pamphlet required under 15 U.S.C. Section 2696 as specified in 40 C.F.R. § 113(a)(4) **Level 4- Major: \$4,400**
3. Seller, Lessor and Agent Requirement: Failure to include in the contract signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well dates, pursuant to 40 C.F.R. § 113(a)(7) **Level 6- Major: \$1,100**

### Scenario #5 Penalty Calculation:

<p><b>(Presumption that lead is present -- no 80% reduction)</b> Total Proposed penalty: \$451,000 (For 10 units: \$45,1000 per unit) Lowest Possible Penalty under the ERP for "Attitude" adjustments (30%) (\$451,000 - 30%) = \$135,300 <b>Total Adjusted Penalty: \$315,700</b></p>
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**Please note:** After the civil administrative complaint is issued, the Respondent is allowed to present evidence to demonstrate that no child under six years old or pregnant woman resides in the apartment units and/or the units are lead free. If such evidence is presented, then the proposed penalty must be adjusted to reflect this new information. Such an adjustment may be made either by way of filing an Amended Complaint or in a Consent Agreement.

# **APPENDIX D:**

## **Civil Penalty Assessment Worksheet**

## EXPLANATION OF FACTORS

### Line (1) Gravity-Based Penalty (GBP) from the Matrix:

Enter a whole number in the appropriate field indicating the gravity-based penalty in a dollar amount from the Enforcement Response Policy. The appropriate fields are marked with asterisks. Do not push enter following the entry of a number into a field; scroll down to complete the entry.

### Line (2) Adjustment Factors:

Enter a whole number in the appropriate field for each item. This number indicates a percentage, but do not enter a percentage sign (%), and do not put this entry in decimal form. The computer will convert the whole number into a decimal. If the adjustment is a negative number then enter a minus sign directly preceding the number. A positive sign is not necessary, but if added directly preceding a number will not harm the final calculation. This number will indicate if the penalty should be adjusted upward or downward. Example: -25 (this indicates a 25% reduction in the penalty).

**Ability to pay/Ability to continue in business:** This percentage adjustment will be determined by using information regarding the dollar amount of the sale/lease and the number of dwellings sold or leased.

**History of prior violations:** This entry should be limited to an upward adjustment of 25%. The adjustment is based on the violator's previous violations. Prior violations include:

- CAFO (a prior violation consists of all violations described in one prior CAFO), default judgment, consent decree
- A NON is not a prior violation
- A violation by the same property management firm will be considered as a prior history.

**Degree of culpability:** Based on the violator's knowledge of the particular requirement and the degree of control over the violative condition.

The two principal criteria for assessing culpability are: (a) the violator's knowledge of the Disclosure Rule, and (b) the degree of the violator's control over the violative condition. For penalty purposes, when the violator intentionally commits an act which he knew would be a violation of the Disclosure Rule or would be hazardous to health, or has been issued a prior NON, the penalty may be increased by up to 25%.

### Line (3) Sum of Items in Line 2:

Do not enter a number into the appropriate field for each item. The computer will calculate the total of the adjustments entered for the items in line 2.

# A ppendix D: Civil Penalty Assessment Worksheet

## Line (4) Other Factors as Justice May Require:

Enter a whole number into the appropriate field for each item. This number will indicate a percentage adjustment in the penalty that will be allowed for these factors.

- **No Known Risk of Exposure:** Regions may adjust the proposed penalty downward 80% if the target housing is certified lead-free.
- **Attitude:** Regions may give a percentage reduction for attitude, if circumstances warrant. The attitude adjustment has three components: cooperation throughout case development and settlement, good faith effort to comply and steps taken to comply. The EPA may reduce the based penalty up to 10% for each of these factors for a total of 30%
- **Supplemental Environmental Projects (SEPs):** Regions may reduce the penalty paid for the violator's involvement in environmentally beneficial projects for settlement of an environmental enforcement action.
- **Voluntary Disclosure:** Voluntary disclosure of a violation may result in a 50% reduction of the gravity-based penalty. Sellers/Lessors/Agents cannot qualify for reductions in both attitude and voluntary disclosure.
- **Size of Business:** Regions should follow the EPA's Small Business Policy and reduce penalties accordingly, when confronted with violations that may warrant a civil penalty.
- **Adjustment for small independent Sellers/Lessors:** Fines should be adjusted downward by 50% for lessor with one target housing or seller who is selling target housing in a "for sale by owner" transaction.

## Line (5) Sum of Items in Line 4:

Do not enter a number into this field. The computer will calculate the total of the adjustments enter for the items in line 4.

## Line (6) Sum of Lines 3 and 5 (Percentage Converted to Decimal):

Do not enter a number into this field. The computer will calculate the total adjustments given for factors included in lines 2 and 4, and convert these to decimal form to be used in calculating the dollar amount of the adjustment to the penalty.

## Line (7) Multiplication of the GBP in Line 1 by Line 6:

Do not enter a number into this field. The computer will multiply the GBP in line 1 by the amount in line 6 which is the total percentage adjustment, and this will result in the dollar adjustment for the penalty resulting from the factors in lines 2 and 4.

## Line (8) Subtraction of line 7 from line 1:

Do not enter a number into this field. The dollar adjustment of the penalty will be subtracted from the GBP in line 1 to give an adjusted, but not a final penalty.

## Line (9) Enter the Dollar Amount That is Shown in Line 8.

## Line (10) Enter the Dollar Amount of Economic Benefit From Noncompliance:

# **A**ppendix D: Civil Penalty Assessment Worksheet

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Enter a whole number in this field. This number will represent a dollar amount that the violator has gained by avoiding compliance. This is explained in the Enforcement Response Policy.

## **Line (11) Sum of Lines 9 and 10:**

Do not enter a number into this field. This will increase the penalty by adding the adjusted penalty with the amount that the violator has gained by not complying.

## **Line (12) For the Disclosure Rule Violations enter 0 Dollar Amount.**

## **Line (13) Sum of line 12 and line 11 equals the PROPOSED PENALTY:**

Do not enter a number into this field. This will give you the proposed penalty for the violation.

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This form can be used to recalculate the penalty as additional adjustments, such as economic benefit or SEPs are determined. It will be important to include the date for any changes made due to adjustments.

# A ppendix D: Civil Penalty Assessment Worksheet

## CIVIL PENALTY ASSESSMENT WORKSHEET

Date of Entry:  
 Complaint ID Number:  
 Date Complaint Issued:  
 Date Answer Received:  
 Date Final Order Signed:  
 Date Remittance Received:

Entry Column

(1) Gravity-Based Penalty (GBP) from matrix	\$	*****
(2) Adjustment Factors		
Ability to pay/Ability to Continue in Business	%	*****
History of Prior Violations	%	*****
Degree of Culpability	%	*****
(3) Sum of items in line 2	%	0
(4) Other factors as justice may require		
No Known Risk of Exposure	%	*****
Attitude:	%	*****
SEPs:	%	*****
Voluntary Disclosure:	%	*****
Size of business:	%	*****
Adjustment for small independent owner/lessor:	%	*****
(5) Sum of items in line 4	%	0
(6) Sum of lines 3 and 5 (percentage converted to decimal)		0
(7) Multiplication of the GBP in line 1 by total in line 6	\$	0
(8) Subtraction of line 7 from line 1=adjusted penalty	\$	0
(9) Enter the dollar amount in line 8	\$	*****
(10) Enter the amount of Economic Benefit from non-compliance	\$	*****
(11) Sum of lines 9 and 10	\$	0
(12) Enter 0	\$	*****
(13) Sum of line 12 and line 11 equals the <b>PROPOSED PENALTY</b>	\$	0