

EPA Releases New TSCA and FIFRA Enforcement Policies

Article By:

Lynn L. Bergeson

Lisa R. Burchi

On January 17, 2025, days before the end of President Biden's term, the U.S. Environmental Protection Agency (EPA) released two new enforcement documents: (1) Expedited Settlement Agreement (ESA) Pilot Program Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) ([FIFRA Settlement Pilot Program](#) or Pilot Program); and (2) Interim Consolidated Enforcement Response and Penalty Policy (Interim [CERPP](#)) for the Toxic Substances Control Act (TSCA) New and Existing Chemicals Program. Their relevance is unclear.

FIFRA Settlement Pilot Program

EPA states that the “purpose of this Pilot Program is to provide an additional enforcement tool that encourages resource prioritization and violation deterrence through expedited resolution of cases involving minor violations that are easily correctible and do not cause significant health or environmental harm.”

Although “easily correctible” is not defined, from a timing perspective, it appears that EPA considers a violation easily correctible if FIFRA compliance can be achieved within 30 days, although EPA may, “at its discretion, grant an extension for corrective action in limited circumstances upon submission of a written extension request detailing why achieving compliance within 30 calendar days of receipt of this letter is infeasible or impracticable.”

EPA also provides the following “general parameters” that EPA considers when determining whether a case involves “minor violations” that are suitable for resolution under this Pilot Program, including but not limited to:

- The case involves domestically produced or imported pesticides or device products.
- The case does not require EPA review and approval of registration changes, including but not limited to labeling changes.
- The total proposed penalty should not exceed \$24,000, with a penalty matrix provided at Attachment B.
- The company is not a “repeat violator” (noting that in the Pilot Program, EPA discusses when a repeat violator may be eligible under the Pilot Program depending on the type of violation

and when the violation occurred and provides a hypothetical timeline when a ESA may be permissible).

- The case does not involve criminal or fraudulent behavior (e.g., intentionally falsifying information).

For additional clarity, EPA lists at Appendix A the violations that are eligible for resolution under this Pilot Program.

If EPA determines that a case qualifies under the Pilot Program, EPA has developed a template cover letter and final order that it can provide to the company as an opportunity to resolve the violations. Upon receipt, if the company does not respond within 30 calendar days, the ESA is automatically withdrawn. EPA states that an “adequate response” from the ESA recipient would include the following:

1. Returning a signed agreement;
2. Paying the full penalty per the ESA terms offered; and
3. Submitting a signed, certified statement that Respondent no longer engages in violative activities, that the violations have been corrected, or that lists the steps Respondent has or will take to prevent recurrence of the violation(s), as applicable.

If an ESA is withdrawn, EPA without prejudice retains its ability to file any other enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

Interim CERPP

EPA states that the Interim CERPP guidance is intended to help ensure that enforcement actions and the assessment of civil administrative penalties are “appropriate, nationally consistent and promote compliance among TSCA-regulated entities.” The CERPP contains the following Parts:

- CERPP Part One provides cross-cutting background information: Introduction; TSCA Legal Background; Enforcement Response Options; and Regulatory Responses.
- CERPP Part Two provides a cross-cutting overview of the process for determining penalties: Introduction; General Principles; Steps in Computing Civil Penalties; Factors as to Violation; and Factors as to Violator.
- CERPP Part Three encompasses Modules for computing Gravity-based Penalties for specific Core TSCA programs, including: Module A for the Section 6(a) Rules.
- CERPP Part Four presents the cross-cutting Gravity-based Penalty Matrix, which states the “initial” (per violation) Gravity-based Penalty dollar amount applicable in all Core TSCA programs.
- CERPP Part Five provides cross-cutting guidance for adjusting (or remitting) the Gravity-based Penalty to derive the final civil administrative penalty in a case: Overview; Preliminary Information; Ability to Pay/Continue in Business; Prior Violation; Culpability; Other Matters Justice May Require; and Penalty Remittance.

Currently, there are several enforcement response policies (ERP) applicable to different statutory violations under TSCA:

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- Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act, 45 Fed. Reg. 59770 (Sept. 10, 1980) (TSCA Penalty Policy), <https://www.epa.gov/sites/default/files/documents/tscapen.pdf>.
 - Final TSCA GLP Enforcement Response Policy, <https://www.epa.gov/enforcement/final-tsca-glp-enforcement-response-policy>.
 - Enforcement Response Policy for TSCA Section 4 Test Rules, <https://www.epa.gov/enforcement/enforcement-response-policy-tsca-section-4-test-rules>.
 - Amended TSCA Section 5 Enforcement Response Policy, <https://www.epa.gov/enforcement/amendment-tsca-section-5-enforcement-response-policy-penalty-limit-untimely-noc>.
 - Issuance of Revised Enforcement Response Policy for TSCA Sections 8, 12 & 13, <https://www.epa.gov/enforcement/issuance-revised-enforcement-response-policy-tsca-sections-812-13>.

EPA intends to consolidate and update these TSCA ERPs with this CERPP, but states that “until a module for a specific Core TSCA program is added to the CERPP, use the current ERP for that Core TSCA program.” When a module is available for a particular TSCA provision, the CERPP will be immediately effective and supersede any prior TSCA ERP.

At this time, the Interim CERPP appears to address only penalties for TSCA Section 6(a) violations, as described under “Module A,” and for which there is no current ERP counterpart.

As with all ERPs, the initial gravity-based penalty is determined based on three factors: nature, circumstances, and extent. Since there is no existing ERP for Section 6, the program-specific Module A provides EPA’s guidance for how it will consider Section 6(a) violations:

- **Nature:** The Nature classification for all Section 6(a) violations is Chemical Control (CC), excluding recordkeeping violations. The Nature classification for recordkeeping violations under Section 6(a) is Control-associated Data-Gathering (CADG).
- **Circumstance:** The Circumstance Level depends on the type of requirement that was violated, and EPA provides a chart to explain the “high,” “medium,” and “low” range Circumstance Levels.
- **Extent:** The Extent Level Matrix establishes three classifications: Major, Significant, or Minor. For Section 6 violations, EPA describes how a violation will be classified based on two factors relevant to the unreasonable risks from Section 6(a) chemicals: (1) Potential Injury, meaning “the scope of the violation in relation to the potential injury from noncompliance;” and (2) Potentially Impacted Entity (PIE), meaning “the population or environment that could be subject to the potential injury from the violation.” The Interim CERPP provides additional guidance explaining how these classifications will be derived.

Commentary

EPA states that in issuing this FIFRA Settlement Pilot Program, its intent is to “decrease transaction costs and achieve speedy compliance.” This would seem to align with the recent Trump Administration’s [Executive Order](#) (EO) titled “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative” that instructs agencies to “preserve their limited enforcement resources by generally de-prioritizing actions to enforce regulations that are based on anything other than the best reading of a statute” and “direct the termination of all such enforcement proceedings that do not comply with the Constitution, laws, or

Administration policy.” The list of violations that are eligible for ESAs is limited, however. The Pilot Program is expected to be available for three years, so it will be interesting to see whether and how this Pilot Program is implemented.

While the Pilot Program might be considerably narrow, the Interim CERPP has the potential for much broader applicability. Although the current Interim CERPP only has a Module focused on Section 6(a), for which there is no current ERP, EPA has stated its interest in developing Modules for other TSCA Sections, which will then supersede those existing ERPs. The existing ERPs have many parallels and similarities, but they also address distinct differences depending on the TSCA sections at issue. There thus is the likelihood that one consolidated CERPP will impact how penalties are calculated for all TSCA violations, and stakeholders should be prepared to review carefully any additional Modules released.

In that both of these enforcement documents were prepared by the prior Administration, their enduring relevance, like so many other issues at EPA, is unclear. As new leadership populates the ranks at EPA program offices, including the Office of Enforcement and Compliance Assurance, we may learn more.

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