

# TABLE OF CONTENTS

## CHAPTER 1

### An Overview of the Organizational Sentencing Guidelines

§ 1.01	Introduction . . . . .	1-3
§ 1.02	Corporate Criminal Liability . . . . .	1-6
	[1] History of Corporate Criminal Liability . . . . .	1-6
	[2] Principles of Corporate Criminal Liability . . . . .	1-9
	[3] Trends in Corporate Criminal Prosecutions . . . . .	1-12
§ 1.03	The Sentencing Guidelines for Individuals . . . . .	1-15
	[1] Origins of the Federal Sentencing Commission . . . . .	1-15
	[2] Federal Sentencing Before the Guidelines. . . . .	1-15
	[3] Principles of the Sentencing Guidelines for Individuals . . . . .	1-16
	[4] Criticisms of the Individual Guidelines. . . . .	1-18
	[5] <i>Booker's</i> Impact: Advisory Federal Guidelines . . . . .	1-22
	[a] Section 3553(a) . . . . .	1-22
	[b] Weight Given to the Guidelines . . . . .	1-23
	[c] Standard of Review. . . . .	1-26
	[d] Limiting of Prosecutorial Power. . . . .	1-27
	[e] Congressional Action. . . . .	1-27
§ 1.04	Promulgation of the Organizational Guidelines . . . . .	1-28
	[1] Procedural Background . . . . .	1-28
	[2] Theoretical Approach . . . . .	1-28
§ 1.05	Executive Summary of the Organizational Guidelines . . . . .	1-31
	[1] When Do the Organizational Guidelines Apply? . . . . .	1-32
	[a] Against Whom. . . . .	1-32

## SENTENCING GUIDELINES

	[b] For What Offense . . . . .	1-32
	[c] Offenses Subject to the Fine. . . . .	1-32
[2]	The Fine Calculation . . . . .	1-33
	[a] Calculating the Base Fine . . . . .	1-34
[3]	Calculating the Culpability Multiplier. . . . .	1-34
	[a] Aggravating Circumstances. . . . .	1-35
	[i] Involvement in or Tolerance of Criminal Activity . . . . .	1-35
	[ii] Prior History . . . . .	1-35
	[iii] Violation of an Order . . . . .	1-36
	[iv] Obstruction of Justice . . . . .	1-36
	[b] Mitigating Circumstances . . . . .	1-36
	[i] Effective Program to Prevent and Detect Violations of the Law. . . . .	1-36
	[ii] Self-Reporting, Cooperation, and Acceptance of Responsibility . . . . .	1-37
[4]	Establishing and Imposing the Guideline Fine . . . . .	1-38
	[a] Determining the Guideline Fine Range. . . . .	1-38
	[b] Determining the Fine Within the Range. . . . .	1-39
	[c] Additional Fine Penalties . . . . .	1-39
	[d] Relationship to Statutory Fine Range. . . . .	1-39
	[e] Timing of Fine Payment . . . . .	1-39
	[f] Reduction of the Applicable Fine. . . . .	1-40
[5]	Departures . . . . .	1-40
	[a] Upward Departures . . . . .	1-40
	[b] Downward Departures . . . . .	1-41
	[c] Substantial Assistance to Authorities. . . . .	1-41
[6]	Restitution . . . . .	1-42
[7]	Remedial Orders . . . . .	1-44
[8]	Organizational Probation . . . . .	1-44
	[a] Imposition of Probation. . . . .	1-44
	[b] Term of Probation . . . . .	1-45
	[c] Conditions of Probation. . . . .	1-45
	[d] Violation of Conditions of Probation . . . . .	1-46
§ 1.06	Application of Guidelines by the Courts . . . . .	1-47
	[1] Cases Involving Sentences Under the Guidelines. . . . .	1-47
	[2] Type of Defendant . . . . .	1-49

## TABLE OF CONTENTS

vii

	[3] Compliance Programs . . . . .	1-50
	[4] Culpability Score . . . . .	1-56
	[5] Type of Offense . . . . .	1-61
	[6] Fines and Restitution . . . . .	1-67
	[7] Probation and Other Remedies . . . . .	1-72
§ 1.07	The Future Role of the Guidelines . . . . .	1-76
	[1] Amendments to the Organizational Sentencing Guidelines . . . . .	1-77
	[a] Tightening the Requirements for Corporate Compliance and Ethics Programs . . . . .	1-77
	[b] Waiver of Attorney-Client Privilege and Work Product Protections . . . . .	1-79
	[2] 2010 Amendments to the Organizational Sentencing Guidelines: Further Guidance on Effective Compliance and Ethics Programs . . . . .	1-81
	[3] Impact of <i>Booker</i> on the Organizational Sentencing Guidelines . . . . .	1-82

## CHAPTER 2

### Determining the Fine in Organizational Sentencing

§ 2.01	Introduction . . . . .	2-1
§ 2.02	Applicability of Fine Guidelines . . . . .	2-4
§ 2.03	Preliminary Determination of Inability to Pay Fine . . . . .	2-7
§ 2.04	Offense Level . . . . .	2-8.1
§ 2.05	Base Fine . . . . .	2-11
	[1] The Three Alternatives . . . . .	2-11
	[a] Offense Level Fine . . . . .	2-11
	[b] Pecuniary Gain . . . . .	2-12
	[c] Pecuniary Loss . . . . .	2-13
	[2] Special Instructions . . . . .	2-14
	[3] Undue Prolongation or Complication of the Sentencing Process . . . . .	2-15
§ 2.06	Culpability Score . . . . .	2-17
§ 2.07	Minimum and Maximum Multipliers . . . . .	2-19
§ 2.08	Guideline Fine Range—Organizations . . . . .	2-20
§ 2.09	Determining the Fine Within the Range (Policy Statement) . . . . .	2-21
§ 2.10	Disgorgement . . . . .	2-25
§ 2.11	Departures from the Guideline Fine Range . . . . .	2-26
§ 2.12	Anti-“Piling On” Policy . . . . .	2-29

## CHAPTER 3

**Aggravating Factors in Organizational Sentencing**

§ 3.01	Introduction . . . . .	3-3
§ 3.02	Involvement in or Tolerance of Criminal Activity . . . . .	3-7
	[1] Operation of the Rule. . . . .	3-7
	[2] Participation, Condonation, or Willful Ignorance of Individual Within High-Level Personnel. . . . .	3-8
	[a] High-Level Personnel . . . . .	3-8
	[b] Participation, Condonation, and Willful Ignorance. . . . .	3-9
	[3] Pervasive Toleration of Offense by Substantial Authority Personnel . . . . .	3-10
	[a] Substantial Authority Personnel . . . . .	3-10
	[b] Lack of Standard Definition of Pervasiveness . . . . .	3-11
	[4] Participation, Condonation, or Willful Ignorance of Individual Within Substantial Authority Personnel . . . . .	3-11
	[5] Organization Versus Unit of Organization Dynamic . . . . .	3-12
§ 3.03	Prior History . . . . .	3-13
	[1] General Rule. . . . .	3-13
	[2] Prior History Resulting in Higher Culpability Score . . . . .	3-13
	[a] Requirement that the Prior Adjudication Be Based on Similar Misconduct . . . . .	3-13
	[b] Prior Criminal, Civil or Administrative Adjudication Based on Similar Misconduct. . . . .	3-14
	[3] Separately Managed Line of Business Limits Scope of Prior History. . . . .	3-15
	[4] Effect of Change in Legal Structure or Ownership . . . . .	3-15
§ 3.04	Violation of an Order . . . . .	3-16
	[1] General Rule. . . . .	3-16
	[2] Separately-Managed Line of Business Limits Definition of Prior Criminal History. . . . .	3-16
§ 3.05	Obstruction of Justice . . . . .	3-17
	[1] General Rule. . . . .	3-17

**TABLE OF CONTENTS**

	[a]	Requirement that the Obstruction Occur During the Investigation, Prosecution, or Sentencing of the Instant Offense . . . . .	3-17
	[b]	Requirement that Obstruction Is Committed on Behalf of the Organization . . . . .	3-17
	[2]	Categories of Conduct . . . . .	3-18
	[3]	Standards Developed Under the Analogous Individual Guidelines . . . . .	3-19
§ 3.06		Factors the Court May Consider in Determining the Fine Within the Range . . . . .	3-21
	[1]	Factors Under Section 8C2.8(a) . . . . .	3-22
	[2]	The Organization’s Role in the Offense . . . . .	3-22
	[3]	Collateral Consequences of Conviction. . . . .	3-23
	[4]	Non-Pecuniary Loss Caused or Threatened by the Offense . . . . .	3-24
	[5]	Offense Involved Vulnerable Victim. . . . .	3-24
	[6]	Prior Criminal Record of High-Level Personnel. . . . .	3-25
	[7]	Prior Civil or Criminal Misconduct of the Organization. . . . .	3-25
	[8]	Culpability Score Higher than Ten . . . . .	3-27
	[9]	Partial But Incomplete Satisfaction of the Conditions for Aggravating Factors . . . . .	3-27
	[10]	Factors Listed in Section 3572(a) . . . . .	3-27
	[11]	Factors Used in Determining the Range. . . . .	3-28
§ 3.07		Upward Departures from the Guideline Range. . . . .	3-29
	[1]	Factors Justifying Departure from the Guideline Fine Range . . . . .	3-30
	[a]	Risk of Death or Bodily Injury. . . . .	3-30
	[b]	Threat to National Security. . . . .	3-30
	[c]	Threat to the Environment . . . . .	3-30
	[d]	Threat to a Market. . . . .	3-30
	[e]	Official Corruption . . . . .	3-30
	[f]	Mandatory Programs to Prevent and Detect Violations of Law. . . . .	3-31
	[g]	Exceptional Organizational Culpability . . . . .	3-31
	[2]	Treatment of Departures Under the Individual Guidelines. . . . .	3-31
	[3]	Implications of <i>Booker</i> . . . . .	3-37

## CHAPTER 4

**Mitigating Factors in Organizational Sentencing**

§ 4.01	Introduction . . . . .	4-2
§ 4.02	Effective Compliance and Ethics Program . . . . .	4-4
	[1] The General Rule . . . . .	4-5
	[2] Criteria for an Effective Program . . . . .	4-8
	[3] Exceptions to the General Rule . . . . .	4-11
	[a] Delay in Reporting the Offense . . . . .	4-11
	[b] Participation of High-Level Personnel . . . . .	4-12
	[c] Participation of Substantial Authority Personnel . . . . .	4-13
	[d] Small Organizations and Culpability Score Reduction . . . . .	4-13
§ 4.03	Self-Reporting, Cooperation, and Acceptance of Responsibility . . . . .	4-14
	[1] The General Rule . . . . .	4-16
	[a] Timely Disclosure . . . . .	4-17
	[b] Disclosure to the Appropriate Governmental Authorities . . . . .	4-19
	[c] Full Cooperation . . . . .	4-19
	[d] Acceptance of Responsibility . . . . .	4-20
	[2] The Two-Point Reduction . . . . .	4-21
	[3] The One-Point Reduction . . . . .	4-21
§ 4.04	Downward Departures from the Guidelines Range . . . . .	4-22
	[1] Substantial Assistance to Authorities . . . . .	4-24
	[a] Government Motion . . . . .	4-24
	[b] Factors Considered by the Court . . . . .	4-26
	[c] Relationship to Self-Reporting, Cooperation and Acceptance of Responsibility . . . . .	4-26
	[2] Members or Beneficiaries of the Organization as Victims . . . . .	4-27
	[3] Public Entities . . . . .	4-27
	[4] Remedial Costs that Greatly Exceed Gain . . . . .	4-28
	[5] Exceptional Organizational Culpability . . . . .	4-28
	[6] Exceptional Circumstances . . . . .	4-29
§ 4.05	Commentary . . . . .	4-32

CHAPTER 5

Corporate Compliance Programs

§ 5.01	Corporate Compliance Programs . . . . .	5-4
	[1] Introduction . . . . .	5-4
	[2] Empirical Studies of Corporate Codes and Compliance Programs . . . . .	5-6
§ 5.02	The Evolution of Corporate Compliance Programs . . . . .	5-9
	[1] Compliance Programs as a Response to Corporate Crises . . . . .	5-9
	[a] The “Electrical Cases” and Antitrust: Compliance Programs . . . . .	5-10
	[b] The Foreign Corrupt Practices Act of 1977 . . . . .	5-11
	[i] Background . . . . .	5-11
	[ii] FCPA Compliance Policies . . . . .	5-16
	[iii] Global Adoption of FCPA Principles . . . . .	5-19
	[c] The Insider Trading Scandals of the 1980s . . . . .	5-31
	[d] The Defense Industry Initiative . . . . .	5-35
	[e] Expansion of Efforts to Combat Healthcare Fraud . . . . .	5-40.1
	[i] Operation Restore Trust and the HIPAA . . . . .	5-40.1
	[ii] Mandatory Compliance Under the Patient Protection and Affordable Care Act of 2010 . . . . .	5-40.3
	[f] The Sarbanes-Oxley Act . . . . .	5-40.5
	[g] Adoption of the Sentencing Guidelines: Norm of Compliance as Shaped by the Sentencing Guidelines . . . . .	5-40.13
	[h] The War Against Terrorism: The Patriot Act and Global Compliance . . . . .	5-40.15
	[i] Closing the Gaps: Rules Governing Compliance Programs and Mandatory Disclosure by Government Contractors . . . . .	5-40.18
	[j] The Financial Crisis of 2007 . . . . .	5-40.22
	[i] Compliance Issues Arising from the Troubled Asset Relief Program and the Stimulus Package . . . . .	5-40.22

## SENTENCING GUIDELINES

	[ii] Compliance Issues Arising from Financial Regulatory Reform .....	5-40.25
	[k] Compliance Programs and COVID-19 .....	5-40.25
	[2] Compliance Programs as a Response to <i>Caremark</i> .....	5-40.26
§ 5.03	Issues Commonly Addressed in Compliance Programs .....	5-40.35
	[1] Statement of Principles .....	5-40.35
	[2] Administration of the Compliance Program .....	5-41
	[3] Bribes, Kickbacks and Other Improper Payments .....	5-42
	[4] Proper Accounting Practices .....	5-53
	[5] Conflicts of Interest .....	5-54
	[a] Relations with Suppliers .....	5-55
	[b] Outside Employment .....	5-56
	[c] Service on Corporate Boards .....	5-56
	[d] Corporate Opportunities .....	5-57
	[6] Confidentiality of Corporate Information .....	5-58
	[7] Communications with the Public .....	5-60
	[8] Insider Trading .....	5-61
	[9] Discrimination .....	5-69
	[10] Harassment .....	5-70
	[11] Cybersecurity .....	5-77
	[12] Sanctions .....	5-82
	[13] Certification of Compliance .....	5-82
§ 5.04	Design and Implementation Issues .....	5-84
	[1] Tailoring a Compliance Program to the Corporate Culture .....	5-84
	[2] Implementation of the Corporate Compliance Program .....	5-84.1
	[a] Dissemination of the Compliance Program .....	5-84.1
	[b] Corporate Compliance Training .....	5-84.2
	[3] Management and Monitoring .....	5-84.3
	[a] Management of the Compliance Program .....	5-84.3
	[b] Monitoring Compliance .....	5-84.13
	[4] Enforcement of the Compliance Program .....	5-84.15
	[5] Updating the Compliance Program .....	5-84.16
	[6] Settlements and Consent Decrees .....	5-84.17
	[7] The Board of Directors and the Compliance Program .....	5-84.17

**TABLE OF CONTENTS**

xiii

	[a] SEC Initiatives . . . . .	5-84.19
	[b] Director Obligations After <i>Caremark</i> . . . . .	5-84.21
§ 5.05	The Legal Effect of Corporate Compliance Programs . . . . .	5-85
§ 5.06	Specialized Aspects of Compliance Programs . . . . .	5-94
	[1] Post-Sarbanes-Oxley Standards for Codes of Conduct . . . . .	5-94
	[a] SEC Requirements for Disclosure of Codes of Ethics for Financial Personnel . . . . .	5-94
	[b] Waivers of, and Amendments to, Code of Ethics for Financial Personnel . . . . .	5-95
	[c] Standards for Audit Committee Complaint Procedures . . . . .	5-96
	[d] Corporate Governance Reforms . . . . .	5-97
	[2] Statutory Whistleblower Protections and Their Impact on Corporate Compliance Programs . . . . .	5-99
	[a] Whistleblower Protections Included in the Sarbanes-Oxley Act . . . . .	5-99
	[b] Whistleblower Protections in the American Recovery and Reinvestment Act of 2009 . . . . .	5-101
	[c] Whistleblower Protections in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 . . . . .	5-102
	[d] Whistleblower Protections in the Anti-Money Laundering Act of 2020 and the Consolidated Appropriations Act of 2023 . . . . .	5-105
	[e] Reconciling Whistleblower Incentives with the Need for Effective Internal Reporting . . . . .	5-106
	[i] Anti-Retaliation Provision . . . . .	5-107
	[ii] Awards for Corporate Officers . . . . .	5-108
	[iii] Effect on Internal Investigations . . . . .	5-108.1
§ 5.07	The Auditor Relationship and Compliance . . . . .	5-109

**SENTENCING GUIDELINES**

	[1]	Compliance Standards and the Audit Process . . . . .	5-109
	[a]	Private Securities Litigation Reform Act of 1995 . . . . .	5-109
	[b]	Implications for Auditor-Client Relationships . . . . .	5-112
	[2]	Proposed New Requirements for Audit Committees: The Blue Ribbon Committee Report . . . . .	5-115
	[a]	Overview . . . . .	5-115
	[b]	The Ten Point Plan to Improve Audit Committee Oversight . . . . .	5-117
	[c]	SRO Rulemaking on Audit Committees . . . . .	5-119
	[i]	NYSE Listed Companies . . . . .	5-119
	[ii]	AMEX Listed Companies . . . . .	5-123
	[iii]	Companies Quoted on NASDAQ . . . . .	5-125
	[3]	Practical Guidelines . . . . .	5-128
	[4]	The Audit Committee and the Whistleblower . . . . .	5-131
	[5]	Conclusion . . . . .	5-132
§ 5.08		The Legal Counsel Relationship and Compliance . . . . .	5-133
	[1]	Sarbanes-Oxley and the Lawyer's Obligation to Report Misconduct . . . . .	5-133
	[2]	Lawyers Covered by the SEC's Rules . . . . .	5-134
	[3]	The Reporting Obligation . . . . .	5-135
	[4]	Practical Considerations Regarding the SEC's Lawyer Rules . . . . .	5-139
	[5]	The Potential Liability of Lawyers as Supervisors under Federal Securities Laws . . . . .	5-139
§ 5.09		Compliance Standards and Document Control . . . . .	5-142
	[1]	Introduction . . . . .	5-142
	[2]	The Medium and the Risks . . . . .	5-144
	[3]	Preventive Steps . . . . .	5-148

**CHAPTER 6****Advocacy Considerations for Practitioners**

§ 6.01		Pre-Indictment Advocacy on Behalf of the Corporate Client . . . . .	6-2
	[1]	Introduction . . . . .	6-2

**TABLE OF CONTENTS**

xv

	[2] Pre-Indictment . . . . .	6-3
	[a] Gathering the Facts . . . . .	6-3
	[b] Communications with Prosecutors . . . . .	6-16
	[c] Self-Reporting Considerations . . . . .	6-18.1
	[3] Managing the Risk That an SEC Examination Could Ripen into an Enforcement Action . . . . .	6-18.4
§ 6.02	Privilege Issues and Compliance . . . . .	6-19
	[1] Introduction . . . . .	6-19
	[2] Summary of Primary Privileges . . . . .	6-21
	[3] Structuring Compliance to Preserve the Privilege . . . . .	6-24
	[4] Selective Disclosures to Government Investigators . . . . .	6-34
§ 6.03	The Filip Memorandum and Arguments for Not Prosecuting Corporations . . . . .	6-44.1
	[1] Corporate Cooperation, Attorney-Client Privilege, and Work Product Protections . . . . .	6-44.1
	[a] Evolution of DOJ Policy on Privilege Waiver in the Context of Cooperation . . . . .	6-44.2
	[b] The Filip Memorandum . . . . .	6-50
	[c] Maintaining Privilege While Cooperating with the SEC . . . . .	6-52
	[d] Other Considerations . . . . .	6-54
	[2] Cooperation under the Yates Memorandum . . . . .	6-57
	[3] Yates Memorandum-Inspired Self-Reporting Programs . . . . .	6-62
	[4] Consequences for Lack of Cooperation . . . . .	6-75
	[5] Deferred and Non-Prosecution Agreements . . . . .	6-84
	[a] Contours . . . . .	6-84
	[b] Criticism . . . . .	6-87
	[c] SEC Cooperation Agreements . . . . .	6-92.2
	[d] Use of Corporate Monitors . . . . .	6-92.6
	[e] Reasons for Caution . . . . .	6-92.13
	[6] Disputes Over Compliance with Non-Prosecution Agreements . . . . .	6-92.19
§ 6.04	Plea or Trial: The Decision on Whether to Cooperate . . . . .	6-93
§ 6.05	Considerations in Negotiating a Plea Agreement Under the Guidelines . . . . .	6-96
	[1] Charge Agreements . . . . .	6-96
	[2] Recommendation Agreements . . . . .	6-98.1

## SENTENCING GUIDELINES

	[3] Fact Stipulations . . . . .	6-99
	[4] Cooperation Agreements . . . . .	6-99
	[5] Withdrawal Agreements . . . . .	6-101
§ 6.06	Trial . . . . .	6-102
§ 6.07	Pre-Sentence Investigation and Report . . . . .	6-104
§ 6.08	Departures . . . . .	6-105
§ 6.09	Appeal . . . . .	6-106

## CHAPTER 7

## Antitrust: The Special Rules

§ 7.01	Introduction . . . . .	7-2
§ 7.02	Offenses Covered by the Antitrust Guideline . . . . .	7-7
§ 7.03	Statutory Penalties for Sherman Act Violations . . . . .	7-8
	[1] The Statutory Authority . . . . .	7-8
	[2] Implications of <i>Booker</i> and Its Progeny . . . . .	7-11
§ 7.04	Sentences for Individuals . . . . .	7-14
	[1] Imprisonment . . . . .	7-14
	[a] Base Offense Level . . . . .	7-14
	[b] Relevant Conduct . . . . .	7-18
	[c] Multiple Counts . . . . .	7-20
	[d] Adjustments and Departures . . . . .	7-22
	[i] Role in the Offense . . . . .	7-22
	[ii] Abuse of Position of Trust or Use of Special Skill . . . . .	7-23
	[iii] Acceptance of Responsibility . . . . .	7-24
	[iv] Prior Antitrust Convictions . . . . .	7-25
	[v] Substantial Assistance to Authorities . . . . .	7-25
	[vi] Other Extraordinary Circumstances . . . . .	7-25
	[2] Fines and Community Service . . . . .	7-26
	[a] Generally . . . . .	7-26
	[b] Community Service and Restitution . . . . .	7-27
	[3] Antitrust Leniency Policy for Individuals . . . . .	7-27
	[4] Antitrust Whistleblower Provisions . . . . .	7-27
§ 7.05	Sentences for Organizations . . . . .	7-28.2
	[1] Fines . . . . .	7-28.2
	[a] The Base Fine . . . . .	7-28.2
	[b] Culpability Score . . . . .	7-31

**TABLE OF CONTENTS**

[i] Involvement in or Tolerance of Criminal Activity . . . . . 7-31

[ii] Prior History . . . . . 7-31

[iii] Violation of an Order . . . . . 7-32

[iv] Obstruction of Justice . . . . . 7-32

[v] Effective Compliance and Ethics Program . . . . . 7-32

[vi] Self-Reporting, Cooperation, and Acceptance of Responsibility . . . . . 7-35

[c] Minimum and Maximum Multipliers and Determining the Fine Range . . . . . 7-36

[i] Antitrust Division Corporate Leniency Policy . . . . . 7-37

[ii] Amnesty Plus Program . . . . . 7-43

[d] Determining the Fine Within the Range . . . . . 7-44

[e] Departure from the Guideline Fine Range . . . . . 7-45

[2] Probation . . . . . 7-46

**CHAPTER 8**

**Environmental Crimes: The Indirect Applicability of General Guidelines and the Utility of Environmental Self Audits and Compliance Programs**

§ 8.01 Scope of the Organizational Sentencing Guidelines . . . . . 8-2

[1] Exclusion of Environmental Crimes from the General Guidelines for Fines . . . . . 8-2

[2] The Advisory Group’s Proposed Guidelines for Environmental Offenses . . . . . 8-7

[3] Reasons for Exclusion of Fines for Environmental Crimes From Fine Provisions of Chapter Eight . . . . . 8-10

[4] Inconsistencies in the Department of Justice’s Approach . . . . . 8-13

[5] Applicability of the “Remedial Orders” and “Probation” Provisions of the Guidelines . . . . . 8-13

[6] Applicability of the Guidelines to Prosecution for False Statements . . . . . 8-16

[7] Impact of the Guidelines in the Environmental Context . . . . . 8-17

§ 8.02	Utility of “Environmental Audits” and “Compliance Programs” . . . . .	8-20
[1]	The 2000 EPA Policy Statement . . . . .	8-20
[a]	Conditions . . . . .	8-21
[b]	Opposition to State Privileges for “Self-Evaluative” Materials . . . . .	8-22
[c]	Effect on States . . . . .	8-23
[d]	EPA’s Self-Policing Policy for Disclosures Involving Potential Criminal Violations . . . . .	8-26
[e]	Small Business Compliance Policy . . . . .	8-27
[f]	EPA Compliance Incentive Programs . . . . .	8-27
[2]	The 1991 Department of Justice Guidance Document . . . . .	8-29
[3]	The 1990 Clean Air Act Amendments . . . . .	8-32.1
[4]	“EPA Policy Statement” Regarding “Delisting” of Violating Facilities: The EPA Contractor Listing Program . . . . .	8-35
[a]	Application of the Delisting Criteria . . . . .	8-38
§ 8.03	“Multi-Level” Audit/Compliance Program Technique . . . . .	8-40
§ 8.04	Multiple Proceedings and Sovereigns . . . . .	8-41
§ 8.05	Double Jeopardy . . . . .	8-42
§ 8.06	Parent-Subsidiary Relations . . . . .	8-44
§ 8.07	Privilege Issues . . . . .	8-46
§ 8.08	Compliance with SEC Requirements . . . . .	8-50
§ 8.09	Impact of Sarbanes-Oxley in the Environmental Crimes Context . . . . .	8-51

## Appendices

<b>APPENDIX A:</b>	Chapter Eight—Sentencing of Organizations . . . . .	A-1
<b>APPENDIX B:</b>	Chapter Two—Offense Conduct . . . . .	B-1
<b>APPENDIX C-1:</b>	2005 Statement of Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division, Department of Justice . . . . .	C-1
<b>APPENDIX C-2:</b>	2001 Statement of Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division, Department of Justice . . . . .	C-17

**TABLE OF CONTENTS**

xix

<b>APPENDIX C-3:</b>	1999 Statement of Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, Department of Justice. . . . .	C-35
<b>APPENDIX C-4:</b>	Leniency Policy for Individuals, Department of Justice, 1994. . . . .	C-59
<b>APPENDIX C-5:</b>	2003 Statement of James M. Griffin, Deputy Attorney General, Antitrust Division, Department of Justice. . . . .	C-63
<b>APPENDIX D-1:</b>	1998 Statement of Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, Department of Justice. . . . .	D-1
<b>APPENDIX E:</b>	Pitt, Groskaufmanis & Tsaganos, “Talking the Talk and Walking the Walk: Director Duties to Uncover and Respond to Management Misconduct” (Feb. 21, 1997). . . . .	E-1
<b>APPENDIX F:</b>	Pitt, Groskaufmanis & Whittemore, “Misappropriating Certainty from the Securities Markets: A Practitioner’s Primer on the <i>O’Hagan</i> Decision” (Aug. 6, 1997). . . . .	F-1
<b>APPENDIX G:</b>	Audit Policy Interpretive Guidance. . . . .	G-1
<b>APPENDIX H:</b>	Implementation of the EPA’s Self-Policing Policy for Disclosures Involving Potential Criminal Violations. . . . .	H-1
<b>APPENDIX I:</b>	2008 Memorandum and Revised Principles of Federal Prosecution of Business Organizations, Mark Filip, Deputy Attorney General, Department of Justice. . . . .	I-1
<b>APPENDIX J:</b>	Final Policy on Compliance Incentives for Small Business. . . . .	J-1
<b>APPENDIX K:</b>	SEC Enforcement Manual, §§ 4.1-4.3: Privileges and Protections, October, 2008. . . . .	K-1
<b>APPENDIX L:</b>	Environmental Protection Agency Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice. . . . .	L-1

## SENTENCING GUIDELINES

<b>APPENDIX M:</b>	Environmental Protection Agency Statement of Principles regarding the Effect of State Audit Immunity/ Privilege Laws on Enforcement Authority for Federal Programs . . . . .	M-1
<b>APPENDIX N:</b>	Rethinking Disclosure Policies and Practices in the Wake of the SEC's New Selective Disclosure Rules . . . . .	N-1
<b>APPENDIX O:</b>	FCPA Antibribery Case Suggests Effective Strategies for Addressing Discovery of Illegal Corporate Activity . . . . .	O-1
<b>APPENDIX P:</b>	Securities and Exchange Commission Enforcement Manual . . . . .	P-1
<b>APPENDIX Q:</b>	Good Practice Guidance on Internal Controls, Ethics, and Compliance . . . . .	Q-1
<b>APPENDIX R:</b>	Office of the Inspector General's Updated Provider Self-Disclosure Protocol . . . . .	R-1
<b>INDEX</b>	. . . . .	I-1