



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Expedited Settlement Agreement Pilot for the HFC Allocation Regulation Import Enforcement Program

FROM: Rosemarie A. Kelley, Director **ROSEMARIE** Digitally signed by
Office of Civil Enforcement **KELLEY** ROSEMARIE KELLEY
Date: 2023.06.30
09:56:26 -04'00'

TO: Air Enforcement Division
Office of Civil Enforcement

This memorandum approves an expedited settlement agreement (ESA) pilot for prehearing settlement of enforcement actions to address violations arising from importing bulk¹ regulated substances² (certain hydrofluorocarbons, or HFCs) without expending allowances in violation of the American Innovation and Manufacturing Act (AIM Act), 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84 (i.e., HFC Allocation Regulations) (HFC Import ESA Pilot).³ This approval is for implementation by the Air Enforcement Division (AED) with potential for Regional support.⁴ The HFC Import ESA Pilot will be effective for one year from the date of signature of this memorandum.

The AIM Act provides that Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413, applies to the AIM Act and any regulation promulgated thereunder “as though this section were expressly included in title VI of that Act.” 42 U.S.C. § 7675(k)(1)(C).

¹ The HFC Allocation regulations at 40 C.F.R. § 84.3 define “bulk” to mean: “[A] regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.”

² The HFC Allocation regulations at 40 C.F.R. § 84.3 define a “regulated substance” to mean: “[A] hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3).”

³ The HFC Allocation regulations at 40 C.F.R. § 84.5(b) provide that starting January 1, 2022, subject to a few exceptions that require a non-objection notice or transshipment confirmation from the EPA, “[n]o person may import bulk regulated substances, except [b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported....”

⁴ HFC enforcement work is currently designated as a “Nationally Managed Program.” See Memorandum from Acting Assistant Administrator Lawrence Starfield, re: “Designation of HFC Program Enforcement Work as a Nationally Managed Program,” (Mar. 7, 2022), available at: <https://www.epa.gov/system/files/documents/2023-04/memodesignationofhfcprogramenforcementwork.pdf>. During the pilot, the ESAs will be submitted for ratification to the Environmental Appeals Board by AED.

As detailed below, the HFC Import ESA Pilot is consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements (2014 ESA Guidance).⁵ The violations covered by this pilot are easily detected, can be easily and timely corrected, and are not likely to result in significant harm to human health or the environment.⁶ To expedite settlements and encourage a timely return to compliance, this pilot provides a penalty calculation approach that should reduce penalties for eligible cases, as explained in Section 5 of this memorandum. A recipient of an ESA offer may decline to accept it, in which case another enforcement action is utilized. EPA always reserves the right not to extend an ESA offer to any particular party, and ESAs are precluded in circumstances where criminal conduct is suspected.⁷ In summary, this HFC Import ESA Pilot requires:

- the environmental harm of the violation to be fully remediated by re-exporting the violative regulated substances;
- the economic benefit of the violation not to exceed \$5,000;
- the penalty not to exceed \$50,000, or \$100,000 with AED Director’s concurrence;
- the monetary value of the import not to exceed \$500,000, or \$1,000,000 with AED Director’s concurrence; and
- the violation to be by a first-time violator.

1. Purpose, Goals and Legal Authority

Per the 2014 ESA Guidance, the goals of an ESA program are threefold: (1) to create deterrence and increase compliance with regulations through expedited and effective settlements; (2) to ensure a quick return to compliance and the collection of a penalty for noncompliance; and (3) to allow prioritization of resources to cases with “the most significant impact on public health or the environment.”⁸ An expedited enforcement tool complements other enforcement work by allowing for a more efficient enforcement response to resolve violations that are easily detectable, correctable, and result in no significant harm to human health or the environment.⁹

The HFC Import ESA Pilot meets these goals by expediting resolution of claims concerning illegal imports of bulk regulated substances without allowances for cases that involve economic benefit below \$5,000, a civil penalty of \$50,000 or less (or \$100,000 with AED Director’s concurrence), and for which the monetary value of the import does not exceed \$500,000 (or \$1,000,000 with AED Director’s concurrence). Further, per the 2014 ESA Guidance, “an ESA program may be particularly useful when the universe of regulated entities is large compared to available enforcement resources,”¹⁰ which is true

⁵ See November 24, 2014 Memorandum from Assistant Administrator Cynthia Giles, “Revised Guidance on the Use of Expedited Settlement Agreements”, available at: https://www.epa.gov/sites/default/files/2014-12/documents/revisedesa_guidance.pdf (2014 ESA Guidance).

⁶ See 2014 ESA Guidance, Section B.3 (No Significant Impact), which states that “All ESAs must require that the violator be in compliance, or return to compliance, before the EPA will sign and finalize the agreement.” *Id.* at 8.

⁷ Case teams will refer such suspected violations to EPA’s Criminal Investigation Division.

⁸ *Id.* at Section I.B (Why ESAs Make Sense), p. 3.

⁹ See *Id.* at Section II.B.3 (No Significant Impact), p. 6.

¹⁰ *Id.* at Section I.B (Why ESAs Make Sense), p. 3.

of the entities regulated under the HFC Import ESA Pilot.¹¹

The ESAs that will be issued under the HFC Import ESA Pilot are a form of Consent Agreement (CA) accompanied by a Final Order (FO), in compliance with 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b).¹² An ESA under the HFC Import ESA Pilot is a nonnegotiable, standardized agreement that the Respondent may accept in the defined circumstances set forth in this memorandum.¹³ When a Respondent accepts an ESA offer in exchange for a reduced penalty and minimized transaction costs, the Respondent agrees to waive its opportunity for a hearing and certifies, under penalty of perjury, that the violations covered by the ESA have been corrected.¹⁴

2. Covered Violations

This Pilot may be used to resolve violations of 40 C.F.R. § 84.5(b) (HFC Import Violations).¹⁵ These provisions require entities importing bulk regulated substances starting on January 1, 2022, to expend allowances at the time of import in a quantity equal to the exchange-value equivalent of the regulated substances imported, subject to a few exceptions that require a non-objection notice or transshipment confirmation from the EPA. 40 C.F.R. § 84.5(b). These types of violations are often easily detected, discovered quickly, within days or weeks of arrival, and easily corrected, usually while the violative import is at the port of entry to the United States. This HFC Import ESA Pilot requires the environmental harm of the HFC Import Violations to be fully remediated by re-exporting the violative regulated substances to a country other than Canada or Mexico (unless the point of entry to the U.S. was through Canada or Mexico).

This ESA does not cover other violations of the CAA (e.g., illegally imported ozone-depleting substances). Instead, the HFC Import Violations should be folded into the enforcement response for the other violations. In unusual instances, such as if separate resolution of the HFC Import Violation would expedite final resolution, the team may recommend resolution of the identified HFC Import Violations with an ESA.

¹¹ There are approximately 100 importers who received consumption (import) allowances for calendar years 2022 and 2023, the time period covered by the HFC Allocation Regulation. However, there are approximately 10,000 Heating Ventilation Air Conditioning and Refrigeration distributors and hundreds of thousands of contractors, any of whom could try to import regulated HFCs, with or without acquiring and expending allowances.

¹² Section 113(d) of the CAA specifically sets out the Administrator's authority to assess administrative penalties through the issuance of administrative penalty orders for CAA violations. The EPA may pursue resolution of a penalty claim either before or concurrent with a formal administrative proceeding under 40 C.F.R. Part 22, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP). Pursuant to the CROP, once the parties reach an agreement, the agreement is embodied in two documents: (1) a CA signed by the parties, i.e., an EPA Division Director, Regional Administrator, or other delegated official, and the Respondent; and (2) a FO, through which the CA is ratified. ESAs are subject to the same delegations as other CAFOs.

¹³ See 2014 ESA Guidance, p. 3.

¹⁴ *Id.* at 3.

¹⁵ Violations of 40 C.F.R. § 84.5(b) include violations of 40 C.F.R. § 84.5(c) (Application-specific Uses) and (d) (Calendar-year Allowances). This pilot does not include violations of 40 C.F.R. § 84.5(a) (Production), (e) (International Transfers), (f) (Sale and Distribution), (g) (False Information), (h) (Disposable Cylinders), and (i) (Labeling).

3. Return to Compliance Timeliness

The Respondent must sign and submit the ESA, certifying completion of one of the corrective actions set forth in the *AIM Act Offsite Compliance Monitoring Activity Or Inspection Facts, Alleged Violations, Penalty, And Corrective Action Form* (ESA Attachment 1) within 20 calendar days of issuance of the ESA offer cover letter. If a Respondent does not return the signed ESA within 20 days, it is automatically withdrawn without prejudice, unless Respondent timely requests an extension prior to the deadline.

The cover letter accompanying the ESA explains that if the Respondent has any questions or would like to request an extension, they may contact the EPA contact identified in the cover letter within 20 calendar days of issuance of the cover letter. The EPA will consider whether to grant an extension on a case-by-case basis, but any extension (i) must not exceed an additional 30 calendar days (total of 50 calendar days), (ii) must require Respondent to hold the goods in a warehouse and perform a listed corrective action by the extended deadline, each at the Respondent's expense, (iii) must require Respondent to pay the penalty as specified, and (iv) must be memorialized by EPA personnel in writing to the Respondent.

4. Repeat Violators

Under the HFC Import ESA Pilot, ESAs will not be offered to repeat violators.¹⁶ Violators with noncompliant goods already in shipment to the United States before the Respondent received notice of the violation(s) addressed in the first ESA will not be considered repeat violators if the noncompliant goods cannot reasonably be redirected away from a U.S. port.¹⁷ In such instances, the additional shipment(s) can be addressed through an ESA.

5. Penalties

To expedite settlements and encourage a timely return to compliance, this HFC Import ESA Pilot provides an alternative to and offers reduced penalties from the penalty policy otherwise applicable to HFC Import Violations.¹⁸ The penalty reductions in this HFC Import ESA Pilot are consistent with the

¹⁶ For the purposes of this pilot, a repeat violator is defined as a Respondent who, in the past five years (based on the date of the violation being considered for the ESA), has had the same or a closely-related violation to the subject of the enforcement action. A "closely-related" violation means any HFC Import Violation. In evaluating potential repeat violators, case teams must include those violations of corporate predecessors in interest, and cases where a principle involved in a different business or entity had the same or a closely-related violation. Past violations that may trigger the limitation on using an ESA may be established through a resolved prior EPA enforcement action, for example, through a previously ratified ESA or an administrative or judicial enforcement action.

¹⁷ This approach is consistent with the 2014 ESA Guidance, Section II.C (Treatment of Repeat Violators), p. 7.

¹⁸ See Interim Penalty Policy Applicable To Certain Illegal Imports Of Bulk Regulated Substances Under 40 C.F.R. Part 84: Phasedown of Hydrofluorocarbons, Appendix XII to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (Mar. 24, 2023), available at: <https://www.epa.gov/system/files/documents/2023-04/interimhfcpenaltypolicyforbulkimports.pdf>. The body of the 1991 Clean Air Act Stationary Source Civil Penalty Policy shall be referred to hereafter as the "1991 Penalty Policy."

factors laid out in Section 113(e) of the CAA¹⁹ and long-standing penalty policies,²⁰ establish deterrence, provide a transparent and expeditious method of calculating a penalty, and incentivize a rapid return to compliance.

This Pilot may not be used to resolve a case where the economic benefit of the violations exceeds \$5,000. Because the HFC Import ESA Pilot requires return to compliance within a short timeframe (within 20 days or up to 50 days with an extension) and places limits on the monetary value of the violative imports that qualify for an ESA under the pilot (\$500,000 or \$1,000,000 with AED Director’s concurrence), many violations will have economic benefit amounts below \$5,000. Consistent with the 1991 Penalty Policy, case teams have discretion not to seek economic benefit when it is less than \$5,000.²¹ This HFC Import ESA Pilot policy provides factors for quickly determining whether economic benefit is below the \$5,000 threshold or not. Case teams can conclude the economic benefit falls under the \$5,000 threshold if the period of noncompliance and the number of allowances are below the amounts in the Table below.²²

Table 1

Determining Insignificant Economic Benefit Threshold	
<u>Days of Noncompliance</u>	<u>Number of Allowances (MTEVe)²³</u>
30 days or under ²⁴	241,306
35 days or under	166,320
40 days or under	119,727
45 days or under	93,527
50 days or under	76,720
55 days or under	65,020
60 days or under	56,407

This HFC Import ESA Pilot bases the calculation of the civil penalty on a percentage (10%, 20%, or 30%) of the monetary value of the violative import. The percentage multiplier is related to the global

¹⁹ 42 U.S.C § 7413(e)(1).

²⁰ See 2014 ESA Guidance; The EPA Policy on Civil Penalties (EPA General Enforcement Policy #GM-21, February 16, 1984); and 1991 Penalty Policy.

²¹ See 1991 Penalty Policy, p. 7. In exercising the discretion to not pursue economic benefit, the litigation team should consider the impact on the violator and size of the gravity component as outlined at p. 7 of the 1991 Penalty Policy.

²² The days of noncompliance and number of allowances in this table were calculated using the EPA’s BEN model. Each calculation resulted in economic benefit of \$4,750 which is 5% below the \$5,000 insignificance threshold. This 5% contingency ensures the insignificance threshold will not be reached. A \$15 cost per allowance was inputted in the BEN model as a one-time, non-depreciable expenditure. The \$15 cost per allowance is a conservative cost estimate based on European HFC phasedown information that has had a longer HFC phasedown marketplace compared to the HFC marketplace in the United States. Each calculation was inputted in the BEN model as a delayed cost because the violator will either purchase allowances or will re-export their HFC goods. We chose to use the cost of allowances for the insignificance threshold because we believe these costs will be higher than the costs associated with re-export.

²³ The AIM Act directs EPA by October 1 of each calendar year to determine the quantity of production and consumption allowances for the following calendar year. These are measured in MTEVe or metric tons of exchange value equivalent.

²⁴ AED expects to sign the cover letter transmitting an ESA offer under the HFC Import ESA Pilot within 10 calendar days of import. Respondent will have 20 calendar days from the Director of AED’s signature of the cover letter to sign and submit the ESA, for a total of up to 30 calendar days of noncompliance (with opportunity for extension for up to 30 calendar days, or 60 calendar days of total noncompliance).

warming potential (GWP) or exchange value (Exchange Value)²⁵ of the regulated substances at issue. Exchange Values are used to compare the abilities of different greenhouse gases to trap heat in the atmosphere, such that higher Exchange Values have a greater impact on global warming. To account for this variable impact on the environment, a relatively low Exchange Value HFC import has a lower percentage multiplier (10% of the monetary value of the import), and a high Exchange Value HFC import has a higher percentage multiplier (30% of the monetary value of the import).²⁶ Basing the penalty on the monetary value of the violative import is relevant to the economic impact of the penalty on the importer, with higher value goods having a greater impact on the business.²⁷

Regulated substances can be imported as a single containerized chemical, as a blend of multiple regulated substances, or as a blend of regulated substances and non-regulated substances. To determine the Exchange Value of a blend, the EPA calculates the contribution of each regulated substance to the total Exchange Value of the blend and calculates a case-specific Exchange Value multiplier. The contribution of each regulated substance to the total Exchange Value of the blend is calculated by multiplying the percentage of the blend made up of each regulated substance by its Exchange Value and summing the resulting blend constituent products to calculate the blend Exchange Value. For example, if the percentages of the blend and the Exchange Values (in parentheses) of the constituents are: 55 percent HFC-32 (675), 16 percent HFC-125 (3,500), and 29 percent HFC-134a (1,430), the Exchange Value of this example would be calculated as $(0.55 \times 675) + (0.16 \times 3,500) + (0.29 \times 1,430) = 1345.95$. Where the exact amount or percentage of each regulated substance in a blend is unknown, the case team shall use the highest Exchange Value associated with a regulated substance in the blend as a multiplier to calculate the penalty.

Finally, the penalty is non-negotiable, and inability to pay arguments will not be considered. If a Respondent claims an inability to pay or requests to pay in installments, the EPA will pursue traditional enforcement.

Thus, case teams are directed to calculate HFC Import ESA Pilot penalties as follows:

1. Determine the monetary value of the illegally imported HFCs (HFC Value).²⁸

²⁵ The term Exchange Value is used in the AIM Act and HFC Allocation Regulations. The term is defined at 40 C.F.R. § 84.3. The Exchange Values for HFCs listed as regulated substances under the AIM Act are found at 40 C.F.R. Part 84, Appendix A.

²⁶ Appendix VIII of the 1991 Penalty Policy, the “Penalty Policy for Production or Importation in Violation of 40 C.F.R. Part 82 of Substances that Deplete the Stratospheric Ozone,” similarly requires consideration of the ozone-depleting effect of the violator’s actions in assessing gravity, available at: <https://www.epa.gov/sites/default/files/documents/penpol.pdf>. By analogy, it is appropriate to consider the GWP or Exchange Value of the HFCs regulated under the HFC Allocation Regulations in assessing gravity.

²⁷ This ESA Pilot does not require a case-by-case analysis of the size of business or size of violator, a gravity factor included in some penalty policies. Analyzing the size of business or size of violator is a time-intensive effort that requires an evaluation of complicated financial documents that is not feasible within the tight timeframe for compliance permitted under the HFC Import ESA Pilot. However, larger businesses will tend to be excluded from qualification for an ESA by the penalty cap on violations resolved through an ESA (\$50,000, or \$100,000 with AED Director’s concurrence), as larger businesses tend to have larger import shipments.

²⁸ The first step is to determine an appropriate value of the goods. This is generally listed as the declared value in importation documents; however, case teams should exercise due diligence to ensure declared values are appropriate to use. In exercising due diligence, case teams for example may consult CBP or publicly available advertised market value of goods for indicia that the value as declared by the importer is appropriate.

2. Multiply the HFC Value by the applicable Exchange Value percentage multiplier, as follows:

Table 2

Exchange Value	Percentage Multiplier
<1,400	10%
≥1,400≤5,000	20%
>5,000≤14,800	30%

3. Confirm the penalty does not exceed \$50,000, or \$100,000 with AED Director's concurrence, and the monetary value of the import does not exceed \$500,000, or \$1,000,000 with AED Director's concurrence.

For example, if a Respondent has imported HFC-125 with a declared value of \$50,000, then the HFC Value is \$50,000 and the Exchange Value is 3,500,²⁹ the calculation reads: \$50,000 * 0.20 = \$10,000.

Case teams must document the penalty calculation in Table 3 of the ESA Attachment 1 (not just in the case file), providing notice to Respondent of how the penalty was calculated.

The penalty approach described above is consistent with applicable policy and the statute, expected to simplify the penalty calculation for matters resolved under this Pilot, eliminate the need for a more time-consuming analysis, and expedite settlements and compliance while maintaining deterrent effect, consistent with the 2014 ESA Guidance.

6. Outreach

Since the AIM Act does not give EPA the authority to delegate enforcement, no outreach to states is planned.

7. Unique Statutory Requirements

There are no unique statutory requirements associated with the HFC Import ESA Pilot. The date of violation and the penalty amounts (as adjusted for inflation) resulting from the approach described herein do not exceed the statutory thresholds for administrative action, so no waiver from DOJ is necessary.³⁰

²⁹ The Exchange Value for HFC-125 is 3500. The Exchange Values for HFCs listed as regulated substances under the AIM Act are found at 40 C.F.R. Part 84, Appendix A.

³⁰ 42 U.S.C. § 7413(d)(1).

8. Model ESA Documents

The model documents to be used in the HFC Import ESA Pilot are attached to this Memorandum and include:

- A. Cover Letter to Respondents with enclosures:
 - 1. HFC Import ESA
 - 2. AIM Act Offsite Compliance Monitoring Activity Or Inspection Facts, Alleged Violations, Penalty, And Corrective Action Form (collectively “ESA Attachment 1”);
 - 3. Final Order

ATTACHMENT
Model Documents for HFC Import ESA

- A. Cover Letter to Respondents with enclosures:
 - 1. Template HFC Import ESA
 - 2. AIM Act Offsite Compliance Monitoring Activity Or Inspection Facts, Alleged Violations, Penalty, And Corrective Action Form (ESA Attachment 1”)); and
 - 3. Template Final Order



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA Electronic Mail
[Respondent Name]
[Address]

Re: Docket No. [AIM-HQ-20XX-00XX]; [Entry or Shipment No. XXXX]

Dear [Respondent]:

The U.S. Environmental Protection Agency (EPA) has determined that the above-referenced entry/shipment is an importation of hydrofluorocarbons (HFCs) in violation of the American Innovation and Manufacturing (AIM) Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84. 40 C.F.R. Part 84, Subpart A, referred to as the “HFC Allocation regulations,” includes requirements for importers of HFCs. Starting January 1, 2022, entities importing bulk HFCs must expend allowances equal to the HFCs imported, subject to a few exceptions that require a non-objection notice or transshipment confirmation from the EPA. 40 C.F.R. § 84.5(b).

On [date], an authorized representative of the EPA conducted [*an offsite compliance monitoring activity or inspection*] of the shipment identified in Table 1 of ESA Attachment 1 (the AIM Act Offsite Compliance Monitoring Activity or Inspection Facts, Alleged Violations, Penalty, and Corrective Action Form) of the enclosed Expedited Settlement Agreement/Consent Agreement (“Agreement”) and proposed Final Order. The basis of the EPA’s determination is set forth in Tables 1 and 2 of ESA Attachment 1 of the Agreement. The enclosed Agreement is an offer to resolve this violation with an Expedited Settlement Agreement.

Based upon the information currently available to the EPA, you may resolve the violation(s) alleged in the enclosure using the Expedited Settlement Agreement process that provides for lower penalties than the EPA may seek through the traditional enforcement and settlement process. See <https://www.epa.gov/enforcement/enforcement-american-innovation-and-manufacturing-act-2020>. The civil penalty assessed for this violation is stated in Table 3 of ESA Attachment 1 of the enclosed Agreement. The EPA is authorized to enter into the enclosed Agreement under the authority vested in the EPA Administrator by Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), applies to the AIM Act and any regulation promulgated thereunder. See 42 U.S.C. § 7675(k)(1)(C). After the Agreement becomes effective, and provided you fully comply with its terms, the EPA will not seek further civil penalties against your company for the violation(s) covered by the Agreement.

However, the EPA does not waive its ability to take an enforcement action for any other past, present, or future violations of the AIM Act, or of any other federal statute or regulation or to impose administrative consequences pursuant to 40 C.F.R. § 84.35.

To take advantage of the expedited process, **you must comply with each of the following conditions within 20 calendar days** of the date of signature of this letter:

- Complete and certify as completed, the corrective action in accordance with Table 3 of ESA Attachment 1, and
- Complete, sign, and return to the EPA the Agreement.

If you have any questions or would like to request an extension, you should contact [Inspector Name] of the Air Enforcement Division at [(XXX) XXX-XXXX] or [email] within 20 calendar days of the date of signature of this letter. The EPA will consider whether to grant an extension on a case-by-case basis. The EPA will not accept or approve any Agreement returned more than 20 calendar days after the date of signature of this letter unless an extension in writing has been granted by the EPA.

If you choose to sign and return the Agreement, the EPA will submit the Agreement for ratification by the Environmental Appeals Board. Upon ratification of the Agreement, the EPA will send you a copy of the ratified Agreement and Final Order. **You must submit proof of payment of the civil penalty to the EPA within 31 calendar days of the Effective Date of the Agreement.** Instructions for payment are included in the Agreement.

Please note that if you do not sign and return the enclosed Agreement (or request an extension) within 20 calendar days of the date of signature of this letter (or up to 50 calendar days if an extension was requested and granted), the settlement offer is withdrawn with no additional notice to you, and without prejudice to the EPA's ability to file an enforcement action for the violation(s) identified in the Agreement and ESA Attachment 1, and to seek penalties for each violation.

Sincerely,

Mary E. Greene, Director
Air Enforcement Division
United States Environmental Protection Agency

Enclosure

ENCLOSURE

**AMERICAN INNOVATION AND MANUFACTURING ACT EXPEDITED
SETTLEMENT AGREEMENT/CONSENT AGREEMENT AND FINAL ORDER**

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
)	Docket No. CAA-HQ-[20XX]-
[Entity])	[XXXX]
)	
)	
)	

EXPEDITED SETTLEMENT AGREEMENT

A. JURISDICTION

1. This is an expedited administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), and §§ 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency (“EPA”). On the EPA’s behalf, Mary E. Greene, Director, Air Enforcement Division, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is [Entity], identified further in Table 1 of ESA Attachment 1.
4. Complainant and Respondent (together, the “Parties”), having agreed that settlement of this action is in the public interest, consent to the issuance of the attached final order (“Final Order” or “Order”) ratifying this expedited consent settlement agreement (“Agreement”) before taking testimony and without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement and Final Order.
5. The Environmental Appeals Board is authorized to ratify this Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).
6. The Ratification the Final Order, incorporating this Agreement, simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

B. GOVERNING LAW

7. This proceeding arises under the American Innovation and Manufacturing (“AIM”) Act of 2020, 42 U.S.C. § 7675, and the regulations promulgated thereunder.
8. The EPA regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
9. 40 C.F.R. § 84.5(b)(1) states that “no person may import bulk regulated substances, except by expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported.”
10. 40 C.F.R. § 84.5(b)(6) states that “every kilogram of bulk regulated substances imported ... constitutes a separate violation of this subpart.”

C. ALLEGED VIOLATION OF LAW

11. The EPA alleges Respondent violated 40 C.F.R. § 84.5(b) by importing the bulk regulated substances identified in Table 1 of ESA Attachment 1 without expending consumption or application-specific allowances in a quantity equal to the exchange value equivalent of the regulated substances imported.

D. TERMS OF AGREEMENT

12. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - b. admits the facts stipulated in Table 1 of ESA Attachment 1;
 - c. consents to the assessment of a civil penalty as stated in Table 3 of ESA Attachment 1 and below;
 - d. waives any right to contest the alleged violations of law set forth in Section C of this Agreement; and
 - e. waives its right to appeal the Order accompanying this Agreement.
13. For the purpose of this proceeding, Respondent:
 - a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions related to the Respondent;
 - c. certifies that it completed the corrective action as set forth in Table 4 of ESA Attachment 1;

- d. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- e. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Columbia; and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court for the District of Columbia to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for noncompliance with the Agreement or Order, and agrees that federal law shall govern in any such civil action.

14. Penalty Payment. The civil penalty agreed upon by the Parties for settlement purposes is stated in Table 3 of ESA Attachment 1. Respondent agrees to:

- a. pay the penalty within 30 calendar days of the Effective Date of this Agreement;
- b. pay the penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>;
- c. identify each and every payment with the Docket No. of this Agreement and Final Order; and
- d. within 24 hours of payment of the penalty, send proof of payment via electronic mail to the Inspector at the Inspector's email address identified in Table 1 of ESA Attachment 1. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the docket number.

15. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in the United States District Court for the District of Columbia to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2), the United States' enforcement expenses, and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

- d. (1) suspend or revoke Respondent's licenses or other privileges, or (2) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
16. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
 17. By signing this Agreement, Respondent acknowledges that this Agreement and Order, including identifying information such as name, federal tax ID number, mailing and e-mail address, will be available to the public when the Agreement and Certificate of Service are filed and uploaded to a searchable database and agrees that this Agreement does not contain any confidential business information or other personally identifiable information.
 18. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
 19. By signing this Agreement, Respondent agrees to acceptance of the Complainant's: (a) digital or an original signature on this Agreement; and (b) service of the fully executed Agreement on the Respondent by mail or electronically by e-mail. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.
 20. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

E. EFFECT OF AGREEMENT AND ATTACHED FINAL ORDER

21. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations identified in Section C of this Agreement.
22. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
23. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings among the Parties with respect to the subject matter hereof.

24. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended after it is ratified except upon the written agreement of both parties, and approval of the Environmental Appeals Board.
25. Any violation of this Order may result in a civil judicial action for an injunction, or civil penalties of up to \$109,024 per day per violation (with each kilogram a separate violation), or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
26. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
27. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
28. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

F. EFFECTIVE DATE

29. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order ratifying the Agreement. The effective date of the Agreement shall be the date of issuance of the Final Order. The EPA will transmit a copy of the Final Order and ratified Agreement to the Respondent.

ESA ATTACHMENT 1

**AMERICAN INNOVATION AND MANUFACTURING (“AIM”) ACT
OFFSITE COMPLIANCE MONITORING ACTIVITY OR INSPECTION FACTS,
ALLEGED VIOLATIONS, PENALTY, AND CORRECTIVE ACTION FORM**

Table 1 – Offsite Compliance Monitoring Activity or Inspection Stipulated Facts	
Offsite Compliance Monitoring Activity or Inspection Date(s):	Docket Number:
	CAA-HQ-[20XX]-[XXXX]
Offsite Compliance Monitoring Activity or Inspection Location:	Entry/Shipment Number(s):
Person/Importer¹ Name (“Respondent”) and Importer Number:	Inspector(s) Name(s) and Email Address:
Respondent Address:	Date of Detention or Hold:
Value of Goods:	Arrival Date:
Subject HFCs² and Mass (in kg):	MTEVe³:
Did the importer have and expend allowances equal to the imported HFCs?	Container and Quantity:
No	
Did the importer receive any non-objection notices from the EPA?	The EPA Delegated Official:
No	Mary E. Greene

¹ “Person” and “Importer” are defined in 40 C.F.R. § 84.3.

² “Subject HFCs” are Bulk Regulated Substances, subject to 40 C.F.R. § 84.5. “Bulk” and “Regulated Substance” are defined in 40 C.F.R. § 84.3.

³ The EPA calculates metric tons of EVe (“MTEVe”) by multiplying X kg (the mass of the regulated substance) by Y (the exchange value (EV) of the bulk regulated substance, as reflected in Appendix A of 40 C.F.R. Part 84), and dividing the product by 1,000 to obtain metric tons. The formula for calculating the EV of an HFC blend is set forth in footnote 4.

Table 2 – Description of Alleged Violation

Based on the facts in Table 1, the EPA alleges that the Subject HFCs are bulk regulated substances that were imported without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, a violation of the HFC Allocation regulations at 40 C.F.R. § 84.5(b).

Table 3 – Civil Penalty ⁴			
<p>\$[XXX], where</p> <p>[Insert Calculation]</p> <p>Monetary Value of Goods * Percentage Multiplier = Penalty, where</p>			
EV ⁵	Percentage Multiplier	HFC	EV
< 1,400	10%	HFC-152	53
≥ 1,400 ≤ 5,000	20%	HFC-41	92
> 5,000	30%	HFC-152a	124
≤14,800		HFC-143	353
		HFC-32	675
		HFC-245ca	693
		HFC-365mfc	794
		HFC-245fa	1,030
		HFC-134a	1,100
		HFC-236cb	1,340
		HFC-236ea	1,370
		HFC-134a	1,430
		HFC-43-10mee	1,640
		HFC-227ea	3,220
		HFC-125	3,500
		HFC-143a	4,470
		HFC-236fa	9,810
		HFC-23	14,800

⁴ To determine the EV of a HFC blend, calculate the contribution of each HFC to the total EV of the blend and calculate a case-specific EV multiplier by: multiplying the percentage of the blend made up of each HFC by its EV and summing the resulting blend constituent products to calculate the blend EV. For example, if the percentages of the blend and the EVs (in parentheses) of the constituents are: 55 percent HFC-32 (675), 16 percent HFC-125 (3,500), and 29 percent HFC-134a (1,430), the EV would be $(0.55 \times 675) + (0.16 \times 3,500) + (0.29 \times 1,430) = 1345.95$ EV. Where the exact amount or percentage of each HFC in a blend is unknown, the case team shall use the highest EV associated with a HFC in the blend as a multiplier to calculate the penalty.

⁵ EVs are found in Appendix A of 40 C.F.R. Part 84.

Table 4 – Corrective Action

Respondent certifies that it has:

- exported the Subject HFCs to [redacted] [name and address (including country) of the recipient of the exports], a country other than Canada or Mexico (unless the point of entry to the U.S. for the Subject HFCs was through Canada or Mexico) **and**
- paid \$[redacted] to perform the above action to address the Subject HFCs, and enclosed a record documenting such payment.

Respondent must check the boxes, fill in all relevant blanks, and return any enclosures and this Attachment 1 with the signed Agreement.

Model Documents for HFC Import ESA Pilot
A.2: Template Expedited Settlement Agreement; ESA Attachment 1

The foregoing Agreement In the Matter of [Entity], Docket No. CAA-HQ-[20XX]-[XXXX] is
Hereby Stipulated, Agreed, and Approved.

FOR COMPLAINANT:

Signature

Date

Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

FOR RESPONDENT:

Signature

Date

Printed Name: _____

Title: _____

Address: _____

Federal Tax Identification Number: _____

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____))
In re:))
)) Docket No. CAA-HQ-[20XX]-
[Entity])) [XXXX]
))
))
_____))

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of the EPA’s Consolidated Rules of Practice, the attached Expedited Settlement Agreement/Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Expedited Settlement Agreement/Consent Agreement, effective immediately.

So ordered.⁶

ENVIRONMENTAL APPEALS BOARD

Dated: _____

[Name]
Environmental Appeals Judge

⁶ The three-member panel ratifying this matter is composed of Environmental Appeals Judges [Names].