



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

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 24, 2023

**MEMORANDUM**

**SUBJECT:** 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 Penalty Policy

**FROM:** Lawrence E. Starfield  
Acting Assistant Administrator

**LAWRENCE  
STARFIELD** Digitally signed by  
LAWRENCE STARFIELD  
Date: 2023.03.24  
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**TO:** OECA Office Directors and Deputies  
Regional ECAD Directors and Deputies  
Regional Counsels and Deputies

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Attached is the 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 Penalty Policy (the Interim Policy). This Interim Policy is intended to be used by the Environmental Protection Agency in calculating the civil penalty that EPA will seek in settlement of administrative enforcement actions arising from a person importing bulk regulated substances (certain hydrofluorocarbons) without expending allowances in violation of the American Innovation and Manufacturing Act and associated regulations, 40 C.F.R. Part 84, Subpart A. This Interim Policy will be available to the public on EPA's website.

This Interim Policy is effective immediately and will remain in effect until a revised policy is issued. The Interim Policy applies to all administrative actions initiated after this date, and all pending actions in which the government has not yet transmitted a proposed settlement penalty amount. It may be applied in pending cases in which penalty negotiations have commenced, at the discretion of the litigation team.

If you have any questions about the Interim Policy, please contact Sparsh Khandeshi, [khandeshi.sparsh@epa.gov](mailto:khandeshi.sparsh@epa.gov), in the Air Enforcement Division of the Office of Civil Enforcement.

cc: Tom Mariani, Chief, DOJ-EES  
Environmental Appeals Board  
Susan L. Biro, Chief Administrative Law Judge, EPA  
Regional Judicial Officers

Attachment

**APPENDIX XII TO OCTOBER 25, 1991 CLEAN AIR ACT STATIONARY SOURCE  
PENALTY POLICY**

**INTERIM PENALTY POLICY APPLICABLE TO CERTAIN ILLEGAL IMPORTS OF  
BULK REGULATED SUBSTANCES UNDER 40 CFR PART 84: PHASEDOWN OF  
HYDROFLUOROCARBONS**

**I. Introduction**

This appendix establishes an interim framework for calculating civil penalties that the United States Environmental Protection Agency (EPA) will seek in settlement of enforcement actions arising from a person importing bulk<sup>1</sup> regulated substances<sup>2</sup> (certain hydrofluorocarbons, or HFCs) without expending allowances in violation of the American Innovation and Manufacturing Act (AIM Act) and associated regulations, 40 C.F.R. Part 84, Subpart A (HFC Allocation Regulations).<sup>3</sup> The AIM Act provides that section 113 of the Clean Air Act (CAA) applies to rules and regulations promulgated under the AIM Act as though the AIM Act were included in Title VI of the CAA. *See* 42 U.S.C. § 7675(k)(1)(C). As noted in the preamble to the HFC Allocation Regulations, “EPA’s enforcement authorities, including penalties, and associated regulations (e.g., 40 C.F.R. Part 22) apply to [the HFC Allocation Regulations] and any other AIM Act regulations.” 86 Fed. Reg. 55,168 (October 5, 2021). Certain components of the body of the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1991 Policy), pages 1 – 31, thus apply to violations of AIM Act regulations.<sup>4</sup>

This interim penalty policy (Interim Policy) is effective immediately and will remain in effect until a revised policy is issued. It is important to have an interim policy in place to deter illegal imports and achieve the goals Congress intended in promulgating the AIM Act: (1) to phase down production and consumption of bulk HFCs through an allowance allocation and trading program, (2) to restrict the use of HFCs in a sector or subsector in which the HFC is used, and (3) to minimize releases of HFCs from equipment. The marketplace for the import of bulk HFCs is dynamic and quickly evolving, as a result of the HFC Allocation Regulations and similar laws

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<sup>1</sup> 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.”

<sup>2</sup> 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).”

<sup>3</sup> 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. . . .”

<sup>4</sup> Settlement of violations of the recordkeeping and reporting provisions of the HFC Allocation Regulations will be treated like other recordkeeping and reporting violations addressed in the body of the 1991 Policy. *See* 1991 Policy, p. 11. The EPA will determine the appropriate penalties for violations of the HFC Allocation Regulations that are not covered by this penalty policy by applying the statutory factors set forth in section 113(e) of the CAA on a case-by-case basis.

in other countries, which have increased the costs to legally import bulk HFCs, creating an incentive for people to import them illegally. The EPA needs a penalty policy that can be efficiently implemented immediately to provide consistent application of the Agency's civil penalty authority to deter violations and establish a level playing field for industry. At the same time, the EPA anticipates there may be shifts in the market for bulk HFCs in the early years of implementation of the HFC Allocation Regulations. In particular, the mix of HFCs being produced and imported will likely transition to lower GWP HFCs and non-HFC alternatives. Moreover, the incentive to import illegally will likely increase over time as the phasedown occurs. Thus, the EPA will revisit this Interim Policy in the future to ensure that the penalties it generates are appropriate to deter violations given the evolving nature of the marketplace.

## **II. Calculating a Penalty**

The HFC Allocation Regulations state that every kilogram (kg) of bulk regulated substances imported in excess of allowances expended at the time of import constitutes a separate violation of the rule. 40 C.F.R. § 84.5(b)(6). In accordance with the general practice EPA follows when calculating civil penalties under the CAA, as discussed in the 1991 Policy, the preliminary deterrence amount of penalties assessed for importing HFCs without expending allowances will be the sum of an economic benefit component and a gravity component.

### **A. Economic Benefit**

The Policy on Civil Penalties and the 1991 Policy establish deterrence as an important goal of penalty assessment, and provide that any penalty should, at a minimum, remove any significant economic benefit resulting from noncompliance.<sup>5</sup> That portion of the penalty which recovers the economic benefit of noncompliance is referred to as the “economic benefit component.”

The term “economic benefit” is understood to mean the extent to which a violator is financially better off because of its noncompliance.<sup>6</sup> The EPA has recognized that economic benefit may accrue in three basic ways. A violator may: (1) delay costs necessary to achieve compliance; (2) avoid costs necessary to achieve compliance; or (3) obtain benefits other than those derived from delayed or avoided compliance costs. For delayed and avoided cost scenarios, the EPA should calculate economic benefit using the EPA's financial model “BEN”.<sup>7</sup> The third form of economic benefit is a catch-all category that may be referred to as “illegal competitive advantage,” “competitive advantage,” “illegal profits,” “wrongful profits,” or, collectively, “beyond BEN benefits” (or “BBBs”). Profit from the sale of illegal products is an example of a BBB.

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<sup>5</sup> As the 1991 Policy is consistent with the EPA Policy on Civil Penalties (EPA General Enforcement Policy #GM-21, February 16, 1984) and A Framework for Statute-Specific Approaches to Penalty Assessments (EPA General Enforcement Policy #GM-22, February 16, 1984), collectively referred to as the Policy on Civil Penalties, so is this Appendix.

<sup>6</sup> Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, 70 Fed. Reg. 50,326, 50,327 (Aug. 26, 2005).

<sup>7</sup> BEN is available at: <https://www.epa.gov/enforcement/penalty-and-financial-models>.

All three forms of economic benefit may be present in cases arising from importing HFCs without expending allowances, and the EPA will calculate the economic benefit of these violations on a case-by-case basis.

If the violator performs injunctive relief quickly, it is possible the economic benefit will be low and will not have a substantial impact on the violator's competitive position. In such instances, where the economic benefit of noncompliance is \$5,000 or less, consistent with long-standing policy, the case team has discretion to pursue or not pursue the economic benefit.<sup>8</sup>

## **B. Gravity**

The Policy on Civil Penalties specifies that for a penalty to achieve deterrence it should, in addition to recovering any economic benefit of noncompliance, recover an additional amount to reflect the seriousness of the violation.<sup>9</sup> This additional amount is the “gravity component” of the penalty. The body of the 1991 Policy further explains that it is appropriate to assign a dollar figure to represent the gravity of the violation and link that dollar amount to objective factors to ensure that violations of approximately equal seriousness are treated the same way.<sup>10</sup> As generally described in the body of the 1991 Policy, the objective factors that are considered in determining the seriousness or gravity of a violation are: 1) the importance of the violated provision to the regulatory scheme; 2) the actual or possible harm to the environment from excess emissions (including the amount of the pollutant, the sensitivity of the environment, and the duration of the violation); and 3) the size of the violator.<sup>11</sup>

### **1. Importance to the Regulatory Scheme**

The importance to the regulatory scheme of the violated provision that is the subject of this Interim Policy cannot be overstated. In the AIM Act, Congress set a tight timeframe of 270 days for the EPA to promulgate a final regulation phasing down the production and consumption of certain HFCs in the United States through an allowance allocation and trading program. The Agency met this deadline with the promulgation of the final rule effective September 23, 2021. HFCs are potent greenhouse gases (GHGs) with global warming potentials (GWPs) or exchange values (Exchange Values) that can be hundreds to thousands of times greater than carbon dioxide.<sup>12</sup> The violations addressed in this Interim Policy — failure to expend appropriate allowances at the time of the import — threaten the ability of the United States to meet the phasedown schedule. Thus, to protect the integrity of the HFC Allocation Regulations, the EPA will assess a base dollar amount against all violators, with the base dollar amount related to the size of the import, as set forth in Table 1.

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<sup>8</sup> See 1991 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 Policy.

<sup>9</sup> See EPA General Enforcement Policy #GM-22, February 16, 1984, p. 13.

<sup>10</sup> See 1991 Policy, p. 8.

<sup>11</sup> See *Id.* at 9.

<sup>12</sup> GWPs or Exchange Values are used to compare the abilities of different greenhouse gases to trap heat in the atmosphere and contribute to global warming. The term Exchange Value is used in the AIM Act and HFC Allocation Regulations.

**Table 1**

<b>Kg</b>	<b>Base Dollar Amount</b>
≤ 100	\$500
101 ≤ 250	\$825
251 ≤ 500	\$1,500
501 ≤ 1000	\$3,000
1001 ≤ 5000	\$7,500
5001 ≤ 10,000	\$15,000
10,001 ≤ 20,000	\$25,000
20,001 ≤ 30,000	\$37,500
30,001 ≤ 40,000	\$50,000
40,001 ≤ 50,000	\$70,000
Over 50,000	\$90,000

## 2. Actual or Possible Harm

To account for actual or possible harm to the environment from excess emissions, this Interim Policy incorporates two factors into the gravity calculation. The HFC Allocation Regulations state that every kilogram of bulk regulated substances imported in excess of allowances expended at the time of import constitutes a separate violation. Thus, it is appropriate to increase the gravity component of the civil penalty relative to its mass. After testing different types of cases for appropriate penalties, in connection with the other components of this gravity calculation, the EPA determined that it is appropriate to assign \$1.00 in civil penalty per kg of HFCs imported in violation of 40 C.F.R. § 84.5(b).

Because the HFCs regulated by the HFC Allocation Regulations have varying impacts on global warming, reflected in their varying Exchange Values (the higher the Exchange Value, the greater the impact on global warming), it is also appropriate for the gravity component to assess higher penalties based on greater impact on global warming.<sup>13</sup> Thus, after testing different types of cases for appropriate penalties, the EPA developed the Exchange Value (EV) Multipliers (EV Multipliers) for each HFC by dividing the EV for each HFC by 1500, as set forth in Table 2.<sup>14</sup>

<sup>13</sup> Appendix VIII of the 1991 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. *See* p. 4, Appendix VIII.

<sup>14</sup> The purpose of the derived multiplier is to scale the penalty, using consistent and objective factors, based on the impact of the chemical on global warming.

**Table 2**

<b>HFC</b>	<b>Chemical</b>	<b>EV<sup>15</sup></b>	<b>EV Multiplier (EV/1500)</b>
HFC-152	CH <sub>2</sub> FCH <sub>2</sub> F	53	0.035
HFC-41	CH <sub>3</sub> F	92	0.061
HFC-152a	CH <sub>3</sub> CHF <sub>2</sub>	124	0.083
HFC-143	CH <sub>2</sub> FCHF <sub>2</sub>	353	0.235
HFC-32	CH <sub>2</sub> F <sub>2</sub>	675	0.450
HFC-245ca	CH <sub>2</sub> FCF <sub>2</sub> CHF <sub>2</sub>	693	0.462
HFC-365mfc	CF <sub>3</sub> CH <sub>2</sub> CF <sub>2</sub> CH <sub>3</sub>	794	0.529
HFC-245fa	CHF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	1,030	0.687
HFC-134	CHF <sub>2</sub> CHF <sub>2</sub>	1,100	0.733
HFC-236cb	CH <sub>2</sub> FCF <sub>2</sub> CF <sub>3</sub>	1,340	0.893
HFC-236ea	CHF <sub>2</sub> CHF <sub>2</sub> CF <sub>3</sub>	1,370	0.913
HFC-134a	CH <sub>2</sub> FCF <sub>3</sub>	1,430	0.953
HFC-43- 10mee	CF <sub>3</sub> CHFCH <sub>2</sub> CF <sub>2</sub> CF <sub>3</sub>	1,640	1.093
HFC-227ea	CF <sub>3</sub> CHF <sub>2</sub> CF <sub>3</sub>	3,220	2.147
HFC-125	CHF <sub>2</sub> CF <sub>3</sub>	3,500	2.333
HFC-143a	CH <sub>3</sub> CF <sub>3</sub>	4,470	2.980
HFC-236fa	CF <sub>3</sub> CH <sub>2</sub> CF <sub>3</sub>	9,810	6.540
HFC-23	CHF <sub>3</sub>	14,800	9.867

HFCs can be imported as a single containerized chemical, as a blend of multiple regulated HFCs, or as a blend of regulated HFCs and non-regulated substances. To determine the EV of these blends, the case team should calculate the contribution of each HFC to the total EV of the blend and calculate a case-specific EV Multiplier. For example, R-448A is made up of five components, three of which are HFCs regulated under the AIM Act, and two of which are nonregulated chemicals, Hydrofluoroolefins (HFOs). The percentage of the blend and the exchange value of the constituents are: 26 percent HFC-32 (675), 26 percent HFC-125 (3,500), 21 percent HFC-134a (1,430), 20 percent HFO-1234yf (0), and 7 percent HFO-1234ze (0). The contribution of each HFC to the total EV of the blend is calculated by multiplying the percentage of the blend made up of that HFC times its EV, and the sum of the contributions of all the blend constituents is the blend EV. Thus, the EV of R448A is  $(0.26 \times 675) + (0.26 \times 3,500) + (0.21 \times 1,430) + (0.20 \times 0) + (0.07 \times 0) = 1,385.8$ . Dividing 1,385.8 by 1500 equals a case-specific EV Multiplier of 0.924.

Thus, for HFCs imported in violation of 40 C.F.R. § 84.5(b), the actual or possible harm constituent of the gravity component is the product of the excess imported kilograms and \$1.00,

<sup>15</sup> As explained in the HFC Allocation Regulations, EPA has determined these are the same as the 100-year GWPs listed in the 2007 Intergovernmental Panel on Climate Change Fourth Assessment Report. 86 FR at 55121, n.5.

multiplied by the relevant EV multiplier. Where the exact amount or percentage of each HFC in a blend is unknown, the case team has discretion to use the highest EV associated with an HFC in the blend as a multiplier to calculate the gravity-based penalty (typically, the identity of at least one HFC in a blend is known).

### 3. Size of the Violator

CAA section 113(e) requires the EPA or a court, as appropriate, to consider the size of the violator and the economic impact of the penalty on the business in determining the amount of penalty to be assessed. Consistent with these factors, the “size of the violator” element of the gravity component should be calculated based on gross revenue.

The factors used in the body of the 1991 Policy — net worth (corporations) and net current assets (partnerships and sole proprietorships) — were developed for big businesses that owned stationary source industrial facilities. Violators of 40 C.F.R. § 84.5(b) may include large corporations; however, violators may also include entities whose net worth or net current assets are difficult to ascertain, such as various forms of partnerships, proprietorships, and individuals.

Thus, this Interim Policy directs case teams to use gross revenue, a benchmark that is reasonably attainable from different types of potential violators, in determining the size of the violator factor.<sup>16</sup> When ascertaining gross revenue, case teams may review all credible sources of information and may request multiple years of documentation. After testing different types of cases in connection with the other components of this gravity calculation, the EPA determined that it is appropriate to increase the gravity component to account for size of the violator by an amount equal to 0.75 percent (i.e., 0.0075) of gross revenue, rounded to the nearest dollar.

The Interim Policy maintains the flexibility for case teams to reduce the amount added to the gravity component for the size of violator to 50% of the total gravity component if the size of violator would otherwise exceed 50% of the total gravity component.<sup>17</sup>

### 4. Other Gravity Factors

Section 113(e)(1) of the CAA directs the EPA and the courts to consider factors that include “good faith efforts to comply” and “other factors as justice may require” when determining the amount of any penalty to be assessed. In order for the penalty to reflect the seriousness of the harm resulting from the violation and to provide violators with an incentive to perform injunctive relief to fully address or reduce the harm of their violation, EPA should assess an additional gravity component against violators who do not fully address the harm associated with their violations. This additional amount should be determined by the case team on a case-by-case basis

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<sup>16</sup> Use of gross revenue is consistent with the general approach taken in the recently updated “Clean Air Act Title II Vehicle & Engine Civil Penalty Policy January 2021” (V&E Policy, available at <https://www.epa.gov/sites/default/files/2021-01/documents/caatitleiivehicenginepenaltypolicy011821.pdf>). The size of the violator’s business is also one of Title II’s enumerated penalty factors. 42 U.S.C. § 7524(c)(2).

<sup>17</sup> *Id.* For example, assume the preliminary deterrence amount, before adding the size of violator figure, is \$30,000. If the size of violator figure is \$50,000, it may be reduced by case teams to \$30,000. Thus, the preliminary deterrence amount with the size of violator adjustment would be \$60,000, with \$30,000 coming from the preliminary deterrence amount, and \$30,000 from the size of violator figure.

using the statutory factors set forth in section 113(e)(1) of the CAA. It is important to underscore that performance of injunctive relief does not nullify the violation, nor does payment of the civil penalty. Even a violator who remedies, in whole or in part, the potential harm resulting from their actions, remains a violator. Every instance of noncompliance remains on a violator's record and, consistent with long-standing practice, as discussed next, any civil penalties assessed against repeat violators will be significantly higher than those assessed against first-time violators.

Evidence that a person has violated an environmental requirement before indicates that the person was not sufficiently deterred by a previous government response. Thus, the gravity component assessed to a repeat violator of 40 C.F.R. § 84.5(b) should be increased by at least 50% over what it would have been if the violation were committed by a first-time violator, with additional increases permitted at the discretion of the case team. This upward adjustment is consistent with the 1991 Policy and does not preclude the case team from assessing additional increases to the penalty based on history of noncompliance with other sections of the HFC Allocation Regulations, other AIM Act regulations, or other environmental statutes.<sup>18</sup>

Case teams may apply all other adjustment factors to the gravity component set forth in the body of the 1991 Policy at their discretion.<sup>19</sup> Generally, violations of illegal imports are discovered quickly, within days or weeks of import, when the goods are still at the port and still containerized and non-emitting, or during quarterly reporting required of importers. However, in assessing the impact of a specific violation, the case team may have evidence that leads it to increase the gravity component due to environmental damage (which may, by way of example, include impacts from a longer duration of violation).<sup>20</sup>

Any applicable civil monetary penalty inflation adjustment shall be applied to the subtotal of the gravity component.

### **C. Other Adjustments**

Case teams may apply any other factors or adjustments in accordance with the provisions in the body of the 1991 Policy and other applicable EPA policy.

### **D. Example**

Company A, a corporation with gross revenue of \$3,500,000, imports 15,000 kg of HFCs, comprised of 8,000 kg of HFC-125 and 7,000 kg of HFC-134a, without expending any allowances at the time of import, in violation of 40 C.F.R. § 84.5(b). Within 30 days of import, Company A re-exports all of the violative product. This is the company's second violation of 40 C.F.R. § 84.5(b).

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<sup>18</sup> See 1991 Policy, p. 7.

<sup>19</sup> See *Id.* at p. 15 – 19.

<sup>20</sup> See *Id.* at p. 19.



Economic Benefit Penalty Component:

The case team runs the BEN model, and, in part because the injunctive relief was performed temporally close to the time of violation, finds an economic benefit of less than \$5,000. Using its discretion, and with due consideration to factors described in this Interim Policy, the case team decides not to pursue the economic benefit.<sup>21</sup> This is one fact pattern. In other situations, the case team may decide to pursue the economic benefit despite the fact that the economic benefit is below the \$5,000 threshold.

Gravity Penalty Component:

**Base Penalty Dollar Amount + ((Violative kg of HFC 1 \* \$1.00) \* HFC 1 EV Multiplier) + ((Violative kg of HFC 2 \* \$1.00) \* HFC 2 EV Multiplier) + Size of the Violator = Gravity Component Prior to Application of Any Relevant Gravity Adjustment Factors**

The Total Mass of HFC's Imported In Violation of the AIM Act is: 15,000 kg.

The Mass of HFC-125 is: 8,000 kg.

The Mass of HFC-134a is: 7,000 kg.

The Base Penalty Dollar Amount for 15,000 kg is: \$25,000. See Table 1.

The EV Multiplier for HFC-125 is: 2.333. See Table 2.

The EV Multiplier for HFC-134a is: 0.953. See Table 2.

The Size of the Violator factor is: \$3,500,000 \* .0075 = \$26,250.

Gravity = \$25,000 + ((8,000 kg \* \$1.00) \* 2.333) + ((7,000 kg \* \$1.00) \* 0.953) + \$26,250 = \$76,585

Because Company A is a repeat violator the case team should apply the 50% repeat violation gravity adjustment factor. Accordingly, the penalty should be increased by \$38,292.50. Making this adjustment, the gravity penalty component equals \$114,877.50. Any further adjustments would be additive to that value.

Recall, no economic benefit is being assessed in this example. So, the total penalty amount the EPA would assess is \$0 (economic benefit) + \$114,877.50 (gravity) = \$114,877.50.

***Please note that this document identifies internal Agency policies and recommended procedures for EPA employees in coordinating Agency enforcement activities. This document is not a rule or regulation, and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person and may not be relied upon to create a right or a benefit, substantive or procedural,***

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<sup>21</sup> See *Id.* at p. 2 – 3.

***enforceable at law or in equity, by any person. EPA reserves the right to act at variance with this policy and to change it at any time without public notice.***