OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Expedited Settlement Agreement Pilot for the Hydrofluorocarbon Import and Ozone-Depleting Substances Import Enforcement Program

FROM: Rosemarie A. Kelley, Director
Office of Civil Enforcement

ROSEMARIE KELLEY
Digitally signed by ROSEMARIE KELLEY
Date: 2025.01.16 17:22:59 -05'00'

TO: Air Enforcement Division, Office of Civil Enforcement
Regional Counsels
Regional Enforcement and Compliance Assurance Division Directors

This memorandum approves a national expedited settlement agreement ("ESA") pilot to address certain alleged violations of the American Innovation and Manufacturing ("AIM") Act, 42 U.S.C. § 7675,[1] and the regulations promulgated thereunder at 40 C.F.R. Part 84; Title VI of the Clean Air Act ("CAA"), Stratospheric Ozone Protection, 42 U.S.C. § 7671-7671(q), and the regulations promulgated thereunder at 40 C.F.R. Part 82; and Title I of the CAA, Part A - Air Quality and Emission Limitations, 42 U.S.C § 7401-7431, and the greenhouse gas ("GHG") reporting regulations promulgated thereunder at 40 C.F.R. Part 98, Subparts A, OO, and QQ. ("HFC and ODS ESA Pilot" or "Pilot"). As detailed below, this Pilot is consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements ("2014 ESA Guidance"). I am approving this Pilot for use by staff in all the Regions and in OECA.

This Pilot expands and extends the initial pilot, "Expedited Settlement Agreement Pilot for the HFC Allocation Regulation Import Enforcement Program" ("2023 HFC ESA Pilot").[2] The Pilot will be effective from the date of signature of this memorandum for a minimum of two years with the option for an extension and will remain effective until either (i) another pilot or permanent hydrofluorocarbon ("HFC") and ozone-depleting substances ("ODS") ESA program goes into effect, or (ii) this Pilot is withdrawn or otherwise ended.

---

[1] The AIM Act provides that Section 113 of the Clean Air Act, 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." *See* 42 U.S.C. § 7675(k)(1)(C).

[2] The 2023 HFC ESA Pilot was effective between June 30, 2023, and June 30, 2024, and was field tested during that time. *See* U.S. ENVTL. PROT. AGENCY, REVISED GUIDANCE ON THE USE OF EXPEDITED SETTLEMENT AGREEMENTS, at Section III.C (Evaluation of Pilots and Expansion to National Program), at 15 (2014), *available at*: https://www.epa.gov/sites/default/files/2014-12/documents/revisedesaguidance.pdf. The 2023 HFC ESA Pilot was extended on June 27, 2024. Based on field testing of the 2023 HFC ESA Pilot, OECA Headquarters, in consultation with the Regions, is expanding, extending, and replacing the 2023 HFC ESA Pilot with the HFC and ODS ESA Pilot, which goes into effect on the date of signature of this memorandum.

1. Purpose and Goals

This Pilot will allow EPA to maintain a widespread presence through the HFC import and ODS import enforcement program, efficiently and timely address noncompliance and create deterrence while also focusing EPA resources on those cases that have the most significant impact on human health and the environment. The number of regulated entities in these sectors is large compared to available enforcement resources, which, as recognized by the 2014 ESA Guidance, makes an ESA program particularly useful.[3] The goal of the HFC and ODS ESA Pilot is to expedite resolution of certain claims concerning illegal HFC imports of bulk regulated substances without allowances, 40 C.F.R. § 84.5, claims concerning imports of prohibited products under the Technology Transitions Rule, 40 C.F.R. § 84.54, claims for violations of ODS import requirements under 40 C.F.R. §§ 82.4 and 82.15(b), and claims for violations of the greenhouse gas reporting program ("GHGRP") under 40 C.F.R. Part 98 Subparts A, OO, and QQ.

An ESA under the Pilot is a nonnegotiable, standardized agreement that the Respondent may accept (or reject) in the defined circumstances set forth in this memorandum.[4] 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 consistent with this Pilot.[5] If a Respondent rejects an ESA offer, EPA will pursue other enforcement options.

2. Covered Violations and Eligibility

This Pilot may be used to resolve violations that are easily detected, easily corrected, and did not or will not result in significant adverse impacts, and covers the following specific violations:

- HFC Allocation Regulations under 40 C.F.R. § 84.5(b) (Import);[6] HFC reporting requirements under 40 C.F.R. §§ 84.31(c)(1) and (7);[7] 40 C.F.R. § 84.5(c) (application-specific uses); 40 C.F.R. § 84.5(d) (calendar-year allowances); and 40 C.F.R. § 84.33(a) (auditing). This Pilot does not include violations of prohibitions contained in 40 C.F.R. § 84.5(a) (production), 40 C.F.R. § 84.5(e) (international transfers), 40 C.F.R. § 84.5(f) (sale and distribution), 40 C.F.R. § 84.5(g) (false information), and 40 C.F.R. § 84.5(i) (labeling).

- Technology Transitions Rule[8] import requirements under 40 C.F.R. § 84.54(a) and reporting

[3] *See id*. at Section I.B (Why ESAs Make Sense), at 3 ("an ESA program may be particularly useful when the universe of regulated entities is large compared to available enforcement resources"). For example, there are approximately 80 importers who received consumption (import) allowances for calendar years 2022, 2023, and 2024. *See* Phasedown of Hydrofluorocarbons: 86 Fed. Reg. 55,841, 55,843 (Oct. 7, 2021); Phasedown of Hydrofluorocarbons, 87 Fed. Reg. 61,314, 61,316 (Oct. 11, 2022); Phasedown of Hydrofluorocarbons, 88 Fed. Reg. 72,060, 72,062 (Oct. 19, 2023).
[4] *See* 2014 ESA Guidance at Section I.A (Overview of ESAs), at 3.
[5] *Id.*
[6] For violations occurring prior to September 18, 2023, see the previous regulations contained in 40 C.F.R. § 84.5(b) (2022).
[7] For those violations occurring prior to September 18, 2023, see the previous regulations contained in 40 C.F.R. §§ 84.31(c)(1) and (7) (2022).
[8] Note, although 40 C.F.R. § 84.64(a) defines the GWP to be equal to the exchange value (EV) as defined by the AIM Act and appendix A to Part 84, the bulk allocation rule is written so that the "EV" of the substance is the operative factor specified

requirements under 40 C.F.R. § 84.60(a). The Pilot does not include the restrictions in 40 C.F.R § 84.54(b) (sale and distribution) because they do not take effect until 2028. Additionally, 40 C.F.R § 84.54(c) (system installation requirements), 40 C.F.R. § 84.54(d) (compliance date for 40 C.F.R. § 84.54(c)), 40 C.F.R. § 84.54(e) (description of certain terms, relating to 40 C.F.R. § 84.54(c)), 40 C.F.R § 84.54(f) (restriction on sale, manufacture, or import of unlabeled products), 40 C.F.R § 84.54(h) (providing false information to EPA), 40 C.F.R § 84.54(i) (falsely labeling a product), 40 C.F.R § 84.58 (failing to meet the labeling requirements), and 40 C.F.R § 84.60(b) (recordkeeping requirements) are not covered under this Pilot and will be enforced through other administrative or judicial means.

- ODS Import requirements under 40 C.F.R. §§ 82.4 and 82.15(b).

- Greenhouse gas reporting requirements for HFCs under 40 C.F.R. Part 98, Subparts A (general provision), OO (suppliers of industrial GHGs), and QQ (importers/exporters of products containing GHGs). *See* 40 C.F.R. §§ 98.2(a)(4), 98.3(b).

To qualify for the ESA, the violator will need to take remedial action to correct the alleged violations identified by EPA and submit evidence of the corrections as requested by the case team.[9] In addition, the following requirements must be met [if applicable to the alleged violation(s)]:

- **For Violations of Quarterly or Annual Reporting Requirements under 40 C.F.R. Part 82, 40 C.F.R. Part 84, and/or 40 C.F.R. Part 98:** the harm to the regulatory scheme is fully remediated by submitting or correcting the quarterly or annual report in question prior to the ratification of the ESA;
- **For Import Violations under 40 C.F.R. Part 82 and/or 40 C.F.R. Part 84:** the environmental harm of the violation is fully remediated by either destroying or re-exporting the violative regulated substances to countries other than Canada or Mexico (unless the point of entry to the U.S. was through Canada or Mexico);[10]
- **For All Violations:** the economic benefit of the violation does not exceed $5,000;
- **For All Violations:** the total ESA penalty does not exceed $50,000, or $100,000 with AED Director concurrence;
- **For All Violations:** the monetary value of the import does not exceed $500,000, or $1,000,000 with AED Director concurrence; and
- **For All Violations:** the violation is by a first-time violator.

in the regulation, while the Technology Transitions Rule lists "GWP" as the operative factor. Although functionally identical, the language in this Pilot uses "EV" when referring to violations under the bulk allocation rule, and "GWP" when referring to Technology Transitions Rule violations.

[9] Respondents that violate the advance reporting requirements under either 40 C.F.R. Part 82 or 40 C.F.R. Part 84 do not need to take remedial action to qualify for an ESA under this Pilot. The purpose of the advance notice reports is to provide both the EPA and Customs and Border Protection advance notice of an import shipment to better identify which shipments might be subject to potential inspection. Requiring Respondents to submit or correct an advance notice report days or weeks after committing an advance notice report violation would not effectuate the purpose of the requirement.

[10] Other full remediation alternatives may only be allowed after obtaining AED Director approval.

3. Timely Return to Compliance

This Pilot should result in swift resolution of violations. To ensure this happens, the following measures should be undertaken when an ESA is appropriate:

a. EPA should give the Respondent 20 business days from the signature date on the ESA cover letter to accept the settlement offer. If a Respondent accepts the offer, Respondent must return the signed ESA to EPA before the deadline and certify completion of the applicable corrective actions.
b. If a Respondent does not return the signed ESA within 20 business days, the ESA offer is automatically withdrawn without prejudice, unless the EPA has granted a timely request for an extension.
c. The cover letter accompanying the ESA should state that if the Respondent has any questions or would like to request an extension, they may reach out to the EPA contact identified in the cover letter. Extensions must be requested within 20 business days of the signature date on the ESA offer cover letter and documented by EPA when granted. EPA will consider whether to grant an extension on a case-by-case basis, but any extension: (i) must not exceed an additional 30 business days (total of 50 business days); (ii) must require Respondent to perform listed corrective action(s) by the extended deadline at the Respondent's expense; (iii) must require Respondent to pay the penalty as specified in the ESA; and (iv) must be memorialized by EPA personnel in writing to the Respondent.
d. The Respondent must sign and submit the ESA, certifying completion of the applicable corrective actions set forth in the "AIM Act and/or Clean Air Act Offsite Compliance Monitoring Activity Or Inspection Facts, Alleged Violations, Penalty, And Corrective Action Form" (Attachment 1 to the ESA). Such corrective actions may include export or permanent destruction of the subject HFCs and/or subject ODSs and completion and submittal of related documentation, and correction of any quarterly or annual reporting violations.
e. In the unlikely situation where the first alleged date of violation in the ESA occurred more than 12 months before initiation of the administrative action, the case team will need to seek a waiver from the Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section.[11]

[11] Pursuant to section 113(d) of the CAA, the EPA's authority to issue administrative penalty orders is limited to matters in which the total penalty sought does not exceed the statutory maximum and the first alleged date of violation occurred no more than twelve months before initiation of the administrative action. However, the Administrator and the Attorney General may "jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty assessment." Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

4. Repeat Violators

Under the HFC and ODS ESA Pilot, ESAs will not be offered to repeat violators.[12] Violators with noncompliant goods already in shipment to the U.S. 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. Respondent must notify EPA in writing of the noncompliant goods already in shipment to the U.S.[13] In such instances, the original shipments and any additional shipment(s) can be addressed through a single ESA.

5. Penalties

To expedite settlements and encourage a timely return to compliance, this Pilot provides a penalty calculation approach that is expected to result in a lower penalty figure than a penalty calculation under the traditional enforcement and settlement process. A recipient of an ESA offer may decline to accept it, in which case EPA will pursue other enforcement options. The EPA always reserves the right not to extend an ESA offer to any particular party, and ESAs are precluded in circumstances where the EPA suspects criminal conduct.[14]

To expedite settlements and encourage a timely return to compliance via one of the acceptable Pilot corrective actions, this Pilot provides an alternative to, and offers reduced penalties from, the penalty policy otherwise applicable to HFC Allocation Regulation Violations,[15] Technology

---

[12] For the purposes of this Pilot, a repeat violator is defined as a Respondent who, in the past five years from the date of the alleged violation in the current ESA, has had the same or a closely related violation to the subject of the enforcement action. A "closely related" violation means a previous violation of any of the following: any HFC Allocation Regulation violation, or Technology Transitions Rule violation, or HFC Allocation Regulation and Technology Transitions Rule reporting violations, ODS import violation, or GHG reporting violation. In evaluating potential repeat violators, case teams must include those violations of corporate predecessors in interest, and cases where a principal 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, such as a previously ratified ESA or an administrative or judicial enforcement action.

[13] This approach is consistent with the 2014 ESA Guidance, Section II.C (Treatment of Repeat Violators), at 7-8.

[14] Case teams will coordinate with EPA's criminal enforcement team according to the U.S. ENVTL. PROT. AGENCY, STRATEGIC CIVIL-CRIMINAL ENFORCEMENT POLICY (2024), *available at* https://www.epa.gov/system/files/documents/2024-04/strategic-civil-criminal-enforcement-policy-april-2024.pdf. Case teams will refer suspected violations to the EPA's Criminal Investigation Division (CID). If CID declines a referral, EPA reserves the ability to use an ESA to resolve the matter in such situations.

[15] AED anticipates that in 2025 it will issue the U.S. ENVTL. PROT. AGENCY, INTERIM PENALTY POLICY APPLICABLE TO CERTAIN RESTRICTIONS CONCERNING HYDROFLUOROCARBONS UNDER 40 C.F.R. PART 84: PHASEDOWN OF HYDROFLUOROCARBONS, AND GREENHOUSE GAS REPORTING REQUIREMENTS UNDER 40 C.F.R. PART 98, APPENDIX XII TO THE OCTOBER 25, 1991 CLEAN AIR ACT STATIONARY SOURCE PENALTY POLICY ("HFC/ODS/GHGRP Penalty Policy"), which will replace the current U.S. ENVTL. PROT. AGENCY, 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 (2023), *available at*: https://www.epa.gov/system/files/documents/2023-04/interimhfcpenaltypolicyforbulkimports.pdf ("HFC Interim Penalty Policy") ("Interim HFC Penalty Policy"). After its release, the HFC/ODS/GHGRP Penalty Policy will be used to calculate penalties for HFC Allocation Regulation Violations, including import and reporting violations. Prior to the HFC/ODS/GHGRP Penalty Policy's release, HFC Import violations will be calculated under the Interim HFC Penalty Policy. Reporting violations under the AIM Act are currently calculated according to the U.S. ENVTL. PROT. AGENCY, CLEAN AIR ACT STATIONARY SOURCE CIVIL PENALTY POLICY (1991) ("1991 CAA Stationary Source Penalty Policy"), available at https://www.epa.gov/sites/default/files/documents/penpol.pdf.

Transitions Rule Violations,[16] ODS Violations,[17] and GHGRP violations.[18] The penalty reductions in this Pilot are consistent with the factors laid out in Section 113(e) of the CAA[19] 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. Consistent with the 1991 CAA Stationary Source Penalty Policy, case teams have discretion not to seek economic benefit when it is less than $5,000 depending on the particular facts and circumstances of the matter.[21] Given that the corrective actions under this ESA will likely stop the HFCs from entering U.S. commerce, and therefore prevent Respondents from gaining any profits from illegally introducing the goods into U.S. commerce, case teams can presume that economic benefit is below the $5,000 threshold.

Case teams are directed to calculate Pilot penalties for import violations as follows:

1. Determine the monetary value of the illegally imported products (Product Value).[22]

2. Determine the Exchange Value of the bulk HFC or Global Warming Potential of the HFC containing product.

3. If the Exchange Value of the bulk HFC or Global Warming Potential of the HFC-containing

[16] The HFC/ODS/GHGRP Penalty Policy, expected for release in 2025, will be used to calculate penalties for violations under the Technology Transitions Rule. Penalties for violations of the Technology Transitions Rule are currently calculated according to the 1991 CAA Stationary Source Penalty Policy.

[17] The HFC/ODS/GHGRP Penalty Policy, expected for release in 2025, will be used to calculate penalties for violations under ODS import regulations at 40 C.F.R. Part 84. Prior to the release of the HFC/ODS/GHGRP Penalty Policy, penalties for violations of ODS import regulations at 40 C.F.R. Part 84 will be calculated under the U.S. ENVTL. PROT. AGENCY, PENALTY POLICY FOR PRODUCTION OR IMPORTATION IN VIOLATION OF 40 CFR PART 82 OF SUBSTANCES THAT DEPLETE THE STRATOSPHERIC OZONE, APPENDIX XIII TO THE 1991 PENALTY POLICY (2023), *available at https://www.epa.gov/sites/default/files/documents/penpol.pdf*. ODS reporting violations are calculated according to the 1991 CAA Stationary Source Penalty Policy. The EPA notes that the HFC/ODS/GHGRP Policy will not be used to calculate ODS reporting violations, and case teams should continue to use the 1991 CAA Stationary Penalty Policy for calculating ODS reporting violations.

[18] The HFC/ODS/GHGRP Penalty Policy, expected for release in 2025, will be used to calculate penalties for violations of the GHGRP under 40 C.F.R. Part 98. GHGRP penalties are currently calculated using the 1991 CAA Stationary Source Penalty Policy.

[19] 42 U.S.C. § 7413(e)(1).

[20] *See generally* the 2014 ESA Guidance; the 1991 CAA Stationary Source Penalty Policy; and U.S. ENVTL. PROT. AGENCY, POLICY ON CIVIL PENALTIES (EPA GENERAL ENFORCEMENT POLICY #GM-21) (1984), *available at* https://www.epa.gov/sites/default/files/documents/epapolicy-civilpenalties021684.pdf.

[21] *See* 1991 CAA Stationary Source Penalty Policy, at 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 page 7 of the 1991 CAA Stationary Source Penalty Policy.

[22] 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 U.S. Customs and Border Patrol or publicly available advertised market value of goods for indicia that the value as declared by the importer is appropriate. Also, for values on import documents that are not in U.S. Dollar, it is recommended to use exchange rates from: https://www.federalreserve.gov/releases/h10/default.htm. There are different release dates for these rates and thus it is recommended to use the import's date of arrival (and if that occurs on a weekend, use the average of the Friday before and Monday after the shipment, since the rates are only published on weekdays).

product is below the threshold for the product sector or subsector, it is not assessed a penalty under this Pilot.

4. Multiply the Product Value for HFCs by the applicable Exchange Value or Global Warming Potential percentage multiplier, as applicable.

5. For ODS, multiply the Product Value by 40%.

6. 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.

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

The following is a more detailed description of how to calculate penalties under this Pilot.

Penalty Calculations by Violation Type

- For HFC Allocation Regulation violations, this Pilot bases the calculation of the civil penalty on a percentage (20%, 30%, 40%, or 50%) of the monetary value of the violative import. The percentage multiplier is related to the Exchange Value of the regulated substances at issue. Exchange Values are used to compare the abilities of different greenhouse gases to trap heat in the atmosphere; 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 (20% of the monetary value of the import), and a high Exchange Value HFC import has a higher percentage multiplier (50% of the monetary value of the import).[23] 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.[24]

  Bulk HFCs can be imported as a single regulated substance, a blend of multiple regulated substances, or a blend of regulated substances and non-regulated substances. Multiple bulk HFCs may be found imported as part of the same shipment (*e.g.*, cylinders of R-410A and R-404C have been found imported within the same shipment). To determine the Exchange Value of a blend, EPA calculates the contribution of each regulated substance to the total Exchange Value of the blend and calculates a blend Exchange Value. The contribution of

[23] U.S. ENVTL. PROT. AGENCY, PENALTY POLICY FOR PRODUCTION OR IMPORTATION IN VIOLATION OF 40 CFR PART 82 OF SUBSTANCES THAT DEPLETE THE STRATOSPHERIC OZONE, APPENDIX XIII TO THE 1991 PENALTY POLICY (2023) 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 Exchange Value of the HFCs regulated under the HFC Allocation Regulations in assessing gravity.

[24] Penalties calculated under this Pilot do not contain a size of violator adjustment. Larger businesses are unlikely to qualify for an ESA because of the penalty cap ($50,000, or $100,000 with AED the Director's concurrence) and the fact that larger businesses tend to have larger imports.

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% HFC-32 (675), 16% HFC-125 (3,500), and 29% HFC-134a (1,430), the Exchange Value of this example would be calculated as (0.55 × 675) + (0.16 × 3,500) + (0.29 × 1,430) = 1,345.95. Where the exact amount or percentage of each regulated substance in a blend is unknown, the case team should use the highest Exchange Value associated with a regulated substance in the blend as a multiplier to calculate the penalty.

For violative shipments containing multiple bulk HFCs, case teams should use total quantity and Exchange Value per bulk HFC to calculate the weighted average Exchange Value for the entire shipment, which should be used as the Exchange Value multiplier for the entire violative shipment.

For example, a shipment that has:

30 kg with Exchange Value of 1,000
20 kg with Exchange Value of 5,000, and
10 kg with Exchange Value of 10,000

would yield a weighted average Exchange Value as follows:

$$\frac{(\mathbf{30 \times 1{,}000}) + (\mathbf{20 \times 5{,}000}) + \mathbf{(10 \times 10{,}000)}}{\mathbf{30 + 20 + 10}} = \mathbf{3{,}833.33}$$

Certain types of substances contain both ODS and HFCs (such as R-401 and R-500). The method of calculating HFC exchange value listed above does not factor in the environmental harm of the ODS component. Because of this, all substances containing ODS will be assessed a penalty multiplier of 40%, no matter if the substance is a virgin ODS or a blend of ODS and HFCs.

- HFC Allocation Regulation reporting violation penalties are based off the reporting penalties approach in the 1991 CAA Stationary Source Penalty Policy, with lower values depending on the type and size of the report. *See below* Table – Civil Penalty.

- For Technology Transitions Rule violations, this Pilot bases the calculation of the civil penalty on a percentage of the monetary value of the violative import. Products containing regulated substances will be assessed a percentage multiplier based on their Global Warming Potential, unless that value is at or below the Global Warming Potentials (GWP) limit specified in the Technology Transitions Rule. GWPs are used to compare the abilities of different greenhouse gases to trap heat in the atmosphere, such that a higher Global Warming Potential has a greater impact on global warming. To account for this variable impact on the environment, a relatively low Global Warming Potential product has a lower percentage multiplier (20% of the monetary value of the import), and a high Global Warming Potential product has a higher percentage multiplier (50% of the monetary value of the

import). 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.

- The Technology Transitions Rule reporting violation penalties are based on the reporting penalty approach in the 1991 CAA Stationary Source Penalty Policy, with lower values depending on the type and size of the report. *See below* Table – Civil Penalty.

- GHGRP violation penalties are based on the reporting penalty approach in the 1991 CAA Stationary Source Penalty Policy. *See below* Table – Civil Penalty.

- For ODS import violations, this Pilot bases the calculation of the civil penalty on a percentage (40%) of the monetary value of the violative import. The percentage multiplier of 40% is used to reflect the seriousness of an ODS import violation, given the ODS phaseout has been fully in effect for many years. 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.

- If a shipment contains items which are not in violation of any of the applicable regulations under this Pilot, the value of those items will be excluded from the Product Value.

- If the shipment contains multiple categories of items; some of which violate different violation types under this Pilot, each violation will be evaluated as if that product were the only item in the shipment, and then the sum total of the violations will be added together for the final penalty. For instance, if an imported shipping container was inspected and found to contain regulated bulk HFC containers, a product regulated under the Technology Transitions Rule, containers of bulk ODS, and non-violative consumer goods, the final penalty would be calculated as:

  Final Penalty = (Product Value of Bulk HFCs x Percentage Multiplier)
  + (Product Value of Technology Transitions Rule Product x Percentage Multiplier)
  + (Product Value of ODS x 40%)
  + (Product value of non-violative material x 0%).

- Finally, the penalty is non-negotiable. If a Respondent claims an inability to pay or requests to pay in installments, EPA will pursue traditional enforcement in accord with EPA policy.[25]

Case teams must provide notice to Respondent of how the penalty was calculated, using the "Table – Civil Penalty" below. For each asserted violation below, identify the penalty amount in the table and sum the penalty amounts for each violation to obtain a total reporting violation penalty figure. A copy of the Table is also included in the ESA model, Table 3 of Attachment 1.

[25] *See* "Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action" (2015), available at https://www.epa.gov/enforcement/guidance-evaluating-ability-pay-civil-penalty-administrative-enforcement-actions.

Table – Civil Penalty

Complainant and Respondent agree upon the following civil penalty for settlement purposes: $[*XXX*], where:

HFC Allocation Regulations,[26] Technology Transitions Rule, and ODS Import Violations Calculation:

Monetary Value of Goods * Percentage Multiplier = Penalty

[*Insert Calculation]*

Reporting Violations Calculation:

Number of Violations * Violation Type Penalty Amount = Penalty

[*Insert Calculation*]

Violation Type	Total Penalty Amount
Late advance reporting (40 C.F.R. § 84.31(c)(7))	$1,000
Failure to provide any advance reporting (40 C.F.R. § 84.31(c)(7))	$2,000
Late quarterly reports (40 C.F.R. § 84.31(c)(1))	$2,500
Incomplete or inaccurate quarterly reporting (40 C.F.R. § 84.31(c)(1))	$3,000
Failure to submit quarterly reports (40 C.F.R. § 84.31(c)(1))	$3,500
Late annual reports (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$10,000
Incomplete or inaccurate annual reporting (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$10,000
Failure to submit annual reports (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$15,000
Failure to maintain records (40 C.F.R. § 98.3(g))	$5,000
Late annual GHG reports (40 C.F.R. § 98.3(b))	$10,000
Incomplete or inaccurate annual GHG reporting (40 C.F.R. § 98.3(b); 40 C.F.R. § 98.3(h))	$10,000
Failure to submit annual GHG reports (40 C.F.R. § 98.3(b))	$15,000

[26] To determine the EV of a HFC blend *see* –https://www.epa.gov/system/files/documents/2021-10/hfc-allowance-calculator.xlsx. 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% HFC-32 (675), 16% HFC-125 (3,500), and 29% HFC-134a (1,430), the EV would be (0.55 × 675) + (0.16 × 3,500) + (0.29 × 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.

HFC EV[27]	Percentage Multiplier
< 1,300	20%
≥ 1,300 ≤ 5,000	30%
> 5,000 ≤ 10,000	40%
>10,000 ≤ 15,000	50%

Technology Transitions Rule Product GWP[28]	Percentage Multiplier
< 1,300[29]	20%
≥ 1,300 ≤ 5,000	30%
> 5,000 ≤10,000	40%
>10,000≤ 15,000	50%

ODS	Percentage Multiplier
Any ODS listed as a class I or class II controlled substance in 40 C.F.R. Part 82, whether on its own or in a blend	40%

HFC	EV
HFC–152	53
HFC–41	92
HFC–152a	124
HFC–143	353
HFC–32	675
HFC–245ca	693
HFC–365mfc	794
HFC–245fa	1,030
HFC–134	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

For example, using the Table above, if a Respondent has imported HFC-125 with a declared value of $50,000, then the Product Value is $50,000 and the Exchange Value is 3,500.[30] The calculation reads: $50,000 * 0.30 = $15,000. If the Respondent has imported an Air Conditioning Product subject to the Technology Transitions Rule containing R-410A, with a Global Warming Potential of 2087.5, and with a declared value of $4,000, the calculation reads $4,000 * 0.30 = $1,200. Additionally, if a Respondent has imported R-22 with a declared value of $10,000, then the Product Value is $10,000 and the calculation reads: $10,000 * 0.40 = $4,000.

As an example, using the figures calculated above, suppose that Respondent A has imported HFC-125 with a declared value of $50,000 and an Air Conditioning Product containing R-410A with a declared value of $4,000. Additionally, the EPA determines that Respondent A failed to submit an advance notice report for HFC-125 and submitted an incomplete annual report omitting their import of the Air Conditioning Product. The total penalty for the ESA would be calculated as follows:

- Illegal Import of HFC-125: $15,000

[27] Exchange Values are found in 40 C.F.R. Part 84, Appendix A.
[28] *Id.*
[29] Subsectors under the TT program may have different GWP thresholds. For instance, the consumer aerosol subsector has a GWP threshold of 150 GWP. Any products in the consumer aerosol subsector using a regulated substance with a GWP less than the threshold (such as aerosols using HFC-152a) are not considered violative. Case teams must first determine the appropriate subsector of the product, next verify the GWP of the regulated substance or blend used, and then determine if that GWP exceeds the appropriate limit. The limits are generally either 150, 300, or 700 GWP.
[30] 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.

- Illegal Import of Air Conditioning Product: $ 1,200
- Failure to Submit Advance Notice Report for HFC-125 import: $ 2,000
- Incomplete Annual Report for the Air Conditioning Product: $ 3,500
- **Total Penalty for ESA: $21,700**

Please note that Respondent A would have to re-export or destroy its illegally imported HFC-125 and Air Conditioning Product containing R-410A and submit a corrected annual report before signing the ESA.

6. Unique Statutory Requirements

There are no unique statutory requirements associated with the Pilot.

7. Model ESA Documents

The model documents[31] to be used in the Pilot are attached to this Memorandum and include:

1) Sample cover email to distribute ESA to Respondent;
2) Cover Letter to Respondent, with enclosures:
    a. Template HFC ESA
    b. [*AIM Act*] [and/or] [*Clean Air Act*] Offsite Compliance Monitoring Activity or Inspection Facts, Alleged Violations, Penalty, and Corrective Action Form (ESA Attachment 1)
    c. Template Final Order
    d. Template Certificate of Service
    e. Environmental Appeals Board ("EAB") Transmittal Memo (only applies to Headquarters cases initiated by AED and filed with the EAB)

[31] EPA Headquarters or regional users of the ESA documents may not change the substance of the ESA documents, but may make non-substantive, minor edits to them, as needed.

TEMPLATE COVER EMAIL TO DISTRIBUTE ESA TO RESPONDENT

[Delete yellow highlighted text throughout all Model ESA Documents]

[SEND WITH DELIVERY AND READ RECEIPTS REQUESTED]

[SEND HIGH PRIORITY]

[*NAME*],

I am an [attorney/inspector] for the U.S. Environmental Protection Agency. On [*Date*], the EPA conducted an [*Offsite Compliance Monitoring Activity or Inspection*] of the [*Company*] shipment with entry number [*Number*] into [*Entry Location*]. Based on this monitoring activity or inspection, the EPA determined that [*Company*] [*Briefly Describe Facts*]. The relevant statutory and regulatory provisions are as follows: **[Delete provisions that are not relevant]**

- The American Innovation and Manufacturing Act, at 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84, specifically:
  - ☐ The illegal import of "regulated substances" (certain bulk hydrofluorocarbons, or HFCs) without expending allowances under the HFC Allocation Regulations. *See* 40 C.F.R. 84.5.
  - ☐ The reporting requirements of the HFC Allocation Regulations. *See* 40 C.F.R. 84.31.
  - ☐ The illegal import of products containing HFCs under the Technology Transitions Regulations. *See* 40 C.F.R. 84.54.
  - ☐ The reporting requirements of the Technology Transitions Regulations. *See* 40 C.F.R. § 84.60(a).
- Title VI of the Clean Air Act, Stratospheric Ozone Protection, at 42 U.S.C. § 7671-7671(q), and the regulations promulgated thereunder at 40 C.F.R. Part 82, specifically 40 C.F.R. §§ 82.4 [and/or] 82.15(b).
- Title I of the Clean Air Act, Part A - Air Quality and Emission Limitations, at 42 U.S.C. § 7401-7431, and the Greenhouse Gas Reporting regulations promulgated thereunder at 40 C.F.R. Part 98, Subparts A, OO, and QQ.

The EPA is proposing an Expedited Settlement Agreement (ESA) to resolve this matter. The ESA contains a civil penalty of $[*PENALTY*] for the violation(s). This ESA contains a lower penalty than the EPA may seek through the traditional enforcement and settlement process, where the EPA has authority to assess civil penalties up to $121,275 per day for each violation of [*the AIM Act and its implementing regulations, pursuant to Section 7675 of the AIM Act and Section 113 of the Clean Air Act*] [*and/or*] [*Title VI of the Clean Air Act, Stratospheric Ozone Protection, and the regulations promulgated thereunder at 40 C.F.R. Part 82, pursuant to Section 113 of the Clean Air Act*] [*and/or*] [*Title I of the Clean Air Act, Part A – Air Quality and Emission Limitations, and the regulations promulgated thereunder at 40 C.F.R. Part 98, pursuant to Section 113 of the Clean Air Act*].

I am attaching the proposed ESA along with a cover letter that provides further explanation. **Please note that if you do not sign and return the attached ESA (or request an extension) within 20 business days of the signature date on this letter, the settlement offer is withdrawn without prejudice to the EPA's ability to file an enforcement action for the identified violation(s).**

Please let me know if you have any questions.

Sincerely,

[COVER LETTER TO RESPONDENT, WITH ENCLOSURES]

[Insert Regional Office or Headquarters Letterhead, as applicable]

VIA Electronic Mail
[*Respondent Name*]
[*Address*]

Re: Expedited Settlement Agreement for Violations of [*the American Innovation and Manufacturing Act* **(use this for HFC allocation and TT violations)**] [*and/or*] [*Violations of Title VI of the Clean Air Act, Stratospheric Ozone Protection* (**use this for ODS violations**)] [*and/or*] [*Violations of the Clean Air Act Greenhouse Gas Reporting Program*](**use this for GHG reporting violations**), Docket No. [*Insert Regional or HQs Docket #, as applicable*]; [*Entry or Shipment No. XXXX*], [*Company name*]

Dear [*Respondent*]:

[INCLUDE THE FOLLOWING PARAGRAPHS IF APPLICABLE]:

[***Include this paragraph for HFC Allocation* violations**] The U.S. Environmental Protection Agency ("EPA") has determined that [insert brief violation description]. The EPA is alleging 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. The "HFC Allocation regulations," codified at 40 C.F.R. Part 84, Subpart A, includes requirements for importers of HFCs. Starting January 1, 2022, entities importing bulk HFCs must expend allowances granted by the EPA for the amounts imported, subject to a few exceptions that require a non-objection notice or transhipment confirmation from the EPA. 40 C.F.R. § 84.5(b) [***If the violation occurred prior to 9/18/23, cite:*** *40 C.F.R. § 84.5(b) (2022)*[1]].

[***Include this paragraph for HFC TT* violations**] The U.S. Environmental Protection Agency ("EPA") has determined that [*insert brief violation description*]. The EPA is alleging 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 B, referred to as the "Technology Transitions Rule," which includes requirements for importers of products and systems that use HFCs. Starting January 1, 2025, entities are prohibited from importing products that use HFCs over a specified Global Warming Potential ("GWP"), subject to a few exceptions for certain product categories. 40 C.F.R. § 84.54(a).

[***Include this paragraph for alleged ODS violations***] The U.S. Environmental Protection Agency ("EPA") has determined that [*insert brief violation description*]. The EPA is alleging that the above-referenced entry/shipment is an importation of ozone-depleting substances ("ODS") in violation of Title VI of the Clean Air Act, Stratospheric Ozone Protection, and the regulations promulgated thereunder at 40 C.F.R.

[1] The regulations were amended on September 18, 2023. *See* 40 C.F.R. § 84.5(b).

Part 82. Requirements for importers of ODS are contained at 40 C.F.R. Part 82, Subpart A. Starting on or before January 1, 2003, entities importing Class I or II ODS must expend allowances granted by the EPA for the amounts imported, subject to a few exceptions that require a non-objection notice from the EPA or a record of, among other things, transformation, destruction, or heels. 40 C.F.R. §§ 82.4, 82.15(b).

[***Include this paragraph for GHGRP violations***] The United States Environmental Protection Agency ("EPA") has determined that [*insert brief description of violation*]. The EPA is alleging that this is a violation of the Clean Air Act, 42 U.S.C. § 7414, and the Greenhouse Gas Reporting Program regulations promulgated thereunder at 40 C.F.R. Part 98. These regulations require importers of greenhouse gases that meet the reporting threshold to submit an annual report to the EPA. 40 C.F.R. §§ 98.2(a)(4), 98.3(b).

[INCLUDE THE FOLLOWING PARAGRAPHS FOR ALL ESA COVER LETTERS UNDER THIS PILOT]:

On [date], an authorized representative of the EPA conducted [*an offsite compliance monitoring activity or inspection*] of the above-referenced entry/shipment. Based on this monitoring activity, the EPA determined that [*insert Company name (you or your)*] [*insert brief violation description*]. The basis of the EPA's determination is set forth in Tables 1, 2, 3, and 4 of the Expedited Settlement Agreement ("Agreement") and proposed Final Order (ESA Attachment 1). Enclosed is an offer to resolve these violation(s) with an Expedited Settlement Agreement. The EPA issued a letter recommending the denial of entry for the above-referenced shipment on [*Insert Date of Denial Letter, if applicable*] [***only applicable to import violations***].

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. The Expedited Settlement Agreement contains a civil penalty assessed of [$XXXX] for the violation(s) identified in ESA Attachment 1. *See* Table 3 of ESA Attachment 1. This Agreement contains a lower penalty than the EPA may seek through traditional enforcement. Under the traditional process, the EPA has authority to assess civil penalties of up to $121,275 per day for each violation of [*the AIM Act and its implementing regulations, pursuant to Section 7675 of the AIM Act and Section 113 of the Clean Air Act* (**cite this for HFC violations**)] [*and/or*] [*Title VI of the Clean Air Act, Stratospheric Ozone Protection, and its implementing regulations, pursuant to Section 113 of the Clean Air Act* (**cite this for ODS violations**)] [*and/or*] [*Title I of the Clean Air Act, Air Pollution Prevention and Control, and its implementing regulations, pursuant to Section 113 of the Clean Air Act* (**cite this for GHGRP violations**)].

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, 42 U.S.C. § 7413. *See* 42 U.S.C. § 7675(k)(1)(C). After this Agreement becomes effective, and provided you fully comply with its terms, the EPA will not seek further civil penalties against you 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 business days** of the date of signature of this letter:

- Complete and certify as completed, the corrective action in accordance with Table 4 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 for the above-referenced conditions, you should contact [*Inspector Name*] of the [*Regional Enforcement and Compliance Assurance Division or Headquarters Air Enforcement Division, as applicable*] at [*(XXX) XXX-XXXX*] or [*email*] within 20 business days of the date of signature of this letter. The EPA will consider whether to grant an extension on a case-by-case basis. Any extension will not exceed an additional 30 business days (total of 50 business days from the date of signature). The EPA will not accept or approve any Agreement returned more than 20 business 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 or Regional Judicial Officer, as applicable] and issuance of a Final Order. Upon ratification of the Agreement and issuance of the Final Order, 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 thirty (30) calendar days after the date on which the [*Insert RJO or EAB*] ratifies the Final Order] ("Filing Date"). Payment of the penalty may not be made before the Filing Date. (See Section E 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 business days of the date of signature of this letter (or up to 50 business 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,

[*Air Enforcement Division Director or Regional Delegated Authority, as applicable*[2]]
[*U.S. EPA Region XXX or Air Enforcement Division, as applicable*]

Enclosures

[2] *See* Delegations of Authority 7-6A. Administrative Enforcement Actions: Issuance of Complaints and Orders, and Signing of Consent Agreements, etc., and 7-6-C Administrative Enforcement Actions: Issuance of Consent Orders and Final Orders, and any relevant regional and OECA redelegations of authority.

ENCLOSURE

AMERICAN INNOVATION AND MANUFACTURING ACT and/or CLEAN AIR ACT EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

[*ENVIRONMENTAL APPEALS BOARD, as applicable*]
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
[*WASHINGTON, D.C or INSERT REGIONAL OFFICE, as applicable*]

In re: [*Entity*]	)	Docket No. CAA-[2*0XX*]-[*XXXX*]

EXPEDITED SETTLEMENT AGREEMENT

A. JURISDICTION

1. This is an expedited administrative penalty assessment proceeding brought for [an] alleged violation(s) of [*the American Innovation in Manufacturing Act of 2020 ("AIM Act"), 42 U.S.C. § 7675, which governs the import of hydrofluorocarbons ("HFCs")*][,] [*and/or*] [*Title VI of the Clean Air Act ("CAA"), which governs the import of ozone-depleting substances,*] [*Section 114 of the Clean Air Act, 42 U.S.C. § 7414, which authorizes air pollution reporting regulations*]. This proceeding is brought under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), which authorizes the United States Environmental Protection Agency ("EPA") to bring administrative civil enforcement actions.

2. This expedited settlement agreement ("Agreement") is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

3. Complainant is the United States Environmental Protection Agency. On the EPA's behalf, Director [*Insert Name and Title of Air Enforcement Division Director or Name and Title of Regional Delegated Authority, Region XXX Enforcement and Compliance Assurance, as applicable*] is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA.

4. Respondent is [*Entity*] and is a "person" as defined below and identified further in Table 1 of ESA Attachment 1.

5. 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 settlement 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.

6. The [*Environmental Appeals Board or Regional Judicial Officer, as applicable*] is authorized to ratify this Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

7. The ratification of the Final Order, incorporating this agreement, simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

B. GOVERNING LAW

[Hydrofluorocarbons – Governing Law] [Delete paragraphs that do not apply.]

8. This proceeding arises under the American Innovation and Manufacturing Act of 2020, 42 U.S.C. § 7675, and the regulations promulgated thereunder, which impose limits on HFC production and consumption.

9. The EPA is authorized to enforce the AIM Act and any regulation promulgated thereunder pursuant to the federal enforcement authorities established by Section 113(a) of the CAA, 42 U.S.C. § 7413(a). 42 U.S.C. § 7675(k)(1)(C).

10. The EPA regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.

11. **[Include this paragraph for violations of the TT Rule]** The EPA regulations at 40 C.F.R. Part 84, Subpart B, implement the AIM Act requirement to accelerate the transition of technologies in products and systems which utilize HFCs to substances with lower global warming potentials.

12. **[Include this paragraph for Allocation Rule violations occurring before September 18, 2023]** The regulations at 40 C.F.R. Part 84, Subpart A, apply to anyone who imports a regulated substance. 40 C.F.R. § 84.1(b) (2022)[1].

13. **[Include this paragraph for Allocation Rule violations occurring on or after September 18, 2023]** The regulations at 40 C.F.R. Part 84, Subpart A, apply to anyone who imports a regulated substance. 40 C.F.R. § 84.1(b).

14. **[Include this paragraph for Allocation Rule violations occurring before September 18, 2023]** From January 1, 2022, through September 17, 2023, 40 C.F.R. § 84.5(b)(1) (2022) provided that "[n]o 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."

[1] If a version of the regulations was different in 2022 from the current version of the regulations, it is cited as "2022" in this Expedited Settlement Agreement.

15. **[Include this paragraph for Allocation Rule violations occurring on or after September 18, 2023]** 40 C.F.R. § 84.5(b)(1) states that "[n]o person may import bulk regulated substances, either as a single component or a multicomponent substance, except . . . [i]f the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend."

16. 40 C.F.R. § 84.5(b)(7)[2] states that "every kilogram of bulk regulated substances imported … constitutes a separate violation of this subpart."

17. [**Allocation Rule Reporting Requirements**] 40 C.F.R. § 84.31(a) provides that "any person who … imports, … regulated substances must comply with the [*specified*] reporting requirements."

18. [**Allocation Rule Quarterly Reporting Requirements**] 40 C.F.R. § 84.31(c)(1) provides that "Persons" ("importers") who import regulated substances must comply with [*specified quarterly*] reporting requirements.

19. [**Allocation Rule Advance Notice Reporting Requirements**] 40 C.F.R. § 84.31(c)(7) provides that "Persons ('importers') who import regulated substances must comply with [*specified advance notice*] reporting requirements."

20. [**TT Rule**] 40 C.F.R. § 84.54(a)([*XXX*]) provides that "[n]o person may manufacture or import any product in the following sectors or subsectors that uses a regulated substance … [e]ffective January 1, 2025, …[*Insert language from relevant sector*].

21. [**TT Rule Annual Reporting Requirements**] 40 C.F.R. § 84.60(a)(1) provides that any person who imports . . . a product or specified component within a sector or subsector listed in § 84.54 that uses or is intended to use a regulated substance or blend containing a regulated substance must comply with [*specified annual*] reporting . . . requirements.

22. The regulations at 40 C.F.R. Part 84, Subpart A, contain the following definitions:

    a) An "application-specific allowance" is defined as "a limited authorization granted in accordance with subsection (e)(4)(B)(iv) of the AIM Act for the production or import of a regulated substance for use in the specifically identified applications that are listed in that subsection and in accordance with the restrictions contained at § 84.5(c)." 40 C.F.R. § 84.3.

[2] For violations occurring prior to September 18, 2023, this citation should be to § 84.5(b)(6) (2022).

b) "Bulk" is defined as "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." 40 C.F.R. § 84.3.

c) "Consumption allowances" are "a limited authorization to produce and import regulated substances; however, consumption allowances may be used to produce regulated substances only in conjunction with production allowances." 40 C.F.R. § 84.3.

d) "Exchange value equivalent" is defined as "the exchange value-weighted amount of a regulated substance obtained by multiplying the mass of a regulated substance by the exchange value of that substance." 40 C.F.R. § 84.3.

e) "Import" is defined as "to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import." 40 C.F.R. § 84.3.

f) "Importer" is defined as "any person who imports a regulated substance into the United States. 'Importer' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred." 40 C.F.R. § 84.3.

g) "Person" is defined as "any individual or legal entity, including an individual, corporation, partnership, association; state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof." 40 C.F.R. § 84.3.

h) "Regulated substance" is defined as "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)." 40 C.F.R. § 84.3.

23. [**TT Rule – Governing Law**] The regulations at 40 C.F.R., Part 84, Subpart B, contain the following definitions:

a) "Import" is defined as "to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated

substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import." 40 C.F.R. § 84.52 (referring back to the definition in 40 C.F.R. § 84.3).

b) "Importer" is defined as "any person who imports any product or specified component using or intended for use with a regulated substance into the United States. Importer includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes: (1) The consignee; (2) The importer of record; (3) The actual owner; or (4) The transferee, if the right to withdraw merchandise from a bonded warehouse has been transferred." 40 C.F.R. § 84.52.

c) "Product" is defined as "an item or category of items manufactured from raw or recycled materials which performs a function or task and is functional upon completion of manufacturing. The term includes, but is not limited to: appliances, foams, fully formulated polyols, self-contained fire suppression devices, aerosols, pressurized dispensers, and wipes." 40 C.F.R. § 84.52.

24. A current list of regulated substances, their chemical formulas, and their exchange values can be found in Appendix A to 40 C.F.R. Part 84. *See* 40 C.F.R. § 84.3.

25. The compound [*insert HFC*] is regulated by the AIM Act and has an exchange value of [*insert exchange value*]. 40 C.F.R. Part 84, Appendix A.

26. **[Include for Allocation Rule violations occurring before September 18, 2023]** From January 1, 2022 through September 17, 2023, 40 C.F.R. § 84.5(b)(2) (2022) provided that "[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1)."

27. **[Include for Allocation Rule violations occurring on or after September 18, 2023]** 40 C.F.R. § 84.5(b)(3) states that "[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in paragraph (b)(1)(i) or (v) of this section or another party who meets the definition of an importer met one of the exceptions set forth in paragraphs (b)(1)(ii) through (iv) of this section."

[*Ozone-Depleting Substances – Governing Law*]

28. This proceeding arises under Title VI of the Clean Air Act, 42 U.S.C. §§ 7671-7671q, and the regulations promulgated thereunder, which mandates the phase-out of the production and consumption of class I and class II substances that deplete the ozone layer, such as

chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

29. The EPA regulations at 40 C.F.R. Part 82, Subpart A, implement the Title VI requirement to phase out the production and consumption of class I and class II substances that deplete the ozone layer.

30. 40 C.F.R. § 82.1(b) states, "This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports or exports a controlled product."

31. 40 C.F.R. § 82.3 contains the following definitions:

    a) Class I refers to the controlled substances listed in appendix A to this subpart.

    b) Class II refers to the controlled substances listed in appendix B to this subpart.

    c) Controlled substance means "any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance."

    d) Import means "to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with [exemptions not relevant to this matter]…."

    e) Importer means "any person who imports a controlled substance or a controlled product into the United States. 'Importer' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred."

    f) Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

32. Substances defined as Class I controlled substances are listed at 40 C.F.R. Part 82, Subpart A, Appendix A.

33. Substances defined as Class II controlled substances are listed at 40 C.F.R. Part 82, Subpart A, Appendix B.

34. The regulations at 40 C.F.R. § 82.4 prohibit the import of class I controlled substances without allowances except in certain circumstances for transhipments, heels, and substances imported for transformation or destruction, and further state that "[e]very kilogram of excess import constitutes a separate violation of this subpart."

35. The regulations at 40 C.F.R. § 82.15(b)(1) prohibit the import of class II controlled substances without allowances except in certain circumstances for transhipments, heels, and substances imported for transformation or destruction, and further state that "[e]very kilogram of excess import constitutes a separate violation of this subpart."

[Greenhouse Gas Reporting Violations Governing Law]

36. This proceeding arises under Section 114 of the Clean Air Act ("CAA"), which provides EPA with broad authority to require information that will inform the EPA's implementation of various CAA provisions and programs. 42 U.S.C. § 7414. Under CAA Section 114(a)(l), the EPA may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment, or persons whom the EPA believes may have necessary information, to monitor and report emissions and to provide such other information as the EPA requests for the purposes of carrying out any provision of the CAA (except for a provision of Title II with respect to motor vehicles).

37. Pursuant to this legal authority, the EPA established the mandatory greenhouse gas reporting program ("GHGRP") requirements, which have been effective since 2010. 40 C.F.R. Part 98.

38. The GHGRP regulations require that suppliers of industrial greenhouse gases submit an annual report to the EPA by March 31 or each year if they meet the 25,000 metric ton CO_2 equivalent threshold. 40 C.F.R. §§ 98.2(a)(4), 98.3(b), 98.411**[for OO]**, 98.431**[for QQ]**.

39. **[For OO claims]** 40 C.F.R. Part 98, Subpart OO applies to suppliers of industrial greenhouse gases. Table A-5 of 40 C.F.R. Part 98, Subpart A, lists supplier categories for industrial greenhouse gas suppliers subject to 40 C.F.R. Part 98, Subpart OO, including producers of industrial greenhouse gases; and importers of industrial greenhouse gases with annual bulk imports of N2O, fluorinated greenhouse gas, and CO2 that in combination have greenhouse gas quantities equivalent to 25,000 metric tons of CO2 equivalent or more.

40. **[For QQ claims]** 40 C.F.R. Part 98, Subpart QQ applies to importers and exporters of fluorinated greenhouse gases contained in pre-charged equipment or closed-cell foams. Table A-5 of 40 C.F.R. Part 98, Subpart A, lists supplier categories for industrial greenhouse gas suppliers subject to 40 C.F.R. Part 98, Subpart QQ, including importers and exporters of fluorinated greenhouse gases contained in pre-charged equipment or closed-cell foams with annual import/export quantities equivalent to 25,000 metric tons of CO2 equivalent or more.

41. 40 C.F.R. Part 98, Subpart A contains the following definitions that apply throughout Part 98:

    a) "Bulk," with respect to industrial greenhouse gas suppliers and carbon dioxide ("CO_2") suppliers, means "the transfer of a product inside containers, including but not limited to tanks, cylinders, drums, and pressure vessels." 40 C.F.R. § 98.6.

    b) "Carbon dioxide equivalent" ("CO_2e") means the number of metric tons of CO_2 emissions with the same global warming potential as one metric ton of another greenhouse gas, and is calculated using Equation A-1 of Subpart A. 40 C.F.R. § 98.6.

    c) "Exporter" means "any person, company, or organization of record that transfers for sale or for other benefit, domestic products from the United States to another country or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction." 40 C.F.R. § 98.6.

    d) "Fluorinated greenhouse gas" means sulfur hexafluoride, nitrogen trifluoride, and any fluorocarbon except for controlled substances as defined at 40 C.F.R. Part 82, Subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C. With these exceptions, "fluorinated GHG" includes but is not limited to any hydrofluorocarbon, any perfluorocarbon, any fully fluorinated linear, branched or cyclic alkane, ether, tertiary amine or aminoether, any perfluoropolyether, and any hydrofluoropolyether. 40 C.F.R. § 98.6.

    e) "Importer" means "any person, company, or organization of record that for any reason brings a product into the United States from a foreign country, excluding introduction into United States jurisdiction exclusively for United States military purposes. An importer is the person, company, or organization primarily liable for the payment of any duties on the merchandise or an authorized agent acting on their behalf. The term includes, as appropriate: (1) the consignee, (2) the importer of record, (3) the actual owner, and (4) the transferee, if the right to draw merchandise in a bonded warehouse has been transferred." 40 C.F.R. § 98.6.

    f) "Industrial greenhouse gases" means "nitrous oxide or any fluorinated greenhouse gas." 40 C.F.R. § 98.6.

    g) "Operator" means "any person who operates or supervises a facility or supplier." 40 C.F.R. § 98.6.

    h) "Owner" means "any person who has legal or equitable title to, has a leasehold interest in, or control of a facility or supplier, except a person whose legal or equitable title to or

leasehold interest in the facility or supplier arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility or supplier shall not be considered an 'owner' of the facility or supplier." 40 C.F.R. § 98.6.

i) "Supplier" means a producer, importer, or exporter in any supply category included in Table A-5 to Subpart A, as defined by the corresponding subpart of Part 98. 40 C.F.R. § 98.6.

42. **[For QQ Claims]** 40 C.F.R. § 98.438 contains the following additional definitions, which apply to Subpart QQ:

a) "Closed Cell Foam" means any foam product, excluding packaging foam, that is constructed with a closed-cell structure and a blowing agent containing a fluorinated GHG. Closed-cell foams include but are not limited to polyurethane (PU) foam contained in equipment, PU continuous and discontinuous panel foam, PU one component foam, PU spray foam, extruded polystyrene (XPS) boardstock foam, and XPS sheet foam. Packaging foam means foam used exclusively during shipment or storage to temporarily enclose items.

b) "Pre-Charged Equipment" means any pre-charged appliance, pre-charged appliance component, pre-charged electrical equipment, or pre-charged electrical equipment component.

43. **[For OO Claims]** 40 C.F.R. § 98.413 prescribes the methodology to calculate the industrial greenhouse gas emissions set forth in 40 C.F.R. § 98.412.

44. **[For QQ Claims]** 40 C.F.R. § 98.433 prescribes the methodology to calculate the industrial greenhouse gas imports and exports set forth in 40 C.F.R. § 98.432.

45. 40 C.F.R. § 98.5 requires each annual report to be submitted electronically through the "Electronic Greenhouse Gas Reporting Tool" ("e-GGRT"). Each report must be submitted by a designated representative. *See* 40 C.F.R. § 98.4.

C. ALLEGED VIOLATION(S) OF LAW
[Delete all allegations that do not apply]

46. **[Include for Allocation Rule violations occurring before September 18, 2023]** [*Include applicable alleged violations e.g.,…*] The EPA alleges that, on or about, [*insert date*] Respondent violated the prohibition on importing bulk regulated substances into the United States without expending allowances as required by 40 C.F.R. § 84.5(b) (2022) for each of the [*insert kg of HFC*] identified in Table 1 of ESA Attachment 1.

47. **[Include for Allocation Rule violations occurring after September 18, 2023]** [*Include applicable alleged violations e.g.,…*] The EPA alleges that, on or about, [*insert date*] Respondent violated the prohibition on importing bulk regulated substances into the United States without expending allowances as required by 40 C.F.R. § 84.5(b) for each of the [*insert kg of HFC*] identified in Table 1 of ESA Attachment 1.

48. The EPA alleges Respondent violated 40 C.F.R. § 84.31(c)(7) [*advance recordkeeping requirements*] by failing to submit advance notification reports for the HFCs no later than 14 days prior to importation.

49. The EPA alleges Respondent violated 40 C.F.R. § 84.31(c)(1) [*quarterly reporting requirements*] by failing to submit a report to the EPA that describes the HFCs imported during the [*first, second, third, fourth*] quarter of [*calendar year*] within 45 days after the end of the [*first, second, third, fourth*] quarter of [*calendar year*].

50. The EPA alleges that Respondent violated 40 C.F.R. § 84.60(a)(1) [*annual TT rule reporting requirements*] by failing to submit a report to the EPA that describes the regulated substances imported during [*calendar year*] within X days after the end of [*calendar year*].

51. The EPA alleges that, on or about [*insert date*], Respondent imported a product containing a regulated substance in violation of 40 C.F.R. § 84.54(a)(X) for each of the regulated substances identified in Table 1 of ESA Attachment 1.

52. The EPA alleges that, on or about, [*insert date*] Respondent violated the prohibition on importing into the United States a [*class I / class II*] controlled substance without expending allowances, as required by 40 C.F.R. § [*82.4 for class I / 82.15(b) for class II*] for each of the controlled substances identified in Table 1 of ESA Attachment 1.

53. The EPA alleges that Respondent failed to timely submit a complete annual report documenting the previous year's industrial greenhouse gas activity by the deadline of March 31 [insert year] as required by 40 C.F.R. § 98.3(b).

D. TERMS OF AGREEMENT

54. 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 violation(s) of law set forth in Section C of this Agreement; and
    e. waives its right to appeal the Order accompanying this Agreement.

55. By signing this settlement agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the expedited settlement agreement.

56. 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 its right to request a hearing, any right to contest the allegations in this Expedited Settlement Agreement and Final Order and its right to appeal this Expedited Settlement Agreement and Final Order;
    e. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in an appropriate United States District Court; 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 an appropriate United States District Court 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.

E. TERMS OF PAYMENT

57. Respondent agrees to pay a civil penalty in the amount of [*insert Assessed Penalty amount*] ("Assessed Penalty"), which is stated in Table 3 of ESA Attachment 1, within thirty (30) calendar days after the date the Final Order ratifying this Agreement is filed with the [*insert "Regional Hearing Clerk" for a proceeding initiated by a Region or "Clerk of the Environmental Appeals Board" for a proceeding initiated by Headquarters*] ("Filing Date").Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

58. When making a payment, Respondent shall**:**

    a. Identify every payment with Respondent's name and the docket number of this Agreement, [*insert docket number*],

    b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

[*Regional Hearing Clerk / Clerk of the Board Name and Title*]
U.S. Environmental Protection Agency, [*HQ / Region #*]
[*Regional Hearing Clerk / Clerk of the Board Office Address*]
[*Regional Hearing Clerk / Clerk of the Board E-mail Address*]

[*EPA Case Contact Name and Title*]
U.S. Environmental Protection Agency, [*HQ / Region #*]
[*EPA Office Address*]
[*EPA Case Contact E-mail Address*]

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

59. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

    a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
    b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

    c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

60. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

61. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

62. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

63. 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.

64. 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.

65. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity

to bind the party they represent to this Agreement.

66. 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. Respondent understands that the mailing or e-mail address may be made public when the Agreement and Certificate of Service are filed and uploaded to a searchable database. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

67. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

E. EFFECT OF AGREEMENT AND ATTACHED FINAL ORDER

68. 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 violation(s) identified in Section C of this Agreement.

69. **[Include this paragraph only when civil penalties and/or estimated cost of injunctive relief are equal to or greater than $50,000]** Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

    a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

    b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

    c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [*INSERT CFC CONTACT'S EMAIL ADDRESS FROM LIST IN THE*

FOLLOWING FOOTNOTE[3]], within 30 calendar days after the Final Order ratifying this Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 calendar days after the Filing Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

   i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 calendar days after the [*Filing Date of this Order per paragraph XX;*; and

   ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

70. 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.

71. 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 or Regional Judicial Officer, as applicable*].

72. Any violation of this Agreement or Order may result in a civil judicial action for an injunction, or civil penalties of up to $121,275 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 Agreement in an administrative, civil judicial, or criminal action.

73. 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.

74. 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.

[3] Cincinnati Finance Center's Accounts Receivable Branch Contacts: 1) Region 1: Jessica Chalifoux, 2) Region 2: Milton Wise, 3) Region 3: Jessica Henderson, 4) Region 4: Jessica Henderson, 5) Region 5: Milton Wise, 6) Region 6: Jessica Chalifoux, 7) Region 7: Lori Weidner, 8) Region 8: Jessica Chalifoux, 9) Region 9: Dana Sherrer, 10) Region 10: Jessica Henderson, 11) HQ: Milton Wise

75. 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.

76. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order ratifying the Agreement.

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

COMPLAINANT:

_____
Signature

[*Insert Name of Air Enforcement Division Director or Name of Delegated Regional Authority, as applicable*]
[*Insert Director, Air Enforcement Division or Director of Delegated Regional Authority, as applicable*]
[*Insert Office of Enforcement and Compliance Assurance or Region XX, as applicable*]
U.S. Environmental Protection Agency

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

FOR RESPONDENT:

_____ _____

Signature Date

Printed Name: _____ _____

Title: _____

Address: _____

Federal Tax Identification Number: _____

[*ENVIRONMENTAL APPEALS BOARD, if AED issues ESA*]
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
[*WASHINGTON, D.C. or Region XX, as applicable*]

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

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)–(c) of the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the attached Expedited Settlement 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, effective immediately.

So ordered.[1] [**include this FN, if ESA is for EAB approval**]

[*ENVIRONMENTAL APPEALS BOARD or REGIONAL JUDICIAL OFFICER, as applicable*]

Dated: _____

_____
[*Name*]
[*Environmental Appeals Judge or Regional Judicial Officer, as applicable*]

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Expedited Settlement Agreement" and "Final Order," in the matter of [*insert case name and docket number*] were sent to the following persons in the manner indicated:

By Electronic Mail:
[*EPA Case Attorney Name]*
[EPA Office, e.g., Air Enforcement Division or ORC Region XX, as applicable]
[EPA Office Address]
[EPA Case Attorney Email address]

[Respondent Name]
[Company Name]
[Company Address]
[Respondent email address]

Dated: _____

_____
[*Clerk of the Board or Regional Hearing Clerk, as applicable*]

ESA ATTACHMENT 1

[*AMERICAN INNOVATION AND MANUFACTURING ACT*] *AND/OR [CLEAN AIR 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-[*20XX*]-[*XXXX*]**
Offsite Compliance Monitoring Activity or Inspection Location:	**Port of Entry/Shipment Number(s):**
Person/Importer 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 Regulated Product(s) and Mass (in kg): ("Subject HFCs") [*as applicable*] **Subject Regulated Product(s) and Mass (in kg): ("Subject ODS") [*as applicable*]**	**MTEVe:**
[*For HFC Allocation Violations*] Did the importer have and expend allowances equal to the imported HFCs?	**Container and Quantity**
[*For HFCs*] Did the importer receive any non-objection notices from the EPA?	**[*For ODS*] Did the importer submit a Certification of Intent to Import ODS for Destruction before the shipment left the foreign port of export?**
[*For ODS*] Did the importer receive any approved exemption or petition from the EPA in advance of the importation?	

Table 2 – Description of Alleged Violation(s)

[Delete any alleged violations that do not apply, delete italicized headings after selecting appropriate violations]
 	
The EPA alleges that:
• [*for HFC Allocation Rule violations*]
  ○ 1) Based on the facts in Table 1, 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, in violation of the HFC Allocation regulations at 40 C.F.R. § 84.5(b) [**For violations occuring before 9/18/23 include (2022) at the end of this citation**];
  ○ 2) the importer failed to submit the quarterly reports describing the HFCs imported during the [*first, second, third, fourth*] quarter of [*calendar year*], per 40 C.F.R. § 84.31(c)(1);
  ○ 3) the importer failed to submit advance notification reports for the HFCs no later than 14 days prior to importation, in violation of 40 C.F.R. § 84.31(c)(7), for the entries listed in Table 1;
• [*for HFC Technology Transitions Rule violations*]
  ○ 4) Based on the facts in Table 1, the Subject products are products containing regulated substances above the appropriate GWP limit for the subsector of the product, and that those products were imported into the United States, in violation of the Technology Transition regulations at 40 C.F.R. § 84.54(a);
  ○ 5) the importer failed to submit the annual reports required under 40 C.F.R. § 84.60(a)(1) for the regulated substances imported during [*calendar year*];
• [*for ODS violations*]
  ○ 6) Based on the facts in Table 1, the Subject ODS were imported in violation of 40 CFR §§ 82.4 [*for class I*] and/or 82.15(b) [*for class II*];
• [*For GHG Violations*]
  ○ 7) respondent failed to timely submit complete greenhouse gas reports for (year) by the deadline of March 31, (year) as required by 40 C.F.R. Part 98, Subpart A.

Table 3 – Civil Penalty
Complainant and Respondent agree upon the following civil penalty for settlement purposes: $[*XXX*], where: **HFC Allocation Regulation, Technology Transitions, and ODS Import Violations Calculation:** Monetary Value of Goods * Percentage Multiplier = Penalty [*Insert Calculation*] **Reporting Violations Calculation:** Number of Violations * Violation Type Penalty Amount = Penalty [*Insert Calculation*]

Violation Type	Total Penalty Amount
Late advance reporting (40 C.F.R. § 84.31(c)(7))	$1,000
Failure to provide any advance reporting (40 C.F.R. § 84.31(c)(7))	$2,000
Late quarterly reports (40 C.F.R. § 84.31(c)(1))	$2,500
Incomplete or inaccurate quarterly reporting (40 C.F.R. § 84.31(c)(1))	$3,000
Failure to submit quarterly reports (40 C.F.R. § 84.31(c)(1))	$3,500
Late annual reports (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$10,000
Incomplete or inaccurate annual reporting (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$10,000
Failure to submit annual reports (40 C.F.R. § 84.33(a); 40 C.F.R. § 84.60(a))	$15,000
Failure to maintain records (40 C.F.R. § 98.3(g))	$5,000
Late annual GHG reports (40 C.F.R. § 98.3(b))	$10,000
Incomplete or inaccurate annual GHG reporting (40 C.F.R. § 98.3(b); 40 C.F.R. § 98.3(h))	$10,000
Failure to submit annual GHG reports (40 C.F.R. § 98.3(b))	$15,000

HFC EV[1]	Percentage Multiplier
< 1,300	20%
≥ 1,300 ≤ 5,000	30%
> 5,000 ≤ 10,000	40%
>10,000 ≤ 15,000	50%

TT Product GWP[2]	Percentage Multiplier
< 1,300	20%
≥ 1,300 ≤ 5,000	30%
> 5,000 ≤ 10,000	40%
>10,000 ≤ 15,000	50%

ODS	Percentage Multiplier
Any ODS listed as a class I or class II controlled substance in 40 C.F.R. Part 82, whether on its own or in a blend	40%

HFC	EV
HFC–152	53
HFC–41	92
HFC–152a	124
HFC–143	353
HFC–32	675
HFC–245ca	693
HFC–365mfc	794
HFC–245fa	1,030
HFC–134	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

Table 4 – Corrective Action

[Delete any corrective actions that do not apply]

Respondent certifies that it:

□ has completed permanent destruction of the [*Subject HFCs and/or Subject ODS*] that Respondent imported on or about [_____], [*for HFCs*] using one of the technologies listed at 40 C.F.R. § 84.29, [*for ODS*] see: https://www.epa.gov/ods-phaseout/ozone-depleting-substances-ods-destruction-technologies)

□ will submit to the EPA at [*insert EPA contact's email address*] a copy of the destruction verification required at 40 CFR § 84.31(e)(4), within ninety (90) days of the Effective Date of the ESA. For ODS imports, destruction verification is required per 40 CFR §§ 82.13 & 82.24.

□ has exported the [*Subject HFCs and/or Subject ODS*] to [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 and/or Subject ODS*] was through Canada or Mexico), and has paid $[_____] to perform the action to export the [*Subject HFCs and/or Subject ODS*].

□ will submit to the EPA at [*insert EPA contact's email address*], within thirty (30) days of the Effective Date of the ESA a record documenting such payment for export of the [*Subject HFCs and/or Subject ODS*].

□ has completed and resubmitted to [*insert EPA contact's email address*] any incomplete reports, as applicable.

□ has completed and submitted any reports to [*insert EPA contact's email address*] it failed to submit, as applicable.

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

[1] EVs are found in Appendix A of 40 C.F.R. Part 84.
[2] *Id.*

TRANSMITTAL MEMORANDUM

SUBJECT: Expedited Settlement Agreement and Proposed Final Order: [*Case name*], Docket No. [*XXX*]

FROM: Mary E. Greene
Director Air Enforcement Division
Office of Civil Enforcement

TO: Environmental Appeals Board

I have determined that the attached Expedited Settlement Agreement (ESA) and proposed Final Order is consistent with the global action memorandum, "Expedited Settlement Agreement Template and Proposed Final Order Template for the Hydrofluorocarbon (HFC) and Ozone-Depleting Substances (ODS) Import Enforcement Program."

The relevant statutory and regulatory provisions applicable to this ESA are as follows **[CHECK provisions that are relevant]**:

- The American Innovation and Manufacturing Act, at 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84, specifically:
  - ☐ The illegal import of "regulated substances" (certain bulk hydrofluorocarbons, or HFCs) without expending allowances under the HFC Allocation Regulations. *See* 40 C.F.R. 84.5.
  - ☐ The reporting requirements of the HFC Allocation Regulations. *See* 40 C.F.R. 84.31.
  - ☐ The illegal import of products containing HFCs under the Technology Transitions Regulations. *See* 40 C.F.R. 84.54.
  - ☐ The reporting requirements of the Technology Transitions Regulations. *See* 40 C.F.R. § 84.60(a).
- Title VI of the Clean Air Act, Stratospheric Ozone Protection, at 42 U.S.C. § 7671-7671(q), and the regulations promulgated thereunder at 40 C.F.R. Part 82, specifically 40 C.F.R. §§ 82.4 [and/or] 82.15(b).
- Title I of the Clean Air Act, Part A - Air Quality and Emission Limitations, at 42 U.S.C. § 7401-7431, and the Greenhouse Gas Reporting regulations promulgated thereunder at 40 C.F.R. Part 98, Subparts A, OO, and QQ.

For this reason, I recommend that you ratify the Expedited Settlement Agreement and issue the proposed Final Order.

Attachments: Expedited Settlement Agreement and Proposed Final Order Certificate of Service

cc: [*Respondent or Counsel for Respondent*]

[*Air Enforcement Staff Attorney*]