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Mr. Tom Land
Chief
Stratospheric Program Implementation Branch
Environmental Protection Agency
1310 L St. NW
Washington, D.C. 20005

Re: Request for Interpretation of Import Petition Requirement of 40 C.F.R. § 82.13(g)(2)

Dear Mr. Land:

On behalf of the Halon Recycling Corporation ("HRC"), we write to request an interpretation concerning the applicability of 40 C.F.R. § 82.13(g)(2) to aircraft fire extinguishing pressure vessels containing halon-1301 ("halon bottles") that are imported into the United States for the purpose of servicing or repair.

Halon-1301 is a low-toxicity, chemically stable, gaseous compound used in fire protection systems and devices to suppress fire and explosions. Due to the adverse effects of halons on the ozone layer, the Clean Air Act Amendments of 1990 and the Montreal Protocol on Substances That Deplete the Ozone Layer prohibit the production of new halon-1301. Since effective substitutes are presently unavailable for such critical uses as aircraft fire protection, the recycle and transfer of halon-1301 for such uses is encouraged. HRC is a non-profit corporation formed in 1993 to facilitate the transfer of recycled halons to buyers who have a critical need for the product.

Background

Aircraft halon bottles are purpose-built high pressure vessels that range in size from that of a grapefruit to that of a basketball. Each bottle contains from less than one pound to over 100 pounds of an halon-1301/nitrogen mixture. The bottles are components of systems used on aircraft to prevent or retard fire or explosions and prevent the spread of a fire.

Halon bottles are designed to store the required amount of pressurized suppressant agent while housing the bosses and pads necessary to satisfy functional and attachment requirements. The bosses, properly positioned, provide mounting beds for the installation of the outlet, rupture discs, fill fitting, and switches. After assembly, the container is filled with the required quantity of suppressant agent, superpressurized with nitrogen, and hermetically sealed. The extinguishing agent is expelled from the container through a rupture disk which is opened by explosive cartridge actuation. Prior to installation, the whole unit undergoes final testing to ensure against leakage.

Regular servicing and repair of halon bottles is very important. Upon receipt, the bottles may be fired (empty) or remain filled. All the bottles are emptied, the halon is captured, and the bottles are torn down, hydrostatically tested, rebuilt, and refilled with halon that has been recycled according to specific requirements. The captured halon is collected and recycled either in-house or by a certified recycling facility. After any necessary repairs or testing, the bottles are returned to service.

The use and presence of halon bottles on aircraft is regulated by the Federal Aviation Administration ("FAA") and the Department of Transportation ("DOT"). The requirements for these devices onboard aircraft are contained in 14 C.F.R. Part 25 and the FAA certificate that incorporates the design as part of the airplane certification package and controls the design and application of the products. As the equipment is under high pressure and in severe environments, it may be subject to leakage and the ability to function on command may be degraded over time. Thus, halon bottles must periodically be overhauled to validate the integrity of the pressure via hydrostatic testing. 49 C.F.R. § 173.301 requires halon bottles to meet certain testing and servicing requirements, while DOT E 10990 specifies re-hydrotest requirements for aviation cylinders.

Applicability of 40 C.F.R. § 82.13(g)(2) to Halon Bottles

40 C.F.R. § 82.13(g)(2) provides that "for each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export a [variety of information] in the form of a petition." 40 C.F.R. § 82.3 defines used controlled substances as "controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)."

Aircraft halon bottles cannot be classified as "controlled substances," and by extension cannot be considered "used controlled substances." 40 C.F.R. § 82.3 defines a "controlled substance" as:

> "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'. . . "

Under this definition, halon bottles should not be considered "controlled substances" since the definition specifically exempts any substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Aircraft halon bottles are far more than containers for transportation or storage. Rather, they are integral components of complex and expensive fire safety systems designed to disperse pressurized agent and prevent fires.

Most notably, aircraft halon bottles are not *bulk* containers. Halon bottles cost from $5,000 to $10,000 apiece and are designed to size and shape requirements unique to the system of which they are components. These hardly qualify as bulk containers, however defined. The preamble to the rule adopting the "controlled substances"

definition contains the following discussion about the distinction between bulk containers and products:

> "Technical experts called together by UNEP to discuss implementation of the Protocol (Nairobi, January 1988) recommended that the Protocol's definition be clarified as follows: 'Any amount of a [listed] substance or a mixture of [listed] substances which is not part of a use system containing the substance is a controlled substance and not a product containing a controlled substance [for the purpose of the Protocol]. 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 first container is in fact utilized only for storage and/or transport and the [listed] substance is considered [in] bulk [form or a controlled substance] and not a product.' Under this modified definition, for example, CFCs in small cans used to refill refrigerators and car air conditioners would clearly be in bulk form and therefore counted as controlled substances. EPA concluded that this clarification captured the bulk-versus-product distinction the Protocol drafters sought to make, and proposed in its May 24 supplemental notice to add the clarification to the rule's definition. Comments on that notice supported the proposed clarification, and it has been incorporated into the final rule."[1]

The foregoing discussion makes clear that halon bottles do not qualify as "controlled substances." Halon bottles are completely unlike "CFCs in small cans that are used to refill refrigerators and car air conditioners," the paradigm example of small bulk containers. Such cans are disposable. Halon bottles, on the other hand, are worth hundreds of times the value of the halon they contain. Furthermore, halon bottles are generally classified for import in the same category as "controlled products," a definition inconsistent with their also being "controlled substances."[2]

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[1] 53 Fed. Reg. 30566, 30581 (August 12, 1988).

[2] 40 C.F.R. § 82.3 defines a "controlled product" as "a product that contains a controlled substance." In addition, it provides that "controlled products include, but are not limited to, those products listed in appendix D to this subpart." Appendix D defines and assigns categories of products, like portable fire extinguishers, certain tariff classification numbers. Under the US Harmonized Tariff Schedule, portable fire extinguishers are classified in 8424/8424.10, the same classification generally used for aircraft halon bottles.

Even if the Environmental Protection Agency ("EPA") should take the position that halon bottles are "controlled substances," they should not be included in the import petition process. First, almost half the halon bottles imported for service or repair contain 5 pounds or less of halon and are exempt from the petition process as the regulations exclude shipments of 5 pounds or less.[3] Almost all incoming shipments are for one or two halon bottles with the largest shipment reported by HRC members containing four bottles. In addition to demonstrating that halon bottles are not bulk containers, these characteristics show that making them subject to the petition process would introduce unnecessary confusion and inconsistency and would burden customs inspection for no good reason.

Second, halon bottles are routinely sent out of the country immediately after servicing and repair. The records of Kidde Aerospace, another leading supplier of fire protection and safety systems products for civilian and military aircraft, show that only 355 aircraft halon bottles were imported for repair in 2002 and 2003. Following repair, the bottles were immediately returned overseas. Only those bottles that could not be repaired were not re-exported; they were broken down and disposed of internally. Kidde Aerospace reports that typically less than 5 percent of the aircraft halon bottles they receive are non-repairable.

Finally, servicing companies maintain detailed logs and records pertaining to the importation of halon bottles. For example, each halon bottle received at the Pacific Scientific facility is logged. The date the halon bottle was received, the owner, the part number, the serial number, and the work to be done are all recorded. Halon fill data and the service date are also recorded on all work that is completed in-house. On the manufacturing side, each bottle is serial numbered and shipment records maintained. These procedures provide detailed and accurate records on the movement of halon bottles into and out of the United States.

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[3] Pacific Scientific, an aviation services company, estimates that roughly 44 percent of the bottles it supplies hold less than 5 pounds of halon-1301.

In light of the foregoing, we respectfully request an interpretation that 40 C.F.R. § 82.13(g)(2) does not apply to importers of aircraft fire extinguishing spherical pressure vessels containing halon for the purpose of servicing or repair.

Sincerely,

Caffey Norman

W. Caffey Norman, III

cc: Mr. Thomas A. Cortina