

Environmental Protection Agency

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APPENDIX A TO PART 84—REGULATED SUBSTANCES

AUTHORITY: Pub. L. 116-260, Division S, Sec. 103.

SOURCE: 86 FR 55201, Oct. 5, 2021, unless otherwise noted.

Subpart A—Production and Consumption Controls

§ 84.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement certain provisions of the American Innovation and Manufacturing Act of 2020 (AIM Act), enacted as part of Public Law 116-260. In particular, the AIM Act imposes limits on the production and consumption of certain regulated substances, according to a specified schedule, which are addressed by this subpart. (b) This subpart applies to any person that produces, transforms, destroys, imports, exports, sells or distributes, offers for sale or distribution, recycles for fire suppression, or reclaims a regulated substance and to end users in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act.

[86 FR 55206, Oct. 5, 2021]

§ 84.3 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

Allowance means a limited authorization for the production or consumption of a regulated substance established under subsection (e) of section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (the AIM Act). An allowance allocated under subsection (e) of section 103 in Division S of the AIM Act does not constitute a property right.

Application-specific allowance means 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). An application-specific allowance does not constitute a property right.

Batch means a vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers regulated substances directly for sale or distribution, or for repackaging for sale or distribution; or a population of small vessels, containers, or cylinders with the same nominal composition that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

Berth means to moor a ship in its allotted place at a wharf or dock.

Bulk means 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.

Certificate of analysis means a document that certifies the contents of an import meets the nominal composition following sampling and testing requirements prescribed in § 84.5(i)(3) for the appropriate regulated substance or blend of regulated substances.

Chemical vapor deposition chamber cleaning means, in the context of semiconductor manufacturing, a process type in which chambers used for depositing thin films are cleaned periodically using plasma-generated fluorine atoms and other reactive fluorine-containing fragments.

Commonly owned: An entity that is related to another entity by a shared individual natural person(s), where either:

(1) There is at least a single individual that owns 30 percent or more of each entity; or

(2) Individuals that share a direct family relationship (parent, child, sibling, or spouse) own a majority of each entity.

Confer means to shift unexpended application-specific allowances obtained in accordance with subsection (e)(4)(B)(iv) of the AIM Act from the end user allocated such allowances to one or more entities in the supply chain for the production or import of a

regulated substance for use by the end user.

Consumption, with respect to a regulated substance, means production plus imports minus exports.

Consumption allowances means 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. A person's consumption allowances are the total of the allowances obtained under § 84.11 or § 84.15 as may be modified under §§ 84.17 (availability of additional consumption allowances), 84.19 (transfer of allowances), and 84.35 (administrative consequences).

Defense spray means an aerosol-based spray used for self-defense, including pepper spray and animal sprays, and containing the irritant capsaicin and related capsaicinoids (derived from oleoresin capsicum), an emulsifier, and an aerosol propellant.

Destruction means the expiration of a regulated substance to the destruction and removal efficiency actually achieved. Such destruction might result in a commercially useful end product, but such usefulness would be secondary to the act of destruction.

Etching means, in the context of semiconductor manufacturing, a process type that uses plasma-generated fluorine atoms and other reactive fluorine-containing fragments that chemically react with exposed thin films (e.g., dielectric, metals) or substrate (e.g., silicon) to selectively remove portions of material. This includes semiconductor production processes using fluorinated GHG reagents to clean wafers.

Exchange value means the value assigned to a regulated substance in accordance with AIM Act subsections (c) and (e), as applicable, and as provided in appendix A to this part.

Exchange value equivalent (EVe) means 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.

Expend means to subtract the number of allowances required for the production or import of regulated substances under this part from a person's unexpended allowances.

Export means the transport from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for onboard use.

Exporter means the person who contracts to sell regulated substances for export or transfers regulated substances to his affiliate in another country.

Facility means one or more production lines at the same location owned by or under common control of the same person.

Final customer means the last person to purchase a bulk regulated substance before its intended use. Final customer includes, but is not limited to, air conditioning contractors in the residential air conditioning market, foam systems houses, aerosol fillers, semiconductor manufacturers, air conditioning and refrigeration equipment manufacturers that ship equipment pre-charged, and fire extinguisher manufacturers.

Fire suppressant recycler means, generally, an entity that collects used HFC fire suppressants and directly resells those collected and aggregated HFCs—with or without any additional reprocessing—to another entity for reuse as a fire suppressant (also referred to as a “recycler for fire suppression” in this subpart). An entity that collects and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. An entity that resells HFC fire suppressants that have already been reprocessed for use as a fire suppressant by another entity would not be a fire suppressant recycler.

Foreign country means an entity that is recognized as a sovereign nation or country other than the United States of America.

Heel means the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container).

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, 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.

Importer means 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) The consignee;
- (2) The importer of record;
- (3) The actual owner; or
- (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

Individual shipment means the kilograms of a regulated substance for which a person may make one (1) U.S. Customs entry, as identified in the non-objection notice obtained from the relevant Agency official in accordance with § 84.25.

Laboratory testing means the use of the sampling and testing methodology prescribed in § 84.5(i)(3) by a laboratory that is accredited to ISO 17025 in accordance with ISO/IEC 17025:2017(E) (incorporated by reference, see § 84.37), or certified under the AHRI Refrigerant Testing Laboratory Certification Program in accordance with the AHRI RTL OM and AHRI General OM (both incorporated by reference, see § 84.37), or recognized under OSHA's Nationally Recognized Testing Laboratory program in accordance with requirements codified at 29 CFR 1910.7.

Majority owned means when a corporate entity has at least a fifty percent stake in another entity.

Metered dose inhaler (MDI) means a handheld pressurized inhalation system that delivers small, precisely measured therapeutic doses of medication directly to the airways of a patient. MDIs treat health conditions such as asthma and chronic obstructive pulmonary disease and are approved for

such use by the U.S. Food and Drug Administration (FDA).

Mission-critical military end uses means those uses of regulated substances by an agency of the Federal Government responsible for national defense that have a direct impact on mission capability, as determined by the U.S. Department of Defense, including, but not limited to uses necessary for development, testing, production, training, operation, and maintenance of Armed Forces vessels, aircraft, space systems, ground vehicles, amphibious vehicles, deployable/expeditionary support equipment, munitions, and command and control systems.

Non-objection notice means the limited authorization granted by the relevant Agency official to import a specific individual shipment of a regulated substance in accordance with § 84.25.

On board aerospace fire suppression means use of a regulated substance in fire suppression equipment used on board commercial and general aviation aircraft, including commercial-derivative aircraft for military use; rotorcraft; and space vehicles. On board commercial aviation fire suppression systems are installed throughout mainline and regional passenger and freighter aircraft, including engine nacelles, auxiliary power units (APUs), lavatory trash receptacles, baggage/crew compartments, and handheld extinguishers.

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.

Process agent means the use of a regulated substance to form the environment for a chemical reaction or inhibiting an unintended chemical reaction (e.g., use as a solvent, catalyst, or stabilizer) where the regulated substance is not consumed in the reaction, but is removed or recycled back into the process and where no more than trace quantities remain in the final product. A feedstock, in contrast, is consumed during the reaction.

Production/Produce means the manufacture of a regulated substance from a

raw material or feedstock chemical (but not including the destruction of a regulated substance by a technology approved by the Administrator as provided in § 84.29). The term production does not include:

(1) The manufacture of a regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical;

(2) The reclamation, reuse, or recycling of a regulated substance; or

(3) Insignificant quantities of a regulated substance inadvertently or coincidentally generated from any of the following, independent circumstances: during a chemical manufacturing process, resulting from unreacted feedstock, from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured, as an unintended byproduct of research and development applications, or during semiconductor manufacturing processes.

Production allowances means the limited authorization to produce regulated substances; however, production allowances may be used to produce regulated substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances obtained under § 84.9 or § 84.15 as may be modified under §§ 84.19 (transfer of allowances) and 84.35 (administrative consequences).

Production line means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into regulated substances or consume regulated substances in the production of other chemicals.

Reclaim means the reprocessing of regulated substances to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on AHRI Standard 700–2016) that are applicable to that regulated substance and to verify that the regulated substance meets these specifications using the analytical methodology prescribed in section 5 of appendix A to 40 CFR part 82, subpart F.

Regulated substance means a hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a

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regulated substance by the Administrator under the authority granted in subsection (c)(3). A current list of regulated substances can be found in appendix A to this part.

Repackagers means entities who transfer regulated substances, either alone or in a blend, from one container to another container prior to sale or distribution or offer for sale or distribution. An entity that services system cylinders for use in fire suppression equipment and returns the same regulated substances to the same system cylinder it was recovered from after the system cylinder is serviced is not a repackager.

Representative sample means a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of regulated substance(s) in an unbiased and precise manner; and a sample that can be used to infer that the composition of regulated substance(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch, are within stated tolerances.

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond Earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

Structural composite preformed polyurethane foam means a foam blown from polyurethane that is reinforced with fibers and with polymer resin during the blowing process, and is preformed into the required shape (*e.g.*, specific boat or trailer design) to increase structural strength while reducing the weight of such structures.

Transform means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals. A regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical is called a feedstock.

Transshipment means the continuous shipment of a regulated substance, from a foreign country of origin through the United States or its territories, to a second foreign country of final destination, as long as the shipment does not enter U.S. commerce. A transshipment, as it moves through the United States or its territories, cannot be repackaged, sorted, or otherwise changed in condition.

Used regulated substances means regulated substances that have been recovered from their intended use systems (including regulated substances that have been, or may be subsequently, recycled or reclaimed).

[86 FR 55201, 55206, Oct. 5, 2021, as amended at 88 FR 46893, July 20, 2023; 88 FR 46894, July 20, 2023]

§ 84.5 Prohibitions relating to regulated substances.

(a) *Production.* (1) As of January 1, 2022, no person may produce regulated substances, intentionally or unintentionally, in excess of the quantity of unexpended production allowances and consumption allowances or unexpended application-specific allowances held by that person under the authority of this subpart at that time in that control period. Every kilogram of production in excess of allowances expended constitutes a separate violation of this subpart. The required amount of allowances that must be expended will be calculated to the tenth with a minimum expenditure of 0.1 allowances for any production of regulated substances.

(2) As of January 1, 2022, no person may expend production allowances to produce a quantity of regulated substances unless that person expends an equal quantity of consumption allowances at the same time.

(3) A person is not required to expend production, consumption, or application-specific allowances to produce regulated substances if the regulated substances are destroyed using a technology approved by the Administrator for destruction under § 84.29 within 30 days of generating the regulated substance if the destruction technology is located at the facility where production occurred or 120 days of generating