Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (recast) (Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer, on the reporting of information related to those substances and on the import, export, placing on the market and use of products and equipment containing or relying on those substances.

Article 2

Scope

This Regulation shall apply to controlled substances, to new substances and to products and equipment containing or relying on controlled substances.

Article 3

Definitions

For the purposes of this Regulation:

1. ‘Protocol’ means the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, as last amended and adjusted;

2. ‘Party’ means any party to the Protocol;

3. ‘State not party to the Protocol’ means, with respect to a particular controlled substance, any State or regional economic integration organisation that has not agreed to be bound by the provisions of the Protocol applicable to that substance;

4. ‘controlled substances’ means substances listed in Annex I, including their isomers, whether alone or in a mixture, and whether they are virgin, recovered, recycled or reclaimed;

5. ‘chlorofluorocarbons’ means the controlled substances listed in Group I of Annex I, including their isomers;

6. ‘halons’ means the controlled substances listed in Group III of Annex I, including their isomers;

7. ‘carbon tetrachloride’ means the controlled substance specified in Group IV of Annex I;

8. ‘methyl bromide’ means the controlled substance specified in Group VI of Annex I;

9. ‘hydrochlorofluorocarbons’ means the controlled substances listed in Group VIII of Annex I, including their isomers;

10. ‘new substances’ means substances listed in Annex II, whether alone or in a mixture, and whether they are virgin, recovered, recycled or reclaimed;

11. ‘feedstock’ means any controlled substance or new substance that undergoes chemical transformation in a process in which it is entirely converted from its original composition and whose emissions are insignificant;

12. ‘process agents’ means controlled substances used as chemical process agents in the applications listed in Annex III;

13. ‘producer’ means any natural or legal person producing controlled substances or new substances within the Community;

14. ‘production’ means the amount of controlled substances or new substances produced, including the amount produced, intentionally or inadvertently, as a by-product unless that by-product is destroyed as part of the manufacturing process or following a documented procedure ensuring compliance with this Regulation and the Community and national legislation on waste. No amount recovered, recycled or reclaimed shall be considered as ‘production’, nor shall any insignificant amount unavoidably incorporated in products in trace quantities or emitted during manufacturing;

15. ‘ozone-depleting potential’ or ‘ODP’ means the figure specified in Annexes I and II representing the potential effect of each controlled substance or new substance on the ozone layer;

16. ‘calculated level’ means a quantity determined by multiplying the quantity of each controlled substance by its ozone-depleting potential and by adding together, for each group of controlled substances in Annex I separately, the resulting figures;

17. ‘industrial rationalisation’ means the transfer either between Parties or within a Member State of all or a portion of the calculated level of production of one producer to another, for the purpose of optimising economic efficiency or responding to anticipated shortfalls in supply as a result of plant closures;

18. ‘import’ means the entry of substances, products and equipment covered by this Regulation into the customs territory of the Community as far as the territory is covered by a Member State’s ratification of the Protocol and this Regulation applies;

19. ‘export’ means the exit from the customs territory of the Community, in so far as the territory is covered by a Member State’s ratification of the Protocol and by this Regulation, of substances, products and equipment covered by this Regulation which have the status of Community goods or the re-export of substances, products and equipment covered by this Regulation if they have the status of non-Community goods;

20. ‘placing on the market’ means the supplying or making available to third persons within the Community for payment or free of charge, and includes the release for free circulation in the Community as referred to in Regulation (EC) No 450/2008. In respect of products and equipment being part of immovable property or part of

means of transport this refers only to the supplying or making available within the Community for the first time;

21. ‘use’ means the utilisation of controlled substances or new substances in the production, maintenance or servicing, including refilling, of products and equipment or in other processes;

22. ‘heat pump’ means a device or installation that extracts heat at low temperatures from air, water or earth and supplies heat;

23. ‘recovery’ means the collection and the storage of controlled substances from products and equipment or containers during maintenance or servicing or before disposal;

24. ‘recycling’ means the reuse of a recovered controlled substance following a basic cleaning process;

25. ‘reclamation’ means the reprocessing of a recovered controlled substance in order to meet the equivalent performance of a virgin substance, taking into account its intended use;

26. ‘undertaking’ means any natural or legal person which:

    (a) produces, recovers, recycles, reclaims, uses or destroys controlled substances or new substances;

    (b) imports such substances;

    (c) exports such substances;

    (d) places such substances on the market; or

    (e) operates refrigeration, air conditioning or heat pump equipment, or fire protection systems, which contain controlled substances;

27. ‘quarantine applications’ means treatments to prevent the introduction, establishment or spread of quarantine pests (including diseases), or to ensure their official control, where:
    — official control is that performed by, or authorised by, a national plant, animal or environmental protection or health authority,
    — quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed, and being officially controlled;

28. ‘pre-shipment applications’ means those non-quarantine applications applied no more than 21 days prior to export to meet the official requirements of the importing country or official requirements of the exporting country existing before 7 December 1995. Official requirements are those which are performed by, or authorised by, a national plant, animal, environmental, health or stored product authority;

29. ‘products and equipment relying on controlled substances’ means products and equipment which do not function without controlled substances, not including those products and equipment used for the production, processing, recovery, recycling, reclamation or destruction of controlled substances;

30. ‘virgin substances’ means substances which have not previously been used;

31. ‘products and equipment’ means all products and equipment except containers used for the transportation or storage of controlled substances.

CHAPTER II

PROHIBITIONS

Article 4

Production of controlled substances

The production of controlled substances shall be prohibited.

Article 5

Placing on the market and use of controlled substances

1 The placing on the market and the use of controlled substances shall be prohibited.

2 Controlled substances shall not be placed on the market in non-refillable containers, except for laboratory and analytical uses as referred to in Article 10 and Article 11(2).

3 This Article shall not apply to controlled substances in products and equipment.

Article 6

Placing on the market of products and equipment containing or relying on controlled substances

1 The placing on the market of products and equipment containing or relying on controlled substances shall be prohibited, with the exception of products and equipment for which the use of the respective controlled substance is authorised in accordance with Article 10, Article 11(2) or Article 13 or has been authorised on the basis of Article 3(1) of Regulation (EC) No 2037/2000.

2 Except for uses referred to in Article 13(1), fire protection systems and fire extinguishers containing halons shall be prohibited and shall be decommissioned.

CHAPTER III

EXEMPTIONS AND DEROGATIONS

Article 7

Production, placing on the market and use of controlled substances as feedstock

1 By way of derogation from Articles 4 and 5, controlled substances may be produced, placed on the market and used as feedstock.

2 Controlled substances produced or placed on the market as feedstock may only be used for that purpose. As of 1 July 2010, containers of such substances shall be labelled with a clear indication that the substance may only be used as feedstock. Where such substances are required to be labelled in accordance with Directive 67/548/EEC, Directive 1999/45/EC or Regulation (EC) No 1272/2008, such indication shall be included in the label referred to in those

Directives or in the supplemental information part of the label as referred to in Article 25(3) of that Regulation.

The Commission may determine the form and content of the label to be used. Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 8

Production, placing on the market and use of controlled substances as process agents

1 By way of derogation from Articles 4 and 5, controlled substances may be produced, placed on the market and used as process agents.

2 Controlled substances may only be used as process agents in installations existing on 1 September 1997, and where emissions are insignificant.

3 Controlled substances produced or placed on the market as process agents may only be used for that purpose. As of 1 July 2010, containers of such substances shall be labelled with a clear indication that those substances may only be used as process agents. Where such substances are required to be labelled in accordance with Directive 67/548/EEC, Directive 1999/45/EC or Regulation (EC) No 1272/2008, such indication shall be included in the label referred to in those Directives or in the supplemental information part of the label as referred to in Article 25(3) of that Regulation.

The Commission may determine the form and content of the label to be used. Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

4 The Commission shall, if appropriate, in accordance with the management procedure referred to in Article 25(2), establish a list of undertakings in which the use of controlled substances as process agents shall be permitted, laying down maximum quantities that may be used for make-up or for consumption as process agents and emission levels for each of the undertakings concerned.

The maximum amount of controlled substances that may be used as process agents within the Community shall not exceed 1 083 metric tonnes per year.

The maximum amount of controlled substances that may be emitted from process agent uses within the Community shall not exceed 17 metric tonnes per year.

5 In the light of new information or technical developments or decisions taken by the Parties, the Commission shall, if appropriate:

a amend Annex III;

b amend the maximum amount of controlled substances that may be used as process agents or emitted from process agent uses as referred to in the second and third subparagraphs of paragraph 4.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 9

Placing on the market of controlled substances for destruction or reclamation and of products and equipment containing or relying on controlled substances for destruction

By way of derogation from Articles 5 and 6, controlled substances and products and equipment containing or relying on controlled substances may be placed on the market for destruction within the Community in accordance with the requirements for destruction referred to in Article 22(1). Controlled substances may also be placed on the market for reclamation within the Community.

Article 10

Essential laboratory and analytical uses of controlled substances other than hydrochlorofluorocarbons

1 By way of derogation from Articles 4 and 5, controlled substances other than hydrochlorofluorocarbons may be produced, placed on the market and used for essential laboratory and analytical uses, subject to registration and licensing in accordance with this Article.

2 The Commission shall, if appropriate, in accordance with the management procedure referred to in Article 25(2), determine any essential laboratory and analytical uses for which the production and import of controlled substances other than hydrochlorofluorocarbons may be permitted in the Community, the respective quantities, the period for which the exemption shall be valid and those users which may take advantage of those essential laboratory and analytical uses.

3 Controlled substances produced or placed on the market for essential laboratory and analytical uses may only be used for that purpose. As of 1 July 2010, containers containing such substances shall be labelled with a clear indication that the substance may only be used for laboratory and analytical uses. Where such substances are required to be labelled in accordance with Directive 67/548/EEC, Directive 1999/45/EC or Regulation (EC) No 1272/2008, such indication shall be included in the label referred to in those Directives or in the supplemental information part of the label as referred to in Article 25(3) of that Regulation.

The Commission may determine the form and content of the label to be used. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Controlled substances referred to in the first subparagraph shall only be placed on the market and further distributed under the conditions set out in Annex V. The Commission may amend that Annex. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

4 Any undertaking using controlled substances other than hydrochlorofluorocarbons for essential laboratory and analytical uses shall register with the Commission, indicating the substances being used, the purpose, the estimated annual consumption and the suppliers of those substances, and shall update that information when changes occur.

5 By the date specified in a notice issued by the Commission, producers and importers supplying the undertaking referred to in paragraph 4 or using controlled substances for their

own account shall declare to the Commission the foreseen demand for the period specified in the notice, specifying the nature and quantities of controlled substances needed.

6 The Commission shall issue licences to producers and importers of controlled substances, other than hydrochlorofluorocarbons, produced or imported for essential laboratory and analytical uses and shall notify them of the use for which they have authorisation and the substances and quantities thereof that they are authorised to place on the market or to use for their own account. The quantity annually authorised under licences for individual producers and importers shall not exceed 130 % of the annual average of the calculated level of controlled substances licensed for the producer or importer for essential laboratory and analytical uses in the years 2007 to 2009.

The total quantity annually authorised under licences, including licences for hydrochlorofluorocarbons under Article 11(2), shall not exceed 110 ODP tonnes. Remaining quantities may be allocated to producers and importers which did not place on the market or use controlled substances, for their own account for essential laboratory and analytical uses in the years 2007 to 2009.

The Commission shall determine a mechanism for the allocation of quotas to producers and importers. Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

7 A producer may be authorised by the competent authority of the Member State in which that producer's relevant production is situated to produce the controlled substances referred to in paragraph 1 for the purpose of meeting the requests licensed in accordance with paragraph 6.

The competent authority of the Member State concerned shall notify the Commission in advance of its intention to issue any such authorisation.

8 To the extent permitted by the Protocol, the competent authority of the Member State in which a producer's relevant production is situated may authorise that producer to produce or to exceed the calculated levels of production laid down in paragraph 6 in order to satisfy any essential laboratory and analytical uses of Parties at their request.

The competent authority of the Member State concerned shall notify the Commission in advance of its intention to issue any such authorisation.

Article 11

Production, placing on the market and use of hydrochlorofluorocarbons and placing on the market of products and equipment containing or relying on hydrochlorofluorocarbons

1 By way of derogation from Article 4, hydrochlorofluorocarbons may be produced provided that each producer ensures the following:

a the calculated level of its production of hydrochlorofluorocarbons in the period from 1 January 2010 to 31 December 2010 and in each 12-month period thereafter until 31 December 2013 does not exceed 35 % of the calculated level of its production of hydrochlorofluorocarbons in 1997;

b the calculated level of its production of hydrochlorofluorocarbons in the period from 1 January 2014 to 31 December 2014 and in each 12-month period thereafter until

31 December 2016 does not exceed 14 % of the calculated level of its production of hydrochlorofluorocarbons in 1997;

c the calculated level of its production of hydrochlorofluorocarbons in the period from 1 January 2017 to 31 December 2017 and in each 12-month period thereafter until 31 December 2019 does not exceed 7 % of the calculated level of its production of hydrochlorofluorocarbons in 1997;

d it produces no hydrochlorofluorocarbons after 31 December 2019.

2 By way of derogation from Article 4 and Article 5(1), hydrochlorofluorocarbons may be produced, placed on the market and used for laboratory and analytical uses.

Article 10(3) to (7) shall apply mutatis mutandis.

3 By way of derogation from Article 5, until 31 December 2014, reclaimed hydrochlorofluorocarbons may be placed on the market and used for the maintenance or servicing of existing refrigeration, air-conditioning and heat pump equipment, provided that the container is labelled with an indication that the substance has been reclaimed and with information on the batch number and name and address of the reclamation facility.

4 Until 31 December 2014, recycled hydrochlorofluorocarbons may be used for the maintenance or servicing of existing refrigeration, air-conditioning and heat pump equipment provided that they have been recovered from such equipment and may only be used by the undertaking which carried out the recovery as part of maintenance or servicing or for which the recovery as part of maintenance or servicing was carried out.

5 By way of derogation from Article 5, until 31 December 2019, hydrochlorofluorocarbons may be placed on the market for repackaging and subsequent export. Any undertaking carrying out the repackaging and subsequent export of hydrochlorofluorocarbons shall register with the Commission, indicating the controlled substances concerned, their estimated annual demand and the suppliers of those substances, and shall update this information when changes occur.

6 When reclaimed or recycled hydrochlorofluorocarbons are used for maintenance or servicing, the refrigeration, air-conditioning and heat pump equipment concerned shall be labelled with an indication of the type of substance, its quantity contained in the equipment and the label elements set out in Annex I to Regulation (EC) No 1272/2008 for substances or mixtures classified as Hazardous to the Ozone Layer.

7 Undertakings operating the equipment referred to in paragraph 4 containing a fluid charge of 3 kg or more shall keep a record of the quantity and type of substance recovered and added, and of the company or technician which performed the maintenance or servicing.

Undertakings using reclaimed or recycled hydrochlorofluorocarbons for maintenance or servicing shall keep a record of the undertakings that have supplied reclaimed hydrochlorofluorocarbons and of the source of recycled hydrochlorofluorocarbons.

8 By way of derogation from Articles 5 and 6, the Commission may, following a request by a competent authority of a Member State and in accordance with the management procedure referred to in Article 25(2), authorise a time-limited exemption to allow the use and placing on the market of hydrochlorofluorocarbons and of products and equipment containing or relying on hydrochlorofluorocarbons where it is demonstrated that, for a particular use, technically and economically feasible alternative substances or technologies are not available or cannot be used.

This exemption may not be authorised for a period which extends beyond 31 December 2019.

Article 12

Quarantine and pre-shipment applications and emergency uses of methyl bromide

1 By way of derogation from Article 5(1), until 18 March 2010, methyl bromide may be placed on the market and used for quarantine and for pre-shipment applications for treatment of goods for export provided that the placing on the market and use of methyl bromide are allowed respectively under national legislation in accordance with Directive 91/414/EEC and Directive 98/8/EC.

Methyl bromide may only be used on sites approved by the competent authorities of the Member State concerned and, if economically and technically feasible, subject to the condition that at least 80 % of methyl bromide released from the consignment is recovered.

2 The calculated level of methyl bromide which undertakings place on the market or use for their own account in the period from 1 January 2010 to 18 March 2010 shall not exceed 45 ODP tonnes.

Each undertaking shall ensure that the calculated level of methyl bromide which it places on the market or uses for its own account for quarantine and pre-shipment applications shall not exceed 21 % of the average of the calculated level of methyl bromide which it placed on the market or used for its own account for quarantine and pre-shipment in the years 2005 to 2008.

3 In an emergency, where unexpected outbreaks of particular pests or diseases so require, the Commission may, at the request of the competent authority of a Member State, authorise the temporary production, placing on the market and use of methyl bromide, provided that the placing on the market and use of methyl bromide are allowed respectively under Directive 91/414/EEC and Directive 98/8/EC.

Such authorisation shall apply for a period not exceeding 120 days and to a quantity not exceeding 20 metric tonnes and shall specify measures to be taken to reduce emissions during use.

Article 13

Critical uses of halons and decommissioning of equipment containing halons

1 By way of derogation from Article 5(1), halons may be placed on the market and used for critical uses set out in Annex VI. Halons may only be placed on the market by undertakings authorised by the competent authority of the Member State concerned to store halons for critical uses.

2 The Commission shall review Annex VI and, if appropriate, adopt modifications and time-frames for the phasing out of the critical uses by defining cut-off dates for new applications and end dates for existing applications, taking into account the availability of technically and economically feasible alternatives or technologies that are acceptable from the standpoint of environment and health.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

3 Fire protection systems and fire extinguishers containing halons applied in uses referred to in paragraph 1 shall be decommissioned by the end dates to be specified in Annex VI.

4 The Commission may, at the request of the competent authority of a Member State and in accordance with the management procedure referred to in Article 25(2), grant derogations from end dates for existing applications or cut-off dates for new applications, provided those dates have been specified in Annex VI in accordance with paragraph 2, for specific cases where it is demonstrated that no technically and economically feasible alternative is available.

Article 14

Transfer of rights and industrial rationalisation

1 Any producer or importer entitled to place controlled substances on the market or use them for its own account may transfer that right in respect of all or any quantities of the respective group of substances fixed in accordance with this Article to any other producer or importer of that group of substances within the Community. Any such transfer shall be notified in advance to the Commission. The transfer of the right to place on the market or use shall not imply the further right to produce or to import.

2 To the extent permitted by the Protocol, the competent authority of the Member State in which a producer's relevant production is situated may authorise that producer to exceed the calculated levels of production laid down in Article 10 and Article 11(2) for the purpose of industrial rationalisation within the Member State concerned, provided that the calculated levels of production of that Member State do not exceed the sum of the calculated levels of production of its domestic producers as laid down in Article 10 and Article 11(2) for the periods in question. The competent authority of the Member State concerned shall notify the Commission in advance of its intention to issue any such authorisation.

3 To the extent permitted by the Protocol, the Commission may, in agreement with the competent authority of the Member State in which a producer's relevant production is situated, authorise that producer to exceed the calculated levels of production laid down in Article 10 and Article 11(2) for the purpose of industrial rationalisation between Member States, provided that the combined calculated levels of production of the Member States concerned do not exceed the sum of the calculated levels of production of their domestic producers as laid down in Article 10 and Article 11(2) for the periods in question. The agreement of the competent authority of the Member State in which it is intended to reduce production shall also be required.

4 To the extent permitted by the Protocol, the Commission may, in agreement with both the competent authority of the Member State in which a producer's relevant production is situated and the government of the third country Party concerned, authorise a producer to combine the calculated levels of production laid down in Article 10 and Article 11(2) with the calculated levels of production allowed to a producer in a third country Party under the Protocol and that producer's national legislation for the purpose of industrial rationalisation with a third country Party, provided that the combined calculated levels of production by the two producers do not exceed the sum of the calculated levels of production allowed to the Community producer under Article 10 and Article 11(2) and the calculated levels of production allowed to the third country Party producer under the Protocol and any relevant national legislation.

CHAPTER IV

TRADE

Article 15

Imports of controlled substances or of products and equipment containing or relying on controlled substances

1 Imports of controlled substances or of products and equipment other than personal effects containing or relying on those substances, shall be prohibited.

2 The prohibition set out in paragraph 1 shall not apply to imports of:

a controlled substances to be used for laboratory and analytical uses referred to in Article 10 and Article 11(2);

b controlled substances to be used as feedstock;

c controlled substances to be used as process agents;

d controlled substances for destruction by technologies referred to in Article 22(2);

e until 31 December 2019, hydrochlorofluorocarbons to be repackaged and subsequently re-exported no later than 31 December of the following calendar year to a Party where the consumption or import of that hydrochlorofluorocarbon is not prohibited;

f methyl bromide for emergency uses referred to in Article 12(3) or, until 31 December 2014, for repackaging and subsequent re-export for quarantine and pre-shipment applications provided that the re-export takes place during the year of import;

g recovered, recycled or reclaimed halons, under the condition that they are only imported for critical uses referred to in Article 13(1), by undertakings authorised by the competent authority of the Member State concerned to store halons for critical uses;

h products and equipment containing or relying on controlled substances for destruction, where applicable by technologies referred to in Article 22(2);

i products and equipment containing or relying on controlled substances to satisfy laboratory and analytical uses referred to in Article 10 and Article 11(2);

j products and equipment containing or relying on halon to satisfy critical uses referred to in Article 13(1);

k products and equipment containing hydrochlorofluorocarbons for which the placing on the market has been authorised in accordance with Article 11(5).

3 Imports referred to in paragraph 2, with the exception of imports for transit through the customs territory of the Community or imports under the temporary storage, customs warehousing or free zone procedure as referred to in Regulation (EC) No 450/2008, provided that they remain in the customs territory of the Community no longer than 45 days and that they are not subsequently presented for release for free circulation in the Community, destroyed or processed, shall be subject to the presentation of an import licence. Those licences shall be issued by the Commission after verification of compliance with Articles 16 and 20.

Article 16

Release for free circulation in the Community of imported controlled substances

1 The release for free circulation in the Community of imported controlled substances shall be subject to quantitative limits. The Commission shall determine those limits and allocate quotas to undertakings for the period from 1 January to 31 December 2010 and for

each 12-month period thereafter in accordance with the management procedure referred to in Article 25(2).

The quotas referred to in the first subparagraph shall be allocated only for the following substances:

a controlled substances if they are used for laboratory and analytical, or critical uses, referred to in Article 10, Article 11(2) and Article 13;

b controlled substances if they are used as feedstock;

c controlled substances if they are used as process agents.

2 By the date specified in a notice issued by the Commission, importers of substances referred to in points (a), (b) and (c) of paragraph 1 shall declare to the Commission the anticipated demand, specifying the nature and quantities of controlled substances needed. On the basis of those declarations the Commission shall establish quantitative limits to the imports of substances referred to in points (a), (b) and (c) of paragraph 1.

Article 17

Export of controlled substances or of products and equipment containing or relying on controlled substances

1 Exports of controlled substances or of products and equipment other than personal effects containing or relying on those substances, shall be prohibited.

2 The prohibition set out in paragraph 1 shall not apply to exports of:

a controlled substances to be used for essential laboratory and analytical uses referred to in Article 10;

b controlled substances to be used as feedstock;

c controlled substances to be used as process agents;

d products and equipment containing or relying on controlled substances produced in accordance with Article 10(7) or imported under point (h) or (i) of Article 15(2);

e recovered, recycled or reclaimed halons stored for critical uses referred to in Article 13(1) by undertakings authorised by the competent authority of a Member State and products and equipment containing or relying on halon to satisfy critical uses;

f virgin or reclaimed hydrochlorofluorocarbons for uses other than destruction;

g until 31 December 2014, methyl bromide re-exported for quarantine and pre-shipment applications;

h metered dose inhalers manufactured with chlorofluorocarbon the use of which has been authorised on the basis of Article 3(1) of Regulation (EC) No 2037/2000.

3 By way of derogation from paragraph 1, the Commission may, following a request by a competent authority of a Member State and in accordance with the management procedure referred to in Article 25(2), authorise the export of products and equipment containing hydrochlorofluorocarbons where it is demonstrated that in view of the economic value and the expected remaining lifetime of the specific good, the prohibition of export would impose a disproportionate burden on the exporter. Such export requires prior notification by Commission to the importing country.

4 Exports referred to in paragraphs 2 and 3 shall be subject to licensing, with the exception of re-exports subsequent to transit through the customs territory of the Community, temporary storage, customs-warehousing or free zone procedure, as referred to in Regulation (EC) No 450/2008, provided that the re-export takes place not later than 45 days after the import.

That export licence shall be issued by the Commission to undertakings after verification of compliance with Article 20.

Article 18

Licensing of imports and exports

1 The Commission shall set up and operate an electronic licensing system and shall decide on applications for licences within 30 days of receipt.

2 Applications for licences referred to in Articles 15 and 17 shall be submitted using the system referred to in paragraph 1. Before submitting an application for a licence undertakings shall register in that system.

3 An application for a licence shall state the following:

a the names and the addresses of the importer and the exporter;

b the country of import and export;

c in the case of imports or exports of controlled substances, a description of each controlled substance, including:

(i) the commercial description;

(ii) the description and the Combined Nomenclature code as laid down in Annex IV;

(iii) whether the substance is virgin, recovered, recycled or reclaimed;

(iv) the quantity of the substance in metric kilograms;

(v) in the case of halons, a declaration that they are to be imported or exported to satisfy a critical use referred to in Article 13(1), specifying which use;

d in the case of imports or exports of products and equipment containing or relying on controlled substances:

(i) the type and nature of the products and equipment;

(ii) for countable items the number of units, the description and the quantity per unit in metric kilograms of each controlled substance;

(iii) for uncountable items the total quantity of the product, the description and the total net quantity, in metric kilograms, of each controlled substance;

(iv) the country/countries of final destination of the products and equipment;

(v) whether the controlled substance contained is virgin, recycled, recovered or reclaimed;

(vi) in the case of imports or exports of products and equipment containing or relying on halon, a declaration that they are to be imported or exported to satisfy a critical use referred to in Article 13(1), specifying which use;

(vii) in the case of products and equipment containing or relying on hydrochlorofluorocarbons, the reference to the Commission authorisation referred to in Article 17(3);

(viii) the Combined Nomenclature code of the product or equipment to be imported or exported;

e the purpose of the proposed import, including the intended customs treatment and use, specifying where relevant the intended customs procedure;

f the place and expected date of the proposed import or export;

g the customs office where the goods will be declared;

h in the case of imports of controlled substances or products and equipment for destruction, the name and address of the facility where they will be destroyed;

i any further information deemed necessary by the competent authority of a Member State.

4 Each importer or exporter shall notify the Commission of any changes which might occur during the period of validity of the licence in relation to the data notified under paragraph 3.

5 The Commission may require a certificate attesting the nature or composition of substances to be imported or exported and may request a copy of the licence issued by the country from which the import or to which the export takes place.

6 The Commission may share the submitted data so far as necessary in specific cases with competent authorities of the Parties concerned and may reject the licence application if any relevant obligations set out in this Regulation are not complied with, or on the following grounds:

a in the case of an import licence, where it is established based on information from the competent authorities of the country concerned that the exporter is not an undertaking authorised to trade in the respective substance in that country;

b in the case of an export licence, where the competent authorities of the importing country have informed the Commission that the import of the controlled substance would constitute a case of illegal trade, or would adversely impact on the implementation of control measures of the importing country in place to comply with its obligations under the Protocol or would lead to an excess of the quantitative limits under the Protocol for that country.

7 The Commission shall make available a copy of each licence to the competent authority of the Member State concerned.

8 The Commission shall, as soon as possible, inform the applicant and the Member State concerned of any licence application rejected pursuant to paragraph 6, specifying the reason for the rejection.

9 The Commission may amend the list of items mentioned in paragraph 3 and Annex IV. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 19

Measures for monitoring of illegal trade

The Commission may adopt additional measures for the monitoring of controlled substances or new substances and of products and equipment containing or relying on controlled substances placed under temporary storage, customs warehousing or free zone procedure or in transit through the customs territory of the Community and subsequently re-exported, on the basis of an evaluation of the potential risks of illegal trade linked to such movements, taking into account the environmental benefits and socioeconomic impacts of such measures.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 20

Trade with a State not party to the Protocol and a territory not covered by the Protocol

1 Import and export of controlled substances and of products and equipment containing or relying on controlled substances from and to any State not party to the Protocol shall be prohibited.

2 The Commission may adopt rules applicable to the release for free circulation in the Community of products and equipment imported from any State not party to the Protocol which were produced using controlled substances but do not contain substances which can be positively identified as controlled substances. The identification of such products and equipment shall comply with periodical technical advice given to the Parties. Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

3 By way of derogation from paragraph 1, trade with any State not party to the Protocol in controlled substances and products and equipment containing or relying on such substances or which are produced by means of one or more such substances may be authorised by the Commission, to the extent that the State not party to the Protocol is determined by a meeting of the Parties pursuant to Article 4(8) of the Protocol to be in full compliance with the Protocol and has submitted data to that effect as specified in Article 7 of the Protocol. The Commission shall act in accordance with the management procedure referred to in Article 25(2) of this Regulation.

4 Subject to any decision taken under the second subparagraph, paragraph 1 shall apply to any territory not covered by the Protocol as they apply to any State not party to the Protocol.

Where the authorities of a territory not covered by the Protocol are in full compliance with the Protocol and have submitted data to that effect as specified in Article 7 of the Protocol, the Commission may decide that some or all of the provisions of paragraph 1 of this Article shall not apply in respect of that territory.

The Commission shall act in accordance with the management procedure referred to in Article 25(2).

Article 21

List of products and equipment containing or relying on controlled substances

No later than 1 January 2010, the Commission shall make available a list of products and equipment which might contain or rely on controlled substances and of Combined Nomenclature codes for guidance of the Member States' customs authorities.

CHAPTER V

EMISSION CONTROL

Article 22

Recovery and destruction of used controlled substances

1 Controlled substances contained in refrigeration, air-conditioning and heat pump equipment, equipment containing solvents or fire protection systems and fire extinguishers shall, during the maintenance or servicing of equipment or before the dismantling or disposal of equipment, be recovered for destruction, recycling or reclamation.

2 Controlled substances and products containing such substances shall only be destroyed by approved technologies listed in Annex VII or, in the case of controlled substances not referred to in that Annex, by the most environmentally acceptable destruction technology not entailing excessive costs, provided that the use of those technologies complies with Community and national legislation on waste and that additional requirements under such legislation are met.

3 The Commission may amend Annex VII in order to take new technological developments into account.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

4 Controlled substances contained in products and equipment other than those mentioned in paragraph 1 shall, if technically and economically feasible, be recovered for destruction, recycling or reclamation, or shall be destroyed without prior recovery, applying the technologies referred to in paragraph 2.

The Commission shall establish an Annex to this Regulation with a list of products and equipment for which the recovery of controlled substances or destruction of products and equipment without prior recovery of controlled substances shall be considered technically and economically feasible, specifying, if appropriate, the technologies to be applied. Any draft measure to establish such an Annex shall be accompanied and supported by a full economic assessment of costs and benefits, taking into account the individual circumstances of Member States.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

5 Member States shall take steps to promote the recovery, recycling, reclamation and destruction of controlled substances and shall define the minimum qualification requirements for the personnel involved.

The Commission shall evaluate the measures taken by the Member States and may in the light of this evaluation and of technical and other relevant information, as appropriate, adopt measures regarding those minimum qualification requirements.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 23

Leakages and emissions of controlled substances

1 Undertakings shall take all precautionary measures practicable to prevent and minimise any leakages and emissions of controlled substances.

2 Undertakings operating refrigeration, air conditioning or heat pump equipment, or fire protection systems, including their circuits, which contain controlled substances shall ensure that the stationary equipment or systems:

a with a fluid charge of 3 kg or more of controlled substances are checked for leakage at least once every 12 months; this shall not apply to equipment with hermetically sealed systems, which are labelled as such and contain less than 6 kg of controlled substances;

b with a fluid charge of 30 kg or more of controlled substances are checked for leakage at least once every 6 months;

c with a fluid charge of 300 kg or more of controlled substances are checked for leakage at least once every 3 months;

and that any detected leakage is repaired as soon as possible and in any event within 14 days.

The equipment or system shall be checked for leakage within 1 month after a leak has been repaired to ensure that the repair has been effective.

3 Undertakings referred to in paragraph 2 shall maintain records on the quantity and type of controlled substances added and the quantity recovered during maintenance, servicing and final disposal of the equipment or system referred to in that paragraph. They shall also maintain records of other relevant information including the identification of the company or technician which performed the maintenance or servicing, as well as the dates and results of the leakage checks carried out. These records shall be made available on request to the competent authority of a Member State and to the Commission.

4 Member States shall define the minimum qualification requirements for the personnel carrying out activities referred to in paragraph 2. In the light of an evaluation of these measures taken by the Member States and of technical and other relevant information, the Commission may adopt measures regarding the harmonisation of those minimum qualification requirements.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

5 Undertakings shall take all precautionary measures practicable to prevent and minimise any leakages and emissions of controlled substances used as feedstock and as process agents.

6 Undertakings shall take all precautionary measures practicable to prevent and minimise any leakage and emissions of controlled substances inadvertently produced in the course of the manufacture of other chemicals.

7 The Commission may establish a list of technologies or practices to be used by undertakings to prevent and minimise any leakage and emissions of controlled substances.

Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

CHAPTER VI

NEW SUBSTANCES

Article 24

New substances

1 The production, import, placing on the market, use and export of new substances in Part A of Annex II are prohibited. This prohibition does not apply to new substances if they are used as feedstock or for laboratory and analytical uses, to imports for transit through the customs territory of the Community or imports under the temporary storage, customs warehousing or free zone procedure as referred to in Regulation (EC) No 450/2008, unless such imports have been assigned another customs-approved treatment or use as referred to in that Regulation, or to exports subsequent to imports already exempted.

2 The Commission shall, if appropriate, include in Part A of Annex II substances that are included in Part B of that Annex that are found to be exported, imported, produced or put on the market in significant quantities and that are found by the Scientific Assessment Panel under the Protocol to have a significant ozone-depleting potential, and shall, if appropriate, determine possible exemptions from paragraph 1.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

3 In the light of relevant scientific information, the Commission shall, if appropriate, include in Part B of Annex II any substances that are not controlled substances but that are found by the Scientific Assessment Panel under the Protocol or another recognised authority of equivalent stature to have a significant ozone-depleting potential. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

CHAPTER VII

COMMITTEE, REPORTING, INSPECTION AND PENALTIES

Article 25

Committee

1 The Commission shall be assisted by a Committee.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 1 month.

3 Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 26

Reporting by the Member States

1 Each year by 30 June Member States shall report the following information in an electronic format to the Commission, for the previous calendar year:

a the quantities of methyl bromide authorised, pursuant to Article 12(2) and (3), for different treatments for quarantine and pre-shipment purposes used in their territory, specifying the purposes for which methyl bromide was used, and the progress in evaluating and using alternatives;

b the quantities of halons installed, used and stored for critical uses, pursuant to Article 13(1), the measures taken to reduce their emissions and an estimate of such emissions, and progress in evaluating and using adequate alternatives;

c cases of illegal trade, in particular those detected during the inspections carried out pursuant to Article 28.

2 The Commission shall, in accordance with the management procedure referred to in Article 25(2), determine the format for the submission of the information referred to in paragraph 1.

3 The Commission may amend paragraph 1.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 27

Reporting by undertakings

1 Each year by 31 March, each undertaking shall communicate to the Commission, sending a copy to the competent authority of the Member State concerned, the data listed in paragraphs 2 to 6 for each controlled substance and each new substance listed in Annex II for the previous calendar year.

2 Each producer shall communicate the following data:

a its total production of each substance referred to in paragraph 1;

b any production placed on the market or used for the producer’s own account within the Community, separately identifying production for feedstock, process agent and other uses;

c any production to meet the essential laboratory and analytical uses in the Community, licensed in accordance with Article 10(6);

d any production authorised under Article 10(8) to satisfy essential laboratory and analytical uses of Parties;

e any increase in production authorised under Article 14(2), (3) and (4) in connection with industrial rationalisation;

f any quantity recycled, reclaimed or destroyed and the technology used for the destruction, including amounts produced and destroyed as by-product as referred to in Article 3(14);

g any stocks;

h any purchases from and sales to other producers in the Community.

3 Each importer shall communicate for each substance referred to in paragraph 1 the following data:

a any quantities released for free circulation in the Community, separately identifying imports for feedstock and process agent uses, for essential laboratory and analytical uses licensed in accordance with Article 10(6), for use in quarantine and pre-shipment applications and for destruction. Importers which imported controlled substances for destruction shall also communicate the actual final destination or destinations of each of the substances, providing separately for each destination the quantity of each of the substances and the name and address of destruction facility where the substance was delivered;

b any quantities imported under other customs procedures, separately identifying the customs procedure and the designated uses;

c any quantities of used substances referred to in paragraph 1 imported for recycling or reclamation;

d any stocks;

e any purchases from and sales to other undertakings in the Community;

f the exporting country.

4 Each exporter shall communicate for each substances referred to in paragraph 1 the following data:

a any quantities of such substances exported, separately identifying quantities exported to each country of destination and quantities exported for feedstock and process agent uses, essential laboratory and analytical uses, critical uses and for quarantine and pre-shipment applications;

b any stocks;

c any purchases from and sales to other undertakings in the Community;

d the country of destination.

5 Each undertaking destroying controlled substances referred to in paragraph 1 and not covered by paragraph 2 shall communicate the following data:

a any quantities of such substances destroyed, including quantities contained in products or equipment;

b any stocks of such substances waiting to be destroyed, including quantities contained in products or equipment;

c technology used for the destruction.

6 Each undertaking using controlled substances as feedstock or process agents shall communicate the following data:

a any quantities of such substances used as feedstock or process agents;

b any stocks of such substances;

c the processes and emissions involved.

7 Each year before 31 March, each producer or importer which holds a licence under Article 10(6) shall, for each substance for which an authorisation has been received, report to the Commission, sending a copy to the competent authority of the Member State concerned, the nature of the use, the quantities used during the previous year, the quantities held in stock, any quantities recycled, reclaimed or destroyed, and the quantity of products and equipment containing or relying on those substances placed on the Community market and/or exported.

8 The Commission shall take appropriate steps to protect the confidentiality of the information submitted to it.

9 The format of the reports referred to in paragraphs 1 to 7 shall be established in accordance with the management procedure referred to in Article 25(2).

10 The Commission may amend the reporting requirements laid down in paragraphs 1 to 7.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

Article 28

Inspection

1 Member States shall conduct inspections on the compliance of undertakings with this Regulation, following a risk-based approach, including inspections on imports and exports of controlled substances as well as of products and equipment containing or relying on those substances. The competent authorities of the Member States shall carry out the investigations which the Commission considers necessary under this Regulation.

2 Subject to the agreement of the Commission and of the competent authority of the Member State within the territory of which the investigations are to be made, the officials of the Commission shall assist the officials of that authority in the performance of their duties.

3 In carrying out the tasks assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings. When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking's seat is situated.

4 The Commission shall take appropriate action to promote an adequate exchange of information and cooperation between national authorities and between national authorities and the Commission.

The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

5 At the request of another Member State, a Member State may conduct inspections of undertakings or investigations of undertakings suspected of being engaged in the illegal movement of controlled substances and which are operating on the territory of that Member State.

Article 29

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 30 June

2011 at the latest and shall also notify it without delay of any subsequent amendment affecting them.

CHAPTER VIII

FINAL PROVISIONS

Article 30

Repeal

Regulation (EC) No 2037/2000 shall be repealed as from 1 January 2010.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex VIII.

Article 31

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 September 2009.

For the European Parliament

The President

J. BUZEK

For the Council

The President

C. MALMSTRÖM