

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 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.