

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 519/2012

of 19 June 2012

amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

diene⁽⁴⁾, polychlorinated naphthalenes (hereinafter 'PCN'), and short-chain chlorinated paraffins⁽⁵⁾ (hereinafter 'SCCPs') to the Protocol.

Having regard to the Treaty on the Functioning of the European Union,

(3) In view of the Decisions taken by the CLRTAP, it is necessary to update Annex I, Part B to Regulation (EC) No 850/2004 in order to include the three new substances listed in the Protocol.

Having regard to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC⁽¹⁾, and in particular Articles 14(1) and 14(3) thereof,

(4) Placing on the market and use of SCCPs has been restricted in the Union by virtue of Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁽⁶⁾ on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). The existing restriction on SCCPs in the Union covers only two uses and thus its scope is much narrower than the scope of the restriction on SCCPs established by the Decision of the CLRTAP Executive Body. This Regulation should therefore widen the scope of restriction on SCCPs in the Union by prohibiting their production, placing on the market, and use, except for two exempted uses.

Whereas:

(1) Regulation (EC) No 850/2004 implements in the law of the Union the commitments set out in the Stockholm Convention on Persistent Organic Pollutants (hereinafter 'the Convention') approved by Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants⁽²⁾ and in the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (hereinafter 'the Protocol') approved by Council Decision 2004/259/EC of 19 February 2004 concerning the conclusion, on behalf of the European Community, of the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants⁽³⁾ (hereinafter 'CLRTAP').

(5) The 1 % threshold level established in this Regulation for SCCPs should not be considered as an implementation of the notion of 'unintentional trace contaminant' contained in Article 4(1)(b) of Regulation (EC) No 850/2004. Further scientific analysis is required before the Commission can reach a clear view with regard to the level corresponding to 'unintentional trace contaminant' in relation to SCCPs.

(2) At its 27th Session from 14 to 18 December 2009, the CLRTAP Executive Body decided to add hexachlorobuta-

(6) The derogations for SCCPs should, where applicable, be subject to the use of the best available techniques. The Commission should continue to review those derogations and the availability of safer alternative substances or technologies.

⁽¹⁾ OJ L 158, 30.4.2004, p. 7.

⁽²⁾ OJ L 209, 31.7.2006, p. 1.

⁽³⁾ OJ L 81, 19.3.2004, p. 35.

⁽⁴⁾ Decision 2009/1.

⁽⁵⁾ Decision 2009/2.

⁽⁶⁾ OJ L 396, 30.12.2006, p. 1.

- (7) At its fifth meeting from 25 to 29 April 2011, the Conference of the Parties to the Convention agreed by Decision SC-5/3 ⁽¹⁾ to add endosulfan to the list of POPs to be eliminated worldwide, with some exemptions.
- (8) In view of Decision SC-5/3, it is necessary to update Annex I, Part A to Regulation (EC) No 850/2004 in order to include endosulfan. However, endosulfan was subject to Commission Decision 2005/864/EC of 2 December 2005 concerning the non-inclusion of endosulfan in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisation for plant protection products containing this active substance ⁽²⁾. Endosulfan should therefore be listed in Annex I, Part A to Regulation (EC) No 850/2004 without exemptions since all the exemptions allowed under Decision SC-5/3 relate to the use of endosulfan as a plant protection product.
- (9) It is necessary to clarify that the prohibition in Article 3 of Regulation (EC) No 850/2004 does not apply to articles containing endosulfan, hexachlorobutadiene, PCN or SCCPs, produced before or on the date of entry into force of this Regulation until six months after the date of its entry into force.
- (10) It is also necessary to clarify that the prohibition in Article 3 of Regulation (EC) No 850/2004 does not apply to articles containing endosulfan, hexachlorobutadiene, PCN or SCCPs, already in use before or on the date of entry into force of this Regulation.
- (11) It is necessary to adapt to technical progress the reference to the CEN standards currently under development in relation to perfluorooctane sulphonic acid and its derivatives (PFOS), to allow other analytical methods with the same level of performance to be used.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Council Directive 67/548/EEC ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 850/2004 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 19 June 2012.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ SC-5/3 Listing technical endosulfan and its related isomers.

⁽²⁾ OJ L 317, 3.12.2005, p. 25.

⁽³⁾ OJ 196, 16.8.1967, p. 1.

ANNEX

Annex I to Regulation (EC) No 850/2004 is amended as follows:

(1) Part A is amended as follows:

- (a) in the entry for perfluorooctane sulphonic acid and its derivatives (PFOS) point 6 in the column 'Specific exemption on intermediate use or other specification' is replaced by the following:

'6. Once standards are adopted by the European Committee for Standardisation (CEN) they shall be used as the analytical test methods for demonstrating the conformity of substances, preparations and articles to paragraphs 1 and 2. Any other analytical method for which the user can prove equivalent performance could be used as an alternative to the CEN standards.';

(b) the following entry is added:

Substance	CAS No	EC No	Specific exemption on intermediate use or other specification
'Endosulfan	115-29-7 959-98-8 33213-65-9	204-079-4	1. Placing on the market and use of articles produced before or on 10 July 2012 containing endosulfan as a constituent of such articles shall be allowed until 10 January 2013. 2. Placing on the market and use of articles already in use before or on 10 July 2012 containing endosulfan as a constituent of such articles shall be allowed. 3. Article 4(2), third and fourth subparagraphs shall apply to articles referred to in paragraphs 1 and 2.'

(2) in Part B, the following entries are added:

Substance	CAS No	EC No	Specific exemption on intermediate use or other specification
'Hexachlorobutadiene	87-68-3	201-765-5	1. Placing on the market and use of articles produced before or on 10 July 2012 containing hexachlorobutadiene as a constituent of such articles shall be allowed until 10 January 2013. 2. Placing on the market and use of articles already in use before or on 10 July 2012 containing hexachlorobutadiene as a constituent of such articles shall be allowed. 3. Article 4(2), third and fourth subparagraphs shall apply to articles referred to in paragraphs 1 and 2.
Polychlorinated naphthalenes (*)			1. Placing on the market and use of articles produced before or on 10 July 2012 containing polychlorinated naphthalenes as a constituent of such articles shall be allowed until 10 January 2013. 2. Placing on the market and use of articles already in use before or on 10 July 2012 containing polychlorinated naphthalenes as a constituent of such articles shall be allowed. 3. Article 4(2), third and fourth subparagraphs shall apply to articles referred to in paragraphs 1 and 2.
Alkanes C10-C13, chloro (short-chain chlorinated paraffins) (SCCPs)	85535-84-8	287-476-5	1. By way of derogation, the production, placing on the market and use of substances or preparations containing SCCPs in concentrations lower than 1 % by weight shall be allowed.

Substance	CAS No	EC No	Specific exemption on intermediate use or other specification
			<p>2. By way of derogation, the production, placing on the market, and use of the following applications shall be allowed provided that Member States report to the Commission no later than 2015 and every four years thereafter on the progress made to eliminate SCCPs:</p> <p>(a) fire retardants in rubber used in conveyor belts in the mining industry;</p> <p>(b) fire retardants in dam sealants.</p> <p>3. Placing on the market and use of articles produced before or on 10 July 2012 containing SCCPs as a constituent of such articles shall be allowed until 10 January 2013.</p> <p>4. Placing on the market and use of articles already in use before or on 10 July 2012 containing SCCPs as a constituent of articles shall be allowed.</p> <p>5. Article 4(2), third and fourth subparagraphs shall apply to articles referred to in paragraphs 1 and 2.</p> <p>As soon as new information on details of uses and safer alternative substances or technologies become available, the Commission shall review the derogations set out in point 2 so that the uses of SCCPs be phased out.</p>

(*) Polychlorinated naphthalenes means chemical compounds based on the naphthalene ring system, where one or more hydrogen atoms have been replaced by chlorine atoms.