Commission Regulation (EU) 2016/26 of 13 January 2016 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards nonylphenol ethoxylates (Text with EEA relevance)

COMMISSION REGULATION (EU) 2016/26

of 13 January 2016

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards nonylphenol ethoxylates

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[(1)], and in particular Article 68(1) thereof,

Whereas:

(1) On 2 August 2013, the Kingdom of Sweden submitted to the European Chemicals Agency (‘the Agency’) a dossier (‘the Annex XV dossier’) pursuant to Article 69(4) of Regulation (EC) No 1907/2006, in order to initiate the restriction procedure set out in Articles 69 to 73 of that Regulation. Initially, the Annex XV dossier indicated that exposure to nonylphenol (‘NP’) and nonylphenol ethoxylates (‘NPE’) posed a risk to the environment, specifically to aquatic species living in surface water. In order to limit such risk the dossier proposed to prohibit the placing on the market of textile articles that can be washed in water, if they contained NP or NPE in concentrations equal to or higher than 100 mg/kg (0,01 % by weight). The Annex XV dossier demonstrated that action on a Union-wide basis is necessary.

(2) During public consultation on the Annex XV dossier, Sweden recommended removing NP from the scope of the restriction proposal as it is not used intentionally in textile processing. The exclusion of NP was considered justified by the Agency's Committees for Risk Assessment (‘RAC’) and Socio-Economic Analysis (‘SEAC’) when evaluated in terms of the effectiveness, practicality and monitorability of the restriction. Therefore, only NPE should be subject to the proposed restriction.

(3) In the Annex XV dossier NPE are defined as branched and linear ethoxylates of nonylphenol which cover substances defined by CAS or EC numbers and UVCB

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2016/26. (See end of Document for details)*

substances, polymers and homologues. The substances in that group are identified by the molecular formula $(C_2H_4O)_nC_{15}H_{24}O$.

(4) Several market surveys, referred to in the Annex XV dossier, identified the presence of NPE in textile articles, at different concentrations. The placing on the market and use of NPE, as substances or in mixtures, for the purpose of textiles and leather processing are already restricted by entry 46 of Annex XVII to Regulation (EC) No 1907/2006. However, during reasonably foreseeable conditions of washing textile articles in water, release of NPE into the aquatic environment poses risks to aquatic species.

(5) For reason of coherence with Regulation (EU) No 1007/2011 of the European Parliament and of the Council[(2)], the proposed restriction on textile articles should cover products which consist of at least 80 % of textile fibres by weight and other products that contain a part that consists of at least 80 % textile fibres by weight. Furthermore, for reason of clarity it is convenient to indicate that textile articles cover unfinished, semi-finished and finished goods, including products such as clothing (e.g. for people, toys and animals), accessories, interior textiles, fibres, yarn, fabrics and knitted panels.

(6) On 3 June 2014, RAC adopted by consensus an opinion on the restriction suggested in the Annex XV dossier, confirming that there is a risk due to exposure to degradation products of NPE. RAC further advised that a restriction is the most appropriate Union-wide measure to address the risks posed by NPE in textile articles, both in terms of effectiveness and practicability.

(7) On 9 September 2014, SEAC adopted by consensus an opinion on the restriction suggested in the Annex XV dossier, indicating that the proposed restriction on NPE is the most appropriate Union-wide measure to address the risks identified in terms of the proportionality of socioeconomic benefits to socioeconomic costs.

(8) In accordance with the Annex XV dossier and as confirmed by RAC and SEAC, the limit of 0,01 % by weight is the lowest concentration that is commensurate with the intentional treatment of textiles with NPE. Comments received during the public consultation confirmed that a limit lower than 0,01 % by weight would present considerable enforcement difficulties because textiles can become contaminated with NPE at such low concentrations due to incidental exposure during the production process. Furthermore, reducing the limit of 0,01 % by a factor of five (to 0,002 % by weight) would only lower emissions by a factor of about 1,25, which would reduce NPE surface water concentrations by an additional 5 % compared to the limit of 0,01 % by weight.

(9) The Forum for Exchange of Information on Enforcement was consulted and its recommendations were taken into account.

(10) On 1 October 2014 the Agency submitted to the Commission the opinions of RAC and SEAC based on which the Commission concluded that the presence of NPE in textile articles poses an unacceptable risk to the environment which needs to be addressed on a Union-wide basis. The socioeconomic impact of this restriction, including the availability of alternatives, has been taken into account.

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(11) It is assumed that second-hand textiles will usually have been washed several times prior to any supply or making available to a third party and will therefore contain negligible amounts of NPE, if any. Accordingly, the placing on the market of second-hand textile articles should be exempted from the restriction. Similarly, recycled textiles may be assumed to contain negligible amounts of NPE, if any, and accordingly the restriction should not apply to new textile articles, where those have been produced using exclusively recycled textiles without the use of NPE.

(12) Stakeholders should be allowed sufficient time to take appropriate compliance measures, in particular to ensure adequate communication within the complex global supply chain. The new restriction should therefore only apply from a later date.

(13) Regulation (EC) No 1907/2006 should therefore be amended accordingly.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 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, 13 January 2016.

For the Commission

The President

Jean-Claude JUNCKER