Commission Regulation (EC) No 552/2009 of 22 June 2009 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (Text with EEA relevance)

COMMISSION REGULATION (EC) No 552/2009

of 22 June 2009

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 131 thereof,

Whereas:

(1) Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations[(2)] established in its Annex I restrictions for certain dangerous substances and preparations. Regulation (EC) No 1907/2006 repeals and replaces Directive 76/769/EEC with effect from 1 June 2009. Annex XVII to that Regulation replaces Annex I to Directive 76/769/EEC.

(2) Article 67 of Regulation (EC) No 1907/2006 provides that substances, mixtures or articles may not be manufactured, placed on the market or used unless they comply with the conditions of any restrictions laid down in their regard in Annex XVII.

(3) Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006 amending for the 30th time Council Directive 76/769/EEC (perfluorooctane sulfonates (PFOS))[(3)] and Commission Directive 2006/139/EC of 20 December 2006 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of arsenic compounds for the purpose of adapting its Annex I to technical progress[(4)] amending Annex I to Directive 76/769/EC were adopted shortly before Regulation (EC) No 1907/2006 was adopted, in December 2006, but the restrictions concerned have not yet been included in Annex XVII to that Regulation. Therefore Annex XVII should be amended to include the restrictions corresponding to Directives 2006/122/EC and 2006/139/EC as otherwise the restrictions concerned will be repealed on 1 June 2009.

(4) Pursuant to Article 137(3) of Regulation (EC) No 1907/2006, any amendment to the restrictions adopted under Directive 76/769/EEC from 1 June 2007 is to be incorporated in Annex XVII to that Regulation with effect from 1 June 2009.

(5) Directive 2007/51/EC of the European Parliament and of the Council amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury[(5)] was adopted on 25 September 2007. Decision 1348/2008/EC of the European Parliament and Council amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of 2(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylenediphenyl diisocyanate, cyclohexane and ammonium nitrate[(6)] was adopted on 16 December 2008. The restrictions concerned have not yet been included in Annex XVII to that Regulation. Annex XVII should be amended to incorporate the restrictions on certain measuring devices containing mercury adopted under Directive 2007/51/EC and the restrictions on 2(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylene-diphenyl diisocyanate, cyclohexane and ammonium nitrate adopted under Decision 1348/2008/EC.

(6) Account should be taken of the relevant provisions of Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directive 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[(7)].

(7) Since the provisions of Title VIII of Regulation (EC) No 1907/2006 and in particular Annex XVII are to be directly applicable from 1 June 2009, the restrictions should be clearly drafted in order to allow operators and enforcement authorities to apply them correctly. Therefore the drafting of the restrictions should be reviewed. The terminology for the different entries should be harmonised and made more coherent with the definitions contained in Regulation (EC) No 1907/2006.

(8) Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)[(8)] requires that equipment containing PCBs and PCTs is decontaminated and disposed of as soon as possible and sets the conditions for the decontamination of equipment containing those substances. Therefore the entry in Annex XVII to Regulation (EC) 1907/2006 concerning PCTs should not include provision concerning equipment containing PCTs as that is fully regulated under Directive 96/59/EC.

(9) The existing restrictions for the substances 2-naphthylamine, benzidine, 4-nitrobiphenyl, 4-aminobiphenyl are ambiguous as it is unclear whether the prohibition concerns only the supply to the general public or also the supply to professional users. These should be clarified. Since Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents[(9)] prohibits the production, manufacture and use at work of those substances, the restrictions in Annex XVII to Regulation (EC) No 1907/2006 relating to those substances should be consistent with Directive 98/24/EC.

(10) The substances carbon tetrachloride and 1,1,1-trichloroethane are severely restricted under Regulation (EC) No 2037/2000 of the European Parliament and of the Council

of 29 June 2000 on substances that deplete the ozone layer[10]. Regulation (EC) No 2037/2000 imposes for carbon tetrachloride a prohibition with exceptions, and for 1,1,1-trichloroethane a complete prohibition. Restrictions on carbon tetrachloride and 1,1,1-trichloroethane in Annex XVII to Regulation (EC) 1907/2006 are therefore superfluous and should be deleted.

(11) Since mercury in batteries is regulated under Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators[11], the provisions on mercury in batteries currently contained in Annex XVII to Regulation (EC) No 1907/2006 are superfluous and should therefore be deleted.

(12) Pursuant to Article 2(2) of Regulation (EC) No 1907/2006, waste is considered not to be a substance, a mixture, or an article within the meaning of Article 3 of Regulation (EC) No 1907/2006. Therefore since waste is not covered by the restrictions under that Regulation, provisions in Annex XVII thereto excluding waste are redundant and should be deleted.

(13) Certain restrictions in Annex XVII to Regulation (EC) 1907/2006 should be modified in order to take into account the definitions of 'use' and 'placing on the market' contained in Article 3 of that Regulation.

(14) The entry in Annex I to Directive 76/769/EEC concerning asbestos fibres included an exemption for diaphragms containing chrysotile. It should be specified that this exemption will be reviewed following receipt of reports that Member States who are making use of this exemption will have to submit. Moreover in the light of the definition of 'placing on the market' in Regulation (EC) No 1907/2006, Member States should be able to allow the placing on the market of some articles containing such fibres where the articles were already installed or in service before 1 January 2005, under specific conditions ensuring a high level of protection of human health

(15) It should be made clear that, for substances which have been incorporated in Annex XVII to Regulation (EC) No 1907/2006 as a consequence of restrictions adopted in the framework of Directive 76/769/EEC (Entries 1 to 58), the restrictions do not apply to storage, keeping, treatment, filling into containers, or transfer from one container to another of the substances for export, unless the manufacture of the substances is prohibited.

(16) Unlike Directive 76/769/EEC, Regulation (EC) No 1907/2006 defines the term 'article'. In order to cover the same items as provided for in the original restriction on Cadmium, the term 'mixtures' should be added in some of the provisions.

(17) It should be made clear that the restrictions incorporated in Annex XVII to Regulation (EC) No 1907/2006 on the marketing of certain measuring devices containing mercury do not apply to devices already in use in the Community at the time of entry into force of the restriction.

(18) In the entries in Annex XVII to Regulation (EC) 1907/2006 for the substances diphenylether, pentabromo derivatives and diphenylether, octabromo derivatives, it should be provided that the restrictions do not apply to articles already in use at the

date from which the restriction was to apply as those substances were incorporated in articles which have a long lifecycle and are sold on the second hand market, such as aeroplanes and vehicles. Moreover, since the use of the substances in electrical and electronic equipments is regulated under Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment[(12)] that equipment should not be subject to the restrictions concerned.

(19) It should be made clear in the restriction on nonylphenol and nonylphenol ethoxylate that the validity of existing national authorisations for pesticides and biocidal products containing nonylphenol ethoxylate as co-formulant should not be affected, as provided for in Article 1(2) of Directive 2003/53/EC of the European Parliament and of the Council of 18 June 2003 amending for the 26th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (nonylphenol, nonylphenol ethoxylate and cement)[(13)].

(20) It should be made clear that the restriction incorporated in Annex XVII to Regulation (EC) No 1907/2006 concerning perfluorooctane sulfonates does not apply to products which were already in use in the Community when the restriction entered into force.

(21) 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 day following 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, 22 June 2009.

For the Commission

Günter VERHEUGEN

Vice-President

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 552/2009. (See end of Document for details)*

ANNEX

Annex XVII to Regulation (EC) No 1907/2006 is amended as follows:

1. the title is replaced by the following:
Restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles;

2. the table setting out the designation of the substances, groups of substances and mixtures and the conditions of restriction is replaced by the following:

For substances which have been incorporated in this Annex as a consequence of restrictions adopted in the framework of Directive 76/769/EEC (Entries 1 to 58), the restrictions shall not apply to storage, keeping, treatment, filling into containers, or transfer from one container to another of these substances for export, unless the manufacture of the substances is prohibited.	
Column 1Designation of the substance, of the group of substances or of the mixture	**Column 2Conditions of restriction**
1. Polychlorinated terphenyls (PCTs)	Shall not be placed on the market, or used: — as substances, — in mixtures, including waste oils, or in equipment, in concentrations greater than 50 mg/kg (0,005 % by weight).
2. Chloroethene (vinyl chloride) CAS No 75-01-4 EC No 200-831-0	Shall not be used as propellant in aerosols for any use. Aerosols dispensers containing the substance as propellant shall not be placed on the market.
3. Liquid substances or mixtures, which are regarded as dangerous according to the definitions in Council	1. Shall not be used in: — ornamental articles, intended to produce light or colour effects by means of different

a	OJ L 256, 7.9.1987, p. 42.
b	OJ L 147, 9.6.1975, p. 40.
c	OJ L 37, 13.2.2003, p. 19.
d	OJ L 263, 9.10.2007, p. 1.
e	OJ L 171, 9.7.2003, p. 1.
f	OJ L 124, 9.5.2002, p. 1.
g	OJ L 24, 29.1.2008, p. 8.
h	OJ L 104, 8.4.2004, p. 1.
i	OJ L 399, 30.12.1989, p. 18.
j	OJ L 304, 21.11.2003, p. 1.
k	OJ L 121, 15.5.1993, p. 20.
l	OJ L 270, 21.10.2003, p. 1.