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(Acts whose publication is obligatory)

REGULATION (EC) No 1804/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 September 2003

amending Regulation (EC) No 2037/2000 as regards the control of halon exported for critical uses, the export of products and equipment containing chlorofluorocarbons and controls on bromochloromethane

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) In applying Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer [4], a number of issues have emerged that need to be addressed through amendments to that Regulation. These issues that relate to the effective and safe implementation of that Regulation have been discussed with the Member States in the Management Committee under that Regulation. This Regulation concerns four amendments to Regulation (EC) No 2037/2000.

(2) Under Article 4(4)(iv) of Regulation (EC) No 2037/2000, the Commission is mandated to review each year the critical uses of halon listed in Annex VII to that Regulation. However, that Regulation does not provide, in the context of these reviews, for the establishment of time-frames for the eventual phasing out of these critical uses in the light of the identification and use of adequate alternatives. The first amendment to that Regulation provides for the possibility of establishing time-frames for reducing the use of halon for critical uses, taking into account the availability of technically and economically feasible alternatives or technologies that are acceptable from the standpoint of environment and health, when reviewing Annex VII to that Regulation. This should ensure that progress is made in reducing the quantity of halon for critical uses and thereby accelerate recovery of the ozone layer.

(3) The second amendment concerns exports of halon for the critical uses listed in Annex VII to Regulation (EC) No 2037/2000. From 1 January 2004, that Regulation will permit only halon used for the purposes listed in its Annex VII to remain installed for firefighting in the European Community. These uses are deemed 'critical' as they currently have no technically and economically feasible alternatives. Any equipment containing halon that is not listed in Annex VII is therefore deemed non-critical. All non-critical installations of halon should be decommissioned by 31 December 2003. Decommissioned halon should be allowed to be stored for critical uses, exported from critical use storage or destroyed.

(4) Article 11(1)(d) of Regulation (EC) No 2037/2000 permits exports of 'products and equipment containing halon, to satisfy critical uses listed in Annex VII'. That Article should be amended to allow bulk halon for export for critical uses until 31 December 2009 as long as it is obtained from recovered, recycled and reclaimed halon that originates from storage facilities authorised or operated by the competent authority. A review of exports of bulk halon should be called for with a view to banning exports earlier than 31 December 2009, if appropriate. Exports of halon for critical uses should be prohibited after 31 December 2003 if the halon is not from facilities authorised or operated by the competent authority to store halon for critical uses.

[1] OJ C 45 E, 25.2.2003, p. 297.
[2] OJ C 95, 23.4.2003, p. 27.
[3] Opinion of the European Parliament of 5 June 2003 (not yet published in the Official Journal) and Decision of the Council of 26 June 2003.
[4] OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Decision 2003/160/EC (OJ L 65, 8.3.2003, p. 29).

(5) The Commission should be responsible for authorising exports for halon exported in products and equipment for critical uses. The Commission should only authorise these exports once the competent authority of the relevant Member State has verified that the exports are for one or more of the specific critical uses listed in Annex VII to Regulation (EC) No 2037/2000. In addition, the exporter should be required to report actual exports at the end of the year.

(6) Member States should report annually on controlled substances including halon that are recovered, recycled, reclaimed or destroyed. Currently, Regulation (EC) No 2037/2000 mandates reporting by 31 December 2001 rather than annually, whereas annual reports will be important in the future for determining progress, especially as regards the destruction of halon that is surplus to the critical use requirements.

(7) The third amendment concerns the export of controlled substances or products containing controlled substances. The export of controlled substances or products containing controlled substances should be prohibited. This ban will encourage the recovery and destruction of such controlled substances in accordance with Article 16 of Regulation (EC) No 2037/2000. The major focus is to stop the growing export trade in used refrigeration and air-conditioning equipment, in particular domestic refrigerators, freezers and building insulation foam, containing CFCs, to developing countries. In the absence of destruction facilities in developing countries, CFCs will ultimately leak into the atmosphere and cause damage to the ozone layer. In addition, developing countries are now starting to phase out CFCs and many have indicated that they do not wish to be recipients of second-hand products and equipment that contain CFCs.

(8) Regulation (EC) No 2037/2000 applies not only to refrigeration and air-conditioning equipment but also to all products and equipment containing insulating foam or integral skin foam which were produced with CFCs. This could mean, for instance, that second-hand aircraft and vehicles containing rigid insulating foam, or integral skin foam blown with CFCs, could not be exported from the European Community. Since it was the intention of that Regulation to ban the export of used refrigeration and air-conditioning equipment containing CFCs, and not other products and equipment containing foam blown with CFCs, it is appropriate to amend that Regulation to exclude off-target products containing CFCs.

(9) The fourth amendment concerns the provisions on new substances as set out in Article 22 and Annex II to Regulation (EC) No 2037/2000. That Regulation does not provide the same level of control for the new substance indicated in Annex II, bromochloromethane, as is applied to other controlled substances and thereby the European Community is not fully meeting all its obligations under the Montreal Protocol. In order to redress this situation, it is necessary that the provisions applying to controlled substances are also applied to bromochloromethane.

(10) The amendments to Regulation (EC) No 2037/2000 are fully in line with its environmental objectives, which include further protecting the ozone layer where possible, reducing global production of ozone depleting substances (ODS), promoting safe practices for the transport of ODS, ensuring mandatory monitoring of any exports, and providing legal clarification where necessary,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2037/2000 is hereby amended as follows:

1. in Article 1, the first paragraph shall be replaced by the following:

   'This Regulation shall apply to the production, importation, exportation, placing on the market, use, recovery, recycling and reclamation and destruction of chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons, hydrochlorofluorocarbons and bromochloromethane, to the reporting of information on these substances and to the importation, exportation, placing on the market and use of products and equipment containing those substances.';

2. Article 2 shall be amended as follows:

   (a) the fourth indent shall be replaced by the following:

   '— "controlled substances" means chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons, hydrochlorofluorocarbons and bromochloromethane, whether alone or in a mixture, and whether they are virgin, recovered, recycled or reclaimed. This definition shall not cover any controlled substance which is in a manufactured product other than a container used for the transportation or storage of that substance, or insignificant quantities of any controlled substance, originating from inadvertent or coincidental production during a manufacturing process, from unreacted feedstock, or from use as a processing agent which is present in chemical substances as trace impurities, or that is emitted during product manufacture or handling,';

   (b) the following indent shall be inserted after the eleventh indent:

   '— "bromochloromethane" means the controlled substance indicated in Group IX of Annex I';