



REACH COMPLIANCE GUIDANCE

WHAT **NASF JOB SHOPS** NEED TO KNOW ABOUT PRE-REGISTERING UNDER THE EU REACH PROGRAM

The European Union's ("EU") Regulation on Registration, Evaluation, Authorisation and Restriction of Chemical Substances ("REACH")¹ applies to a chemical substance on its own, when it is a component of a preparation, or if the substance is intended to be released from an article under normal or reasonably foreseeable conditions of use. If you are a metal finishing job shop or captive shop, this brief summary explains the basic registration aspect of REACH and how REACH registration affects you and your downstream customers.

What is REACH?

As of June 1, 2008 under REACH, EU manufacturers and EU importers have new obligations in order to continue to manufacture, import or use new and existing chemicals in the EU. Most immediately, you must determine whether the products you ship to the EU need to be

Registered. In addition:

- For new chemical substances, prior to registration there is now a mandatory pre-consultation period with the competent authorities to locate any test data on the substance from prior filings.
- For existing chemical substances (those listed on the European Inventory of Existing Chemical Substances (EINECS)), the time needed to register can be extended only by pre-registering by December 1, 2008. Companies that manufacture or import an existing substance in quantities of 1 metric ton per year or more that fail to pre-register the chemical during this six-month window of opportunity will lose the

¹ Regulation (EC) 1097/2006 (Dec. 18, 2006).

additional time for registration that is being given to pre-registered chemicals, also referred to as the “phase-in period.”

When Parts I Coat Are Shipped to the EU, Do I Need to Register?

No. U.S.-based companies cannot register under REACH. Only EU-based companies may register. U.S. companies may hire an “only representative” located in the EU to take on the registration burden for their EU customers, but for job shops and their customers, this won’t be necessary.

In That Case, Do My Downstream Customers Need to Register?

Good news – no! This is because the chemicals in the metal finish that you apply to a part in a U.S. facility do not require REACH registration if the coated part is subsequently shipped to the EU.² The vast array of parts that an NASF job shop coats will generally meet the criteria for “article” status under REACH. Articles do not need to be REACH-registered. Neither do their components, as long as they are not designed to be released.

While an article, *per se*, does not need to be REACH-registered, Section 7.1 of REACH requires EU manufacturers and importers to register a substance if that substance is intended to be released from an article,³ and if the substance is present at:

- > 1 metric ton/year per article type per manufacturer/importer; and
- The substance is not registered further up the supply chain.

REACH defines an “article” as “an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical

² See REACH, Art. 7, § 1.

³ There are very few examples of intended release of a substance from an article. One might be the release of fragrance from a scented bin liner or eraser. Many objects that at first sight might be considered as articles as a whole are better described as a preparation within a container; examples are a pen, a toner cartridge or an aerosol. With all of these items the substances/preparations within the container (the ink, toner or air freshener respectively) are the most important part and the container (pen body, cartridge or can) is a means of controlling release of the contents.

composition.”⁴ The EU has issued guidance on conducting these analyses, referred to as RIP 3.8. An object becomes an “article” under REACH when its shape, surface and design (i.e., its physical appearance) are more important to its normal use than its chemical composition.⁵ The determination requires a case-by-case analysis to determine whether the special shape, surface or design of a particular product group, manufactured within or imported into the EU, determines its function to a greater degree than its chemical composition. Per RIP 3.8:

If you can unambiguously conclude that the shape/surface/design are more relevant for the function than the chemical composition, the (form of the) material that you are assessing is an article. If the shape, surface or design is of equal or less importance than the chemical composition, it is a substance or preparation [that must be registered].⁶

Metal finishes, as applied, are typically not designed for release. This means that there is no duty for an EU customer to register the substances in the metal finish you apply to the parts that they import into the EU. There is no need to pre-register in that case, either. You can keep supplying your customers without adding to their REACH registration obligations!

Do My Responsibilities Change If I Have a Captive Plating Operation?

Not at all. This is because the chemicals in the metal finishes that you apply to a part in a U.S. facility do not require REACH registration if the coated part is subsequently shipped to the EU.⁷ The vast array of parts that an NASF captive shop finishes will generally meet the criteria for “article” status under REACH. Articles do not need to be REACH-registered. Neither do their components, as long as they are not designed to be released.

Metal finishes, as applied, are not designed for release. This means that there is no duty for an importer to register the substances in finishes on metal parts they bring into the EU. There is no

⁴ *REACH Implementation Project 3.8, Guidance on Requirements for Substances in Articles*, European Chemicals Agency (ECHA) (May 2008), available at http://reach.jrc.it/public-2/getdoc.php?file=articles_en

⁵ See RIP 3.8, at 19.

⁶ RIP 3.8, at 20.

⁷ See REACH, Art. 7, § 1.

need to pre-register in that case, either. You can keep supplying your customers without adding to their REACH registration obligations!

Industry is urged to nevertheless remain vigilant concerning the development of the Candidate List of Substances of Very High Concern (SVHC), specifically for proposals to add ingredients in metal finishes to this list. These listings, which can trigger other REACH requirements such as downstream customer communications, notification, the authorization process, and possible use restrictions, will be the subject of a future NASF briefing paper.

For more information on REACH and metal finishing operations visit the NASF website at www.nasf.org or contact Christian Richter or Jeff Hannapel at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.