



REACH COMPLIANCE GUIDANCE

WHAT **NASF JOB SHOPS AND CAPTIVE SHOPS** NEED TO KNOW ABOUT SUPPLY CHAIN INFORMATION AND NOTIFICATION REQUIREMENTS AND RESTRICTIONS UNDER THE EU REACH PROGRAM

The European Union's ("EU") Regulation on Registration, Evaluation, Authorisation of Chemical Substances ("REACH")¹ applies to a chemical substance on its own, when it is a component of a preparation, or as part of an article under certain conditions. In the case of articles imported into the EU, there is the obligation to provide immediate information to customers and to notify the European Chemical Agency ("ECHA") if the article contains 0.1 percent (by weight of the substance compared to the total weight of the article or "w/w") or more of a substance on the so-called Candidate list of Substances of Very High Concern ("SVHCs"). There are currently more than 40 chemical substances on this Candidate list, which can be viewed at: http://echa.europa.eu/chem_data/candidate_list_table_en.asp.

Imported articles that go to the EU that contain SVHCs may also be subject to Restrictions at some time in the future. If you are a metal finishing job shop or captive shop, this brief summary explains the basic supply chain information and notification aspects of REACH, the restrictions process, and how these REACH requirements affects you and your downstream customers.

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

What Is REACH?

As of June 1, 2008 under REACH, EU manufacturers and EU importers had new obligations in order to continue to manufacture, import or use new and existing chemicals in the EU. By December 2008 companies had to determine whether the products they ship to the EU needed to be *Pre-registered or Registered*. Most, if not all, parts plated in the U.S. are not subject to the pre-registration/registration requirements as a result of the so called “article exemption,” where only substances intended to be released from articles during normal or reasonably foreseeable conditions of use had to be pre-registered/registered.

Article 33 Supply Chain Communication

If the plated article (that is exempt from the registration requirement) nevertheless includes a chemical substance that is an SVHC on the Candidate list in a concentration above 0.1 percent (w/w), then your EU importers must determine if they need to provide certain safety information to their customers as required by Article 33 of REACH. That provision of REACH requires anyone selling an article in the EU that contains a Candidate list substance above 0.1 percent (w/w) to provide available information sufficient to ensure safe use of the article to their customers as of the date the substance is added to the Candidate list, or to a consumer within 45 days of the receipt of a request from a consumer. This information must at a minimum contain the name of the substance.

Notification Under REACH: When Parts I Finish Are Shipped to the EU, Do I Need to Submit Notification?

Separately, if the article (that is exempt from the registration requirement) includes a chemical substance that is on the Candidate list, then you also must determine if you need to submit a notification to the ECHA. Notification is required for articles that contain more than 0.1 percent of a Candidate list substance by weight in the total weight of the article (not just the coating), provided the total quantity of the substance imported into the EU is above 1 ton per year per importer. Note that, although the European Commission, the ECHA, and a majority of the EU member states consider the 0.1 percent weight limitation to apply to the total weight of the article

as a whole, six member states (*i.e.*, Austria, Belgium, Denmark, France, Germany and Sweden) may consider the 0.1 percent concentration threshold to apply to parts of articles as well. These member states have threatened to take enforcement action consistent with their interpretation in what appears to be an effort to bring the question to the European Court of Justice.

For substances included on the Candidate List before 1 December 2010, the notifications have to be submitted to the ECHA not later than 1 June 2011. For substances included on the Candidate List on or after 1 December 2010, the notifications have to be submitted no later than 6 months after the inclusion. The information to be notified must include the following:

- (1) the identity and contact details of the EU article producer or importer;
- (2) the registration number(s) for the candidate list substances, if available;
- (3) the identity of the substance;
- (4) the classification of the substance(s);
- (5) a brief description of the use(s) of the substance(s) in the article and of the uses of the article(s); and
- (6) the notifier's EU production or import tonnage range of the substance(s), such as 1 to 10 tons, 10 to 100 tons, 100 to 1000 tons, or >1000 tons.

Although it appears unlikely that the weight of a SVHC in a coating would exceed more than 0.1 percent of the weight of the article, platers will either have to obtain appropriate assurances from their suppliers, or have to conduct some testing, to demonstrate to EU customers the amount of Candidate list SVHCs that may be in the article. Without some type of documentation that the article is not subject to the notification requirement, customers may be forced to request that surface finishes not contain any of the SVHCs.

Even if the article does contain more than 0.1 percent of a SVHC, you may be exempt from the notification requirement if you can demonstrate one of the following conditions: 1) no exposure from that substance under reasonably foreseeable conditions of use, including disposal, 2) use of the substance in articles is below 1 ton per year, **OR** 3) the substance has already been registered for that use by anyone in the EU.

What Chemical Compounds Are on the Candidate List for SVHCs

Currently there are 18 chemical substances that are on the Candidate List for SVHCs. Of those currently on the list, only sodium dichromate would appear likely to impact the surface finishing industry.

Candidate list SVHCs can be category 1 or 2 carcinogens, mutagens, or reproductive toxins (“CMRs”), persistent, bioaccumulative and toxic (PBT) or very Persistent and very Bioaccumulative (“vPvB”) substances, or substances of like concern, such as endocrine disruptors that are proposed for addition to the Candidate list by Member States or the ECHA (on behalf of the European Commission). The regulatory authority that advocates the listing prepares a scientific dossier in accordance with the requirements of Annex XV of REACH. Interested parties have the opportunity to comment. The Candidate list will be periodically updated at least every year or so.

Industry is urged to remain vigilant concerning the development of the Candidate list of SVHCs, specifically for proposals to add ingredients in metal finishes to this list such as cadmium, chromium, lead and nickel compounds. Again, these listings can trigger REACH requirements such as downstream customer communications, notification, and possible use restrictions.

Do My Downstream Customers Need to Provide Article 33 Information, Submit a Notification or Be Concerned about Restrictions?

The EU importer and downstream users of articles are responsible for Article 33 information requirements, and EU importers are responsible for the notification to the ECHA. Even if the U.S. plater is not responsible for submitting the notification, it may need to provide its customer with the appropriate information to determine whether Article 33 supply chain communications or a notification is needed.

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

Not at all. The same rules apply to metal finishes that you apply to a part whether it is at a job shop or captive shop.

Are Imported Articles Subject to Authorisation or Restrictions?

Imported articles are not subject to Authorisation, *per se*. However, imported articles may be subject to severe restrictions or bans under the Restrictions process under REACH, if such action is deemed necessary to control risks. Restrictions are essentially the same as the regulations formerly issued in the EU under the Marketing and Use Directive, 79/769/EEC. Certain SVHCs on the Candidate list will become subject to Authorisation under REACH which requires pre-market approval to use SVHCs, and in some cases could possibly result in proposals phase-out and ban.

For more information on REACH and surface 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.