

REACH & Metals

2008 Edition

1. BACKGROUND

REACH¹ sets out obligations applying to the EU manufacture, import, placing on the market and use of chemical substances on their own, in preparations or in articles. In practice, its rules are expected to affect some 30,000 chemical substances (including metals and alloys) placed on the EU market and will impose major administrative responsibilities and costs on EU producers and importers of these substances. Downstream users of these substances will be significantly affected as well. One of the principal compliance elements, pre-registration of “phase-in” substances, must take place between June 1 and December 1, 2008. Substantial preparatory work is essential.

2. REACH AND THE METALS INDUSTRY

The central policy objective of REACH is to transfer responsibility for the safety of chemical substances from governmental authorities to the parties placing these substances on the EU market. REACH concerns substances used on their own, in preparations, or as intermediates or incorporated into finished articles. Metals are substances according to REACH. Alloys are preparations under REACH, albeit special ones where the properties of the preparation do not always simply match the properties of the components. Placing on the market means supplying or making available to a third party, whether for payment or free, including importation into the European Union.

The registration of substances manufactured or imported in quantities of 1 tonne or more, whether on their own, in preparations or finished articles or as intermediates, is the fundamental requirement of REACH. The specific information to be submitted for the registration, and when the registration must be made, depends on the classification of the substance in question and the volume manufactured or imported, as summarized below.

REACH provides transitional registration periods for certain “phase-in” substances according to the volumes manufactured or imported but only if the substances in question are pre-registered between 1 June and 1 December 2008. Downstream users of a substance that has not been pre-registered may notify the Agency of his interest in the substance, his contact details and the details of his current supplier. The Agency will publish, on its website, the name of the substance and on request provide contact details of the DU to a potential registrant.

An alloy is defined as:

A metallic material, homogenous on a macroscopic scale, consisting of two or more elements so combined that they cannot be readily separated by mechanical means.

It is a preparation and is not subject to registration as such. However, its component metals must be registered if they are manufactured or imported in the Community in quantities greater than 1 tonne. Certain substances that occur in nature are exempt from registration if they are not chemically modified. They include: minerals, ores, ore concentrations, coal and coke.

REACH will increase the amount of information that flows both up and down supply chains. Suppliers of substances and preparations must provide recipients with safety data sheets (SDS) whenever a substance or preparation is classified as dangerous, is persistent, bioaccumulative and toxic or very persistent and very bioaccumulative or is listed in the Art 59 “candidate list” for substances requiring authorisation for other reasons. Other instances are also specified when an SDS is required or not. It should be noted that the Annex on compiling an SDS states that SDS are also required for certain special substances and preparations (e.g.,

¹ Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), European Union *Official Journal* L 136 (2007), p. 3 (corrigenda version).



REACH & Metals

metals in massive form, alloys, compressed gases, etc.) listed in chapters 8 and 9 of Annex VI to Directive 67/548/EEC, for which there are labelling derogations.

In general, chemical safety assessments and a chemical safety report (CSR) are required for substances M/I in quantities ≥ 10 t/a, although if a substance is present below specified concentrations it is unnecessary. The CSR may need to provide exposure scenarios, which must be annexed to any SDS. The annex on preparing CSR highlights that when assessing the risk of the use of one or more substances incorporated into a special preparation (for instance alloys), the way the constituent substances are bonded in the chemical matrix must be taken into account.

REACH comprises much more than registration and information obligations. In addition to the above, manufacturers, importers and downstream users need to focus on possible authorization requirements for substances of very high concern (SVHC) and potential usage restrictions (or bans). Records must be retained for 10 years.

3. CURRENT ACTIVITIES IN THE METALS INDUSTRY

As manufacturers, importers and downstream users continue to prepare for REACH's pre-registration, registration, and possibly authorization requirements and/or usage restrictions, entities concerned about the same metals have begun to come together. A number of consortia have already formed, and it is foreseeable that the individual company registrants, as well as each consortium that is a data owner, will join the SIEFs required by REACH.

The structures of the consortia vary depending on the metal. For example, the Nickel REACH Program oversees three separate consortia. Consortium 1 is for Nickel and Nickel compounds that underwent the recent Nickel risk assessment; Consortium 2 is for other inorganic Nickel compounds produced or imported in the EU; and Consortium 3 is for complex materials that require different approaches, *inter alia*, Nickel matte (an intermediate) and FeNi (a special preparation). The European Precious Metals Federation, however, has formed one Gold, Silver, and Platinum Group Metals Consortium.

REACH does not require parties, which are interested in the same substances to form consortia, but companies should be aware that the metals industry has taken substantial steps to organize itself. Companies should familiarize themselves with the various appropriate consortia and review, among other things, the associated fees, data-sharing requirements and potential membership benefits.

Step toe has integrated legal and technical expertise to address REACH issues across the board, and has particular experience in the metals/REACH interface and consortia management. We are ready to discuss effective compliance solutions based on your company's specific circumstances and the more general problems your sector encounters.

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