



What NASF Jobshops Need to Know About Pre-Registering Under the EU REACH Program

THIS MONTH: Guidance for Finishing Operations

Since the mid-1990s, European environmental regulations have been catching up and superseding the U.S. in influencing the production and use of chemicals and metals in the global supply chain. The surface finishing industry has faced major pressures but also opportunities in this period as new materials restrictions – both mandatory and voluntary – have emerged in the automotive, electronics, aerospace and other sectors. Many of us have come to know this story intimately, and we obviously operate differently today than we did just several years back.

The ever-changing business and regulatory climate in North America is challenging enough for finishing firms and suppliers. However, the complexities and impacts of new European environmental rules on the scene make the future just that much more uncertain without proper guidance.

See the new NASF Guidance for both finishing and chemical supplier companies at www.nasf.org.

NASF Continues Education Effort for Industry

Last month, we released the first of two guidance documents to assist finishing suppliers, job shops and captive operations in understanding and complying with REACH, the new European Union chemicals mandate. The law went into effect June 1, 2008. NASF anticipated questions and concerns from member companies, and launched a preliminary education effort for the industry earlier this year in Washington DC and at SUR/FIN in Indianapolis.

At SUR/FIN, we facilitated a panel discussion of experts from the automotive, aerospace, defense and nickel industry, focusing especially on the EU's flawed hazard classification for over 140 nickel compounds, some of which may be covered by REACH requirements. Potential regulation of nickel carbonate, nickel sulfate and other nickel compounds remains a concern, and NASF's advocacy for the industry on nickel has spanned from Washington to Brussels on the topic.

This month's focus is on finishers, many of whom are receiving inquiry letters from customers inquiring whether finishing companies and their products are "REACH-compliant." In the summary

guidance below, we highlight how REACH does – and doesn't – affect chemicals, particularly coated products and parts. We also have developed a response (see sample letter) for finishers to use in replying to downstream customer inquiries regarding REACH compliance matters.

The Basics of REACH for Finishing Companies

One of the basic things for finishing operators to know about REACH is that the new law applies to companies who (or whose customers) manufacture, import or use new and existing chemicals in the EU. The REACH framework broadly applies to: (1) a chemical substance on its own; (2) when it is a component of a "preparation" or (3) if the substance is intended to be released from an article under normal or reasonably foreseeable conditions of use.

Most immediately, your company 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 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 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. 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, 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 composition.” 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. 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].”

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. 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 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, where nickel compounds will be specifically addressed.

Further information on REACH and Metal Finishing Operations is Available through NASF. Contact Christian Richter or Jeff Hannapel at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.

[Customer Address]

Re: European REACH Regulation Compliance Statement

Dear Sir or Madam:

This letter responds to your request for our opinion regarding the status under the European Union’s (“EU”) Regulation on Registration, Evaluation, Authorisation and Restriction of Chemical Substances (“REACH”) of our **[insert product trade name(s)]**. We provide metal finishing to your product in the United States, and we understand that your product may be subsequently sent to the EU. We have no hesitation in concluding under these circumstances that, providing that the products that we receive from you meet the criteria for an “article” under REACH, the metal finish that we apply to such products are exempt from pre-registration and registration under REACH, as a component of the article that would not be expected to be intentionally released as part of the design. In such cases, the finishes we supply will comply fully with REACH and all regulations there under.

As a result, pre-registration and registration does not apply to the services we perform for your company. We are committed to compliance with the legal requirements of REACH and, as needed, we look forward to continuing to work with you as you assess the impact of REACH to your organization.

We trust that you will find this letter fully responsive to your request. Should you have any further questions, or if we may be of assistance in any other way, please do not hesitate to contact us.

Sincerely,

**SAMPLE
Letter**