

ENVIRONMENT AND INTERNATIONAL TRADE ALERT

ARE YOU READY FOR DECEMBER 1, 2008? THE EU'S REACH REGULATION WILL AFFECT AMERICAN COMPANIES



On December 1, 2008, the European Union (EU) will close preregistration under the sweeping new chemical regulation known as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals). Companies that preregister the chemical substances they manufacture in, or import into, the EU (either directly or through a member of the supply

chain) will benefit from a special "phase-in" period that extends registration deadlines by two to 10 years for older, more common chemicals used in products and articles. Companies that fail to comply with REACH preregistration requirements waive the opportunity to continue manufacturing or selling products in the EU until the entire time- and resource-intensive registration process is complete.

REACH will have significant business implications for many American companies, including many companies that may not export products directly to the EU. Without supply-chain analysis for potential REACH impacts and coordination among suppliers and customers, U.S. companies may find their products barred from the EU market and may lose the use of unsupported EU products, thereby exposing their entire supply chain to business and legal risks. Companies covered by REACH ignore it at their peril.

Key Compliance Dates under REACH

June 1, 2007: REACH goes into force, triggering expanded supply-chain risk-communication and labeling requirements.

June 1, 2008: Chemicals that are new to the EU market must meet more stringent registration standards. Older chemicals, if not preregistered, must also complete registration for continued use.

November 30, 2008: Preregistration deadline to receive phase-in grace period for registering older chemicals. Failure to preregister substances may bar sale until completion of the full registration process.

November 30, 2010: Registration deadline for phase-in substances imported by a registrant at 1,000 tons per year (tpy) and for lower-volume substances posing higher risks.

May 31, 2013: Registration deadline for substances imported by a registrant at 100 to 1,000 tpy.

May 31, 2018: Registration deadline for substances imported by a registrant at 1 to 100 tpy.

NO REGISTRATION – NO DATA – NO MARKET

REACH took effect on June 1, 2007, imposing significant new registration and notification obligations on manufacturers and importers of chemical substances (and articles containing such substances) introduced in the EU.¹ REACH also restricts the future use and distribution of certain higher-risk substances and imposes additional risk-management, recordkeeping, reporting and risk-communication obligations within the supply chain and on downstream users.

U.S. companies that sell products in the EU market (either directly or through downstream customers) must make their products REACH-compliant or risk being shut out of the EU market until after they complete a lengthy (and potentially costly) registration process for each regulated substance. In the opposite direction, U.S. companies that rely on EU-based products for their business must ensure that their EU suppliers are taking the steps necessary to make their specific substances REACH-compliant, or risk a sudden supply-chain disruption when their suppliers are barred from further production. In either case, companies must take the steps necessary to prepare for December 1, 2008, to prevent significant and costly business disruptions.

PREPARING FOR REACH: FIVE STEPS TO COMPLETE BY DECEMBER 1, 2008

1. **Assess Your Business Model.** Review your supply chain and customer base to determine whether REACH restrictions may affect the supply or demand for your company's products. Some basic questions include –
 - Do you manufacture or market chemical substances, mixtures or products intended for export to the EU?
 - Do you have downstream customers that market, blend or repackage your products for export to the EU?
 - Do your customer contracts warranty the fitness of your products for overseas export or compliance with applicable legal requirements?
 - Do you or your suppliers rely on chemical substances, mixtures or products manufactured in the EU to carry out manufacturing or other contractual obligations?

Unless you can confirm no business or legal connection to the EU substance marketplace, you are likely to be impacted in some fashion by the continued regulatory implementation of REACH.

2. **Develop an Inventory of REACH-Regulated Substances.** Identify each individual substance contained in the products imported into the EU (directly or through downstream customers) during the last three years. Develop an average annual tonnage estimate for each.
3. **Consult with Other Members of Your Supply Chain.** Coordinate with members of your company's supply chain and with your downstream customers to determine which companies may already be planning to register specific substances. Where you rely on substances from the EU, make sure that the EU supplier will be taking the steps necessary to register its products. If a supplier does not plan to support that product, you may need to find an alternative supplier.

¹ REACH defines the term "substance" broadly, and the regulation can apply to many materials used in the manufacturing process, including organic and inorganic chemicals, metals, base oils, lubricants, solvents, refined petroleum products and monomers used in plastic production (polymers are exempt from most, but not all, REACH requirements).

4. ***Establish a Legal Representative in the EU.*** Companies without a legal presence in the EU cannot assume direct responsibility for REACH compliance and cannot fulfill the preregistration requirements. Presuming you elect to continue doing business in the EU, current REACH guidance indicates you have several alternatives for identifying a legal entity in the EU:
- Rely on your EU-based import customers to handle preregistration, registration and ongoing compliance.
 - Appoint an EU-based third-party “Only Representative” to handle preregistration, registration and ongoing compliance on the company’s behalf (numerous firms of varying quality and experience are now offering these services, but it will take time to conduct the due diligence and negotiation required to select the proper one).
 - Establish an EU-based entity with the capacity to act as your own dedicated “Only Representative” (with or without the assistance of third-party technical support) with respect to preregistration, registration and ongoing compliance.

Each option offers distinct advantages and disadvantages on the legal and business fronts. You will need to evaluate your company’s needs to determine which approach will work best.

5. ***Preregister or Assure Preregistration of EU Substances.*** If you, your customers or other downstream users or suppliers intend to take advantage of the delayed registration dates (between 2010 and 2018), it is critical that someone preregister each chemical substance with the European Chemicals Agency (ECHA) before December 1, 2008. ECHA will accept preregistration forms online starting June 1, 2008. The EU claims it will make the preregistration submission process straightforward. Time will tell how burdensome subsequent data-collection requirements and actual registration will be in practice.

PREREGISTRATION IS JUST THE FIRST STEP

REACH is a long-term strategic consideration for companies with ties to the EU. The complete registration process is likely to be time- and resource-intensive, and the additional information-sharing, reporting and risk-management obligations imposed will continue well beyond preregistration and registration.

Given REACH’s potential compliance costs and burdens, some U.S. companies may be reassessing how the EU market (and, hence, the EU’s REACH regulation) fits into their long-term business and compliance strategy. Yet, even for companies still assessing the long-term costs of substance-by-substance registration of products for the EU market, it is critical that they take the preliminary steps necessary to preserve their ability to preregister before December 1, 2008. Without taking such preparatory measures now, some companies may belatedly find that REACH has become a barrier to, rather than just a cost of, doing business in the global market.

** For contact information, please see page four.*

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