

ECHA Proposal – Only Representative (OR) Under REACH

Brief Overview

For phase-in substances the only representative will have to pre-register the substance in order to benefit from the extended registration deadlines and will subsequently become participant of the Substance Information Exchange Forum (SIEF) (see section 3.4 of the Guidance on data sharing). An only representative appointed after 1 December 2008 can pre-register the substance in accordance with Article 28(6) until 12 months before the relevant registration deadline, provided that the substance originating from the non-EU manufacturer was not placed on the EU market before in a quantity above 1 tonne/year after 1st of June 2008.

This is a real problem for US industry as many US manufacturers have held off appointing an OR because, even though their total exports exceed 1 tonne/year, they are at less than one tonne per year per importer in the EU, which is the legal threshold for importers. If the US manufacturer can not appoint an OR after December 1, 2008 when their importers reach 1 tonne/ year, their markets will not be able to grow in the future. There is no legal justification for the ECHA approach and it is potentially discriminatory against non-EU producers.

At the same time there are a number of urgent OR issues that are not addressed in the ECHA proposal at all, such as:

1. Whether an OR can be appointed post-pre-registration to take over the obligations of the EU importers that have pre-registered but do not wish to register in their own right. This is critically needed because many non-EU manufacturers will not be able to appoint the OR prior to December 1, 2008. Article 8(1) contains no time limitation on the appointment of the OR to fulfill the obligation of importers but the ECHA proposal would foreclose an OR from entering the SIEF after December 1, 2008 if the non-EU manufacturer is already at 1 tonne/ yr.
2. Whether an OR has the right to withdraw from a SIEF if the EU manufacturer ceases exports into the EU. This is important because US manufacturers can not be expected to pay 3rd party ORs for services after their commercial interests have ended.
3. Whether a non-EU manufacturer can change her OR during the phase-in period. Provision is made by ECHA for changing the OR post-registration but nothing has been provided for a change before that point.