

## **First REACH Use Notification Deadline**

The first deadline of Use Notification 2010 registered substances is 30<sup>th</sup> November 2009. This affects all Registrants of 2010 substances, and all their Downstream Users. It also affects Registrants who do not need to register by 2010, but are going forward sooner because of “one substance, one registration”; and their Downstream Users as well.

### **Important point – notification is within the supply chain, not directly to ECHA**

The reason for the Use Notification deadline is probably to provide a legal framework to protect both Registrants and Downstream Users.

If a Downstream User notifies their Registrant of their use(s), either directly or via the supply chain, up to one calendar year before the Registration Deadline, then the Registrant is legally obliged either to include that use in the Chemical Safety Report; or to inform the Downstream User that the use will not be included.

This protects the Downstream User, by ensuring that if the use is not included in the CSR, they receive notification, and can make alternative arrangements. The Registrant is protected by having a cut-off date, so that if notification is received later than 1 year before registration, they are not legally obliged to include it in their CSR (otherwise they might receive use notifications eg 1 week before the registration deadline).

The 30<sup>th</sup> November 2009 deadline is the cut-off point for Use Notification for 1<sup>st</sup> December 2010 registrations, and there will be two more such deadlines on 31<sup>st</sup> May 2012, and 31<sup>st</sup> May 2017 for the registration deadlines of 31<sup>st</sup> May 2013 and 31<sup>st</sup> May 2018 respectively.

(Uses will be communicated to ECHA in due course, when the CSRs are submitted, but they are not required to be communicated to ECHA at this stage).

### **What happens if a Downstream User makes notification after the Use Notification Deadline?**

If a Downstream User does not notify the use to the Registrant by the deadline, then they lose the legal protection aspect. The Registrant may still decide to include the use in the CSR. However, if they decide not to include the use in the CSR, they are not under any legal obligation to tell the Downstream User.

It is therefore possible that the first time a Downstream User who didn't meet the Use Notification Deadline realises what has happened is after the Registration Deadline, when they suddenly find their use is illegal.

Hopefully, many Registrants will act in good faith, and keep Downstream Users informed of any late-notified uses which will not be included in the CSR.

However, it will be much easier for everybody if the Use Notification Deadline is adhered to by all participants.

### **Record keeping is important for everybody**

If you are a Downstream User, it is in your interests to make use notification, and to keep copies of all correspondence, so that you have evidence that you have made notification. This will act as backup for any dealings with HSE and ECHA, should your use not be included in a CSR, and you were not informed – at the least, you should be able to go through the use registration procedure, as you will have acted in good faith. allow you to if the worst happens and your use is not included in the CSR

Similarly, if you are a Registrant, you need to demonstrate whether and when Use Notification was made.

Knowing how erratic both mail and email systems can be sending documents both by mail and electronically, and/or having some evidence that e.g. an email has been delivered and read is probably advisable.

### Why are uses of a hazardous substance important for REACH?

The use of a hazardous substance is one of the key elements in a Chemical Safety Report (CSR), as this helps to define how people and the environment may be exposed to the substance. As a substance travels through the supply chain, there will be different uses, and therefore different exposure scenarios.

Once substances have been registered, the idea is that new uses will be notified for inclusion in the CSR as they are discovered, meaning that uses are one of the key drivers for updating risk assessments.

### How Use Notification Works

The uses can't just be described in writing – can you imagine the interpretation and translation difficulties with nearly 30 official languages in the EU? Instead, ECHA have developed a series of standard phrases, called “use descriptors” for registrants to use.

Current Use Descriptors are available to download from ECHA at [http://guidance.echa.europa.eu/docs/guidance\\_document/Inforeq\\_CSR\\_R12\\_en.pdf](http://guidance.echa.europa.eu/docs/guidance_document/Inforeq_CSR_R12_en.pdf)

Based on our experiences of pre-registration, it is possible that this guidance may be changed between now and the Use Notification deadline, and we advise everybody to keep up to date with the ECHA guidance website [http://guidance.echa.europa.eu/index\\_en.htm](http://guidance.echa.europa.eu/index_en.htm).

### The Use Descriptor System

The use descriptor system contains 5 separate categories, which are:

- Sector of use (SU)
- Chemical product category (PC)
- Process category (PROC)
- Environmental Release Category (ERC)
- Article Category (AC)

There will nearly always be a minimum of 3 descriptors for each use. Sector of use; Environmental release category; and one other (eg process category if substance is being formulated; chemical product category if it is for consumer end use).

Example – if you are formulating paint using a pigment, your use might be:

SU10 – formulation; PROC5 – mixing and blending in batch process; ERC2 – mixing and blending of substances into preparations

(Example taken from Brenntag website).

The current descriptor list is given in the ECHA document, but a more user-friendly explanation of how the system works is given on the Brenntag website at <http://www.brenntag-reach.com/en/pages/UseCommunication/UseDescriptorSystem/index.html>, with a summary at [http://www.brenntag-reach.com/en/downloads/SC\\_Communication/d-REACH\\_SCC\\_Slides\\_Use\\_Description\\_Internet.pdf](http://www.brenntag-reach.com/en/downloads/SC_Communication/d-REACH_SCC_Slides_Use_Description_Internet.pdf)

### **Notification through the supply chain - bottom up, or top down?**

Originally, the idea was that end users of chemicals would notify their suppliers, and so on up the supply chain to the companies actually manufacturing or importing the substances.

However, it has been realised by ECHA and CEFIC that this is unrealistic, so the expectation is that registrants will manage the process through communicating down the supply chain.

Having said that, the timing is very tight from the finalised Use Descriptors to the Use Notification Deadline, so we advise that everybody should start preparations now.

### **Dealing with long supply chains**

Some supply chains may include 4 or 5 links between Registrant and End User, so it is very important that people within the supply chain for a 2010 substance act in good faith to transmit Use information back up the supply chain as promptly as possible.

### **What should registrants with 2010 deadlines do?**

Registrants should look at the current end use list, and practice using the descriptor system as it currently stands.

Once the finalised guidance has been issued, communication with downstream users (eg standard letter) is essential, but downstream users may need help with interpretation of the phrases.

For some registrants, it may be easier to produce the use descriptors in-house. However, even if you believe that you know all the downstream uses of your substances, it would be highly advisable to confirm the use descriptors with your customers, in case there are uses which you are unaware of.

Some large companies have developed web-based databases to make use notification comparatively easy for their customers, but this is likely to be a paperchase for companies with 2010 registrations who have not taken this route.

**Important point** – if you decide, as a registrant, that you are not going to include a particular notified use in your CSR, , remember that you are obliged to inform your customers/ end users of this fact. However, you are not obliged to tell them which uses you are going to register.

### **What should downstream users of chemicals do?**

Downstream users should also practice using the current descriptor system, so that they have an idea of what to expect from their suppliers, and how to describe their uses.

Downstream users may need to proactively find out what the finalised use descriptors are, and inform their suppliers, if the suppliers are not acting quickly enough. This will be especially important for business-critical hazardous substances.

If your supplier informs you that your use is not going to be included in the CSR, you have at least three options:

- find another supplier who is going to register that use;
- if you have pre-registered the substance, participate in a Consortium to ensure your use is included in a CSR;
- use the facility within ECHA to register the use separately (but this has not been done yet, and is likely to be complicated).

There may be other options open to you which nobody has thought of yet, because the REACH system is so complex.

### **Important point – the Use Descriptors should help protect commercial confidentiality to some extent**

It's really important that when Downstream Users are describing their uses, they only use the official Use Descriptors, and don't give Registrants or people above them in the supply chain too much detail. The Use Descriptors are fairly broad, and should hopefully enable commercial confidentiality to be maintained.

Similarly, the official Use Descriptors should help ensure that Registrants do not breach the Downstream Users confidentiality inadvertently.

### **Final point – discussing Uses with other Registrants**

You should not discuss uses in a SIEF (that is, the body set up to share animal test information), as it may be classed as confidential business information; but you may decide to discuss uses in a Consortium (that is, a body set up to prepare a CSR for joint registration).

Many thanks to Joanne Gill, Brenntag, for helping with some of this information, and for allowing links to the Brenntag website to be included.

TT Environmental Ltd, 16<sup>th</sup> September 2009.