

April 8th 2010

Communication from the REACH Copper Consortium regarding requirements for exemption according to article 2.7d

A. Introduction

According to Articles 6 (1) and (2) of the new Waste Framework Directive 2008/98/EC, certain specified waste ceases to be waste when it has undergone a recovery operation and complies with specific criteria. The so-called End-of-Waste criteria for copper and copper alloy scrap are currently under development by the European Commission.

Material that ceases to be waste can result in one or several substances. Registration requirements for the substance(s) will depend on whether the substance(s) has been registered before and whether the relevant safety information is available.

Article 2.7d states that:

- (i) the substance that results from the recovery process is the same as the substance that has been registered in accordance with Title II; and*
- (ii) the information required by Articles 31 or 32 relating to the substance that has been registered in accordance with Title II is available to the establishment undertaking the recovery.*

This paper provides the REACH Copper Consortium's assessment on:

1. What information is required by Articles 31 or 32?
2. How access to this information may legitimately be obtained.

While an exemption under Article 2.7d means that no fee is payable to ECHA, a legal entity must be able to demonstrate that it has carried out appropriate due diligence, e.g. to show the sameness of the substance and to demonstrate the information available is relevant and adequate (i.e. the hazard profiles of the recovered substance do not differ from that of the same registered substance).

For the latest ECHA guidance, visit http://guidance.echa.europa.eu/guidance4_en.htm

B. Information required by REACH Articles 31 and 32

According to Article 31.1, the supplier (or in this case the establishment undertaking the recovery) *shall provide the recipient of the substance or preparation with a Safety Data Sheet¹ compiled in accordance with Annex II²:*

- (a) where a substance or preparation meets the criteria for classification as dangerous in accordance with Directives 67/548/EEC or 1999/45/EC; or*
- (b) where a substance is persistent, bioaccumulative and toxic or very persistent and very bioaccumulative in accordance with the criteria set out in Annex XIII; or*
- (c) where a substance is included in the list established in accordance with Article 59 (1) for reasons other than those referred to in points (a) and (b).*

According to Article 31.2 and 31.7, the information in an SDS has also to be consistent with the information in the (Chemical Safety) Assessment (CSA = phys-chem + human health + environment assessments), and, if applicable, the relevant exposure scenarios (ES) from the Chemical Safety Report (= CSA + Risk Characterisation + ES) may be annexed to the SDS (=e-SDS).

Copper massive does not meet any of the 31.1 criteria. Powders with < 1mm diameter will require some classification entries.

However, REACH Annex II states that *Safety data sheets are also required for certain special substances and preparations (e.g. metals in massive form, alloys, compressed gases, etc.) listed in chapters 8 and 9 of Annex VI to Directive 67/548/EEC*. In light of this, the Copper Consortium members have decided to voluntarily provide SDSs for substances and preparations.

This approach is in line with REACH Article 32 that deals with the duty to communicate information for substances or preparations for which an SDS is NOT required.

C. Options to get legitimate access to information

In order to support establishments undertaking recovery to obtain legitimate access to the information required to satisfy Article 31 (and 32), the Copper Consortium can suggest the following options:

1. An establishment becomes a Member of the ECI managed Consortium, independent of its intention to formally register with ECHA. This option was advised in the Consortium's communication of Feb 23rd, 2009.
2. An establishment buys a Letter of Access (LoA) that provides it with the right to use the Consortium's information for a purpose other than formal registration. In the case of copper, the information package provided with the LoA contains the Joint Submission name, a valid token, an electronic copy of the Chemical Safety Report, including Exposure Scenarios, and classification proposals (if any). The cost of an LoA is tonnage related, subject to a minimum.
3. An establishment develops its own dataset, Chemical Safety Report, classification and labelling proposal, etc.

Based on the data obtained via either of these routes, along with the relevant information for all other substances in its recovered material, any supplier, or importer, can develop the information it needs for communication further down the value chain.

Companies wishing more information on options 1 or 2 are invited to visit -

<http://www.eurocopper.org/copper/reach.html>

¹ Supplier shall provide an SDS (to recipient) free of charge (see Article 31.8).

² The SDS shall be compiled in accordance with REACH Annex II (guide to the compilation of SDS). Point 1.1 of this guide states that *for substances subject to registration, the term shall be consistent with that provided under registration and the **registration number** assigned under Article 20 (1) of this Regulation shall also be indicated*. It is the Consortium's interpretation that substances or preparations exempt from registration, according to article 2.7d, do NOT need SDSs with registration numbers on them.