

Environmental Law Alert

Industry's Response to EPA Proposed Nano Rule

06.22.2015

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EPA held a public meeting on June 11, 2015 on EPA's Proposed Rule imposing one-time electronic reporting and recordkeeping requirements on manufacturers and processors of certain nanoscale materials under Section 8(a) of the Toxic Substances Control Act (TSCA). [Click here](#) for an earlier article describing the Proposed Rule.

EPA began the meeting by clarifying that the Proposed Rule targets nanoscale versions of substances that had previously been exempt from reporting requirements. New nanoscale materials are already subject to TSCA and over 170 premanufacturing notices have been filed for those new materials, including many for carbon nanotubes. EPA's goal for the rule is to provide missing information on nanoscale versions of existing substances to evaluate whether further regulation is needed.

Commenters

Five individuals made comments: Steven Gordon of 3M speaking on behalf of the American Chemistry Council; Dan Russell of Pixelligent New Technologies; Jo Anne Shatkin of Vireo Advisors; Martha Marrapese of Keller and Heckman LLP speaking on behalf of the NanoManufacturing Association; and Vincent Caprio of the NanoBusiness Commercialization Association.

Issues Raised

Definition of Reportable Chemical Substances. The definition of "reportable chemical substances" uses vague terms like "unique," "novel," and "trace," which will make it difficult to determine whether something is a "reportable chemical substance." The terms should be better defined and justified.

Discrete Forms of Nanomaterials. EPA should provide better guidance on how to measure discrete forms of nanoscale materials because the model used will affect the resulting measurements. One commenter objected to certain properties chosen by EPA to determine whether a discrete form exists, such as dispersion stability and surface reactivity, because they are not sufficiently linked to risk to human health and environment.

135-Day Review Period. Most of the commenters objected to the 135-day review period, which is longer than the 90-day review of reports for new substances, including because of the adverse economic effects of the additional delay.

Harmonizing U.S. and Canadian Approaches. EPA should reduce the burden on industry by aligning the forthcoming rule with the [Canadian process](#) announced earlier this year.

Availability of Required Information. Companies will not have certain of the required information readily available, burdening industry and violating TSCA 8(a), which only authorizes EPA to require information that companies already have or can reasonably ascertain.

What Next?

Public comments are due on July 6, 2015, but EPA did not specify when it will respond to the comments and what that response will be. One commenter suggested that EPA re-propose the rule for additional comments after it has been revised. During Nanotech 2015, a nanotechnology conference and exposition that occurred the week following the public meeting, it was suggested that the Proposed Rule would likely be finalized in late 2016,



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requiring reporting in 2017. In the meantime, those potentially subject to the rule can review the [proposed form](#) companies would be required to submit under the new rule.

If you have any questions about this topic, please contact the author(s) or your principal Mintz Levin attorney.

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5048-0615-NAT-ENV