

CLIENT ALERT

UPDATE: EPA Intends to Postpone Effective Date of Nano Rule

May.10.2017

In a Federal Register notice that is scheduled to be published tomorrow, EPA will announce a delay in the effective date of the new nano reporting rule until August 14, 2017. [A pre-publication copy of the notice, available here](#), indicates that the delay is intended to allow EPA to issue interpretive guidance on the rule before the new reporting requirements take effect. The lack of interpretive guidance had previously been criticized by various stakeholders.

New Nano Reporting Rule Takes Effect This Friday

Manufacturers, importers and processors of nanoscale materials face new requirements -- without robust guidance from EPA

New regulations imposing reporting obligations on manufacturers, importers and processors of nanoscale materials take effect on May 12, 2017, five months after the [final rule](#) was published by the U.S. Environmental Protection Agency in the Federal Register.

[As previously explained here](#), the new regulations establish reporting and recordkeeping requirements for “discrete forms” of nanoscale materials. For purposes of the regulations, a “discrete form” is defined as a nanoscale substance that, when compared to another form of the same substance, (a) has a different morphology or shape; (b) a different coating; or (c) satisfies certain other criteria.

Two types of reporting are required under the new regulations:

- **Prospective Reporting** - Any person who proposes to manufacture or process a nanoscale material must provide EPA with information required under the rule at least **135 days** before commencing manufacture or processing of a discrete form of the substance, or within **30 days** of forming the intent to manufacture or process the material, whichever is later.
- **Retrospective Reporting** - Any person who has manufactured or processed a covered nanoscale material during the **three years** prior to the effective date of the final rule (*i.e.*, since May 12, 2014) must provide EPA with the required information by no later than May 12, 2018.

More detailed information regarding the specific requirements of the new regulations, and the types of information that will have to be reported to EPA, are provided in [our previous client alert on the final rule, available here](#).

Because this regulation is the first of its kind for nanomaterials, it is anticipated that a number of unique and challenging issues of interpretation and implementation will arise as companies attempt to comply with the rule. And despite calls from stakeholders, EPA has not yet published any formal interpretive guidance on the regulations. For this reason, clients – including

companies that *process* nanomaterials into articles or other materials -- should familiarize themselves with the rule well in advance of any reporting deadlines.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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