

Client Alert

Tort Litigation & Environmental Practice Group

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EPA Proposing Policy On How It Will Collect Information About Nanomaterial Use In Pesticides

EPA recently proposed a policy for obtaining information from companies on the use of nanomaterials in pesticides to better enable EPA to assess whether pesticides may cause unreasonable adverse effects on the environment.

EPA also is proposing to adopt a presumption that nanoscale versions of non-nanoscale ingredients already present in registered pesticide products are different from their normal-sized versions. Applicants would be able to overcome this presumption on a case-by-case basis.

Nanomaterials are intentionally produced to have particles whose size measures between one and one hundred nanometers in at least one dimension. Due to their extremely small size, nanomaterials can have different properties than their larger scale counterparts. While nanomaterials can have beneficial applications, laboratory studies have led to concerns that their small size and unique properties may pose new or increased risks to human health or the environment.

EPA wants to collect information about pesticide products that contain nanoscale materials, including:

- the identity of nanoscale materials present as an active or inert ingredient;
- the size and size distribution of the nanoscale material;
- the manufacturing process used to produce the nanoscale material;
- any composite in the product that combines nanoscale materials with a carrier, such as silica or sulfur;
- potential routes and levels of human and environmental exposure to the nanoscale materials; and
- information on adverse effects at any level of exposure to the nanoscale material.

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EPA indicated that it plans to require companies to submit nanoscale material information as part of an application for registration of a pesticide product if the product contains a nanoscale material.

For products that are already registered, EPA is considering two different options for obtaining additional information related to nanoscale materials.

Under the first approach, EPA would expand its existing interpretation of FIFRA § 6(a)(2) and identify a new subset of reportable information related to nanomaterials. The proponent of a product would have the obligation to determine whether it must report this subset of information on nanomaterials pursuant to the registrant's ongoing duty to report information to EPA. EPA prefers this approach because it would pose a minimal administrative burden for the Agency. Industry has voiced concerns that using that approach, which relies on EPA's authority to require a registrant to submit information potentially relevant for EPA's "adverse effects" analysis, could stigmatize the industry.

Alternatively, EPA is considering using data call-in notices under FIFRA § 3(c)(2)(B) to collect information on the use of nanomaterials in existing, registered pesticides. Generally, a data call-in notice is issued to an individual registrant and specifically identifies the information or data that the registrant must provide. EPA is also considering variations whereby it would issue data call-in notices to groups of registrants. Under this approach, EPA could use the data call-in process to require a registrant to generate new information to support an existing registration.

EPA is accepting public comments on its proposed policy until July 18th.

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