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EPA Launches Nanoscale Materials Stewardship Program

On January 28, 2008, the Environmental Protection Agency (“EPA”) launched its Nanoscale Materials Stewardship Program. The program is an effort to gather information about nanoscale materials that are manufactured, imported, processed or used in the United States. The program is voluntary and does not alter obligations imposed by the Toxic Substances Control Act (“TSCA”) or any other statute or regulation. Participation presents both opportunity and risk: an opportunity to be involved with EPA in a developing area of regulation, and a risk that such participation may highlight compliance issues under present law.

The program is divided into two parts, a Basic Program and an In-Depth Program. In the Basic Program, participants report extensive data about their nanoscale materials, including material characterization, hazard, use, potential exposures and risk-management practices. Participants are asked to provide data that is known or reasonably ascertainable and need not develop new data. The EPA has provided a report form and worksheet to facilitate

participation and hopes to collect much of this data within the next six months.

Participants in the In-Depth Program voluntarily develop data over a longer period of time. The EPA will use information provided by participants and obtained in the Basic Program to develop a study plan that might include physiochemical characterization, health and environmental hazard testing, fate and transport, exposure and release assessment, effectiveness of engineering controls, worker education programs and other actions or investigations. The EPA will also assist participants to form consortia for multi-party studies and will coordinate with other federal agencies and international groups involved in similar efforts.

The EPA encourages the use of exposure mitigation practices where nanoscale materials are used or handled, quoting the National Institute for Occupational Safety and Health (“NIOSH”): “Given the limited amount of information for determining if engineered nanoparticles pose an occupational health risk, it is prudent to take precautionary measures to

minimize worker exposures.” The EPA asks all participants in the program to describe risk-management practices and encourages the development of such plans, though it is not prescribing a specific risk-management practice for all nanomaterials.

The EPA intends to use the information obtained from the program to ascertain “the nature of nanoscale materials that are produced; the quantities in which they are produced; how they are or will be used; any hazards, exposures, or releases associated with those

materials; and how these hazards are being addressed.” The EPA will also evaluate the information to explore more fundamental issues, such as information that may be useful in evaluating specific nanomaterials and recommended risk-management practices and in identifying specific nanomaterials or groups of such materials that may present heightened or minimal degrees of risk.

There are certainly good reasons to work with EPA in developing its understanding of nanomaterial manufacture and use, as regulatory action in this area

is likely in the near future. Participants, however, should be very careful to assure that their use of nanomaterials complies with TSCA and any other applicable statutes or regulations. The EPA will alert participants of the need to comply if data obtained through the program suggests that a nanomaterial is reportable as a new chemical substance under TSCA. The EPA further categorically stated that it “will not exempt anyone from TSCA requirements for participating in the program” including, apparently, enforcement action.

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