

ENVIRONMENTAL PROTECTION AGENCY

[EPAHQOPPT20040122; FRL83866]

Toxic Substances Control Act Inventory Status of Carbon Nanotubes

AGENCY:

Environmental Protection Agency (EPA).

ACTION:

Notice.

SUMMARY:

This document gives notice of the Toxic Substances Control Act (TSCA) requirements potentially applicable to carbon nanotubes (CNTs). EPA generally considers CNTs to be chemical substances distinct from graphite or other allotropes of carbon listed on the TSCA Inventory. Many CNTs may therefore be new chemicals under TSCA section 5. Manufacturers or importers of CNTs not on the TSCA Inventory must submit a premanufacture notice (PMN) (or applicable exemption) under TSCA section 5 where required under 40 CFR part 720 or part 723. In order to determine the TSCA Inventory status of a CNT, a manufacturer may submit to EPA a bona fide intent to manufacture or import under 40 CFR 720.25.

FOR FURTHER INFORMATION CONTACT:

For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 204600001; telephone number: (202) 5541404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 204600001; telephone number: (202) 5648974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use CNTs that are chemical substances subject to the jurisdiction of TSCA. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS code 325), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

• Petroleum and coal product industries (NAICS code 324), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

#### B. How Can I Get Copies of this Document and Other Related Information?

1. Docket. EPA has established a docket for this action under docket identification (ID) number EPAHQOPPT20040122. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 5661744, and the telephone number for the OPPT Docket is (202) 5660280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. Electronic access. You may access this Federal Register document electronically through the EPA Internet under the Federal Register listings at <http://www.epa.gov/fedrgstr>. You may also access information about the TSCA program on-line at <http://www.epa.gov/oppt>.

#### II. Background

Pursuant to TSCA section 5(a)(1), any person manufacturing (including importing) a new chemical substance must file with EPA a PMN (or applicable exemption) at least 90 days prior to manufacture, unless the substance is excluded from PMN reporting. See 40 CFR part 720 regarding when reporting is required.

CNTs are considered chemical substances subject to the jurisdiction of TSCA unless and to the extent they are within the classes of materials specified in TSCA section 3(2)(B) as outside the jurisdiction of TSCA, such as pesticides, foods, drugs, and cosmetics. For example, nanoscale materials used in drugs are subject to the jurisdiction of the U.S. Food and Drug Administration.

EPA has taken steps to inform manufacturers that CNTs may require notification under TSCA section 5. EPA has made numerous public statements and responses to written inquiries indicating that CNTs are not necessarily

identical to graphite or other allotropes of carbon. Manufacturers have been encouraged to submit a bona fide intent to manufacture or import, to submit a notice under TSCA section 5 (where required), or contact the Agency with additional questions. On July 12, 2007 (72 FR 38081) (FRL81399) and January 28, 2008 (73 FR 4861) (FRL83445), EPA issued Federal Register notices which reference a paper, TSCA Inventory Status of Nanoscale Substances General Approach. EPA stated in that document that CNTs might not have the same molecular identity as non-nanoscale allotropes of carbon. EPA has received and is reviewing several PMNs for CNTs as new chemical substances.

Despite these efforts, current pre-notice inquiries to the Agency and questions in public forums still indicate a lack of clarity on this issue. Some of the misunderstanding may be the result of an EPA communication to a chemical manufacturer a number of years ago pertaining to a substance the Agency now considers to be a carbon nanotube material. EPA's initial response, which was specific to that inquiry and based upon the information presented at the time, was that the material was already on the TSCA Inventory. EPA has since notified that manufacturer that a PMN is required for that carbon nanotube material. Nonetheless, the Agency understands that the earlier communication may have been misunderstood by some companies as a possible indication that all CNTs may be equivalent to other allotropes of carbon for purposes of the TSCA Inventory.

This document is intended to give notice of the potential TSCA requirements applicable to CNTs. If a particular CNT is not on the TSCA Inventory, anyone who intends to manufacture or import that CNT is required to submit a PMN (or applicable exemption) under TSCA section 5 at least 90 days before commencing manufacture. Manufacturers may submit a bona fide intent to manufacture or import under 40 CFR 720.25 to determine whether a specific CNT is on the TSCA Inventory. Companies may also contact the Agency with specific questions. EPA strongly recommends that persons who currently manufacture CNTs for commercial purposes determine whether their CNTs are on the TSCA Inventory and in compliance with the TSCA section 5 requirements.

EPA continues to enforce TSCA consistent with its other priorities. Some time after March 1, 2009, EPA anticipates focusing its compliance monitoring efforts to determine if companies are complying with TSCA section 5 requirements for carbon nanotubes.

If you have further questions regarding notification requirements for CNTs, consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

<Q P="04" />

List of Subjects

Environmental protection, Carbon nanotubes, Chemicals, hazardous substances, Nanoscale materials.

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Dated: October 27, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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