

wastes involved in the manufacture, use, and disposal of explosives.

2. Even with respect to activities regulated by OSHA, the proposed rule had a limited scope. It would not have covered the sale or use of consumer and public display fireworks (72 FR 18799). OSHA's construction standards at 29 CFR 1926 subpart U cover the hazards associated with blasting in the construction and demolition industries. The general industry uses addressed by the proposal include blasting of rocks, slag pockets, and beaver dams, as well as blasting associated with metal hardening, stump removal, pond creation, and avalanche control, and various types of blasting used to create art sculptures. Compared to the use of explosives by the construction and demolition industries, these general industry uses do not require large amounts of explosives, and employers perform them relatively infrequently.

Moreover, employers engaged in the manufacture of explosives (other than blasting agents) and pyrotechnics must already meet the requirements contained in OSHA's Process Safety Management (PSM) Standard at 29 CFR 1910.119, which covers working conditions during the manufacture of highly hazardous chemicals (29 CFR 1910.109(k)). The PSM Standard addresses many of the hazards associated with the manufacture of explosives and pyrotechnics.

3. Finally, OSHA did not propose substantive changes to many of the requirements in the existing standard. Whether or not the rulemaking continues, the existing protective provisions addressing hazards associated with storing explosives; transporting explosives; using explosives and blasting agents; packing, marking, and storing explosives at piers, railway stations, and cars or vessels; mixing, storing, and transporting blasting agents; mixing water gel explosives; storing ammonium nitrate; and storing small arms ammunition, small arms primers, and small arms propellants, will remain in effect.

The limited scope of the rulemaking and the breadth of existing Federal protections necessarily constrained the relative safety benefits of the rulemaking, especially when compared with OSHA's higher priority rulemaking activities. The Preliminary Economic and Regulatory Screening Analysis conducted by OSHA in conjunction with the proposed rule supports this conclusion (72 FR 18828). In this analysis, OSHA examined the extent to which the proposed rulemaking would reduce the number of deaths and injuries attributable to explosive

accidents in general industry by reviewing its accident-investigation reports for the years 1992–2002. OSHA concluded that compliance with the new requirements of the amended standard might have prevented only one of the 39 documented explosive accidents. Therefore, the proposed standard would have had limited benefit for workers exposed to explosive hazards.

#### *B. Using Limited Resources Efficiently*

In light of these limited benefits, OSHA cannot justify allocating the substantial resources it would need to utilize in order to issue a new proposal, analyze comments submitted by the regulated community, conduct a hearing, and promulgate an amended standard. As noted above, the existing standard already addresses many of the hazards associated with explosives, and much of the proposal involved clarifying the terms and scope of that standard. The proposal would have: (1) Increased the clarity and focus of the standard by rewriting requirements in plain language, correcting internal inconsistencies and duplicative requirements, and removing references to public safety that are beyond OSHA's regulatory authority; (2) increased harmonization with other Federal standards that regulate explosives;<sup>1</sup> and (3) addressed the scope of preemption by other Federal agencies (notably DOT and ATF) of OSHA authority over working conditions in the explosives industry. While these revisions could have reduced confusion among the regulated community regarding compliance and enforcement authority, they would have no substantive effect on the safety measures employers must take to control explosive hazards.

By withdrawing this proposal, OSHA can devote the resources that would have been utilized in completing the rulemaking to deservedly higher-priority projects. For example, OSHA recently announced a rulemaking to reduce combustible dust hazards in general industry. Combustible dust explosions have resulted in more than 130 deaths and 780 injuries since 1980. OSHA is also preparing to propose a standard governing occupational

<sup>1</sup> For instance, by adopting the ATF system to classify explosives storage magazines, or by following the example of DOT, which adopted the United Nations Globally Harmonized System of Classification and Labeling of Chemicals to classify explosives. This rulemaking goal is actively being addressed, as OSHA recently issued a proposal to conform its Hazard Communication Standard, 29 CFR 1910.1200, to the GHS. (74 FR 50280.) This proposal generally adopts the GHS's requirements for classifying, labeling, and providing safety data sheets for explosives.

exposure to respirable silica. Inhalation of this substance, which is extremely widespread, causes lung disease, silicosis and lung cancer. Terminating the explosives rulemaking will free resources for these and other high-impact proceedings.

#### *C. Conclusion*

Based on the findings discussed in the preceding section, OSHA concludes that terminating the proposed rulemaking will not diminish worker protection because § 1910.109, along with other OSHA standards and the standards of other Federal agencies, provide workers with substantial protection from explosive hazards. In addition, alternatives exist to increase the protection afforded by, and to improve the clarity of the standard. Therefore, terminating the proposed rulemaking will enable OSHA to devote its limited resources to other rulemakings that will provide greater protection to workers from occupational hazards than would the proposed rulemaking.

### **III. Authority and Signature**

David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210, directed the preparation of this notice. It is issued pursuant to Sections 4, 6, and 8 of the Occupational and Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on January 29, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–2273 Filed 2–2–10; 8:45 am]

**BILLING CODE 4510–26–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 721**

[EPA–HQ–OPPT–2009–0686; FRL–8796–7]

RIN 2070–AB27

### **Proposed Significant New Use Rule for Multi-walled Carbon Nanotubes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified generically as multi-walled

carbon nanotubes (P-08-199). This action would require persons who intend to manufacture, import, or process the substance for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** Comments must be received on or before March 5, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2009-0686, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2009-0686. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2009-0686. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends

that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* 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., 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 legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. 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.

**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 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8974; e-mail address: [alwood.jim@epa.gov](mailto: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 the chemical substance contained in this proposed rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after March 5, 2010 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

###### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In

addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What Action is the Agency Taking?

EPA is proposing this SNUR using notice and comment procedures. This SNUR will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the specific multi-walled carbon nanotubes identified by the notice for any activity designated by this SNUR as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs.

### B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant

new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

### C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700.

According to § 721.1(c), persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 1612) import certification requirements promulgated at 19 CFR 12.118 through 12.127, and 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2612 (b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

### III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance that is the subject of this proposed SNUR, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four bulleted factors listed in TSCA section 5(a)(2) in this Unit.

For the multi-walled carbon nanotubes described in P-08-199, EPA believes that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." EPA has determined that activities proposed as a "significant new use" satisfy the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

### IV. Substance Subject to this Proposed Rule

EPA is proposing to establish significant new use and recordkeeping requirements for a chemical substance in 40 CFR part 721, subpart E. This SNUR applies only to the multi-walled carbon nanotubes described in P-08-199. In the past, some stakeholders have asked whether these types of SNURs apply to all variants of carbon nanotubes. This is not the case. **PMN Number P-08-199**

*Chemical name:* Multi-walled carbon nanotubes (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the substance will be used as an additive/filler for polymer composites and

support media for industrial catalysts. Based on test data on analogous respirable, poorly soluble particulates and on other carbon nanotubes (CNTs), EPA identified concerns for lung effects, immunotoxicity, and mutagenicity from exposure to the PMN substance. For the uses described in the PMN, worker inhalation and dermal exposures are minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of gloves and protective clothing, where there is a potential for dermal exposure; use of the substance without a National Institute for Occupational Safety and Health (NIOSH)-approved full-face respirator with an N100 cartridge, where there is a potential for inhalation exposure; or use other than as described in the PMN, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the results of the following tests would help characterize the human health effects of the PMN substance: A bacterial reverse mutation test (OPPTS Harmonized Test Guideline 870.5100) *in vitro*; a mammalian erythrocyte micronucleus test (OPPTS Harmonized Test Guideline 870.5395 or Organisation for Economic Co-operation and Development (OECD) 474 test guideline) *in vivo*, in bone marrow, by the intraperitoneal route; an immunotoxicity test (OPPTS Harmonized Test Guideline 870.7800); and a 90-day inhalation toxicity test (OPPTS Harmonized Test Guideline 870.3465), including a post-exposure observation period of up to 3 months. Evaluation should include markers of damage, oxidant stress, cell proliferation, the degree/intensity and duration of pulmonary inflammation, and cytotoxic effects and histopathology of pulmonary issues, in addition to the standard requirements in the OPPTS Harmonized Test Guideline 870.3465. *CFR citation:* 40 CFR 721.10183.

## V. Rationale and Objectives of the Proposed Rule

### A. Rationale

During review of the chemical substance P-08-199, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

### B. Objectives

EPA is proposing this SNUR for a chemical substance that has undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at <http://www.epa.gov/opptintr/newchems/pubs/invntory.htm>.

### VI. Notice and Comment Procedures

EPA is issuing this SNUR by notice and comment procedure, as described in § 721.170(d)(4). In accordance with § 721.170(d)(4)(ii)(A), persons are being given the opportunity to submit comments on or before March 5, 2010 on whether EPA should establish notification requirements.

### VII. Applicability of the Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use

before the rule became final, and then argue that the use was ongoing before the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing activities with the chemical substances that would be regulated as a "significant new use" through this proposed rule, must cease any such activity before the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this proposed SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR.

### VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN, except where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)). Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. EPA recommended certain testing in Unit IV. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so

that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

#### IX. SNUN Submissions

As stated in Unit II.C., according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Information must be submitted in the form and manner set forth in EPA Form No. 7710-25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001 (see §§ 721.25 and 720.40). Forms and information are also available electronically at <http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm>.

#### X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance subject to this proposed rule. EPA's complete economic analysis is available in the public docket.

#### XI. Statutory and Executive Order Reviews

##### A. Executive Order 12866

This proposed rule would establish a SNUR for a chemical substance that was the subject of a PMN. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

##### B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the

PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA would amend the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070-0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

##### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed

in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006-2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.) is minimal regardless of the size of the firm. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

##### D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

##### E. Executive Order 13132

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled

*Federalism* (64 FR 43255, August 10, 1999).

#### F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

#### G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

#### H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

#### J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 27, 2010.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10183 to subpart E to read as follows:

#### § 721.10183 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–08–199) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(4), (a)(5) (National Institute for Occupational Safety and Health (NIOSH)-approved full-face respirators with N100 cartridges), (a)(6)(i), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (additive/filler for polymer composites and support media for industrial catalysts).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2010–2256 Filed 2–2–10; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 23

[Docket No. OST–2010–0022]

RIN 2105–AD88

#### Participation by Disadvantaged Business Enterprises in Airport Concessions

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation is proposing to remove the “sunset” provision from its rule governing the airport concessions disadvantaged business enterprise program. The rule would instead provide for periodic program reviews. In addition, in the interest of initiating a program review, the Department is soliciting comments on any changes that should be made in the rule. These comments would assist the Department in reviewing the rule and, if warranted, proposing modifications to it in the future.

**DATES:** Comments on the proposal to remove the sunset provision must be received by March 5, 2010. Responses to the request for comments on potential modifications to the rule must be received by November 1, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST–2010–0022) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2010–0022) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to <http://www.regulations.gov> including any