The action on nanomaterials continued at the federal level in August, advancing forward in one area (tentatively) and faltering in another (perhaps temporarily). First, on August 4, the Interagency Testing Committee (ITC) issued its 64th report. (The ITC is an independent advisory committee charged with identifying potentially toxic chemicals for which there is inadequate testing data.) The report noted that EPA intends to pursue testing/information collection rules under Sections 4 and 8 the Toxics Substances Control Act (TSCA) for nanoscale materials, including materials of interest to the ITC. Under Section 4 of TSCA, if there is insufficient data and experience to evaluate a new chemical's effects, EPA may impose testing requirements for specific chemicals through regulation in either of two circumstances. First, EPA must find that the chemical may present an unreasonable risk of injury to health or the environment. Alternatively, EPA must determine that there may be substantial releases to the environment or substantial human exposure. Section 8 provides authority for mandatory submission of information on the production, uses, exposures, and health and safety risks of existing chemicals. The ITC report identified a number of materials of interest, including C90 fullerenes, carbon black, titanium oxide nanowires and nanoparticles, zinc oxide, silica, silver, carbon nanotubes, quantum dots, carbon nanofibers, and nanoclays. No word on when this will happen, but at least it appears that the lackluster performance of the Nanoscale Materials Stewardship Program is nudging things forward. For a useful discussion of some of the obstacles to the use of these authorities, see Richard Dension's blog from last year.

Now for that backward step. In June of this year, EPA issued a direct final rule establishing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two types of carbon nanotubes (CNT) which were the subject of premanufacture notices (PMNs). The significant new use in this case would be the use of such CNTs without protective measures identified by EPA in previous Consent Orders applicable to the respective PMNs. The SNUR requires persons who intend to engage in that significant new use to notify EPA at least 90 days before commencing that activity, so that EPA can evaluate the intended use and, as appropriate, prohibit or restrict the activity. As is common practice for direct final rules, EPA stated that it would withdraw the rule in the event some party planned to file adverse comments, and would the instead pursue conventional notice and comment rulemaking. Guess what; someone notified EPA of such intent and, on August 21, EPA withdrew the rule. Back to the administrative drawing board.