

# TSCA SECTION 21 PETITIONS

## ISSUE SUMMARY:

Since Congress amended the Toxic Substances Control Act (TSCA) in 2016, EPA has received sixteen citizen petitions under section 21. During that time frame:

- Ten petitions were denied because petitioners failed to demonstrate that the requested action was necessary;
- Several of the petitions were determined to also include petition requests under the Administrative Procedures Act;
- Two were granted outright, while a third was granted under reconsideration after an initial denial in a previous administration.

Of the more recent petitions, including the two outright grants, the Agency is seeing a trend of petitioners identifying a single condition of use (COU) for a chemical (or chemicals) where hazard, exposure, and/or risk from the COU makes denial challenging; however, moving forward with a proceeding on a single COU is contrary to EPA's stated approach in its recent risk evaluation rule to evaluate and manage via a "whole chemical" approach. The response to the section 21 petition process (and associated litigation) has potentially high impacts on resources and FTE planning and on the risk evaluation/risk management pipeline. EPA is considering whether there is a need to develop additional guidance for the public as to the contents of petitions that EPA would expect to meet statutory requirements under TSCA section 21.

## UPCOMING MILESTONES:

- Three petitions have been subject to recent litigation:
  - **Lead wheel weights (LWW):**  
The joint motion to dismiss this petition for writ of mandamus without prejudice was granted. Pursuant to the parties stipulation, this petition is dismissed without prejudice to reinstatement within 28 days from: (a) January 7, 2025, if EPA failed to either (1) sign a proposed rule and request publication by the Office of the Federal Register, or (2) request publication in the Federal Register of a determination not to proceed with regulating lead wheel weights; (b) October 7, 2025, if EPA signed a proposed rule but has failed to sign a final rule or otherwise take final action on the proposed rule and request publication of such final action by the Office of the Federal Register.
  - **Fluoride chemicals in drinking water:** EPA was sued after the Agency denied a citizens' petition submitted under TSCA section 21 by Food & Water Watch and the Fluoride Action Network that requested EPA to ban the use of fluoridation chemicals in drinking water systems. A two-week virtual trial took place in mid-June of 2020, after which the case was held abeyance for approximately 2 years, pending further scientific examination of the connection between fluoride in public drinking water and developmental neurotoxic effects. In October 2022, the district court (Northern District of California) lifted the abeyance to allow production of new science, and to permit commencement of expert review of the new evidence, followed by a second round of trial. A two-week in-person trial was held in February 2024. The district court entered an adverse decision in September 2024. and the Agency is evaluating the decision and considering next steps.

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- **PFAS Testing:** EPA received a favorable decision from the Fourth Circuit Court of Appeals in June 2024 affirming the dismissal of a section 21 case in which petitioners had argued that EPA’s grant of a section 21 petition was a constructive denial because EPA had not committed to the specific testing protocol requested by petitioners. The Court determined that EPA’s decision on the petition was a grant, and that the district court therefore did not have jurisdiction over the petition. The Court adopted EPA’s view on testing categories of PFAS rather than the specific chemicals requested by petitioners. The Court also found that it was not a denial to depart from the specific testing requested by petitioners.
- After granting the petition for **6PPD in tires** on November 2, 2023, EPA is planning to issue an advance notice of proposed rulemaking (ANPRM) for 6PPD under TSCA section 6. The ANPRM is anticipated to publish in Fall 2024 and is intended to solicit data related to potential unreasonable risk associated with 6PPD and 6PPD-q.
- After granting the petition for **PFOA, PFNA and PFDA Formed during plastic fluorination** on July 10, 2024, EPA committed to promptly commencing an appropriate proceeding under TSCA section 6 associated with the formation of PFOA, PFNA, and PFDA during the fluorination of plastic containers. On September 30, 2024, EPA published a notice in the Federal Register requesting information, including the number, location, and uses of fluorinated containers in the United States; alternatives to the fluorination process that generates PFOA, PFNA, and PFDA; and measures to address risk from PFOA, PFNA, and PFDA formed during the fluorination of plastic containers.

## BACKGROUND:

- Under TSCA section 21, any person may petition the Agency to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or an order under TSCA sections 5(e) or 5(f).
- All petitions must set forth the facts which establish the necessity for the action requested.
- EPA is required to grant or deny the petition within 90 days from the day the petition is filed with EPA. If EPA grants the petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, the reasons for denial must be published in the Federal Register. If EPA denies the petition or fails to grant or deny the petition within the 90-day timeframe, the petitioner may commence a civil action and has the opportunity to have the petition considered by the court in a de novo proceeding.
- EPA keeps an accounting of recent section 21 petitions, and associated documentation, on our website. For more information: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21>.

## KEY EXTERNAL STAKEHOLDERS:

- Congress       Industry       States       Tribes       Media       Other Federal Agency  
 NGO       Local Government       Other: \_\_\_\_\_

There is discussion among stakeholders around the prospect of courts making decisions about the unreasonable risk of chemicals, a danger in the litigation surrounding section 21 petitions.

## MOVING FORWARD:

- Nothing at this time.

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LEAD OFFICE/REGION: OCSP

OTHER KEY OFFICES/REGIONS: OGC