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## II. Background

### A. What is a TSCA section 21 petition?

Under section 21 of TSCA (15 U.S.C. 2042), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or, if the Agency does not resolve the petition, the expiration of the 90-day period.

### B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15

U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA generally relies on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate petitions. However, because of the absence of legal authority under TSCA to grant the petitioners' first request, this request was resolved without reaching the factual argument set forth by the petitioners. The request was denied based on the scope of EPA's statutory authority.

### C. Summary of TSCA Section 21 Petition Received

On August 3, 2010, Center for Biological Diversity, American Bird Conservancy, Association of Avian Veterinarian, Project Gutpile and Public Employees for Environmental Responsibility filed a petition under TSCA section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing sinkers. The petition asserts that EPA has the authority to regulate lead in bullets and shot because "lead shot and bullets are properly classified as 'chemical substances' subject to TSCA regulation." (Ref. 1, pp. 57-58).

### III. Disposition of the Request With Respect to Lead in Bullets and Shot

On August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. EPA's decision is based on the exclusion of firearms, shells and cartridges from the definition of "chemical substance" in TSCA section 3(2)(B)(v). This exclusion functions to carve out a discrete set of substances from regulation under TSCA: those used in firearms and ammunition. This plain reading of the statute is consistent with EPA's longstanding interpretation of the six TSCA exclusions at TSCA section 3(2)(B).

The statutory definition of "chemical substance" excludes "any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 (26 U.S.C.A. 4181) (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such code)." 15 U.S.C.

2602(2)(B)(v). Section 4181 imposes a tax on firearms, shells and cartridges. 26 U.S.C. 4181. Bullets and shot, and any lead within them, are contained in shells and cartridges and are therefore excluded from the chemical substance definition. In addition, EPA's plain reading of TSCA is consistent with EPA's long-standing interpretation of TSCA's definition of "chemical substance" and with the purpose of the exemption.

### V. Further Consideration of the Request With Respect to Lead in Fishing Sinkers

EPA is still considering the second request contained in the August 3, 2010 petition and will respond to that portion of the petition within the 90-day period provided in section 21 of TSCA.

### VI. References

1. American Bird Conservancy, Petition to the Environmental Protection Agency to Ban Lead Shot, Bullets and Fishing Sinkers under the Toxic Substances Control Act. August 3, 2010.

### List of Subjects

Environmental protection, Bird, Lead, Lead bullets, Lead fishing sinkers, Lead shot.

Dated: September 21, 2001.

**Steve A. Owens,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9206-6]

### 2010 Fall Meeting of the Ozone Transport Commission

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

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Environmental Protection Agency is announcing the 2010 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) on high electric demand days, oil and gas boilers serving EGUs, small natural gas boilers, stationary generators, energy security/energy efficiency, architectural industrial and maintenance coatings, consumer products, institution

commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalyzers, lightering, and non-road idling.

**DATES:** The meeting will be held on November 10, 2010 starting at 9 a.m. and ending at 4 p.m.

*Location:* Sheraton Boston, 39 Dalton Street, Boston, Massachusetts 02199; (617) 236-2000 or (888) 627-7054.

**FOR FURTHER INFORMATION CONTACT:** For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508-3840; e-mail: [ozone@otcair.org](mailto:ozone@otcair.org); Web site: <http://www.otcair.org>.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTR is to deal with ground-level ozone formation, transport, and control within the OTR.

*Type of meeting:* Open.

*Agenda:* Copies of the final agenda will be available from the OTC office (202) 508-3840; by e-mail: [ozone@otcair.org](mailto:ozone@otcair.org) or via the OTC Web site at <http://www.otcair.org>.

Dated: September 7, 2010.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9205-4]

### Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lewiston, ME and the Auburn, Maine Water District

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality]

to the City of Lewiston, Maine and the Auburn, Maine Water District ("Auburn-Lewiston") for the purchase of thirteen separate types of ductile iron pipe fittings (with various quantities for each individual fitting configuration totaling 33 fittings) that are foreign manufactured as part of an upgrade project at the Auburn-Lewiston Water Treatment Facility. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by Auburn-Lewiston, it has been determined that there are currently no domestically manufactured pipe fittings available to meet the Auburn-Lewiston's project construction schedule. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of foreign manufactured pipe fittings by Auburn-Lewiston, as specified in its July 28, 2010 request.

**DATES:** *Effective Date:* September 15, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Katie Connors, Environmental Engineer, (617) 918-1658, or David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109-3912.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City of Lewiston, Maine and the Auburn, Maine Water District for the purchase of foreign manufactured pipe fittings as part of its water treatment facility upgrade project. The specific ductile iron fittings are not available from a domestic manufacturer to meet the project construction schedule. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or

unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the Auburn-Lewiston's request, though made after the date that the contract was signed on March 11, 2010, can be evaluated as timely because the supplier informed the subcontractor of the recipient on July 19, 2010 that the domestic manufacturer would not be able to deliver the required type and number of fittings to meet the project schedule/delivery date. The need for a waiver was not determined until after the subcontractor had been informed of the extended delivery delay and further research indicated that there were no domestic manufacturers that could provide the necessary pipe fittings to meet the required project delivery schedule. The recipient could not reasonably foresee the need for such a determination until it was informed that the specific domestic pipe fittings would not be available at the originally scheduled time frame. Accordingly, EPA will evaluate the request as if it were timely.

Auburn-Lewiston is constructing a new Ultraviolet (UV) disinfection treatment facility in order to comply with the Long Term 2 Enhanced Surface Water Treatment Rule requirements of the Safe Drinking Water Act, and part of the work involves the installation of new pipe and pipe fittings. According to information provided by Auburn-Lewiston, there are 13 different fitting types of various sizes and connection types, resulting in a total of 33 individual fittings. The fittings are also required to meet the following specifications: (1) Manufactured to conform with ANSI/AWWA A21.51/C151; (2) inside bituminous coating; and (3) outside primer of TNEMEC Omnithane Series 1.