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 Veterinarians, Project Gutpilte 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  

List of Subjects  
Environmental protection, Bird, Lead, Lead bullets, Lead fishing sinkers, Lead shot.


Steve A. Owens,  
Assistant Administrator, Office of Chemical Safety and Pollution Prevention.
commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, 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; Web site: http://www.otcair.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 1605(b)(2) [manufactured goods are not manufactured pipe fittings as part of its project unless all of the iron, steel, and the relevant manufactured goods produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; and (3) outside primer of TNIEMEC Omnithane Series 1.

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/G151; (2) inside barrier coating; and