

EPA States TSCA Section 21 Petition for Risk Management Rule Not Valid, Treats It as an APA Petition

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In a [letter dated July 28, 2020](#), the U.S. Environmental Protection Agency (EPA) acknowledged the receipt of a Toxic Substances Control Act (TSCA) Section 21 [petition](#) requesting EPA to “initiate a proceeding for the issuance of a risk management procedural rule under TSCA section 6” submitted on behalf of the National Association of Manufacturers, the American Coatings Association, the National Association of Home Builders, the Toy Association, and the U.S. Chamber of Commerce. In the acknowledgement letter, EPA states that the request is not a valid petition under TSCA Section 21. EPA goes on to state “[u]nder TSCA section 21, as it relates to TSCA section 6, any person may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 6 imposing chemical-specific regulatory controls for setting forth facts showing such action is ‘necessary’” and that “Section 21 does not provide a means for petitioning EPA to initiate a procedural rule.” The acknowledgement letter further states that “EPA will, however, consider your request as a petition under the Administrative Procedure Act (APA) for the issuance of a procedural rule” and that the “petition is under review by the Office of Pollution Prevention and Toxics (OPPT), which is responsible for programs under TSCA.”

As mentioned in our [memorandum](#) addressing the TSCA Section 21 petition, there are requirements under the APA that agencies respond to APA petitions for rulemakings within a reasonable time, that Petitioners are given prompt notice of a denial, and that a brief statement of the grounds for denial be included. A denial of a petition under the APA may be judicially reviewed and set aside if determined to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

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National Law Review, Volume X, Number 275

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