

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALASKA COMMUNITY ACTION ON
TOXICS,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator of the United States
Environmental Protection Agency,

Respondents.

No. 25-158

Agency No. EPA-HQ-OPPT-2022-
0902

Environmental Protection Agency

MEMORANDUM*

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 25-572

Agency No. EPA-HQ-OPPT-2022-
0902

Environmental Protection Agency

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

ENVIRONMENTAL DEFENSE FUND,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; JANE
NISHIDA, Acting Administrator of the
United States Environmental Protection
Agency,

Respondents.

No. 25-573

Agency No. EPA-HQ-OPPT2022-
0902

Environmental Protection Agency

On Petition for Review of an Order of the
Environmental Protection Agency

Argued and Submitted August 13, 2026
Anchorage, Alaska

Before: CALLAHAN, BEA, and BUMATAY, Circuit Judges.

This consolidated action involves three petitions for review of a rule that the United States Environmental Protection Agency (EPA) promulgated in 2024 (the “2024 Rule”) pursuant to the Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. § 2601, *et seq.* We have original jurisdiction to review petitions that challenge rules promulgated pursuant to TSCA. *Id.* § 2618(a)(1)(A). For the reasons below, we deny the petitions.

1. We reject the arguments raised by the environmental advocacy groups Alaska Community Action on Toxics and Environmental Defense Fund (“Environmental Petitioners”) in their petitions for review.

Under TSCA, before an entity may manufacture a new chemical substance, it must file a “premanufacture notice” (PMN) with EPA and obtain the agency’s approval. *Id.* § 2604(a)(1)(B). The statute gives EPA 90 days to complete its PMN review, *see id.* § 2604(i)(3), but the process often takes years in practice. However, TSCA permits EPA to exempt a manufacturer of “any new chemical substance” from all or part of the PMN process if EPA determines that the use of that chemical substance “will not present an unreasonable risk of injury to health or the environment.” *Id.* § 2604(h)(4).

In the 2024 Rule, EPA added a regulation governing when “PBT” chemicals—so called because of their persistence (P) in the environment, accumulation in biological organisms (“bioaccumulation”) (B), and toxicity (T)—may be eligible for certain statutory exemptions. 40 C.F.R. § 723.50(b)(12), (d)(2)(ii). Under the new regulation, EPA reviews exemption requests brought by manufacturers of PBT chemicals on a case-by-case basis and denies the requests if EPA finds that there is a risk of “potentially unreasonable exposures” to the PBT chemicals. *Id.* § 723.50(d)(2)(ii) (the “PBT Regulation”). Environmental Petitioners jointly argue that EPA was required to make PBT chemicals *categorically ineligible* for the PMN exemptions. Environmental Petitioners contend that the PBT Regulation, which established that EPA would review exemption requests involving PBT chemicals on a case-by-case basis, violated the

Administrative Procedure Act (APA) because it was arbitrary and capricious and exceeded EPA’s statutory authority. *See* 5 U.S.C. § 706(2)(A), (C). These arguments fail.

First, EPA validly promulgated the PBT Regulation pursuant to its authority under 15 U.S.C. § 2604(h)(4). We exercise our “independent judgment in deciding whether an agency has acted within its statutory authority.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). In some cases, “the best reading of a statute is that it delegates discretionary authority to an agency[.]” *Id.* at 395. That is true of § 2604(h)(4), so we uphold the PBT Regulation.

Section 2604(h)(4) authorizes EPA to consider exemptions for “*any* new chemical substance,” on a case-by-case basis “upon application.” 15 U.S.C. § 2604(h)(4) (emphasis added). A “PBT chemical substance,” 40 C.F.R. § 723.50(b)(12), falls within the statutory phrase “any new chemical substance,” 15 U.S.C. § 2604(h)(4). The statutory authority to review exemption applications on a case-by-case basis (“upon application”), *id.* § 2604(h)(4), empowers EPA to review exemption requests for PBTs on a case-by-case basis and to decline to issue a rule categorically barring PBTs from eligibility for the low-volume or low-exposure exemptions, *see* 40 C.F.R. § 723.50(d)(2)(ii).

Moreover, the standard governing EPA’s grant of exemptions under the PBT Regulation complies with the statutory standard for granting exemptions. Section

2604(h)(4) permits EPA to exempt “any new chemical substance” from PMN review “if [EPA] determines” that the exemption applicant’s planned use of the substance “*will not present an unreasonable risk of injury to health or the environment.*” 15 U.S.C. § 2604(h)(4) (emphasis added). Under the challenged regulation, a PBT chemical substance is ineligible for the low-volume or low-exposure exemptions if EPA finds that there are “potentially unreasonable exposures to humans or environmental organisms.” 40 C.F.R. § 723.50(d)(2)(ii).

Second, the PBT Regulation is not arbitrary or capricious. Environmental Petitioners contend that EPA’s decision to review exemption requests involving PBTs on a case-by-case basis, rather than making PBTs categorically ineligible for the exemptions and requiring full PMN review in every case, was arbitrary and capricious. But EPA expressly considered both a categorical ban and a case-by-case approach. Although EPA expected that “most exemptions for PBT chemical substances will not be granted,” it also concluded that “there are instances where PBT chemical substances can be managed under an exemption.” Indeed, EPA noted that an exemption might be appropriate if the PBT is used in a “closed system” to make semiconductors. Because the PBT Regulation governs new chemical substances, including those not yet developed, it was reasonable for EPA to reject a categorical ban. “[W]hen an agency makes . . . speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or

feasible or the like, a reviewing court must be at its most deferential.” *Seven Cty. Infrastructure Coal. v. Eagle Cty.*, 605 U.S. 168, 182 (2025) (citation omitted). EPA’s explanation satisfied this standard.

2. We reject the separate challenge raised by petitioner the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

During the comment period for EPA’s rulemaking, UAW submitted a comment that discussed matters tangential to EPA’s proposed rule. EPA responded that UAW’s proposal was outside the scope of the rulemaking. UAW argues that the APA required EPA to address the proposal’s substance. That argument fails.

UAW’s comment urged EPA to revise the substance of orders that EPA issued to manufacturers pursuant to 15 U.S.C. § 2604(e). But in its rulemaking, EPA had not proposed any changes to regulations issued pursuant to § 2604(e). The APA “has never been interpreted to require the agency to respond to every comment, or to analyse every issue or alternative raised by the comments, no matter how insubstantial.” *Thompson v. Clark*, 741 F.2d 401, 408 (D.C. Cir. 1984) (Scalia, J.). “[A]n agency need only respond to ‘significant’ comments, *i.e.*, those which raise relevant points and which, if adopted, would require a change in the agency’s proposed rule.” *Am. Mining Congress v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992) (citation omitted). Here, UAW’s comment was not significant because it did not

address an issue presented in EPA's proposed rule. The only aspect of EPA's proposed rule that UAW cited was EPA's proposal to change how certain scientific information would be made public—through publication in the Federal Register or through EPA's online database. Yet UAW's comment did not discuss the relative benefits of publication through either medium or address any matter germane to EPA's proposed rule. Because UAW's comment concerned matters outside the scope of the rulemaking, EPA did not violate the APA by declining to address the comment's substance.

PETITIONS DENIED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

Name of party/parties requesting costs to be taxed:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

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