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POSSIBLE REPRIEVE ON FEDERAL PFAS REPORTING UNDER TSCA: US EPA ISSUES DIRECT FINAL RULE EXTENDING TSCA PFAS REPORTING DEADLINES

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Companies subject to the Toxic Substances Control Act (“TSCA”) Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances (“PFAS”)—also known as the “TSCA PFAS Reporting Rule”—are poised to receive a much-welcomed (albeit only temporary) reprieve from the rule’s fast-approaching deadlines for submittal of PFAS-related data.

On September 5, 2024, the US Environmental Protection Agency (“EPA”) [published a direct final rule](#) delaying the TSCA PFAS Reporting Rule submission period by eight months, from an originally scheduled start date of November 12, 2024, to a new start date of **July 11, 2025**. The final deadline for submissions (previously May 8, 2025) has also been extended by eight months to January 11, 2026. The new submission period is the same length as the former submission period—six months total. Certain small businesses will have even longer (until July 11, 2026) to make their submissions.

As stated by EPA in the preamble to the direct final rule, the extension is necessary because the software application the agency intends to use to collect companies’ submissions under the rule remains under development due to delays from agency budget and resource constraints. The agency notes that additional time is needed to design, implement, test, and troubleshoot the software before EPA can use the system to reliably accept submissions and process the information provided by companies into useful and usable datasets.

But more important to companies covered by the rule—and as EPA discreetly acknowledges in the rule preamble—“the extension provides additional time [for companies] to submit accurate reports to EPA.” Given the rule’s extensive investigation and reporting obligations, which many companies are only beginning to grapple with, the additional time is a welcome relief. The rule imposes significant due diligence and reporting requirements on US companies that domestically manufactured or imported any PFAS, including importing any articles containing PFAS, between January 1, 2011 and December 31, 2022. Specifically, companies are required to submit certain data to EPA related to the chemical identity, structure, and uses of PFAS manufactured or imported

during the reporting period and information on exposure to, disposal of, and health and environmental effects of those PFAS.

As EPA noted in connection with the issuance of the direct final rule, “the amount of data that is expected to be submitted under [the TSCA PFAS Reporting Rule] is unprecedented” due to the sheer number of PFAS chemicals (well over 15,000 by some counts) and the length of the reporting period – 12 full years. The rule requires companies to report information that is known or reasonably ascertainable about all PFAS manufactured or imported during that 12-year window. This “known or reasonably ascertainable” standard encompasses both information within the companies’ possession or control (including internal documents, such as product specifications, design documents, import records, and emails) and information the companies can reasonably obtain through outreach to their suppliers.

Because EPA has positioned this regulatory action as a direct final rule, it is anticipated to take effect within 60 days of publication in the Federal Register unless the rule receives adverse comments, in which case EPA would withdraw the direct final rule and would instead address all public comments through the issuance of a subsequent final rule. To that end, EPA has concurrently issued, with the direct final rule, a [parallel proposed rule](#) cross-referencing the direct final rule. However, even if adverse comments are received, EPA is unlikely to revert to the original submission period timeline (November 12, 2024 to May 8, 2025). The agency has stated that “there is no feasible way to begin collecting [submissions] by November 12” and that “maintaining the current submission period timeline is not tenable,” given the incomplete state of its submission software. According to the agency, the new proposed submission period also builds in sufficient time for interested industry stakeholders to help test the reporting application and for necessary updates to be made in response to their input.

Although the prospect of an eight-month extension is a relief to many companies, it is not an excuse to delay or pause those efforts, particularly for companies with complex domestic manufacturing operations or wide-ranging global import networks. Rather, the extension provides an opportunity to reassess (and if needed, redirect) current compliance efforts, implement more efficient data collection systems, and develop an outreach strategy for obtaining information from third-party suppliers. And for companies that are only now beginning to recognize the potential applicability of the TSCA PFAS Reporting Rule to their operations (and the significant amount of due diligence that will be required), there is no time like the present to begin to develop a compliance strategy.

BCLP’s PFAS team stands ready to partner with you to develop step-by-step compliance strategies tailored to your unique business needs. Whether you are in the middle of your TSCA PFAS Reporting Rule journey and need guidance on next steps or are simply looking to take the first steps, please reach out to the authors or a member of [BCLP’s PFAS team](#) for additional resources or an introductory call

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