



Thought Leadership

View Related Professionals



Fast and Furious PFAS Changes Signal Intensifying Regulatory Ride for Companies

15 June 2021

Client Updates

Two new U.S. Environmental Protection Agency (“EPA”) regulatory actions concerning per- and polyfluoroalkyl substances (“PFAS”) will directly impact companies manufacturing or importing PFAS or PFAS-containing articles. Both actions – a broad call for PFAS data/research and withdrawal of recent PFAS guidance – were taken on June 10, 2021. As the PFAS regulatory landscape continues to rapidly change, companies will want to closely consider strategies for information gathering, PFAS reporting, and overall PFAS liability and compliance processes on what promises to be an accelerating PFAS regulatory ride.

PFAS Data Call

As noted, EPA announced it is taking [comment on a proposed rule](#), mandated by the 2020 National Defense Authorization Act (“NDAA”), that will require all PFAS manufacturers since 2011, including importers, to report to EPA information on chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal. EPA is required to finalize the rule in January 2023 under the NDAA, and companies will be required to report to EPA one year after the rule's effective date. EPA's proposal contains information to help companies determine if they have manufactured or imported PFAS during the relevant time period and to help determine applicability. Any company subject to the rule would be required to undertake a comprehensive assessment to identify responsive information, and report all information “known to or reasonably ascertainable by” the company. According to the proposed rule, such efforts may include seeking information from suppliers, downstream users, and other sources outside the company.

Commenting on, and ultimately complying with, a rule requiring data production to EPA on PFAS will be an important endeavor for many companies. Since this is the first-ever data call in under the Toxic Substances Control Act (“TSCA”) for PFAS, companies should consider involving counsel in their information-gathering and reporting processes.

Withdrawal of January 2021 PFAS Guidance

EPA also withdrew January 2021 guidance designed to help companies determine if they have a long-chain PFAS “surface coating” on an imported article. Such long-chain PFAS are prohibited from import to the United States under EPA's [2020 PFAS Significant New Use Rule](#) (“SNUR”) without 90 days' notice to EPA and EPA's authorization. The January 2021 guidance defined surface coating as either: (1) a coating on any surface of an article that is in direct contact with humans or the environment during the article's normal use or reuse; or (2) a coating on any internal component if that component is in contact with humans or the environment during the article's normal use or reuse.

On withdrawing the January 2021 guidance, EPA announced that it considers any long chain PFAS “containing coating on any surface of any article, whether the coating is applied to the interior facing surface or the exterior surface of an article or has been cured or undergone a chemical reaction, to be covered by the SNUR” and that “EPA considers all coating layers and their chemical components, even when they are not the outermost layer of an article, to be included as part of a ‘surface coating.’” The guidance's “direct contact” standard was of particular concern to environmental organizations, and, appearing to concur with the groups EPA noted on withdrawal that the guidance “inappropriately narrowed the scope and weakened the prohibitions included in the SNUR.”

With the Agency's position that a “surface coating” should be interpreted broadly, companies may wish to consult counsel as they take steps to ensure that their supply chains and products do not contain long-chain PFAS.

ABOUT BAKER BOTTS L.L.P.

Baker Botts is an international law firm of approximately 725 lawyers practicing throughout a network of 13 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the energy and technology sectors. Since 1840, we have provided creative and effective legal solutions for our clients while demonstrating an unrelenting commitment to excellence. For more information, please visit [bakerbotts.com](https://www.bakerbotts.com).

Share



Follow



Practices

[Environmental, Safety and Incident Response](#)

Search





[Alexandra Dapolito Dunn](#)

Partner



[Samantha Olson](#)

Associate



[J. Barton Seitz](#)

Senior Counsel



[Jeffrey H. Wood](#)

Partner

People

By Last Name

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#)

[K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#)

[U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

Services

Sectors

[Energy](#)

[Technology](#)

Practices / Industries

[Antitrust & Competition Law](#)

[Banking and Finance](#)

[Corporate](#)

[Enforcement and Investigations](#)

[Environmental Law](#)

[Intellectual Property](#)

[Litigation](#)

[Manufacturing](#)

[Projects](#)

[Real Estate](#)

[Regulatory](#)

[Tax](#)

Experience

Practices / Industries

[Experience](#)

[Antitrust and Competition Law](#)

[Banking and Finance](#)

[Corporate](#)

[Enforcement and Investigations](#)

[Environmental Law](#)

[Intellectual Property](#)

[Litigation](#)

[Manufacturing](#)

[Projects](#)

[Real Estate](#)

[Regulatory](#)

[Tax](#)

[View All >](#)

Regions

[Experience](#)

[Asia Pacific](#)

[Europe](#)

[Latin America and Caribbean](#)

[Middle East and Africa](#)

[North America](#)

Info Hubs

[Energy](#)

[Coronavirus Response Group](#)

[PTAB Trials](#)

[Technology](#)

News

[Media Resources](#)

[News Coverage](#)

[News Releases](#)

[Interviews](#)

[Recognitions](#)

[Subscribe](#)

Search

