

Minnesota Seeks Comment on PFAS in Products Law

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The state of Minnesota is seeking comment on rulemaking to implement one of the country's two broadest per- and polyfluoroalkyl substances (PFAS) in product laws. The Minnesota Pollution Control Agency (MPCA) is beginning to draft rules to implement the law's pending reporting and fee obligations. A draft of the rules is not available, but MPCA seeks comment, between now and **November 28, 2023**, on issues it should consider. MPCA plans to issue a draft of the rules for public comment in 2024 or 2025 and finalize the rules by January 1, 2026.

Background

Earlier this year, Minnesota became the second state (after Maine) to enact broad reporting requirements regarding the presence of PFAS in all products unless an exemption applies. Reports will be due January 1, 2026. Reports must include:

- ◆ a description of the product;
- ◆ the purpose of using PFAS in the product;
- ◆ the amount of each type of PFAS in the product (as an exact quantity determined by testing or within a range approved by the MPCA);
- ◆ the contact information of the manufacturer; and
- ◆ any additional information required by the agency.

The law also authorized the MPCA to require manufacturers subject to the reporting requirement to pay a fee to cover the agency's costs to implement the law.

The law also will restrict the use of PFAS in enumerated product categories as of January 1, 2025. Starting January 1, 2032, the sale or distribution of any new product containing intentionally added PFAS will be prohibited unless the MPCA has determined by rule that the use of PFAS in the product is a currently unavoidable use.

Topics on Which the MPCA Seeks Comment

MPCA is developing two separate rules to implement the law's reporting and fee obligations. MPCA has stated that it seeks comment in particular on the following topics.

Reporting Rule

- ◆ **Cost of compliance.** MPCA seeks input on the cost of compliance for regulated parties. As discussed in the next section, industry costs of compliance will be high.
- ◆ **Definitions.** MPCA seeks comment on definitions in the statute that could be clarified or clarification of undefined terms.
- ◆ **Due diligence.** MPCA seeks input on terms or processes "for which clarifications will help reporting entities determine reporting status or data-gathering process".

- ◆ **Trade secrets.** MPCA seeks input on balancing public availability of data and trade secrecy.

Fees Rule

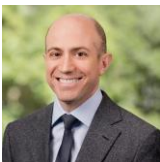
- ◆ **Fee structure.** MPCA seeks comment on whether it should consider tiered fees for different sizes of business. It also seeks comment on whether it should consider per-product vs. per-company fees or a per-PFAS or PFAS amount fees.
- ◆ **Models.** MPCA is asking whether other state program fee structures could serve as a model for the collection of fees.
- ◆ **Updates.** MPCA is asking whether notifiers should be required to pay a fee when updating information previously provided to the state (e.g., eliminating one or more PFAS).

Analysis

Since the Minnesota law defines PFAS very broadly, many industries will likely be affected by the rulemaking. Compliance costs will be very high. For example, when the U.S. Environmental Protection Agency first proposed its PFAS reporting rule under the Toxic Substances Control Act, EPA estimated industry compliance costs of approximately \$10.8 million. EPA [later revised the estimate](#) to over \$875 million, an 80-fold increase. Since the Minnesota reporting requirement is broader even than what EPA proposed (e.g., it will cover products manufactured domestically in addition to imported products), compliance costs for the Minnesota law could be even higher.

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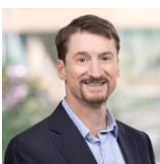
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