Minnesota Pollution Control Agency

Resource Management and Assistance Division

REQUEST FOR COMMENTS

Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA or Agency) is requesting comments on planned new rules for fees to be paid upon submission of required information about products containing PFAS. This rulemaking is referred to as the **PFAS in Products Fee Rule**. The main purpose of this rulemaking is to establish PFAS in products reporting fees as provided for in Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6. Creating a reporting process and reviewing PFAS compounds and concentrations for each manufacturer will result in significant staff and information technology costs. This rulemaking is intended to recoup those costs as provided in Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6. Comments are requested from affected or interested parties. Comments should be submitted in writing as described in the Comments section below.

This Request for Comments is the MPCA's legal notice of its intent to begin rulemaking. This is an opportunity to provide information or comment on any relevant issues related to this rulemaking that we need to consider. For example, we recognize that the cost of fees to regulated parties can be a concern. If you have cost information or data related to fees on PFAS in products reporting that you wish to share with us to inform our decisions, please submit that information. Draft rule language is not available at this time. We want your written comments on the ideas described under the Subject of Rules section.

Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up and helps to ensure informed decision-making on our part. If the planned rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the MPCA Contact Person.

Statutory Authority. Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6; and *Minnesota Statute*, section 116.943, subdivision 9.

Subject of Rules. *Fees*. The MPCA requests comments on planned new rules governing PFAS in products reporting fees. Fees are authorized by Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6, which states:

> "The commissioner may establish by rule a fee payable by a manufacturer to the commissioner upon submission of the information required under subdivision 2 to cover the agency's reasonable costs to implement this section."

"This section" refers to the Minnesota Session Law – 2023, chapter 60, article 3, section 21 (Minnesota Statutes 116.943). Section 21 (Minnesota Statutes 116.943) includes prohibitions on listed products containing PFAS on January 1, 2025; other possible prohibitions from 2025 to 2032; a system in place by January 1, 2026, to allow for PFAS in Products reporting; waiver, testing, certificate of compliance and other mechanisms in place by 2026; and prohibitions on all other uses of PFAS in products unless designated a "currently unavoidable use" by rule by the MPCA by January 1, 2032.

Since this is a complex new system with the first deadlines occurring within 2.5 years of section 21's (Minnesota Statutes 116.943) enactment (May 2023), MPCA began implementation upon its enactment and is planning on continuing implementation efforts throughout the life of the law. The MPCA is in the process of hiring new staff to develop and carry out the program, and the new reporting system will incur both start-up and annual operation and maintenance costs.

The MPCA is interpreting these information submittals ("reporting") to occur once, on or before January 1, 2026, and to not involve resubmittal of the same information. Therefore, updates to reported products when PFAS are added or subtracted ("whenever there is a significant change") are required. Fee payments may also be limited in occurrence, and not required on a recurring, periodic basis.

Whatever fee structures are settled on, the MPCA expects the bulk of the program's revenue to be raised in 2026 or soon thereafter. A large number of initial submittals is expected; however, it is difficult to predict accurately the pace of PFAS-containing product introductions after 2026, or of follow-up (change in PFAS content) submittals over its implementation.

In developing the fee rule, the MPCA would appreciate comments on the following questions:

1) Should the Agency consider tiered fees for different sizes of business?
2) Should the Agency consider a per-product or per-company fee?
3) Should the Agency consider a per-PFAS or PFAS amount fee?
4) Are there other state program fee structures on which the Agency should model the fees?
5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

Other issues. The PFAS in Products Fee Rule may include other subjects requiring clarification or definition to successfully start up information submittals by the January 1, 2026, deadline. Your comments on issues important to the process of fee payment are welcome, and on reporting issues which relate to fee structures and payment processes.

Parties Affected. The new rules would affect any manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS. Definitions of pertinent terms are provided in Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 1, including:

- "Manufacturer" means the person that creates or produces a product or whose brand name is affixed to the product. In the case of a product imported into the United States, manufacturer includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.
- "Intentionally added" means PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function.

- "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

"Manufacturers" can be located in Minnesota or anywhere outside the State, as long as they are selling a product, offering a product for sale, or distributing a product (or component) in the state that contains intentionally added PFAS.

Note that in some cases "manufacturer" may include people or entities not typically thought of as manufacturers, such as retailers which have their brand name or a private label brand name, they own affixed to products. "Manufacturer" does not include landfill or wastewater treatment operators or any person who sells, offers for sale, or distributes in Minnesota:

- Products for which federal law governs the presence of PFAS in the product in a manner that preempts state authority;
- A product regulated under section 325F.072 or 325F.075;
- A used product; or
- Products which contain a pesticidal ingredient regulated by and reported to the Minnesota Department of Agriculture.

While subdivision 8 of the law exempts them from prohibitions and testing and certificate of compliance requirements, "manufacturers" of prosthetic or orthotic devices or any products that are medical devices or drugs or that are otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration are not exempted from information submittal requirements.

Where to Get More Information. Information about this rulemaking is available on the rulemaking website at *https://www.pca.state.mn.us/get-engaged/pfas-in-products-fees*. As stated above, we do not yet have draft rule language. If you are interested in being notified of opportunities for public comment, when the draft rules are available for review, and of other activities relating to this (or other MPCA rulemakings) register for GovDelivery bulletins at *https://public.govdelivery.com/accounts/MNPCA/subscriber/new*.

Comments. Interested parties may submit written comments or information on these planned rules until **4:30 p.m. on Tuesday, November 28, 2023**. Submit written comments or information to the Office of Administrative Hearings (OAH) Rulemaking eComments website at *https://minnesotaoah.granicusideas.com/*. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore, OAH, telephone 651-361-7893, email William.T.Moore@state.mn.us. You may view frequently asked questions about the OAH eComments website at *https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf*. Comments received are public and will be available for review at the OAH Rulemaking eComments website at *https://minnesotaoah.granicusideas.com/discussions* and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA will not publish a Notice of Intent to Adopt the rules until more than 60 days have elapsed from the date of this RFC.

The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes*, section 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

NOTE: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent to Adopt the rules.

MPCA Contact Person. The MPCA contact person is Mary H. Lynn at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2439, email mary.lynn@state.mn.us. Technical questions on the planned rules should be submitted to Al Innes, telephone 651-757-2457, email alister.innes@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

Katrina Kessler

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

September 11, 2023
Date