Minnesota Pollution Control Agency

Resource Management and Assistance Division

REQUEST FOR COMMENTS on Rules Governing Reporting and Fees Paid by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828 (Previously R-4828 for PFAS in products: Reporting and R-4827 PFAS in Products: Fee rules)

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned new rules for submission of required information about products containing PFAS. This rulemaking is referred to as the **PFAS in Products Reporting and Fee Rule**. Previously, there were two separate rules for reporting and fees. The main purpose of this rulemaking is to establish a program for the MPCA to collect information about products containing PFAS intentionally added to products sold, offered for sale, or distributed in Minnesota as required by Minnesota Statute Chapter 116, Section 116.9407, subdivisions 2 and 6. Comments are requested from affected or interested parties. Comments should be submitted in writing as described in the Comments section below.

In a previous Request for Comments (RFC) on this rulemaking published in the State Register on September 25, 2023 , the MPCA asked for comment on the PFAS Reporting and PFAS Fee rules under a new chapter 7026 for PFAS in Products. **If you submitted comments to the original RFC, those responses will still be considered along with the responses to this second RFC; you do not need to resubmit comments.**

The main purpose of this second RFC is to combine these two rules from the first RFC. Doing so helps to ensure that the fee process is directly a part of the reporting system being created for products with intentionally-added PFAS. This second request for comments (RFC) is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about 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 Statute Chapter 116, Section 116.9407, subdivisions 2 and 6.

Subject of Rules. The MPCA requests comments on planned new rules governing PFAS in products reporting. Information must be submitted by "manufacturers" of a product containing intentionally added PFAS about the product, the PFAS, and the submitter, as authorized by Minnesota Statute Chapter 116, Section 116.9407, subdivisions 2, which states:

"(a) On or before January 1, 2026, a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS must submit to the commissioner information that includes:

(1) a brief description of the product, including a universal product code (UPC), stock keeping unit (SKU), or other numeric code assigned to the product;

(2) the purpose for which PFAS are used in the product, including in any product components;

(3) the amount of each PFAS, identified by its chemical abstracts service registry number, in the product, reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes by the commissioner;

(4) the name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(5) any additional information requested by the commissioner as necessary to implement the requirements of this section.

(b) With the approval of the commissioner, a manufacturer may supply the information required in paragraph (a) for a category or type of product rather than for each individual product.

(c) A manufacturer must submit the information required under this subdivision whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state and update and revise the information whenever there is significant change in the information or when requested to do so by the commissioner.

(d) A person may not sell, offer for sale, or distribute for sale in the state a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under this subdivision and the person has received notification under subdivision 4."

The MPCA also requests comments on the associated fee to administer this new reporting program as authorized by Minnesota Statute Chapter 116, Section 116.9407, 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. Fees collected under this subdivision must be deposited in an account in the environmental fund."

In addition, other subdivisions in the law may directly relate to or have implications for reporting, such as the subdivisions referring to definitions, waivers and extensions, and exemptions.

In developing the reporting and fee rule, the MPCA would appreciate comments relating to the reporting and associated fee for products containing intentionally added PFAS.

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. However, updates to reported products when PFAS are added or subtracted ("whenever there is a significant change") are required.

Parties Affected. The new rule 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, 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-reporting*. 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 possible rules until **4:30 p.m. on Tuesday, December 19th 2024**. 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 Quinn Carr at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2722, email quinn.carr@state.mn.us. Technical questions on the planned rules should be submitted to Andria Kurbondski, telephone 651-757-2525, email Andria.kurbondski@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

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Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

November 7, 2024

Date