

## Minnesota Announces PFAS Rulemaking

Alert

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By Claire Williams and Andrew Davis

Minnesota has begun enacting substantive rules and standards for per- and polyfluoroalkyl substances (PFAS). In May, Minnesota enacted a PFAS statute that defines PFAS, creates a reporting requirement, and bans sale or distribution of certain products containing PFAS within the state, a change that will have an impact beyond the state's borders. On September 14, the Minnesota Pollution Control Agency (MPCA) announced its intention to develop PFAS rules to implement the statutory reporting requirement, which becomes effective January 1, 2025.

PFAS refers to a family of nearly 15,000 man-made, environmentally persistent chemicals (often referred to as forever chemicals) with a chain of carbon-fluorine bonds. They are used in a wide variety of consumer and industrial products such as nonstick cookware, waterproof clothing, cosmetics and, historically, in firefighting foam and airport defoaming agents.

### PFAS Statute

The PFAS statute is broadly applicable, and for those covered products, it imposes reporting requirements and creates bans. Unlike other PFAS regulations, some of which include only a handful of specifically named PFAS compounds, the Minnesota statute broadly defines PFAS as “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.” Minn. Stat. § 116.943, subd. 1(p). It does not have any exemptions or exceptions for certain chemicals or compounds in the definition of PFAS. The statute, however, limits its applicability to products where PFAS are “intentionally added,” meaning PFAS is “deliberately added during the manufacture of a product” and its “continued presence...is desired in the final product or one of the product's components to perform a specific function.” Id. § 116.943, subd. 1(l).

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For those products where PFAS are intentionally added, the statute creates a reporting requirement. Manufacturers of products that are sold or distributed in Minnesota and contain intentionally added PFAS are required to submit a report to MPCA on or before January 1, 2026, and a new report for each new product sold or distributed in the state. Id. § 116.943, subd. 2(a) & (c).

The report is required to contain several categories of information, such as:

- A description of the product.
- The purpose for including PFAS in the product.
- The quantity and types of PFAS used.
- The name and location of the manufacturer and the name, phone number and address of a contact person for the manufacturer.
- Any other information requested by MPCA.

Id. § 116.943, subd. 2.

Separate from the reporting requirement, the new legislation bans the sale and distribution of certain PFAS-containing products. Starting on January 1, 2025, 11 product categories are banned from sale or distribution in Minnesota if they contain intentionally added PFAS. The categories are: carpets, cleaning products, cookware, cosmetics, dental floss, fabric treatments, juvenile products (products designed and marketed for infants to children under 12), menstruation products, textile furnishings, ski wax, and upholstered furniture. Id. § 116.943, subd. 5.

These 11 categories are just the beginning. The ban expands on January 1, 2032, to prohibit the sale or distribution of “any product that contains intentionally added PFAS.” Id. § 116.943, subd. 5(c).

There are a small number of exemptions to the reporting requirement and the ban, but they are limited to PFAS products that are otherwise regulated. Id. § 116.943, subd. 8.

## PFAS Rulemaking

Pursuant to the new legislation, MPCA recently announced its intention to create two PFAS rules. The first rule will establish the program for the reporting requirement. The second rule will govern the fees associated with the reporting requirement. For both rules, MPCA anticipates publishing a request for comments on the rulemaking later this month. The timeline for publication of proposed rules is not yet certain, but rulemaking will require public notice and the opportunity for comment submission.

## PFAS Timeline

*Late-September 2023* — Request for Comments on both PFAS rules.

*2024* — Statement of Need and Reasonableness for both PFAS rules.

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*January 1, 2025* — Eleven products containing PFAS are banned.

*January 1, 2026* — On or before January 1, 2026, manufacturers must submit PFAS reports to MPCA.

*January 1, 2026* — Final PFAS rules adopted.

*January 1, 2032* — Complete ban on any products containing PFAS.

Stinson attorneys have experience navigating and participating in MPCA rulemakings, and we are continuing to monitor PFAS developments in Minnesota and around the country.

For more information on the PFAS rulemaking, please contact [Brittany Barrientos](#), [Aimee Davenport](#), [Andrew Davis](#), [Kyle Foote](#), [Kristen Ellis Johnson](#), Desiree McDowell, [Joshua Poertner](#), [Sarah Lintecum Struby](#), [Claire Willaims](#), [Zachary Wright](#) or the Stinson LLP contact with you regularly work.

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