

PFAS UPDATE: MINNESOTA POISED TO PASS COMPREHENSIVE PFAS CONSUMER PRODUCTS BILL WHILE MAINE CONSIDERS PROPOSAL TO DELAY ITS RELATED LAW

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If passed, Minnesota's HF 2310 will prohibit the intentional use of PFAS in 11 categories of consumer products starting in January 2025, and would then prohibit the intentional use of PFAS in all other products sold in the state by January 2032. These broad prohibitions have triggered nationwide media and industry attention, and while the requirements somewhat overlap with certain other state laws, businesses should start to evaluate whether their products will be impacted sooner rather than later.

Interestingly, Maine is the only other state in the nation to have passed a similarly broad PFAS law and the original disclosure deadline was January 1, 2023. Rather than push forward with the implementation and enforcement of the law, a legislative committee just approved a new bill – Maine LD217 – that would extend the reporting deadline to January 1, 2025, in part to allow Maine's Department of Environmental Protection ("DEP") to finalize rules governing the implementation of the law. Whether or not the anticipated passage of an extension of Maine's reporting requirement will impact the deadlines in Minnesota's proposed law is unclear, but it clearly underscores the often unappreciated regulatory burden of these types of comprehensive product regulations.

MINNESOTA'S PROPOSED LAW

The Minnesota bill includes three main requirements: both short-term and long-term PFAS prohibitions, notification requirements, and agency testing rights.

PROHIBITIONS

Beginning on January 1, 2025, a person may not sell, offer for sale, or distribute the following products if it contains intentionally added PFAS:

1. Carpets or rugs;
2. Cleaning products;

3. Cookware;
4. Cosmetics;
5. Dental floss;
6. Fabric treatments;
7. Juvenile products;
8. Menstruation products;
9. Textile furnishings;
10. Ski wax; or
11. Upholstered furniture.

The Minnesota Pollution Control Agency (“Agency”) may identify additional products that should not be sold or distributed if they contain intentionally added PFAS. This prohibition should be effective no earlier than January 1, 2025, and no later than January 1, 2032.

Beginning on January 1, 2032, a person may not sell, offer for sale, or distribute any product that contains intentionally added PFAS, unless the Agency has determined the use of PFAS in the product is a currently unavoidable use.

States have already passed prohibitions on the intentional use of PFAS in some of these product categories (e.g., carpets or rugs, cosmetics, fabric treatments, juvenile products, ski wax, etc.). However, Minnesota’s law would be the first to ban intentionally added PFAS in cookware, which could have a major impact on that industry. States like [California](#) and [Colorado](#) have passed laws requiring cookware manufacturers to disclose the presence of PFAS in their products, but if passed as drafted, Minnesota’s law will go a step further and actually prohibit their intentional use.

NOTIFICATION PROCESS

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

- A brief description of the product, including a universal product code (UPC), stock keeping unit (SKU), or other numeric code assigned to the product;
- The purpose for which PFAS are used in the product and/or product components;
- The amount of each PFAS substance;

- Contact information for the manufacturer; and
- Any additional information requested by the Agency.

A person may not sell, offer for sale, or distribute a product containing intentionally added PFAS if the manufacturer has failed to provide the information required.

Notably, the law also allows the Agency to approve single submissions for groups or categories of products.

TESTING PROCEDURES

If the Agency has reason to believe that a product contains intentionally added PFAS, the Agency may direct the manufacturer of the product to provide the Agency with testing results within 30 days that “demonstrate the amount of each of the PFAS, identified by its [CASRN] number, in the product, reported as an exact quantity.”

- If testing demonstrates that the product does not contain intentionally added PFAS, the manufacturer must provide the Agency with a certificate attesting that the product does not contain intentionally added PFAS.
- If testing demonstrates that the product contains intentionally added PFAS, the manufacturer must provide the Agency with the testing results.

The significant challenge for businesses under these requirements is that there may be no possible way to provide the Agency with the information required. Based on the definition of PFAS in the bill, there are somewhere between 5,000 and 12,000 individual PFAS compounds that are applicable. By contrast, the most advanced testing labs are only able to test for slightly more than 100 individual PFAS compounds, and they only have that capability when testing water samples.

The complex and highly variable structures of consumer products significantly reduces the number of individual PFAS compounds that can be identified through testing. This means that businesses cannot provide “the amount of each of the PFAS ... in the product.” In addition, it is almost impossible to obtain PFAS test results for consumer product samples within 30 days, especially if a business needs to develop a testing plan, hire a qualified lab, and ship samples within those 30 days.

In summary, while the testing provision in the bill would give the Agency a meaningful tool to backstop the law’s requirements, it will be impossible for impacted businesses to comply with the law as drafted.

MAINE’S EXTENSION

Maine's [original PFAS law](#), passed in in 2021, required businesses to disclose the nature and purpose of all intentionally added PFAS compounds in products sold in Maine by January 1, 2023. Although Maine DEP granted extensions to over 2,500 businesses, the Maine Chamber of Commerce and businesses have continued to push for a general extension and additional revisions. [Proposed bill LD 217](#) is designed to address those concerns, and if passed as recently approved by the legislature's environmental committee, it would make the following changes:

- **Date change.** The disclosure deadline will be extended to *January 1, 2025*.
- **Small Business Exemption.** The notification requirements do not apply to a manufacturer that employs 25 or fewer people.
- **Used Products Exemption.** Used products or a used product components will be exempt from the requirements of the law.
- **Retroactive.** The new law, and particularly the extension of the original reporting date, apply retroactively to January 1, 2023.
- **Clarification of Exemptions.** There are three additional exemptions, or technical clarifications, that are added to the notification provisions, and which confirm that the disclosures are not required if:
 - A manufacturer is exempted from the notification requirement pursuant to a specific provision;
 - A product for which DEP has waived the notification requirement pursuant to a specific provision; or
 - A manufacturer that has received an extension of the deadline by DEP for submission of the information required.

CONCLUSION

Minnesota's proposed PFAS bill is notable on a number of levels. First, in contrast to other state laws regulating similar product categories it is more aggressive in the breadth of its prohibitions. Next, the law demonstrates the power of public awareness as a driver for legislation. Minnesota is not typically at the forefront of this type of environmental regulation, but the historic impacts from 3M's PFAS manufacturing facilities in the state have brought intense public attention and concern to this issue, resulting in increased regulation. If the bill is passed as it is currently drafted it will present numerous compliance challenges, so businesses should begin the process of evaluating how it will impact their products to give themselves enough time to, if necessary, plan and reformulate.

The fact that Maine is considering a two year extension to their original reporting deadline – and proposing that extension five months after the deadline has already passed – highlights just how complicated these types of laws are to implement.

For more information on PFAS compounds and related matters, please visit our [PFAS webpage](#). If you have a question about any proposed bills, contact Tom Lee, John Kindschuh, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

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