

# Progress on PFAS Rule Development



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July 18th, 2024

- Introduction & Opening Remarks
- Exemptions
- PFAS in Products Reporting
- Fee Structures
- Currently Unavoidable Use (CUU)
- Additional Q&A Time

- This webinar will be recorded and posted later to the PFAS in Products rule making webpage
- During the webinar, if you have a question please utilize the Q&A function
  - We will try to answer your questions during Q&A breaks if not already answered in the presentation
  - Due to limited time today, we may not get to all questions asked
  - We hope to summarize any unanswered questions and post responses to the PFAS in Products rule making webpage

# Welcome

- PFAS Team Introductions
- Opening remarks from MPCA Commissioner Katrina Kessler

# Disclaimer

The concepts presented here are to inform interested parties on the rulemaking process. Content on these slides should not be misunderstood to represent draft rule text, which the MPCA is now preparing for public comment early next year. Information in this presentation may be subject to change.

# 2025 Prohibition Updates

Today's focus will be on rulemaking for reporting, fees, and CUU. For more information on the 2025 PFAS Prohibitions, please join us for our July 25<sup>th</sup> webinar.

<https://www.pca.state.mn.us/events-and-meetings/pfas-prohibitions-for-retailers-and-manufacturers-2024-07-25>



The screenshot shows a web browser window displaying the Minnesota Pollution Control Agency (MPCA) website. The page is titled "INFORMATION SESSION" and features a large heading: "PFAS prohibitions for retailers and manufacturers". Below the heading, a paragraph states: "This webinar will discuss how the 2025 PFAS in products prohibitions under Amara's Law will affect retailers and manufacturers starting January 1, 2025, when 11 categories of consumer products will be free of intentionally added PFAS. Webinars later in 2024 will focus on the prohibitions' effect on consumers." A "Register online" button is prominently displayed. To the left of the main content, a sidebar provides event details: "Date: July 25, 2024, 11 a.m. - 12 p.m.", "Location: Online only", and "Event type: Information session". Below these details are social media sharing icons for Facebook, Twitter, and LinkedIn. The top navigation bar includes links for "Air, Water, Land, Climate", "Trending Topics", "Business With Us", and "Get Engaged". The breadcrumb trail reads "Home / Events and meetings".

**MINNESOTA POLLUTION CONTROL AGENCY**

Air, Water, Land, Climate | Trending Topics | Business With Us | Get Engaged

Home / Events and meetings

**INFORMATION SESSION**

## PFAS prohibitions for retailers and manufacturers

This webinar will discuss how the 2025 PFAS in products prohibitions under Amara's Law will affect retailers and manufacturers starting January 1, 2025, when 11 categories of consumer products will be free of intentionally added PFAS. Webinars later in 2024 will focus on the prohibitions' effect on consumers.

**Register online**

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<https://minnesota.webex.com/weblink/register/rbbce664ae05ec199535fb4a5566098>

# Exemptions



Will MN follow the state of ME in providing exemption for certain complex products or products subject to other US government agency regulations?

Not planned at this time.



Are there any exemptions from reporting?

As listed in Subdivision 8 of Amara's Law.



# Exemptions

## Subd. 8. Exemptions.

(a) This section does not apply to:

(1) a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority;

(2) a product regulated under section 325F.072 or 325F.075; or

(3) the sale or resale of a used product.

(b) Subdivisions 4 and 5 do not apply to a prosthetic or orthotic device or to any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration

Note: MPCA will take not enforcement actions with respect to PFAS used in pesticides, fertilizers, or other soil amendments that fall under Ch 18B and Ch 18C in which the Minnesota Department of Agriculture has authority

# PFAS in Products Reporting

- Reporting Goals
- Reporting Elements
- Protecting Trade Secret Data
  - Who Reports
- Due Diligence for Data Gathering
  - Reporting System



# Reporting Goals

# Goals of Reporting

## Agency Data Uses

### Scope of Issue

- Assess the overall scale of PFAS use and benchmark its extent

### Usage Breakdown

- Analyze usage patterns across different PFAS subclasses or groups

### Functionality Insights

- Determine widely used or critical PFAS functions

### CUU Determinations

- Identify essential uses of PFAS lacking feasible alternatives

# Goals of Reporting

## Public Data Uses

### Educational Goals

- Information to help the public make informed product choices

### Advocacy Insights

- Data showcasing general patterns and trends in PFAS use

### Functional Understanding

- Explanation of PFAS functions in products (e.g., waterproofing as a surface spray, lubricant as an internal component)

### Transparency

- Why and where PFAS is used in products, allowing input on CUUs

# Goals of Reporting

## Company Data Uses

### Product Understanding

- Comprehensive insights into chemical compositions and uses
- Raise awareness among companies about potential PFAS presence in products or processes

### Product Stewardship

- Facilitates responsible management of PFAS throughout the product lifecycle

### Customer Transparency

- Clear communication to customers about PFAS usage in their products

# Definitions

PFAS:

means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

Fully fluorinated carbon atom:  
means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.



Are we changing the  
PFAS definition?

No



# Reporting Elements

## 1) Product description

- Including a SKU, UPC, or **other numeric code assigned to the product**

## 2) Purpose (**aka function**) for which PFAS are used in the product

## 3) Amount of each PFAS in the product

- Identified by CAS #, **other numeric identifier, or chemical name**
- Exact quantity determined using commercially available analytical methods or **as falling within a range** (e.g., 1,000 to <5,000 ppm, 5,000 ppm to <10,000 ppm, etc.) approved by the commissioner
- Total Fluorine by analysis if no other information on PFAS identity is available





# Product Description

# Definitions

## Product:

An item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including but not limited to its product components, sold or distributed [for personal, residential, commercial, or industrial use], including for use in making other products.

- Consumers means any purchasers, not just retail buyers
- Interpreting components to include integral packaging
- Component does not include bulk packaging – that is a product

# Product Description

**“Brief product description”** means a character-limited (~300) description of a product or grouping of similar products with similar components which includes, whenever applicable, brand name and product model plus other characteristics which distinguish it from similar products made or sold by other manufacturers.

**“Numeric product code”** is any numeric code assigned by a responsible manufacturer to a product being reported, which could include:

- universal product code (UPC)
- stock keeping unit (SKU)
- harmonized tariff schedule (HTS) code
- or other numeric code assigned to the product

If no numeric codes have been assigned, one which will be used on labels, listings, invoices, or receipts should be assigned and reported, or the “none” option chosen.

# Product Grouping

We recognize that products can range from simple to complex in their design and functionality. To streamline the product reporting process, we are considering ways to group similar products as allowed in statute.

- Subd 2 (b) "manufacturer may supply the information for an approved category or type of product rather than for each individual product (grouping)"

# Potential Product Grouping

Products may be grouped under one product description if they have the:

- same PFAS identity or identities, and
- same **approved concentration range** (e.g., 1,000 to <5,000 ppm, 5,000 ppm to <10,000 ppm, etc.) of each PFAS present, and
- same basic form and function except for differences in size, color or other superficial quality



# Whole Product

A manufacturer makes a variety of rain jackets that have PFAS for water proofing.

- If the jackets have the same PFAS chemical(s), which provides the same function(s), within the same concentration range(s), the manufacture could report all the jackets as one product.



Photo source: [www.countryfile.com](http://www.countryfile.com)

# Complex Product with Components

An automotive manufacturer makes a series of trucks that have similar base make up with customizations.

- Report the series of trucks as one product and list all components in the series that would be PFAS containing.
- Each PFAS containing component can be grouped as well if they have the same PFAS chemical(s), in the same concentration range(s), and serving the same function(s).



Photo source: [www.bradleyford.com](http://www.bradleyford.com)



# Q&A Break



# PFAS Purpose (Function)

# Function Definition

## Function:

- Not defined in 116.943 while used in “intentionally added” and needed for CUU determinations
- General concept: The explicit purpose or role served by PFAS when intentionally incorporated at any stage in preparing a product for sale
- Multiple functions per single chemical are possible

# Function Categories & Codes



## Possible approach:

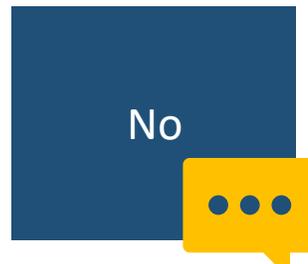
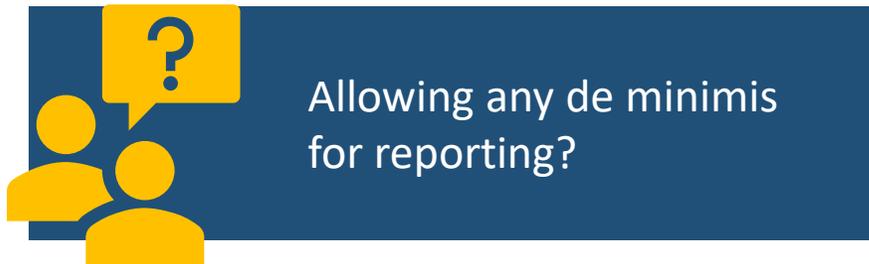
- Start with U.S. EPA TSCA CDR/PFAS reporting categories/codes (117; align with OECD)
- Add other unique codes from ChemSec (15)
- Consider other unique codes from other PFAS reporting systems
- Try to discourage use of article descriptions in the “Other” function category



Amount of  
PFAS in  
Product

# PFAS Quantity

- Subd. 2. (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
- At the component level – Not the whole product



# Alternatives for Exact Concentrations or Unknowns

Concentration ranges for reporting PFAS amounts by weight:

- Practical Quantitation Limit (PQL) to <100 ppm (0.01%)
- 100 ppm to <500 ppm (0.05%)
- 500 ppm to <1,000 ppm (0.1%)
- 1,000 ppm to <5,000 ppm (0.5%)
- 5,000 ppm to <10,000 ppm (1%)
- 10,000 ppm to <300,000 ppm (30%)
- 300,000 ppm to <600,000 ppm (60%)
- 600,000 ppm to <900,000 ppm (90%)
- 90 to 100%
- Present but amount not revealed by supplier(s).





# Protecting Sensitive Data

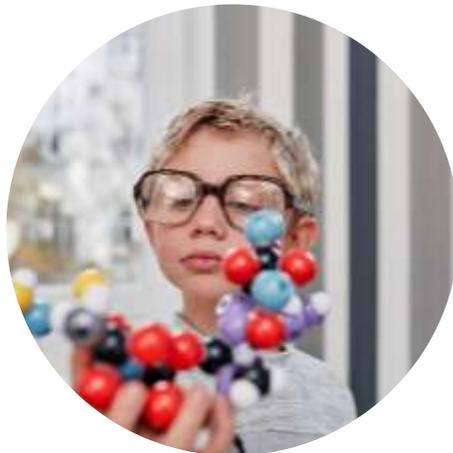
## Trade Secrets Protection

- In reporting, data elements that may be submitted for approval as trade secret include chemical name, chemical numerical identifier, and chemical concentration
- Depending on the element, alternative information will need to be provided that will be available to the public

# PFAS Subclasses & Groups

- Non-Polymers

- Subclass: Perfluoroalkyl substances+
  - Group: PFAA, PFEA, PFAI...
- Subclass: Polyfluoroalkyl substances
  - Group: FTOH, PolyFCAs, PFECA...



- Polymers

- Subclass: Fluoropolymers
- Subclass: Polymeric perfluoropolyethers
- Subclass: Side-chain fluorinated polymers

- Other

- “Fluor” in Chemical name
- Functional groups(s) other than alkyls present

# PFAS Concentration

If a products PFAS chemical concentration is approved for trade secret the exact amount would be converted to a range for public reports, similar to those proposed earlier as an alternative for exact concentration.

## Data submitted to the agency

Manufacturer wants to protect the name and CAS # of the PFAS in their product.

Ex: PTFE, 9002-84-0

Manufacturer wants to protect the exact concentration of the PFAS chemical in their product.

Ex: 867 ppm

If trade secret approved...

## Data seen in public facing reports

CAS # may be marked as trade secret and the name of the PFAS would show up as the group or subclass it belongs to

Ex: Fluoropolymers, "trade secret"

The concentration would show up as a concentration range.

Ex: 500 ppm to <1000 ppm

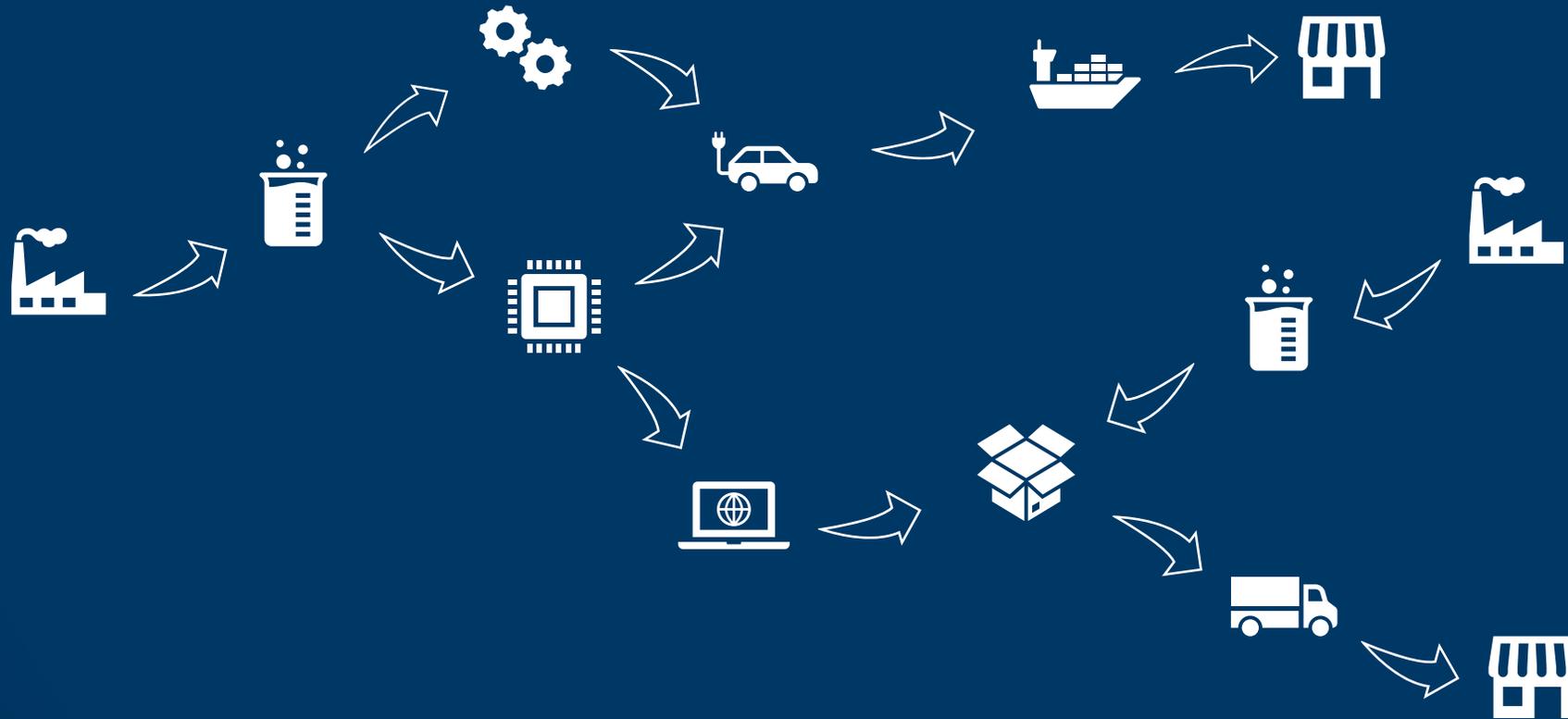


# Q&A Break



# Who Reports

Subd. 2. (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



# Definitions

## Manufacturer:

The person that creates or produces a product, has a product created or produced, or whose brand name is legally affixed to the product. In the case of a product that is imported into the United States where 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, manufacturer includes either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.



# Possible Hierarchy for Determining Who Reports

1. Creator or producer
2. Licensed seller for a brand owner
3. Brand owner
4. Importer of record (within the USA who sells to MN)
5. First US possessor
6. First distributor in MN
7. Franchisor for Franchise Products





# Due Diligence

# Information Collection Due Diligence

- Obtain comprehensive PFAS information from all supply chain levels, not just primary suppliers
  - Responsible manufacturers may only have access to first-tier suppliers and will need to work through them to reach further upstream
- Extensions available with set time limits
- We recognize trade secrecy protection between suppliers and customers
- For most up to date PFAS information reports can be amended after: January 1, 2026



# Reporting System

# PFAS Reporting System

- Working with NEWMOA and ERG
- Will be adapting the HPCDS (High Priority Chemical Data System)
- Optimistic to have beta version of the system ready for testing in Fall of 2025
- If needed, statute allows for extensions:
  - Subd 3 (d) “The commissioner may extend the deadline for submission by a manufacturer of the information required under subdivision 2 if the commissioner determines that more time is needed by the manufacturer to comply with the submission requirement.”

# Fee Structure

- Very rough outline of revenue goal and response scenarios

- Recouping appropriations to MPCA projected through FY 32 (\$6.03M, w/o inflation)
- Providing an incentive to remove PFAS from products

# Fee Structures

- Applying Maine's original fee structure:
  - \$250/first 3 products or components reported
  - \$50/for each additional report or for later increases reported
- Company report scenarios:
  - Assuming average of 23 product or component reports per reporter
  - 2,700 reporters (ME extension requests) - \$3.38M
  - 4,822 reporters to hit recoup goal - \$6.03M
  - If >4,822 reporters (EPA scenario), the extra revenue will likely be needed for a larger-than-budgeted program



# Timelines

# Approximate Rulemaking Timeline – Reporting and Fees

Sept-Oct 2024	Feb-March 2025	Fall of 2025	Late 2025	January 1, 2026
SONAR and draft rule writing completed	Notice of intent to adopt, public comment period opens	Beta version of reporting system open to testing	Reporting system goes live for report submittals	Reporting due



# Q&A Break

# Currently Unavoidable Uses (CUUs)

- Definitions
- CUU Determination Basics
  - Proposals

(c) Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state any product that contains intentionally added PFAS, unless the commissioner has determined **by rule** that the **use** of PFAS in the product is a **currently** unavoidable use. The commissioner may specify **specific products or product categories** for which the commissioner has determined the use of PFAS is a currently unavoidable use.

- "Currently unavoidable use" means a use of PFAS that the commissioner has determined by rule under this section to be **essential for health, safety, or the functioning of society** and for which **alternatives** are not **reasonably available**.

# Possible Key CUU Definitions

## “Alternative”

- A chemical alternative (or combination of chemical alternatives) or non-chemical alternative or combination;
- That fulfills the functional performance requirements of the product (as opposed to comparing directly to the PFAS being replaced);
- For chemical alternatives, they should be demonstrably or predictably safer than the PFAS currently in use with respect to ecological persistence, bioaccumulation, toxicity, and mobility potential;
- Does not include “a chemical identified on the basis of credible scientific evidence by a state, federal, or international agency as being known or suspected with a high degree of probability to:
  - (1) harm the normal development of a fetus or child or cause other developmental toxicity;
  - (2) cause cancer, genetic damage, or reproductive harm;
  - (3) disrupt the endocrine or hormone system; or
  - (4) damage the nervous system, immune system, or organs, or cause other systemic toxicity.”

# Possible Key CUU Definitions

“Reasonably available” means the alternative technology:

- Is available to the manufacturer in terms of volume or quantity, and at the timing needed;
- Is available at a reasonable cost differential (case-by-case and/or by industry rules of thumb);
- If an alternative is in use in a competitor’s products offering the same or similar functional performance specifications, then an alternative would be considered “reasonably available”

# CUU Determination Basics

- Expect CUUs to be time-limited, renewable
- If renewed after 2032, affected products would not be prohibited until their PFAS CUUs are no longer renewed
- To streamline, some CUU determinations may be grouped or made generally available
- Others likely to be company- or product-specific





- What information must be provided in a proposal - completeness
- What types of proposals can be submitted (ex: specific product, specific PFAS, or broader industry uses)
- Trade secrecy availability?

## TBD: Detail of CUU Proposals



# Timelines

# Approximate Rulemaking Timeline – CUU

- Rule writing for CUU process will pick up after rules for reporting and fees have been submitted to the state register
- The rule writing process for CUU will follow a similar schedule and sequence of steps as reporting and fees rules
- We expect to see longer public comment period for the CUU rules as well

The background features a repeating pattern of light blue question marks inside speech bubble shapes. A large, dark blue circle is centered on the right side of the slide, containing the text "Q&A Break" in white.

# Q&A Break

# Sign Up for Updates



## Stay connected

Sign up for updates about PFAS rulemaking process and opportunities for public input.

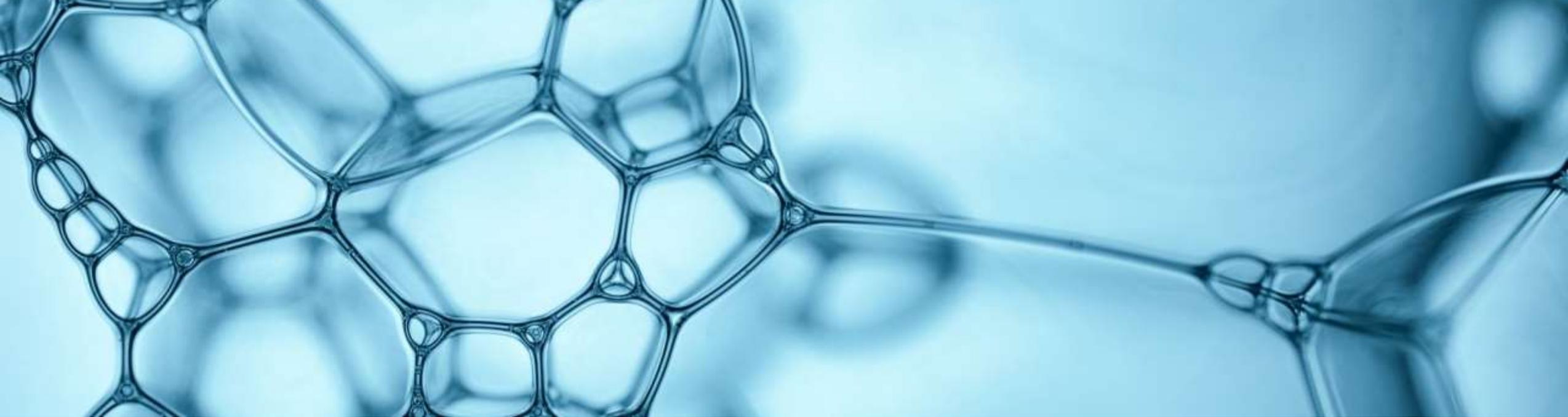
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Questions?



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# Thank you!