



Air Toxics Regulations Rule

Pre-hearing Response to Comments

Revisor ID No. R-04807

CAH Docket No. 21-9003-39347

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Introduction

This document contains the response to the public comments received during the pre-hearing public notice regarding the Minnesota Pollution Control Agency's (MPCA's) Notice of Intent to Adopt Rules published May 18, 2026. 17 commenters submitted comments to the Court of Administrative Hearing's eComments website or via U.S. mail by July 17, 2026. Many of the comments received included multiple components. The agency has provided its responses to those comments below, and where possible, has grouped similar comments together to provide a single response.

The MPCA will respond to comments received at the hearing and during the post-hearing comment period in a future response to comments document.

List of interested parties

The following is a list of interested parties who submitted written comments on the proposed rules during the public notice and comment period from May 18, 2026, through July 17, 2026.

Table 1. List of interested parties

Comment ID	Date	Commenter Name	Organization Name
001	June 3, 2026	Ted Millen	-
002	June 30, 2026	Paul Bakken	-
003	July 7, 2026	Maggie Wegner	Minnesota Pollution Control Agency
004	June 30, 2026	Paul Bakken	-
005	June 30, 2026	Paul Bakken	-
006	July 16, 2026	Helen Lockwood	-
007	July 16, 2026	Helen Lockwood	-
008	July 16, 2026	Nels Paulsen	Conservation Minnesota
009	July 16, 2026	Mark Kreidler	-
010	July 16, 2026	Mark Kreidler	-
011	July 16, 2026	Mark Kreidler	-
012	July 16, 2026	Mark Kreidler	-
013	July 16, 2026	Mark Kreidler	-
014	July 16, 2026	Mark Kreidler	-
015	July 16, 2026	Mark Kreidler	-
016	July 16, 2026	Mark Kreidler	-
017	July 16, 2026	Todd Biewen	-
018	July 16, 2026	Dave Satre	-

Comment ID	Date	Commenter Name	Organization Name
019	July 16, 2026	Dave Satre	-
020	July 16, 2026	Dave Satre	-
021	July 16, 2026	Dave Satre	-
022	July 16, 2026	Dave Satre	-
023	July 16, 2026	Dave Satre	-
024	July 16, 2026	Dave Satre	-
025	July 16, 2026	Dave Satre	-
026	July 17, 2026	Andrew Morley	Minnesota Chamber of Commerce
027	July 17, 2026	Megan Aranguren	-
028	July 17, 2026	Megan Aranguren	-
029	July 17, 2026	Jenni Lansing	Minneapolis Health Department
030	July 17, 2026	Jon Stenseth	Delta Air Lines, Inc.
031	July 17, 2026	Mike Karbo	American Petroleum Institute
032	July 17, 2026	Katharine Bonneson	University of Minnesota
033	July 17, 2026	Chris Freeman	Cordia Energy Center Minneapolis
034	July 17, 2026	Brian D. Ryks	Metropolitan Airports Commission
035	July 17, 2026	Rebecca Lee	-
036	July 17, 2026	Rebecca Lee	-
037	July 17, 2026	Rebecca Lee	-
038	July 17, 2026	Rebecca Lee	-
039	July 17, 2026	Rebecca Lee	-
040	July 17, 2026	Rebecca Lee	-
041	July 17, 2026	Rebecca Lee	-

Changes to the Proposed Rules

The MPCA appreciates the thoughtful and thorough comments that were received during the pre-hearing comment period for this rule. The MPCA has reviewed these comments and the suggested changes to the proposed rule. The MPCA has made modifications to the proposed rule as a result of comments received during the pre-hearing public comment period. Additionally, the MPCA has identified some parts of the proposed rule that require clarification, or that the agency would consider minor, non-substantive changes to the proposed rule that are needed based upon additional review of the proposed rule during the pre-hearing public comment period.

The MPCA does not believe that these potential modifications will result in rules that are “substantially different” as defined in Minn. R. 1400.2010, subp. 10 based on the criteria set forth in Minn. Stat. § 14.05, subd. 2(b).

The issue of substantial difference is addressed in detail with regard to each modification. In general, the Notice provided fair warning that these rule changes could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected, the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the modifications, and the effects of the modifications are not greatly different from the rules as originally proposed. All the modifications are within the scope of “Subject of Rules,” and are related in general to Minnesota’s air toxics regulations, all of which were announced in the Notice. The modifications are a logical outgrowth of the Notice and the comments submitted in response to the Notice.

Part 7012.0055 DEFINITIONS

Definition of Acute inhalation risk

Subp. 5. **Acute inhalation risk.** "Acute inhalation risk" means the risk from one or more exposures to an air toxic within a short period that is evaluated using:

- A. the modeled maximum ambient air concentration of an air toxic occurring over one hour, up to and at the stationary source's fence line; or
- B. the modeled maximum air concentration of an air toxic that occurs over 24 hours, up to and at the stationary source's fence line.

1. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists in the definition of acute inhalation risk at part 7012.0055, subpart 5, item A. Item A defines one method of evaluating the period of time where an exposure to an air toxic may occur. Item A does not include the clarifying term “modeled” to describe the maximum air concentration of an air toxic while item B does include the term “modeled.” Therefore, modifications are needed in this subpart.
2. The term “modeled” clarifies an otherwise broader definition. Without adding “modeled,” the definition in Item A allows for other methods of evaluating exposure, such as monitoring. Monitoring for exposure durations has not historically occurred. It is reasonable to correct typographical errors because doing so provides clarity and prevents confusion for all interested persons.
3. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirement remains the same and the change only corrects a typographical error without changing the subject matter or the effect of the proposed rule. This modification is within

the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because typographical errors are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Definition of Reference concentration

Subp. 31. **Reference concentration.** "Reference concentration" means an estimate of the continuous inhalation~~daily~~ exposure to the human population, including sensitive subgroups, that is likely to be without appreciable risk of deleterious noncancerous effect during a lifetime or other defined averaging time~~duration~~. The reference concentration is ~~for continuous inhalation exposures over the defined averaging time and is~~ expressed in units of micrograms per cubic meter.

4. During the pre-hearing public comment period on the proposed rule, the MPCA determined that unclear language exists in the definition of reference concentration at part 7012.0055, subpart 31. Therefore, modifications are needed in this subpart.
5. This definition uses the term “daily” to describe exposure times. This term can imply an exposure of at least 24 hours but a reference concentration can also use exposures that are less than 24 hours. The definition also includes the more accurate statement that it is for “continuous inhalation exposures.” The MPCA proposes to modify and simplify the definition to make this clearer by replacing “daily” with “continuous inhalation” and deleting “for continuous inhalation exposures” later in the definition. Additionally, an exposure that determines a reference concentration occurs over a duration of time and is not necessarily averaged over that period of time. MPCA proposes to modify this definition to replace “averaging time” with “duration” to remove the potential for confusion.
6. It is reasonable to correct definitions because doing so provides clarity and prevents confusion for all interested persons.
7. The MPCA finds these modifications do not make the proposed rule substantially different because the existing requirements remain the same and the change corrects unclear information without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Definition of Hazard index

Subp. 23. **Hazard index.** "Hazard index" means the sum of more than one hazard quotient for multiple substances with ~~the same or similar~~ exposure periods or health endpoints. ~~It is assumed all noncarcinogens have the same or similar health endpoints during initial screening. A hazard index equal to or less than 1, without rounding down to one significant figure, poses no appreciable likelihood of adverse health effects to the general population.~~

8. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error as well as unclear language exists in the definition of hazard index at part 7012.0055, subpart 23. Therefore, modifications are needed in this subpart.

9. This definition includes both information that is redundant and unclear. The definition includes the use of “same or similar,” which is redundant. The removal of “the same” does not change the meaning of the definition which provides for the simple summation of hazard quotients for the different exposure periods (i.e., acute, subchronic, chronic) that can be over different durations (e.g., subchronic inhalation risk refers to a period of 24 hours to one year). The MPCA proposes to address this redundancy by removing the redundant words from the definition. It is reasonable to remove redundant information and to correct unclear definitions because doing so simplifies the definition to provide clarity and prevents confusion for all interested persons.
10. The definition also refers to “health endpoints” but the use of the term hazard index in the proposed rules does not apply only to health endpoints. The term hazard index applies to health endpoints, multipathway risks, or inhalation risks, and is determined by considering the exposure period for those health endpoints, multipathway risks, and inhalation risks. The exposure period is the term that identifies how these different health endpoints, multipathway risks, and inhalation risks are summed to determine the hazard index (e.g., subchronic or chronic noncancer multipathway risks). The hazard index is not determined by summing the hazard quotients for a health endpoint, multipathway risk, or inhalation risk irrespective of the exposure period. The MPCA proposes to modify the definition to make this clearer by referring to the exposure period as well as the health endpoint. It is reasonable to correct definitions because doing so provides clarity and prevents confusion for all interested persons.
11. This definition includes information about “initial screening” that is not applicable to the proposed rules. The sentence regarding initial screening is a carry-over from existing MPCA guidance and refers to a process the MPCA uses as screening in the risk assessment screening spreadsheet (RASS) in the air emissions risk analysis (AERA) process outside the proposed rules. There is no “initial screening” step identified in the proposed rules. The MPCA proposes to modify the definition by removing the unnecessary sentence. It is reasonable to correct definitions because doing so provides clarity and prevents confusion for all interested persons.
12. The existing definition includes a description regarding rounding which is already identified elsewhere in the rules (see part 7012.0560, subpart 3) and varies depending on which hazard index is calculated. Therefore, the description of rounding is unnecessary and may be incorrect depending on the circumstance. The MPCA proposes to address this by removing the reference to rounding from the definition. It is reasonable to correct definitions because doing so provides clarity and prevents confusion for all interested persons.
13. The MPCA finds these modifications do not make the proposed rule substantially different because the existing requirements remain the same and the change only removed redundant information and corrects unclear information without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because typographical errors and improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Definition of Hazard quotient

Subp. 24. **Hazard quotient.** "Hazard quotient" means the ratio of a single substance exposure level to an inhalation health benchmark for that substance derived from a similar exposure period. A hazard quotient equal to or less than 1, ~~rounded to one significant figure,~~ poses no appreciable likelihood of adverse health effects to the general population.

14. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists in the definition of hazard quotient at part 7012.0055, subpart 24. The existing definition includes a description regarding rounding which is not applicable for this term. In practice, rounding only occurs when calculating a hazard index and so the description of rounding is unnecessary for a hazard quotient. Therefore, modifications are needed in this subpart to correct the definition to align with existing practice. It is reasonable to correct definitions because doing so provides clarity and prevents confusion for all interested persons.
15. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirements remain the same and the change only corrects information without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because typographical errors are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0450 COMPLIANCE DETERMINATION PROTOCOL

Addition of clarifying language for compliance deadlines

MPCA proposes changes to part 7012.0450, subp. 2(D):

(3) For a compliance determination protocol submitted under part 7012.0570, subp. 8, the date that compliance will be achieved with the screening threshold values under part 7012.0300, subpart 1, must be no later than:

(a). three years after the date that the air emissions risk analysis report is approved, if control equipment will be installed; or

(b). two years after the date that the air emissions risk analysis report is approved, if control equipment will not be installed.

16. During the pre-hearing public comment period on the proposed rule, the MPCA determined that unclear language exists in part 7012.0450, subpart 2, item D. Item D describes compliance deadlines for compliance determination protocols (CDPs) when CDPs are submitted after a facility exceeds screening threshold values. The rules as written do not include compliance deadlines for CDPs submitted after completing and air emissions risk analysis (AERA). Therefore, a modification is needed. The MPCA also received one comment, Lockwood-1, regarding “triggering mechanisms and response timing” for ATRPs and Alternatives for ATRPs. The alternative to an ATRP is a CDP.
17. To clarify compliance deadlines for CDPs submitted after completing an AERA, the MPCA proposes to add the compliance deadlines to the requirement as an addition item.
18. Without the modification, the rules do not include deadlines for some facilities’ timelines when completing an AERA first and the current compliance deadlines for CDPs may have already passed. The deadlines in 7012.0450, subpart 2, item D, subitems (1) and (2) are specific to a CDP developed following the submission of a certification identifying any air toxics above screening threshold values. These deadlines are based on the date that the certification was submitted, or the screening threshold analysis certification deadline, whichever is sooner. If an owner or operator chooses to conduct an AERA, instead of developing a CDP, to better understand potential risks the facility might be posing, the deadlines in 7012.0450, subpart 2, item D, subitems (1) and (2) do not provide a sufficient amount of time to comply with screening threshold values under part 7012.0300, subpart

1, if the AERA report demonstrates an exceedance of acceptable risk levels and the owner or operator decides to address risks by developing the alternative to an ATRP, as allowed under part 7012.0570, subpart 8. The deadlines in the modification provide a sufficient amount of time for an owner or operator to comply with screening threshold values after conducting an AERA and choosing the alternative to an ATRP. This modification is reasonable because it clarifies compliance deadlines for owners and operators seeking to utilize the alternative option to an air toxics reduction plan and prevents confusion for all interested parties.

19. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain and the changes clarify without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0500 REVISING COMPLIANCE DETERMINATION PROTOCOLS

Clarifying language for what circumstances require an owner or operator to revise a CDP

MPCA proposes changes to part 7012.0500, subpart 1(A) and subpart 2(A).

Subpart 1. **Facility-initiated revision.** The owner or operator of a facility with a compliance determination protocol must revise the compliance determination protocol and provide the reason why the revision is made when:

A. alterations or modifications to the air toxics facility will result in or have the potential to result in changes to either the amount of emissions for any one or more air toxics emitted included in the compliance determination protocol or the number of air toxics emitted above screening threshold values;”

And 7012.0500, subp. 2(A):

Subpart 2. **Agency-initiated revision.** Except when an owner or operator submits a permit application that includes requirements that would otherwise be incorporated into a compliance determination protocol, the commissioner must require an updated compliance determination protocol for a facility when:

A. alterations or modifications to the air toxics facility will result in or have the potential to result in changes to either the amount of emissions for any one or more air toxics emitted included in the compliance determination protocol or the number of air toxics emitted above screening threshold values;

20. During the pre-hearing public comment period on the proposed rule, the MPCA determined that unclear language exists in part 7012.0500, subpart 1(A) and subpart 2(A). Both subpart 1(A) and subpart 2(A) are unclear about when alterations or modifications to an air toxics facility require an owner or operator of a facility with a CDP to revise the CDP. The proposed rule does not clearly identify that a revision to a CDP is only required when alterations or modifications change air toxics emissions of air toxics that are included in the CDP or the number of air toxics emitted above screening threshold values. Therefore, a modification is needed.
21. The MPCA also received three related comments. See comments Lansing-9, Bonneson-6, and Bonneson-7, which are further addressed under Section “Part 7012.0500 Revising Compliance Determination Protocols.”

22. To clarify the requirements, the MPCA proposes to add language that specifies the circumstances that require an owner or operator to revise their CDP.
23. Without the modification, the rule could be interpreted as requiring a CDP to be revised any time alterations or modifications to the air toxics facility result in changes to any air toxic emissions, or the number of air toxics emitted, regardless of whether an air toxic is included in the CDP or a newly emitted air toxic is below the screening threshold value. Only air toxics above screening threshold values are included in a CDP. Owners or operators would not revise their CDP when alterations or modifications to the air toxics facility will only result in changes to air toxics emissions that will remain below screening threshold values, or new air toxic emissions that are below screening threshold values. Therefore, it is reasonable to add rule language to clarify when a CDP must be revised because it reduces confusion and the burden on owners or operators and the MPCA.
24. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain and the changes clarify when a facility must revise a CDP without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the "Subject of Rules" Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because commenters requested related changes (Lansing-9 and Bonneson-6 and 7) and improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0530 MODELING REQUIRED

Correction of typographical error in citation within 7012.0530

7012.0530 MODELING REQUIRED

If the owner or operator of a facility is not able to provide evidence of remaining at or below screening threshold values by submitting a compliance determination protocol, the owner or operator must submit a protocol for an air emissions risk analysis according to parts 7012.0550 and 7012.0555. The deadline to submit a protocol for an air emissions risk analysis is as provided under part ~~7012.0450, subpart 3~~ 7012.0555. The owner or operator may not extend the deadline to submit an air emissions risk analysis protocol by first submitting a compliance determination protocol.

25. During the pre-hearing public comment period on the proposed rule, the MPCA determined that a typographical error exists in part 7012.0530. This part includes a citation where regulated parties find the deadline for submitting an AERA protocol. The citation included in the rule is the deadline for submitting a compliance determination protocol (CDP), which is the same timeline as submitting an AERA protocol but is not the appropriate submittal for this rule part. Therefore, a modification is needed.
26. To correct the typographical error, MPCA proposes to change the citation to **7012.0555**, the submission deadlines for AERA protocols.
27. Without the modification, the rules do not reference the correct submittal timeline and may create confusion. This modification is reasonable because it clarifies compliance deadlines for owners and operators seeking to utilize the alternative option to an air toxics reduction plan and prevents confusion for all interested parties.
28. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirement remains the same and the change only corrects a typographical error without changing the subject matter or the effect of the proposed rule. This modification is within

the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because typographical errors and improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0550 AIR EMISSIONS RISK ANALYSIS PROTOCOL

Correction of typographical error at part 7012.0550, subpart 1

Subpart 1. **Air emissions risk analysis protocol required.** The ~~an~~ owner or operator of a facility must submit an air emissions risk analysis protocol if the facility is emitting any air toxics above screening threshold values and if the facility is not submitting a compliance determination protocol under part 7012.0150, subpart 2, item A. An owner or operator submitting a completed air emissions risk analysis report to comply with part 7012.0150, subpart 2, item B, must first submit an air emissions risk analysis protocol to the commissioner for approval according to this part.

29. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists at part 7012.0550, subpart 1. Subpart 1 provides when the owner or operator of a facility must submit an air emission risk analysis protocol. Subpart 1 included two articles before the noun. Therefore, a modification is needed in this subpart.
30. The MPCA received one comment regarding this typographical error as well. **Lansing-10:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0550 Subpart 1: Typo correction needed in this sentence: ‘The an owner or operator of a facility must submit...’”
31. Both “the” and “an” are included before “owner or operator.” The MPCA proposes to correct this typographical error by removing “an.” Without removing “an,” the sentence includes an unnecessary word. It is reasonable to correct typographical errors because doing so provides clarity and prevents confusion for all interested persons.
32. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirement remains the same and the change only corrects a typographical error without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because typographical errors and improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0560, AIR EMISSIONS RISK ANALYSIS REPORT

Clarifying language for summary of the report content found in 7012.0560, subpart 1

Subpart 1. Air emissions risk analysis; report content. Except as provided in subpart, an owner or operator of an air toxics facility must submit, in a format specified by the commissioner, a complete air emissions risk analysis report conducted according to the protocol approved under part 7012.0550. The report must contain:

A. a summary of the risk levels, inhalation health benchmarks, and air dispersion modeling output information at the air toxics facility. The summary must include:

- (1) each of the following ~~acceptable~~ risk levels:

- (a) cancer risk;
 - (b) hazard quotient for acute, subchronic, and chronic inhalation risk;
 - (c) hazard quotient for farmer noncancer multipathway risk, ~~farmer cancer~~, urban gardener noncancer multipathway risk, ~~urban gardener cancer~~, and resident noncancer, ~~and resident cancer multipathway risk~~; and
 - (d) farmer cancer multipathway risk, urban gardener cancer multipathway risk, and resident cancer multipathway risk for each pollutant; and
 - (e) (d) hazard index for acute, subchronic, and chronic noncancer health endpoints;
33. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists in part 7012.0560, subpart 1, item A, subitem (1). Subitem (1) contains requirements for the content of an air emission risk analysis report, a summary of the risk levels, inhalation health benchmarks, and air dispersion modeling output information at the air toxics facility; specifically, the summary must include subitem (1), that is “each of the following acceptable risk levels.”
 34. Subitem (1) includes the descriptor “acceptable” but this term is not necessary as the summary should contain the results of the risk levels determined from the air emissions risk analysis, as initially described in item A. Including “acceptable” was a typographical error and therefore, modifications are needed in this subpart to remove this term.
 35. The MPCA proposes to modify the proposed rule so part 7012.0560, subpart 1, item A, subitem (1) reads, “each of the following risk levels:”.
 36. It is reasonable to correct this error because doing so provides consistency between the information described in item A and subitem (1), clarifying what is required in the air emissions risk analysis report, and prevents confusion for all interested persons.
 37. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirements remain the same and the change only corrects information without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.
 38. During the pre-hearing public comment period on the proposed rule, the MPCA determined unclear language exists in part 7012.0560, subpart 1, item (A), subitem (1), unit (c). Unit (c) contains requirements for the content of an air emission risk analysis report, specifically the summary must include “hazard quotient for farmer noncancer, farmer cancer, urban gardener noncancer, urban gardener cancer, and resident noncancer, and resident cancer multipathway risk.”
 39. The MPCA proposes to modify the proposed rule so part 7012.0560, subpart 1, item (A), subitem (1), unit (c) becomes two units, (c) and (d) and they read, respectively, as follows.
 40. “hazard quotient for farmer noncancer multipathway risk, urban gardener noncancer multipathway risk, and resident noncancer-multipathway risk;”
 41. “farmer cancer multipathway risk, urban gardener cancer multipathway risk, and resident cancer multipathway risk for each pollutant; and”.
 42. Without the modification, this unit refers to both cancer and noncancer risks that have different

definitions that apply. For this reason, modifications are needed in this subpart to separate and clarify between cancer and noncancer risks into separate items, item C and new item D. It is reasonable to clarify this requirement because doing so helps prevent confusion for all interested persons.

43. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirements remain the same and the change only separates information in a requirement for clarity without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

Clarifying language for acceptable risk levels content found in 7012.0560, subpart 3.

Subp. 3. **Acceptable risk levels.** The owner or operator of an air toxics facility must not cause or allow the facility-wide air toxics emissions to result in a predicted maximum ambient impact that exceeds the acceptable risk levels in this subpart. The owner or operator must use the following risk levels in air emissions risk analyses:

A. cancer risk of 1 in 100,000 (rounded to one significant figure);

B. hazard quotient of 1 (rounded to one significant figure) for acute, subchronic, and chronic inhalation risk;

C. hazard quotient of 1 (rounded to one significant figure) for farmer noncancer multipathway risk, ~~farmer cancer~~, urban gardener noncancer multipathway risk, ~~urban gardener cancer~~, and resident noncancer multipathway risk; ~~and resident cancer multipathway risk; and~~

D. risk of 1 in 100,000 (rounded to one significant figure) for farmer cancer multipathway risk, urban gardener cancer multipathway risk, and resident cancer multipathway risk; and

~~E.~~ E. hazard index of 1 (without rounding down to one significant figure) for acute, subchronic, and chronic noncancer health endpoints.

44. During the pre-hearing public comment period on the proposed rule, the MPCA determined typographical errors and unclear language exists in part 7012.0560, subpart 3. Item D establishes the acceptable risk levels, identified in items A to D, used within the air emission risk analysis.
45. The MPCA proposes to modify the proposed rule to correct typographical errors and provide clarification regarding unclear rule language that exists in part 7012.0560, subpart 3.
46. Item A contains the requirement for cancer risk. Item A does not clarify whether rounding is allowed for cancer risk calculations. Therefore, a modification is needed to this item.
47. The MPCA proposes to modify item A to clarify that rounding is allowed for the acceptable risk level for cancer risk. Without modification, item A does not identify whether rounding is allowed, however the SONAR (p. 126) makes it clear that rounding is intended for subpart 3, items A to D, “Items A to D require clarification on rounding and significant figures due to the precision in the data included in a final AERA risk estimate.” Because the rules do not state that rounding is allowed, it is reasonable to modify this subpart to clarify this. It is reasonable to clarify this requirement because doing so provides clarity and prevents confusion for all interested persons.
48. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain the same and the changes only clarifies requirements without

changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

49. Item C contains the requirement for hazard quotient for farmer noncancer, farmer cancer, urban gardener noncancer, urban gardener cancer, and resident noncancer, and resident cancer multipathway risk. However, item C identifies and incorrectly uses the same terminology for the acceptable risk level for both cancer and noncancer risks. Therefore, a modification is needed to this item.
50. The MPCA proposes to modify item C to split the cancer and noncancer risks identified into two separate items, item C and item D. Without the modification, the existing item C refers to both cancer and noncancer risks. Cancer and noncancer have different definitions that apply. For this reason, modifications are needed in this item to separate and clarify between cancer and noncancer risks into separate items. It is reasonable to clarify this requirement because doing so helps prevent confusion for all interested persons.
51. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain the same and the changes only clarifies requirements without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.
52. The existing Item D contains the requirement for hazard index for acute, subchronic, and chronic noncancer health endpoints. The MPCA proposes to renumber item D to be new item E. This is to allow for the new item D described above to be listed after similar requirements. It is reasonable to renumber requirements to provide consistency in the organization of rule language.
53. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain the same and the changes only clarifies requirements without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided and the commenter requested the clarification when they commented on the rule.

Part 7012.0570, AIR TOXICS REDUCTION PLAN; REQUIREMENTS

Clarifying language for submission timelines found in 7012.0570, subpart 8

Subp. 8. **Alternative to air toxics reduction plan.** If the owner or operator of an air toxics facility initially models air toxics emissions' impacts above acceptable risk levels under part 7012.0560, subpart 3, but can achieve and remain at or below the screening threshold values under part 7012.0300, subpart 1, through taking restrictive actions or making operational changes, the

owner or operator may submit a compliance determination protocol under part 7012.0450 as part of the completed air emissions risk analysis report in lieu of an air toxics reduction plan under this part. ~~The compliance determination protocol is due within one year after the air emissions risk analysis report is approved.~~

54. During the pre-hearing public comment period on the proposed rule, the MPCA determined that unclear language exists in part 7012.0570, subpart 8. Subpart 8 describes the option for a facility to submit a compliance determination protocol (CDP) in lieu of an air toxics reduction plan and provides two contradicting timelines for the submittal of the CDP. The MPCA also received one comment, Lockwood-1, regarding “triggering mechanisms and response timing” for ATRPs and Alternatives for ATRPs.
55. To clarify the requirement, the MPCA proposes to add “report” after “completed air emissions risk analysis” and to remove the last sentence of subpart 8.
56. The last sentence of subpart 8 provides a contradictory due date and timeline to the prior sentence that specifies a CDP may be submitted with the AERA in lieu of an ATRP. It is reasonable to remove contradictory language to clarify the rule requirement. Additionally, “report” is added after “completed air emissions risk analysis” so it is clear that if an owner or operator chooses to submit a CDP in lieu of an ATRP, the CDP must be submitted with the AERA report, not the AERA protocol. It is reasonable to clarify rule language to avoid confusion for owners and operators and all interested parties.
57. The MPCA finds this modification does not make the proposed rules substantially different because the existing requirements remain and the changes only clarify requirements without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result because improvements for clarity are expected to be discovered during the pre-hearing comment period where the MPCA is reviewing the proposed rules alongside the comments provided.

Part 7012.0600 RECORD KEEPING

Correction of typographical error at part 7012.0600, subpart 4.

Subp. 4. **Environmental justice area status.** The owner or operator of an air toxics facility must keep records of whether the facility's location is in an environmental justice area. Census ~~block~~ tract status must be determined at least every two years, and records must be updated if the status changes.

58. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists at part 7012.0600, subpart 4. Subpart 4 provides when the owner or operator of a facility must keep records for environmental justice area status. Subpart 4 refers to Census blocks. MPCA typically uses Census tracts in mapping tools. The authorizing law in Minnesota Session Laws - 2023, Chapter 60, article 8, section 5, subdivision 1, clause (5) (H.F. No. 2310) defines “environmental justice area” using the term “Census tract.” A modification is needed in this subpart to match the rule language to the law.
59. The MPCA received two similar comments regarding this typographical error, as well.
60. **Morley-25 and Freeman-24:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated the MPCA should provide technical

clarification to “Clarify whether the proposed environmental justice area recordkeeping requirement should use census block, census tract, or another geography, and align it with the applicable statutory and cumulative impacts definitions. We believe that the term census tract, not census block, should be used in the rule.”

61. The MPCA proposes to correct this typographical error by removing “block” and replacing it with “tract.” Without removing the replacement, the requirement does not align with the terminology most frequently used by MPCA, including in existing maps used by the MPCA and the designed formats existing in the Session law directing this rulemaking. It is reasonable to correct typographical errors because doing so provides clarity and prevents confusion for all interested persons.
62. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirement remains the same and the change only corrects a typographical error without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

SONAR Exhibit 4

Corrections of typographical errors in SONAR exhibit 4 - Screening Threshold for Regulated Air Toxics Analysis (STRATA)

63. During the pre-hearing public comment period on the proposed rule, the MPCA determined a typographical error exists in in SONAR exhibit 4 – Screening Threshold for Regulated Air Toxics Analysis (STRATA). Within the STRATA, the air toxic group of “aldehydes” was marked as a HAP, indicated with an “x” in the HAP column. However, “aldehydes” as a group of pollutants are not a HAP. Therefore, a modification is needed to the SONAR exhibit 4, the STRATA. MPCA proposes to correct this typographical error in the Screening Threshold for Regulated Air Toxics Analysis (STRATA) spreadsheet under SONAR Exhibit 4. In the ‘Chronic Inhal. HB’ tab in the STRATA spreadsheet, MPCA proposes to remove the “x” from cell C14 to indicate that aldehydes are not a HAP.
64. Without removing the “x” where aldehydes are marked as a HAP, MPCA documents, including the STRATA that is incorporated by reference in the proposed rules at 7012.0300, subpart 1, are inconsistent. It is reasonable to correct typographical errors because doing so provides clarity and prevents confusion for all interested persons.
65. The MPCA finds this modification does not make the proposed rules substantially different because it was a typographical error and changes are needed to make sure that the classification of aldehydes as not a HAP needs to be consistent across the different health benchmarks. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

Corrections of chronic and acute value typographical errors in SONAR exhibit 4 - Screening Threshold for Regulated Air Toxics Analysis (STRATA)

66. During the pre-hearing public comment period on the proposed rule, the MPCA determined there is updated information related to the chronic and acute values exist in SONAR exhibit 4 – Screening Threshold for Regulated Air Toxics Analysis (STRATA). The air toxics that MPCA proposes updating are:

Chloroform (CAS # 67-66-3)

Dichloroethylene (1,1-) (Vinylidene chloride) (CAS # 75-35-4)

Methyl chloride (Chloromethane) (CAS # 74-87-3)

Methyl chloroform (1,1,1-Trichloroethane) (CAS # 71-55-6)

Methylnaphthalene,2-

Toluene (CAS # 108-88-3)

Vinyl acetate (CAS # 108-05-4)

MPCA proposes adding the chronic value of Methylnaphthalene,2- (CAS # 91-57-6) to the STRATA spreadsheet.

67. In SONAR exhibit 4 – STRATA spreadsheet, the MPCA proposes to update multiple entries in the ‘1hr Inhal. HB’ and ‘24hr Inhal. HB’ tab to account for proposed changes to the acute values used in the STRATA spreadsheet. In the ‘1hr Inhal. HB’ tab, the MPCA proposes removing row 37 as in the proposed changes, methyl chloroform now has a 24-hr IHB. In this same tab, the MPCA proposes to add a row underneath row 57, row 58, for the addition of the value for toluene. For this new row 58, MPCA proposes to update cell A58 to “108-88-3”, cell B58 updated to “Toluene”, cell C58 updated to “x”, cell D58 updated to “5000”, and cell E58 updated to “MDH VOC”. In the ‘24hr Inhal. HB’ tab, the MPCA proposes removing row 42 as in the proposed changes, toluene now has a 1-hr IHB. In this same tab, the MPCA proposes to add a row underneath row 34, row 35, for the addition of the value for methyl chloroform. For this new row 35, MPCA proposes to update cell A35 to “71-55-6”, cell B35 updated to “Methyl chloroform (1,1,1-Trichloroethane)”, cell C35 updated to “x”, cell D35 updated to “6000”, and cell E35 updated to “MDH VOC”.
68. In SONAR exhibit 4 – STRATA spreadsheet, the MPCA proposes to update multiple entries in the ‘Chronic Inhal. HB’ tab. Regarding chloroform (CAS # 67-66-3), the MPCA proposes to update cell D81 to “2.00E+00”, cell E81 updated to “MDH VOC”, cell F81 updated to “Chronic”, and “Y” removed from cell G81. For dichloroethylene, 1,1- (CAS # 75-35-4), the MPCA proposes to update cell D120 to “4.00E+00”. For methyl chloride (CAS # 74-87-3) MPCA proposes to update cell D201 to “6.00E+01”. For vinyl acetate (CAS # 108-05-4) the MPCA proposes to update cell D331 to “1.10E+03”. Finally, the MPCA proposes to add a row underneath row 214, row 215, for the addition of the value for methylnaphthalene, 2-. For this new row 215, MPCA proposes to update cell A215 to “91-57-6”, cell B215 updated to “Methylnaphthalene, 2-”, cell C215 updated to “x”, cell D215 updated to “MDH VOC”, and cell F215 updated to “Chronic”.
69. Without these changes, the sources of information are inconsistent with the most recent source of inhalation health benchmarks and do not follow the hierarchy listed in proposed rules at part 7012.0560, subpart 1, item G. It is reasonable to make these changes because doing so maintains consistency, provides clarity, and prevents confusion for all interested persons.
70. The MPCA finds this modification does not make the proposed rules substantially different because these changes are needed to make sure that the STRATA contains the most up to date information and remains consistent with the hierarchy of data sources within the rules at part 7012.0560, subpart 1, item G. This modification is within the scope of the “Subject of Rules” Chapter 7012 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

General comments

The MPCA received 10 general comments that were not specific to any rule part which are summarized and responded to below.

General comments

71. **Ryks-2:** Brian Ryks from Metropolitan Airports Commission stated, “MAC strongly encourages the MPCA to revise its Proposed Rules to narrow the scope of regulated pollutants and to seek ways to mitigate the regulatory burden on this area’s critical economic drivers.”
72. **MPCA Response:** The MPCA respectfully disagrees that the scope of regulated pollutants should be narrowed. The screening threshold analysis evaluate pollutants, also referred to as air toxics, that are included in the emissions inventory. The MPCA defines the term “air toxics” in rule and also clarifies the meaning of air toxics on page 35 through 37 of the SONAR. The screening threshold analysis and subsequent STRATA spreadsheet only include air toxics that are defined by this proposed rule. More information is found on page 76 of the SONAR. For an AERA, the pollutants evaluated would be air toxics that have an inhalation health benchmark. More information about inhalation health benchmarks used in an AERA can be found on pages 116 through 119 in the SONAR. The MPCA believes that from the thousands of pollutants that this rule could regulate, the list provided for the screening threshold analysis and AERA is sufficient to protect human health and the environment, but not overly burdensome to facilities. Justification for the list of pollutants is found on page 76 in the SONAR.
73. **Morley-12 and Freeman-11:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “The SONAR’s cost analysis appears to understate the likely burden of the rule, particularly for facilities that do not screen out at Stage 1. MPCA estimates that a screening threshold analysis could take 5 to 50 hours and cost \$421 to \$4,206, despite the fact that its own survey responses reported a median screening cost of \$7,500 and some estimates above \$50,000. The SONAR also acknowledges that 131 to 178 facilities may be above screening thresholds and need either a CDP or AERA. For AERA, the SONAR estimates can be read as substantially lower than the experience of facilities that have completed complex toxics modeling. The AERA work for large or complex facilities can involve significant data collection, protocol development, model development, quality assurance, consultant time, MPCA review, iteration, and reporting. For some facilities, the cost to prepare an AERA has exceeded \$500,000, not including related source emissions testing, and the process took over two years before the MPCA deemed it complete. The SONAR also recognizes that cumulative costs could reach \$80,325 without accounting for employee training, workflow changes, operational changes, installation of new or modified equipment, and permit application fees. Those omitted or deferred costs are still foreseeable consequences of the rules. Rules that require CDPs, AERAs, ATRPs, source testing, process emissions monitoring evaluations, controls, permit amendments, and public notification should evaluate those costs as part of the full compliance pathway, not just the first-year screening obligation. MPCA should revise its cost and implementation analysis to account for:
 - complex individual and capped permit facilities;
 - facilities with many emissions units, materials, stacks, and pollutants;
 - consultant and engineering costs;
 - source testing and CEMS feasibility evaluation;
 - permit amendment fees and staff time;
 - control equipment procurement and installation;

- operational restrictions or production changes;
- public notification costs;
- repeated screening and additional screening triggers; and
- MPCA review workload across permitting, compliance, risk assessment, emissions inventory, small business assistance, and environmental justice staff.”

74. **MPCA Response:** The MPCA takes these comments seriously and re-examined its cost estimates in consideration of all the compliance steps that may be associated with the proposed rule. The MPCA acknowledges that it had very limited information from the regulated community to use to estimate likely compliance costs. The MPCA specifically requested input from regulated parties and consultants that may provide services for technical, outreach, or engagement support for businesses. As described in the SONAR (page 40 and page 233), in July 2025 the MPCA sought comments during an informal comment period using an anonymous survey tool to 16,151 subscribers of the air toxics regulations rulemaking and environmental justice issues lists, asking regulated parties to provide their expected costs and work hours for each potential compliance step for the proposed rule.
75. Only 29 respondents provided quantitative estimates about the time and financial cost that would be required for each compliance step they expected to need to complete, including a screening threshold analysis, an Air Emissions Risk Analysis (AERA), and other potential compliance steps. These 29 respondents comprised holders of a variety of permit types, including registration option D permits, capped and general permits, and others. While this was useful information for the MPCA to use to estimate likely compliance costs, it was too small a sample size to extrapolate an estimate of the likely compliance costs for the entire population of facilities subject to the rule with a high degree of confidence and statistical significance. Thus, to produce the most reasonable estimates of likely compliance costs given the limited information, the MPCA sought to triangulate the information in the survey responses with its own analysis of the expected costs of all the potential actions that regulated permittees may have to do to comply with the proposed rule. The ways that the MPCA estimated likely costs of each possible compliance step are outlined in the SONAR; the estimated number of hours in the MPCA’s analysis needed for each possible compliance step were based on informal consultation with MPCA technical staff, drawing on institutional knowledge and operational expertise.
76. As these commenters indicated, the survey responses on the expected time and cost for a screening threshold analysis included median values of 30 hours and \$7,500, respectively. While the 30 hours time estimate gleaned from the survey responses aligns reasonably well with MPCA’s estimates from its own analysis of 5 to 50 hours, as the commenters pointed out, the estimates of financial cost of a screening threshold analysis gleaned from the survey analysis do not exactly align with the MPCA’s estimates from its own analysis of screening threshold analysis costs of \$421 to \$4,206.
77. There was evidence in the survey respondents that the estimated screening threshold analysis cost gleaned from these responses may be an overestimation. Notably, survey respondents were asked to provide both estimates of staff and consultant time (in hours) along with the costs (in dollars) for conducting a screening threshold analysis. Dividing the median cost by the median number of hours gleaned from the survey responses equates to \$250 per hour, which the MPCA explained in the SONAR is likely to exceed the average cost per hour for either a regulated facility’s own staff or an

external consultant. The MPCA acknowledges that this apparent mismatch between dollars and hours may to some degree reflect other costs associated with a screening threshold analysis, besides internal staff time and paid consultants. However, the MPCA does not expect these additional costs to be excessive and expects the bulk of compliance costs for a screening threshold analysis to result from paying internal staff and external consultants for their work.

78. The MPCA considered both of these sources of information – the survey responses from the regulated community and the MPCA’s own analysis of likely compliance costs – when considering the likely costs of a screening threshold analysis. The MPCA acknowledges that estimating compliance costs for a screening threshold analysis as well as for other compliance steps entails a high degree of uncertainty, and the MPCA did the best it could with the limited information in order to fulfill its statutory responsibility under Minn. Stat. § 14.131 to estimate “the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals” to the extent the agency, through reasonable effort, can ascertain this information.
79. To assess the possible compliance costs for regulated facilities that need to complete an AERA, the MPCA had even less information from the survey to the regulated community. Only four respondents provided estimates of the time and cost expected to complete an AERA. From this very small survey sample, the MPCA gleaned median estimates of 45 hours and \$20,250 to complete an AERA. As the commenters point out, for some facilities, particularly large or complex facilities, the cost of an AERA may be considerably higher than the averages estimated from both the survey and the MPCA’s own analysis. For other regulated facilities, the cost is likely to be considerably lower than the average. Starting on pages 161 and 173, the SONAR includes discussion of several proposed methods in the rules to limit costs for facilities. The rules offer multiple possible compliance pathways to provide facilities the flexibility to determine which pathway makes the most sense and is the most cost effective. Moreover, starting any compliance pathway with a screening analysis, as the rule directs, reduces costs for low-emitting facilities.
80. As stated above, MPCA’s statutory responsibility to estimate probable costs of complying with the proposed rule does not require a level of detail that would anticipate all the types of costs that compliance for any individual regulated facility may entail, nor must the MPCA try to estimate business decisions that regulated permittees may make in response to the proposed rule. In particular, the MPCA cannot account for variations in site or facility-specific costs. With the information it had to estimate compliance costs, the MPCA did as best it could to estimate a range of such costs while also acknowledging the high level of uncertainty inherent in those estimates.
81. The MPCA’s SONAR reflects a reasonable effort to provide “sufficiently specific” descriptions of the probable costs borne by “identifiable categories of affected parties” as required by Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 1. The SONAR projects costs with specific values and estimates allowing interested persons to prepare evidence in favor or in opposition. “The requirement that an agency analyze its own costs and those of impacted parties is not intended to be onerous,” but a reasonable effort that adequately previews the agency’s intentions, evidence, and rationale. *See Court of Administrative Hearings, In the Matter of the Proposed Rules Relating to K-12 Academic Standards in Health*, Minnesota Rules, Chapter 3501, CAH Docket No. 65-9005-

General support

The MPCA received two comments of general support from two individual commenters. The MPCA additionally received a letter of support from Conservation Minnesota, signed by 610 community members.

82. **Millen-1:** Ted Millen stated, “I support the Minnesota Pollution Control Agency’s efforts to establish a clear and science-based framework for regulating air toxics. The proposed Chapter 7012 rules appear to provide a more consistent approach to emissions monitoring, reporting, testing, and permitting oversight, particularly in areas where residents may face disproportionate exposure risks. The use of health benchmarks, risk-based thresholds, and enhanced compliance requirements has the potential to improve transparency and public confidence in the state’s air quality program.”
83. **Paulsen-1:** Nels Paulsen with Conservation Minnesota submitted a letter with 610 signatures that supported the statement, “I support the MPCA implementing rules that improve the air quality for all communities in Minnesota.”
84. **Biewen-1:** Todd Biewen stated, “I am writing in support of new Air Toxics Regulatory Rules within the Twin Cities 7 county metro area. After reviewing the draft rule and statement of need and reasonableness, these observations summarize my support for this important expansion of Minnesota's regulation of harmful air toxics: 1) MPCA has statutory authority for environmental regulation in Minnesota. 2) The Minnesota Legislature has directed the MPCA to complete this rulemaking. 3) Federal treatment of air toxics regulation is lacking site specific review within communities. 4) Legislative direction was given to MPCA because it recognizes Minnesota's air quality program is deficient. 5) Without an air toxics regulatory rule, air toxics are not adequately controlled in many communities, putting the public and environmental health at risk. 6) Air toxics pose the greatest risk in communities where population density is greatest, where other sources of pollution, such as roadways, contribute additional pollution, and where Environmental Justice communities reside. 7) The rules as drafted are reasonable. 8) The MPCA has looked extensively at air toxics regulations in other states and local jurisdictions, and has incorporated proven ideas from these other states into these draft rules. 9) The rulemaking process has included thorough and careful engagement with all partners, with the public, community groups, businesses, and facility owners. 10) The rules as drafted will present new burdens for regulated parties, but the draft rule does a good job of reducing burden by tying new requirements to existing features of the air quality program that are already familiar to Minnesota businesses. These existing features include air toxics reporting processes, AERA, MNRisks, permitting processes, recordkeeping requirements, air monitoring, and community involvement practices. 11) Finally, Minnesota needs the protections these new rules will bring. Site specific review of air toxics within our neighborhoods is overdue and is precisely why MPCA was directed to prepare these new requirements.”
85. **MPCA response:** The MPCA appreciates the strong public support for the full implementation of the Air Toxics Regulations rules.

Comments concerning Interactions with Federal Regulations

86. **Ryks-1:** Brian Ryks from Metropolitan Airports Commission stated, “MAC is concerned that the additional level of requirements, such as the possibility of having to create and implement an Air Toxics Reduction Plan, and a regulatory scope that exceeds pollutants regulated by the federal government, could discourage aviation-related businesses from investing in new or expanded facilities at MSP or other MAC airports. The loss or decline of these aviation-related facilities would

blunt the MAC's statutory mandate and stunt economic growth and the associated high-paying jobs in Minnesota."

87. **MPCA Response:** The proposed rules regulate air toxics, including but not limited to the 188 HAPs, whereas the part 61 and part 63 Federal standards are only designed to regulate emissions of the 188 HAPs. Apart from HAPs, Minnesota Statute 162.062 define air toxics as:
- Chemicals reported as released into the atmosphere by a facility located in the state for the Toxic Release Inventory under the federal Emergency Planning and Community Right-to-Know Act, United States Code, title 42, section 11023, as amended;
 - Chemicals for which the Department of Health has developed health-based values or risk assessment advice;
 - Chemicals for which the risk to human health has been assessed by either the federal Environmental Protection Agency's Integrated Risk Information System; or
 - Chemicals reported by facilities in the agency's most recent triennial emissions inventory.
88. The session law did not specify that the MPCA must only evaluate HAPs. Therefore, based on the definition of air toxics, the MPCA must regulate more than the federal HAPs to comply with Minnesota law.
89. The MPCA acknowledges in the SONAR that the cost burden of complying with the proposed rule could incentivize regulated businesses to either move their facilities out of the seven metropolitan counties or not establish their operations in the seven metropolitan counties (SONAR, page 228). The Minneapolis-Saint Paul International Airport and the six other airports that are owned and maintained by the Metropolitan Airports Commission are all within the seven metropolitan counties and are thus subject to compliance with the proposed rule. Thus, as the commenter points out, this rule could have some bearing on aviation-related businesses' decisions to establish or expand facilities at these airports. However, as the MPCA states in the SONAR, the expectation that businesses subject to the proposed rule would make initial establishment or relocation decisions outside the seven metropolitan counties due to the proposed rule is highly speculative and the MPCA does not expect the proposed rule to be a substantial motivating factor for such business decisions. There are numerous economic factors that incentivize where the businesses that are regulated by the proposed rule establish and conduct their operations, and the MPCA does not expect the costs of compliance with the proposed rule to play a big role amidst the myriad of other factors that motivate and incentivize the decisions of these businesses. The MPCA believes that this unlikelihood is particularly the case for aviation-related businesses that conduct their operations at airports due to the fact that the airports are fixed in place and thus it is less of an option for an airport-based business to choose to conduct their operations elsewhere. Hence, relative to other businesses whose operations are not tied to a particular location, aviation-related businesses' decisions are even less likely to be motivated by having to comply with the proposed rule.
90. In addition to the economic aspects, the statutory mandate for MAC includes: "assure residents of the metropolitan area of the minimum environmental impact from air navigation and transportation," and "promote the overall goals of the state's environmental policies. . . . To achieve these purposes, the corporation shall cooperate with and assist . . . the Pollution Control Agency. . . ." Minn. Stat. § 473.602. The MPCA believes that the proposed rules help the MAC achieve these portions of the statutory mandate.

Concerns about implementation

91. **Karbo-6:** Mike Karbo from the American Petroleum Institute stated, "The proposed rule establishes

a sequence of technical evaluations that may include screening analyses, AERAs, Compliance Determination Protocols, Air Toxics Reduction Plans, agency review, and permit modifications. API is concerned that the cumulative effect of these requirements could substantially extend permitting and project implementation timeframes, particularly for new facilities and facility modifications.

API recommends that MPCA:

- evaluate the expected impact of the proposed requirements on permit processing timelines;
- clarify expected agency review timeframes for AERAs, Compliance Determination Protocols, and Air Toxics Reduction Plans;
- ensure that compliance schedules account for the availability of qualified modelers, risk assessors, and agency review staff; and
- consider streamlined review where facilities have already completed comparable analyses or are subject to existing federal hazardous air pollutant requirements.”

92. **MPCA Response:** The MPCA understands that regulated parties have concerns about how the proposed air toxics rule will impact permitting timelines. There are several triggers within the rule that require a permittee or applicant to conduct a screening analysis and subsequent analyses that may be needed depending on screening results. The first is the initial deadlines under part 7012.0200. These deadlines are not tied to any specific permit application and are unlikely to impact permitting timelines.
93. The second trigger would be those instances under part 7012.0170 that require an additional screening analysis. Again, these required analyses are not tied to any specific project or permit and are only required upon notification from the MPCA commissioner so it is unlikely an analysis required under part 7012.0170 would impact permitting timelines.
94. The last trigger for a screening analysis is a permit application for a new air toxics facility, which is defined under part 7012.0050, subpart 30, as an air toxics facility that applies for a new total facility air emission permit. For new air toxics facilities submitting a total facility permit application more than three years after the effective date of the rule, an AERA report is required to be included in the application. The MPCA recognizes that this will likely increase the time required to prepare a complete permit application. The MPCA estimates that the AERA process takes between one to two years to complete. However, it is unlikely that the timeframe from MPCA receipt of a complete permit application to permit issuance will be affected. Additionally, during the permit application preparation, the applicant has the opportunity evaluate and change the proposed facility operation such that the screening thresholds will not be exceeded, eliminating the need for any additional analysis.
95. Finally, the MPCA wishes to make clear that facility modifications do not automatically trigger any sort of air toxics review. In summary the only triggers for air toxics analysis, all of which begin with the screening step are: 1) immediately after implementation according to the timelines under proposed part 7012.0300, plus the repeated screening every 5-10 years as stated under proposed part 7012.0160; 2) Upon MPCA notification as outlined in proposed part 7012.0170; and 3) when a new air toxics facility submits an application for a total facility permit.
96. **Karbo-8:** Mike Karbo from the American Petroleum Institute stated, “The SONAR discusses the need for an air toxics program generally but provides limited information regarding the incremental public health benefits expected from this specific proposal.

API recommends that MPCA quantify, to the extent practicable:

- anticipated reductions in cancer and non-cancer risk;
- pollutants expected to drive risk reductions;
- the number of facilities expected to require additional controls;
- anticipated reductions in emissions; and
- the relationship between expected benefits and implementation costs.

Providing this information would strengthen the administrative record and demonstrate that the proposed requirements are appropriately tailored to achieve measurable public health improvements.”

97. **MPCA Response:** Incremental public health benefits are difficult to quantify, even if future emission reductions were known. However, the intent of this rulemaking as directed by the Legislature is to identify and ensure facilities are not exposing community members to air toxics at elevated risk levels. As stated in the SONAR, this rule is needed to improve the understanding of health risks from air toxics emitted by facilities in order to regulate and reduce air toxics emissions’ impacts. The air toxics emissions reporting rule is applicable to most facilities with mandatory air toxics reporting starting in 2027 for emissions released in 2026. Impacts from the rule would not be available until after rule promulgation and after a few years of reporting after 2026 when air toxics reporting is mandatory. The MPCA discussed the general health risks from air toxics on pages 5 through 7 in the SONAR. More information on emissions reporting can be found on page 17 in the SONAR. Page 51 of the SONAR describes an analysis that estimates 23% - 32% of facilities may be above screening threshold values.
98. The MPCA is unable to estimate how many facilities would require additional controls. However, based on table 4 in the SONAR (pages 50 and 51) the MPCA estimates between 131 to 178 facilities could be above screening threshold values. Under the proposed rules, a facility has the option to either develop a CDP or complete an AERA. At this time the facility may choose to install control equipment, but it is not a requirement of either a CDP or an AERA. Emission reductions or other changes would be required for facilities that cannot demonstrate acceptable risk levels through an AERA.
99. Using data from MNRISKS, which uses reported air toxics data, the MPCA was able to investigate facilities that may be posing an increased risk, through a program called Facility Focus. The MPCA created a list of facilities that may be potentially posing an increased risk. This list also contains one to two pollutants that are driving the risk at each facility. The Facility Focus program has been a voluntary program for facilities for the last four years. Results from the current program are found on page 33 in the SONAR. From the Facility Focus program, the MPCA learned that several facilities had reported inaccurate emissions data and once corrected indicated that the facilities didn’t pose a risk to human health. The MPCA expects that with the results from the voluntary Facility Focus program and with the adoption of the new Air Toxics Reporting rule, the proposed rules would provide more accurate emissions and risk information and will be able to identify risk driving pollutants at a facility through the screening threshold analysis. Once this information is available, it may allow for better understanding of health benefits from the proposed air toxics regulations rules.
100. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, “API also recommends that MPCA provide additional information regarding anticipated implementation costs, workload, and

agency review timelines."

101. **MPCA Response:** MPCA appreciates concerns around implementation costs, workload, and agency review timelines. The MPCA provided estimations of anticipated implementation costs based on information provided to the MPCA from informal comment requests as well as in a survey sent to small businesses through an MPCA email listserv for the Small Business Environmental Assistance Program. The SONAR provides information regarding anticipated costs starting on page 164.
102. *Minn. Stat.* § 14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the Agency in meeting those objectives. Per this statute, there are several nuanced business decisions facilities may make in complying with the proposed rules. The SONAR provides more information about this starting on page 173. Because of the flexibility in compliance options, such as choosing to develop either a compliance determination protocol or air emissions risk assessment protocol, timelines and costs will vary across facilities.
103. MPCA recognizes that there may be additional uncertainty in both timelines for project planning and budgeting consideration. MPCA will consider providing review timeline information externally once MPCA determines this information through implementation of the rules.
104. **Morley-12 and Freeman-11:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, "MPCA should also reconsider the 60-day additional screening deadline. The proposed rule allows a facility to respond within ten days with information MPCA may not have considered, but the rule does not clearly state whether that response tolls or extends the 60-day deadline. MPCA should clarify that the deadline is tolled while MPCA considers the response and should require additional screening only for clearly defined material changes or new information that could reasonably affect screening results."
105. **MPCA Response:** The 60-day calendar deadline in the rule for the additional screening threshold analysis in part 7012.0170, subpart 2, item B does not change when an owner or operator submits additional information under 7012.0170, subpart 2, item C. As the comment phrases it, the deadline is tolled while MPCA considers the response.
106. The MPCA agrees with the commenter and believes that the proposed rules in part 7012.0170 do only require additional screening for clearly defined material changes or new information that could reasonably affect screening threshold analysis results. The conditions contained in the proposed rules that will require an air toxics facility to complete an additional screening threshold analysis are based on when the parameters of the facility's analysis may have changed from the most recent screening threshold analysis or when information may be missing or was inaccurate, as those changes could lead to an exceedance of a screening threshold value. Starting on page 68, the SONAR provides more information on why the parameters in the proposed rules are reasonable.
107. **Freeman-23:** Chris Freeman from Cordia Energy Center Minneapolis stated, "MPCA should consider lessons from prior screening exercises. Cordia understands that MPCA conducted screening modeling in approximately 2005 in support of a different rulemaking and that conservative screening assumptions identified numerous potential issues that required substantial follow-up by MPCA and facilities, with few material issues ultimately identified. That experience illustrates the risk of designing a screen that creates too many false positives. STRATA should be designed to focus agency and facility resources on real risk drivers."
108. **MPCA Response:** The MPCA believes the commenter is referring to the initial analysis of MNRISKS

data compared to monitoring data. MNRISKS is the Minnesota risk screening tool that is used to understand cumulative impacts of air pollution on Minnesotans. MNRISKS is also defined in the proposed rule under part 7012.0055, subpart 29. The MPCA released the first MNRISKS around 2005, with the MPCA conducting a peer review before its release. Pratt et al. (2011) published an article "Validation of Novel Air Toxic Risk Model with Air Monitoring" that was a study that took the results from MNRISKS and compared the results to ambient outdoor air monitoring data. The study found that there was reasonable agreement between available measurements and model predictions. More information on the study can be found on page 18 in the SONAR.

109. The MPCA agrees that the STRATA should help focus resources on risk drivers and believes that it will do that. The MPCA completed a preliminary analysis to estimate how many facilities could be above screening threshold values. The methodology for how the screening threshold values were developed is found in SONAR exhibit 2. Screening threshold values are assessed in the STRATA spreadsheet. Pages 51 and 52 in the SONAR describe this analysis and the results. Additionally, Table 4 in the SONAR (pages 51 and 52) displays how many facilities by permit type are estimated to be above screening threshold values. From the results of this analysis, around 23-32% of facilities may be above screening threshold values. This analysis validates that not all facilities are expected to be above screening threshold values, thus the screening threshold values established are not too conservative and the use of screening threshold values in the STRATA focuses work onto risk driving pollutants.

Comments specific to the Proposed Rules

The MPCA received 99 comments regarding specific rule parts which are summarized and responded to below.

PART 7012.0050 APPLICABILITY; OTHER LAW

Residents in Environmental Justice Areas

110. **Morley-1 and Freeman-1:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, "The Legislature directed MPCA to develop rules governing facilities that emit air toxics in the seven-county metropolitan area and required MPCA to establish testing, monitoring, reporting, recordkeeping, and inspection requirements that reflect, among other things, "any exposure of residents of an environmental justice area to the facility's air toxics emissions." That language should shape the rule's design and implementation. The proposed rule applies broadly to permitted facilities in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties, subject to specified exemptions. The SONAR estimates that approximately 523 facilities would remain subject to the proposed rule and that 131 to 178 facilities may be above screening thresholds depending on assumptions regarding distance to property line. The SONAR also states that MPCA expects approximately 5.2 FTE to implement the proposed rule. Those numbers raise a fundamental implementation concern. A broad program that pushes a large number of facilities into CDPs, AERAs, inspections, potential permit amendments, and possible air toxics reduction plans will consume MPCA and facility resources without necessarily focusing first on the locations, pollutants, and sources most relevant to resident exposure in environmental justice areas. Cordia is concerned that this approach could divert scarce agency resources away from the communities the statute is intended to prioritize. MPCA has decades of air toxics information, including emissions inventory work, monitoring data, MNRISKS, and other technical analyses. MPCA's public materials have repeatedly described air toxics risk in terms of specific pollutants, locations, and source categories. The rule should use those existing tools to

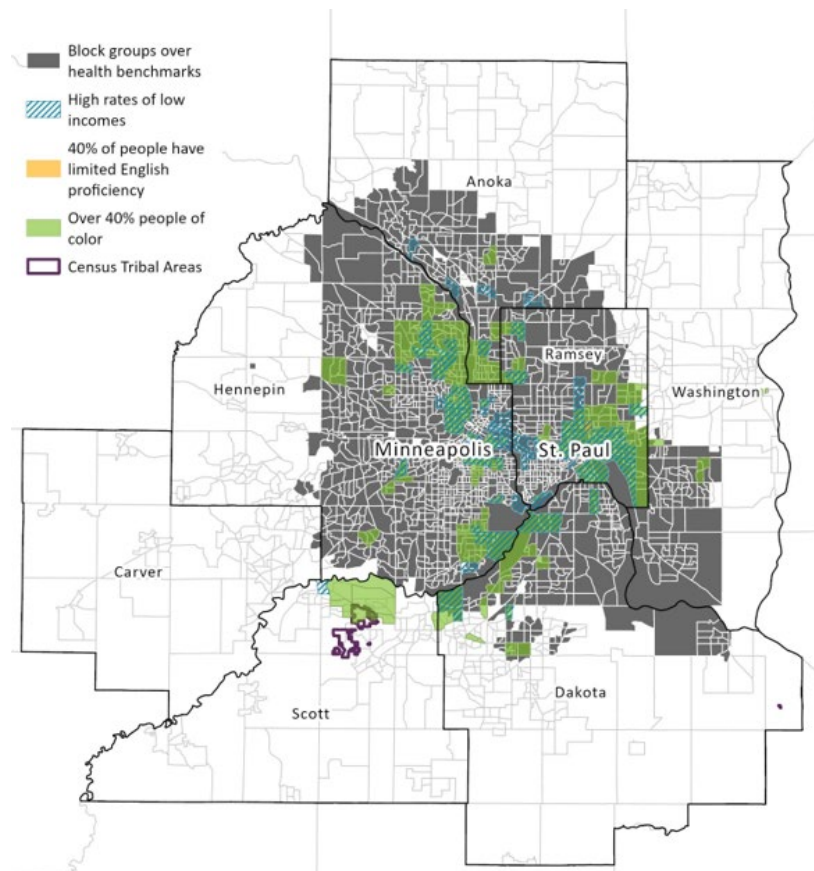
prioritize implementation. A targeted and sequenced approach would better protect public health by focusing first on the facilities and pollutants most likely to materially affect residents in environmental justice areas. Cordia requests that MPCA revise the rule or implementation schedule to prioritize:

- facilities located in environmental justice areas;
- facilities within a defined distance of environmental justice areas where resident exposure is plausible;
- pollutants and source categories that MPCA's existing data identify as higher contributors to risk;
- facilities that have not already been evaluated through an MPCA AERA, federal NESHAP/MACT framework, residual-risk review, or other toxics analysis; and
- facilities whose emissions and dispersion characteristics indicate a realistic possibility of resident exposure above health-protective levels.”

111. **MPCA Response:** The proposed rules were written to meet the intent and requirements included in the Minnesota Session Law — 2023, H.F. No. 2310, Chapter 60, article 8, section 5. The session law required the MPCA to regulate air toxics emitted by air permitted facilities in the seven metropolitan counties of Minnesota. The rules are written in a manner that addresses facilities located throughout the seven-county metropolitan area, including those that are located in environmental justice areas. Minn. Session Law — 2023, H.F. No. 2310, Chapter 60, article 8, section 5, subd. 4(b)(3) directs the agency to ensure that the rules reflect any exposure of residents of an environmental justice area to the facility’s air toxics emissions. Instead of using geographical areas and facility locations to prioritize work required in the proposed rules, the MPCA uses a screening analysis based on risk from air toxic emissions to prioritize which facilities do further analysis and possibly make operational changes. This is consistent with the Session law, which directed the MPCA to regulate air permitted facilities emitting air toxics and amend existing air quality permits. This framework also aligns with the direction to develop rules that reflect any exposure of residents of an environmental justice area to the facility’s air toxics emissions because all facilities must engage in the screening analysis and any applicable subsequent requirements. The proposed rules were not limited to environmental justice areas because residents of environmental justice areas are also impacted by air toxics emissions from facilities outside environmental justice areas. Starting on page 10, the SONAR includes more discussion on why the proposed rules were not limited to environmental justice areas.

112. The intended outcome of the proposed rulemaking is to regulate facilities emitting air toxics that may increase health risks and thus pose risks to human health and the environment throughout the seven metropolitan counties, as required by the session law. As noted in the Air Toxics Regulations SONAR on page 5, people living in 77.7% of block groups (subsets of a census tract) in the seven metropolitan counties are exposed to air toxics pollution that is above health benchmarks. An estimated 25% of these over-benchmark block groups are located in areas of concern for environmental justice. See Figure 2 from SONAR page 6 below.

Figure 2. 2017 MNRISKS modeling shows seven metropolitan counties emissions data from voluntarily reported air toxics and environmental justice areas of concern.



113. The SONAR further addresses the number of people living in the seven metropolitan county area that may experience reduced emissions of air toxics near them due to these proposed air toxics regulations on page 7. From the SONAR: “According to the Minnesota State Demographic Center’s PopFinder1, this proposed rule will affect the approximately 3,222,455 residents who live in the seven metropolitan counties of Minnesota. As of 2023, there are 5,800,386 residents living state-wide in Minnesota, therefore, this rulemaking will improve the MPCA’s understanding of air toxics and health risks for 56% of the state’s population. As a result, the proposed rules will regulate the air toxics emissions that over half of Minnesotans are exposed to.”

114. These commenters suggest that: “a targeted and sequenced approach would better protect public health by focusing first on the facilities and pollutants most likely to materially affect residents in environmental justice areas”. However, this was not the direction given to the agency from the legislature.

115. The MPCA appreciates the commenters’ concerns regarding implementation costs, workload, and agency review timelines. The MPCA was specifically directed and funded to establish these air toxic regulations. As noted on page 160 of the SONAR, “the State Legislature provided funding from the environmental fund to cover staffing for this proposed rule and the air toxics reporting rule. The

MPCA estimates \$175,000 per FTE. Based on this FTE estimate and the funding provided by the State Legislature, the MPCA will have 6.3 FTE to implement these two rules. There will be some overlapping responsibilities for staff implementing both of these rules. However, MPCA estimates approximately 5.2 FTE to implement this proposed rule, costing \$910,000. The MPCA anticipates adding staff to air permitting, compliance and enforcement, risk assessment, environmental justice, emissions inventory, and small business assistance programs to implement these proposed rules.”

116. These commenters also suggested that the MPCA should use existing tools to prioritize implementation. As stated on SONAR pages 58 through 62 and 74 through 88 in the SONAR, all facilities subject to the proposed rule must complete an initial screening threshold analysis. From this initial analysis there may be additional or repeated screening threshold analyses that the facility must complete.
117. The facility may use a completed AERA in lieu of additional screening threshold analysis under part 7012.0070. More information on this exemption is found on pages 55 through 57 in the SONAR. The MPCA is unable to provide any exemptions, more than the exemptions by permit type under part 7012.0060 before the initial screening threshold analysis, as the MPCA does not have current or accurate data to assess the risks at every facility subject to this proposed rule.

PART 7012.0055 DEFINITIONS

Acceptable Risk Levels

118. **Kreidler-5:** Mark Kreidler stated, “The rule does not specify numerical acceptable risk levels. Without explicit values, implementation may be inconsistent, and facilities may interpret acceptable risk differently. Many states use a one-in-one-million cancer risk as the benchmark for negligible risk, particularly in densely populated or sensitive areas. Requested change: The rule should specify numerical acceptable risk levels directly in rule text. Cancer risk should be set at one in one million. The non-cancer hazard index should be set at or below one for all pollutants. The acute hazard quotient should be set at or below one for all pollutants. Clear numerical standards ensure consistent application and stronger public health protection.”
119. **Satre-5:** Dave Satre stated, “The rule stops short of specifying numerical acceptable risk levels. Without explicit values, implementation may vary, and facilities may interpret what counts as acceptable risk differently from one another. Many states rely on a one-in-one-million cancer risk benchmark to define negligible risk, especially in densely populated or sensitive areas. Requested change: The rule should establish numerical acceptable risk levels directly within the rule text. Cancer risk should be capped at one in one million. The non-cancer hazard index should be held at or below one for all pollutants. The acute hazard quotient should likewise be held at or below one for all pollutants. Clear numerical standards would promote consistent application and stronger protection of public health.”
120. **MPCA Response:** The MPCA agrees that clear numerical standards should be provided in the rule. Acceptable risk levels have been determined and numbers assigned to these risk levels by the MPCA and are listed in part 7012.0560, subpart 3 of the proposed rule. The acceptable risk levels are: cancer risk of 1 in 100,000 (round to one significant figure); hazard quotient of 1 (rounded to one significant figure) for acute, subchronic, and chronic inhalation risk; hazard quotient of 1 (rounded to one significant figure) for farmer noncancer multipathway risk, urban gardener noncancer multipathway risk, resident noncancer multipathway risk; risk of 1 in 100,000 (round to one significant figure) for farmer cancer multipathway risk, urban gardener multipathway risk, and resident cancer multipathway risk; and hazard index of 1 (without rounding down to one significant figure) for acute, subchronic, and chronic noncancer health endpoints. The justifications for the

numerical values for each of the acceptable risk levels can be found in the SONAR, pages 178 through 182.

PART 7012.0070 EXEMPTION; AIR EMISSION RISK ANALYSIS IN LIEU OF SCREENING THRESHOLD ANALYSIS

Exemption of sources

121. **Morley-7 and Freeman-7:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “the proposed rules exclude HAP emissions from an emissions unit for which a 40 CFR Part 63 standard has been adopted under Clean Air Act section 112(d) from the Stage 1 screening threshold analysis (Minn. R. 7012.0400, subp. 6). This reflects an important principle: facilities and units already subject to federal HAP regulations should not be forced to undergo duplicative analysis unless MPCA identifies a specific gap warranting additional review. The Stage 1 screening exemption is too limited and should be clarified. MPCA should allow the exemption to apply to all non-HAP toxics emitted from a source subject to a section 112(d) standard where the federal standards regulate the chemical class of HAPs. Many federal standards use surrogate pollutants, such as PM (for total metal HAP), VOC (for total organic HAP), or SO₂ (for total acid gas HAP), that effectively control the entire class of air toxics. MPCA should allow facilities to exclude the chemical class(es) of air toxics that the Section 112(d) standard addresses, in addition to all specific Federal HAP (Minn. R. 7012.0400, subp. 6). Federal HAP standards adopted in 112(d) impose emission limits, work practices, monitoring, recordkeeping, and reporting requirements across numerous source categories. Many MACT categories have also undergone EPA residual-risk and technology reviews. While the federal program is not identical to MPCA's proposed facility-specific risk framework, it is a mature regulatory structure specifically designed to reduce hazardous air pollutant emissions and address remaining risks. The proposed rule exempts certain HAP emissions from Stage 1 but appears to bring those same sources back into AERA if the facility proceeds to Stage 2. That approach undermines the efficiency of the Stage 1 exemption and may require facilities to remodel or re-evaluate emissions already addressed through existing programs. MPCA should either extend the exemption into AERA or clearly identify the circumstances in which a section 112(d) source must be included in AERA despite the Stage 1 exemption (Minn. R. 7012.0400, subp. 6; 7012.0550, subp. 2, item A; 7012.0560, subp. 1, items D, H, and I).”
122. **MPCA Response:** The MPCA respectfully disagrees that facilities or stacks subject to section 112(d) of the federal Clean Air Act should be excluded from an AERA. In the screening threshold analysis step, hazardous air pollutants from an emissions unit for which a standard has been adopted under section 112(d) of the federal Clean Air Act are exempt from the screening threshold analysis, but air toxics emissions that are not hazardous air pollutants must be included (part 7012.0400, subpart 6). More information on this exemption and justification can be found on pages 87 and 88 in the SONAR. The screening threshold analysis is individually looking at each air toxic and comparing the emissions from a facility of an individual air toxic to a screening threshold value for that individual air toxic. However, an AERA is looking at the cumulative risk of all pollutants emitted at the facility and not just individual pollutants. Excluding emissions of air toxics from an AERA leaves significant gaps in the protection of human health and the environment. More information as to why sources subject to section 112(d) of the federal Clean Air Act are included in an AERA can be found on page 99 of the SONAR.
123. The commenter has also stated that surrogate classes (PM, VOC, and SO₂) should be excluded from the AERA analysis. The MPCA disagrees that surrogate classes should be excluded from the AERA

analysis. The AERA estimates the risk from individual pollutants that are then summed across different exposure periods and health endpoints. Assessing individual pollutants, instead of using surrogates, can more accurately assess total risk when all pollutants are included in the AERA. As previously stated, the AERA assesses the cumulative risk at a facility. If any emissions are excluded from this analysis, then the estimated risk at a facility may be underestimated. Past and current AERAs do not exempt these sources from being included in an AERA. More information on the gaps of the current air toxics regulatory structure can be found on pages 7, 8, 14, and 15 in the SONAR.

Off-Ramp for Facilities

124. **Morley-24 and Freeman-22:** Andrew Morley from the Minnesota Chamber of Commerce stated, “MPCA should also provide an off-ramp for facilities with prior MPCA AERAs or equivalent risk analyses that remain representative of current permitted activities. Requiring a facility to repeat a costly AERA that has already been completed and reviewed does not materially improve public health unless facility operations, emissions, or surrounding receptors have changed in a way that could materially affect risk. The rules should allow prior analyses to satisfy or narrow the rules' requirements (Minn. R. 7012.0070; 7012.0560, subp. 4).”
125. **MPCA Response:** Proposed Minn. R. 7012.0560, subpart 4 provides that a previous AERA can be used if the AERA meets the criteria listed in items A through D under this subpart. The MPCA understands that the AERA process can be a lengthy process, therefore, the MPCA included language in the proposed rule to allow facilities to use previously completed AERAs. More information about when a previously completed AERA can be used is found on pages 126 and 127 in the SONAR.

PART 7012.0100 COMPLETE SUBMISSIONS

Reliance on facility self-reporting

126. **Lockwood-1:** Helen Lockwood stated, “7012.0100 (Air Toxics Emissions Inventory); 7012.0600 (Record Keeping); 7012.0550 (Reporting). The rule requires facilities to calculate emissions, maintain records, and submit inventories. The SONAR repeatedly describes facility-generated emissions estimates as the basis for screening and risk determinations. Improvement: Independent verification of emissions inventories for facilities with significant toxic emissions or a history of violations”.
127. **MPCA Response:** MPCA respectfully disagrees that third party verification is necessary. The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA conducts a QA/QC process on emissions data submitted by facilities. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F).
128. While the proposed rule does not require third-party audits, the MPCA has established processes for reviewing emissions inventories, modeling data, and other records, and for determining inspection frequencies. Inspections involve reviewing records, such as emissions estimates and other data, and verifying their accuracy and completeness. Some types of permit holders covered by the proposed rule are subject to unannounced routine compliance inspections. All types of permit holders covered by the proposed rule may be subject to random unannounced inspections, which may be more frequent if an owner or operator has repeated violations. If violations are identified through review of submitted data, inspection of a facility, or other means, the MPCA has authority

to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. Additionally, emissions inventories, modeling data, and other records are public data per Minn. Stat. 13.03, subdivision 1, and available to the public upon request per Minn. Stat. 13.03, subdivision 3.

PART 7012.0150 AIR TOXICS SCREENING THRESHOLD ANALYSIS

New Permit Application

129. **Lansing-1:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0150 Subpart 3: Does a facility submitting a new permit application have an option to make changes to the facility to lower air toxics emissions below the screening threshold values instead of moving directly to completing an AERA (similar to the compliance determination protocol option for existing facilities)?”

130. **MPCA Response:** Under the proposed Chapter 7012, an air toxics facility submitting a new total facility permit application must submit a screening threshold analysis certification with the application. An air toxics facility submitting a new total facility permit application that certifies it is below screening thresholds does not need to complete an AERA. An air toxics facility submitting a new total facility permit application that certifies it is above screening thresholds must complete an AERA.

An air toxics facility submitting a new total facility permit application that certifies it is above screening thresholds does not have an option to make changes to the facility to reduce air toxics emissions below the screening threshold values after submitting its application. However, prior to submitting a permit application an applicant has the opportunity to evaluate its design and proposed operation against the screening threshold values using the publicly available STRATA. An applicant for a new air toxics facility that is estimating actual emissions as required under proposed part 7012.0400, subpart 4 may wish to tailor its proposed operation and design such that its estimated actual emissions will be below screening threshold values in order to avoid the requirement to complete an AERA.

PART 7012.0160 REPEATED AIR TOXICS SCREENING ANALYSIS

Timeframe of Repeated Analysis

131. **Lansing-2:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0160 Subpart 3(B): We oppose the proposed rule language to allow a ten-year timeframe between repeated screening threshold analysis certification for facilities with a CDP, as compared with the shorter five-year timeframe for facilities that originally had emissions below screening threshold values. A repeated screening threshold analysis after ten years for an air toxic that was addressed by the CDP may be acceptable, but it should not be assumed that because the facility is addressing and reducing that/those air toxics that all air toxics are reduced. Because there are some air toxics not addressed by the CDP, the facility should be required to repeat the screening threshold analysis certification every five years, in alignment with the frequency requirement for facilities with all air toxics under the screening threshold values. It should also be noted that with frequent turnover at facilities, a longer timeline of ten years may not be advantageous because it will require a long recordkeeping lookback and challenges with consistency in calculation methods. It is our recommendation that this repeated screening threshold analysis certification frequency be changed to every five years, consistent with 7012.0160 Subpart 3(A).”

132. **Lockwood-ltr-5:** Helen Lockwood stated, “Facilities with repeated violations should face more frequent audits and inspections than facilities with strong compliance records. ~ 10 years is way too

long.”

133. **MPCA Response:** The reasoning for the ten-year timeframe is found in the SONAR on page 66. Additionally, if the facility’s emissions that are not included in the CDP have been demonstrated to show possible exceedances in screening threshold values through risk-based determinations under part 7012.0170, subpart 1, item D in the proposed rule, then the facility would have to complete an additional screening threshold analysis. Since proposed rule part 7012.0170 requires a facility to complete an additional screening threshold analysis outside of the repeated screening threshold analysis required by 7012.0160, subpart 3, the proposed rule language in 7012.0170 allows for additional screening threshold analyses before 10 years. Due to the proposed rule language in part 7012.0170, it is reasonable for facilities completing a CDP to rescreen every 10 years rather than every five years. Pages 67 through 70 in the SONAR describe the need for an additional screening threshold analysis and justification as to why an additional screening threshold analysis is needed.
134. Requiring an owner or operator to repeat the screening threshold analysis every five or ten years, as required under part 7012.0160, subpart 3 is not the only process for oversight by the MPCA to ensure compliance with the screening threshold values. The MPCA has established processes for reviewing and investigating submitted reports, such as those required under part 7012.0450, subpart 4, that identify deviations from compliance. These reports will be required from any owner or operator with a CDP, in addition to the ten-year timeframe to repeat a screening threshold analysis. If a submitted report identifies deviations from compliance, the owner or operator may be subject to enforcement actions requiring corrective actions to bring the facility back into compliance. Additionally, some types of permit holders covered by the proposed rule are subject to routine compliance inspections by the MPCA, which are more frequent than every ten years. All types of permit holders covered by the proposed rule may be inspected more frequently if the owner or operator has repeated violations.

Harmonization with Cumulative Impacts Rule

135. **Morley-9:** Andrew Morley from the Minnesota Chamber of Commerce stated, “Because the Air Toxics Regulation has a strong Environmental Justice dimension, see Laws of Minn. 2023, Ch. 60, Art. 8, § 5, subd. 4(b)(3) MPCA should expressly attempt to minimize duplication with the concurrent proposed Cumulative Impacts Rule (CAH Docket No. 21-9003-39398). Emissions regulated under the Air Toxics Regulations Rule should be presumptively excluded from the Cumulative Impacts Rule. The Chamber discusses this issue in more detail in its comments on the Cumulative Impacts Rule. It is critical that the Court of Administrative Hearings and MPCA fully consider the interaction of both rulemakings to reduce the FTE burden on the MPCA and administrative burdens on the regulated community.”
136. **MPCA Response:** The MPCA agrees that duplicative work should be minimized for all parties, where possible. The commenter refers to the proposed cumulative impacts rule that has not yet been promulgated. MPCA would like to note that these are two separate rulemaking directives (statute and session law) and two separate rules, and though they do share similarities, they each have their own geographic and permit type applicability, information requirements and outcomes. While the MPCA has included rules language to try to minimize duplicative work, this could not explicitly occur with the proposed cumulative impacts law until it is promulgated. With that, MPCA would like to note that there will be opportunities to use existing information between the two rules to avoid duplication.
137. One example where the proposed air toxics regulations rules aim to minimize duplicative work that may occur is in part 7012.0070 EXEMPTION; AIR EMISSIONS RISK ANALYSIS IN LIEU OF SCREENING

THRESHOLD ANALYSIS. Portions of this rule part provides an option for facilities that have recently completed an AERA to not have to duplicate work and also covers the situations where risks from air toxics may have changed since the last AERA submittal. The proposed cumulative impacts rule may also require facilities to complete an AERA. Part 7012.0070 allows facilities to possibly use these analyses to avoid completing the screening analysis for the proposed air toxics regulations rules. Page 56 of the SONAR includes more information about part 7012.0070. Page 127 of the SONAR includes information about part 7012.0560, subpart 4, on using a previously completed analysis. This subpart outlines the parameters for submitting a request to use a previously completed air emissions risk analysis to the commissioner for approval to meet the AERA requirements of these proposed rules.

PART 7012.0170 ADDITIONAL SCREENING THRESHOLD ANALYSIS

Cumulative Impacts Analysis

138. **Bakken-3:** Paul Bakken stated, “In proposed section 7012.0170 "ADDITIONAL SCREENING THRESHOLD ANALYSIS," Subp. D(2) there is a reference to a "cumulative impacts analysis." Are cumulative impact analyses only performed for the benefit of those living in environmental justice areas, or can other neighborhoods with a demonstrated long-term exposure (50+ years) to the accumulated deposition of heavy metal air toxics such as lead also benefit from this level of protection?”
139. **Lee-1:** Rebecca Lee stated in response to Bakken-3, “Agree. I live within the buffer zone of an EJ area as well as within a mile of a lead and other toxins emitter yet the 2 areas do not intersect. The lead emitter is literally 1/4 mile from being included in an EJ area. Why should Cumulative Impacts be tied to an EJ area when there have been repeated violations by this facility?”
140. **Lockwood-2:** Helen Lockwood stated, “In proposed section 7012.0170 "ADDITIONAL SCREENING THRESHOLD ANALYSIS," Subp. D(2) there is a reference to a "cumulative impacts analysis." Are cumulative impact analyses only performed for the benefit of those living in environmental justice areas or that 1-mile buffer area? We'd prefer this to change to include a wider buffer to include neighborhoods with a demonstrated long-term exposure (50+ years) to the accumulated deposition of heavy metal air toxics such as lead also benefit from this level of protection.”
141. **MPCA Response:** Proposed rule part 7012.0170 subpart 1(D)(2) references “a cumulative impacts analysis under part 4410.4300 or 4410.4400; Minnesota Statutes, section 116.07, subdivision 4a; or other applicable law and regulations.”
142. For current, existing laws that may require a cumulative impact analysis, and specifically those referenced above, only Minnesota Statute, section 116.07, subdivision 4a applies to a specific geographic area only. Types of cumulative impacts analyses are completed as part of environmental review under chapter 4410, as well; and depending on the project, those may be completed in any area, not just environmental justice areas.
143. There is another law on cumulative impacts that is currently proposed [CAH Docket No. 21-9003-39398], and not yet applicable to any regulated party or area. That law would only apply in environmental justice areas within the seven metropolitan counties and environmental justice areas within the cities of Duluth and Rochester.

Additional Screening Threshold Analysis

144. **Kreidler-2:** Mark Kreidler stated, “The triggers for additional screening threshold analyses are

broad but incomplete. The rule does not require re-analysis when toxicity values are updated, when ambient monitoring detects elevated concentrations, or when cumulative impacts change. Without these triggers, screening analyses may become outdated and fail to reflect current scientific understanding or real-world conditions. Requested Change: The rule should include mandatory triggers requiring additional screening threshold analysis when toxicity values such as inhalation unit risks or reference concentrations are updated by federal or state agencies, when ambient monitoring detects elevated concentrations of any air toxic, when cumulative impacts change due to new nearby emission sources, or when environmental justice area status changes under Minnesota law. These additions ensure screening analyses remain current and protective.”

145. **Satre-2:** Dave Satre stated, “While the existing triggers for additional screening threshold analyses cover considerable ground, they leave gaps. The rule does not call for re-analysis when toxicity values are revised, when ambient monitoring reveals elevated pollutant concentrations, or when cumulative impacts shift. Absent these triggers, screening analyses risk growing stale and no longer reflecting up-to-date science or actual field conditions. Requested Change: The rule should establish mandatory triggers for additional screening threshold analysis in the following circumstances: when federal or state agencies update toxicity values such as inhalation unit risks or reference concentrations; when ambient monitoring detects elevated concentrations of any air toxic; when cumulative impacts change because of new nearby emission sources; or when a location's environmental justice area status changes under Minnesota law. These additions would help keep screening analyses current and adequately protective.”
146. **MPCA Response:** The commenters suggested that the proposed rule should be changed to require an additional screening threshold analysis when there are updated toxicity values. The MPCA agrees and the proposed rules cover this situation. Under part 7012.0170, subpart 1, item C in the proposed rules, the commissioner must require an additional screening threshold analysis when “screening threshold values have been newly established or updated since the last analysis” and it could lead to an exceedance of a screening threshold value. Screening threshold values are calculated using inhalation health benchmarks (stated as toxicity values in the comment), thus if the IHBs are updated the screening threshold values would be then updated and would require an additional screening threshold analysis. However, since these screening threshold values are listed in rule, rulemaking is needed to update these screening threshold values. Page 69 of the SONAR has more information about the requirement for additional screening threshold analysis when IHBs are updated.
147. Additionally, the commenters stated that the proposed rule should be updated to account for ambient monitoring data that detects elevation in concentrations in any air toxic and when cumulative impacts changes because of nearby emission sources. Under part 7012.0170, subpart 1, item D in the proposed rules, an additional screening threshold analysis is required when data from risk-based determinations “demonstrate possible exceedances of screening threshold values established in part 7012.0300, subpart 1, or acceptable risk levels established in part 7012.0560, subpart 3.” These changes proposed by the commenter are already covered under 7012.0170, subpart 1, item D. More information on these risk-based determinations can be found on page 69 in the SONAR.
148. Lastly, the commenter stated that the proposed rule should be changed to require an additional screening threshold analysis if the facility's environmental justice status changed. The MPCA understands the want for an additional screening threshold analysis for facilities that were previously not in an environmental justice area, but with demographic changes are now considered to be in an environmental justice area. However, the proposed rule does not solely focus on facilities

located in environmental justice areas. The MPCA has proposed multiple situations in part 7012.0170 that would require an additional screening threshold analysis that would apply not only to facilities in environmental justice areas but to all facilities in the seven metropolitan counties. More information on when an additional screening threshold analysis is required can be found on pages 67 through 70 in the SONAR.

149. **Lansing-3:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0170: We oppose the labeling of this section as “additional” unless clarification can be provided as to how the additional screening differs from the repeated screening described in 7012.0160. Is there new methodology or new air toxics that are included in the additional screening? Does the additional screening follow the same protocol as the initial screening and repeated screening? Our recommendation is to combine the "repeated air toxics screening threshold analysis" section (7012.0160) and the "additional screening threshold analysis" section (7012.0170) into one "rescreening" section.”
150. **MPCA Response:** The MPCA respectfully disagrees that the repeated air toxics screening threshold analysis (part 7012.0160) and the additional screening threshold analysis (part 7012.0170) should be combined into one part in the proposed rule. The additional screening threshold analysis under 7012.0170 applies to different situations than those requiring a repeated screening threshold analysis under part 7012.0160. In the proposed rule an additional screening threshold analysis is required when any of the situations in 7012.0170, subpart 1 are applicable. This additional screening threshold analysis is requested by the commissioner and is not repeated on a recurring basis, unlike the repeated screening threshold analysis under part 7012.0160, which is required on a recurring basis, when either the facility is at or below all screening threshold values, or if the facility submitted a CDP. More information on when an additional screening threshold analysis is required is found on pages 67 through 70 in the SONAR.
151. **Lansing-6:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0170 Subpart 2(A): We oppose the placement of full responsibility on the commissioner to notify the facility if an additional air toxics screening threshold analysis is required. 7012.0170 Subpart 1(B) requires an additional screening threshold analysis when the facility makes alterations or modifications that result in or have the potential to result in an increase in air toxics emissions. In this case, the facility should have responsibility for initiating the additional air toxics screening threshold analysis as they are the originators of the change requiring the additional screening. The timeline of the screening analysis may be significantly extended if MPCA has to first find out about the facility modifications, determine whether they have the potential to result in an increase in air toxics emissions, and then notify the facility of the need to rescreen. Additionally, there may be cases where a facility modification has the potential to result in an increase in air toxics emissions but does not require review by MPCA. In these cases, it would be imperative for the facility to have responsibility for notifying MPCA and initiating the rescreening as MPCA may otherwise be unaware of the change. We recommend differentiating between conditions in 7012.0170 Subpart 1 that require MPCA notification of rescreening versus those that require facility initiation of rescreening.”
152. **MPCA Response:** MPCA appreciates the concern and agrees that an understanding of and compliance with the rules are the responsibilities of regulated parties. MPCA respectfully disagrees that a change in the proposed rules is needed as regulated parties with higher impacts from air toxics resulting in compliance determination protocols (CDPs) do have the responsibility to notify the MPCA to initiate a CDP revision. In the proposed rules, part 7012.0500, subpart 1, item A includes a similar requirement where the facility must initiate a revision for the compliance determination protocol and provide the reason why when “alterations or modification to the air

toxics facility will result in or have the potential to result in changes to either the amount of any one or more air toxics emitted or the number of air toxics emitted.” The requirement in proposed part 7012.0170, subpart 2(A) is included to clarify that the MPCA commissioner must initiate the process and require an additional screening threshold analysis for air toxics that are not tracked and otherwise accounted for in a CDP. This is similar to existing rule language based on the commissioner’s determinations, e.g. proposed part 7007.1100, subpart 10a, item E.

153. The MPCA disagrees that facilities should have the responsibility for initiating an additional air toxics screening required under proposed part 7012.0170. Proposed part 7012.0170, subpart 1(B) requires that the commissioner request an additional screening threshold analysis when alterations or modifications will result in or have the potential to result in an increase in the amount of one or more air toxics emitted or the addition of an air toxic emitted by the air toxics facility and could lead to an exceedance of a screening value. Air toxics facilities make many small changes and modifications that may increase air toxics. However, not all of these changes could reasonably lead to an exceedance of a screening value. In order to reduce the regulatory burden on facilities, the MPCA has discretion to determine which changes “could lead to an exceedance of a screening threshold value” and then notify a facility when additional screening is required.
154. Furthermore, since the screening threshold analysis is based on actual emissions determined during a facility’s emissions inventory once per year, it is unreasonable for a facility to conduct a screening more than once per year. Overall, the repeated screening timelines required under proposed Minn. R. 7012.0160 are adequate to capture the aggregation of small changes that might increase actual emissions at an air toxics facility.

MNRISKS Data

155. **Lee-5:** Rebecca Lee stated in response to Biewen-1, “Point #10 MNRisk data is a voluntary action that is done not because there is some governing law. Our data hasn't been updated since 2017. Normally it is updated every 3 yrs. Would like to see it as a requirement not a nice to have tool”.
156. **MPCA Response:** The MPCA adopted new rules (revisor ID: R-04599) on October 5, 2025, that related to air toxics emissions reporting. This new rule requires that most facilities in the seven metropolitan counties report air toxics emissions annually. Facilities outside of the seven metropolitan counties will continue to report voluntarily. MNRISKS uses emissions data reported to estimate the risk from facilities. Given the new rule, MNRISKS will have more data that could potentially be updated more frequently. MPCA disagrees that there should be a requirement in rule to update MNRISKS. The MPCA is close to finalizing MNRISKS with 2020 data and is focusing on streamlining the process for more timely updates of the MNRISKS data for years to come.

Timeframe for Required Rescreening

157. **Lansing-4:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0170 Subpart 1(C): We recommend specifying the timeline for required rescreening after a screening threshold value has been newly established or updated.”
158. **MPCA Response:** Under part 7012.0170, subpart 1, item C in the proposed rule, the commissioner would require a facility complete an additional screening threshold analysis if screening threshold values are newly established or updated and it could lead to the facility exceeding a screening threshold value. Once the notification is sent, the facility must provide the additional screening threshold analysis certification within 60 calendar days (part 7012.0170, subpart 2, item B). The facility can respond to the MPCA within ten calendar days with more information that may

determine a facility does not have to complete an additional screening threshold analysis (part 7012.0170, subpart 2, item C). More information on the notification and the timeline for the submittal of the additional screening threshold certification can be found on pages 70 and 71 in the SONAR.

Additional Risk-Based Determinations

159. **Lansing-5:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0170 Subpart 1(D): We oppose the framing of this section, as it conflates two different potential situations. The first, that additional risk-based determination demonstrates possible exceedances of the screening threshold values, implies that the facility made an error in their screening threshold analysis. Would this result in a penalty or violation? The second, that additional risk-based determination demonstrates possible exceedances of acceptable risk levels, is separate because if a facility only completed a screening threshold analysis and not an AERA, then they wouldn't have been comparing the analysis to risk levels in part 7012.0560 and this is not an error on the part of the facility. Our recommendation is to separate these two situations into two separate rule sections and clarify whether the first one, which indicates an error made by the facility, would have an associated penalty.”
160. **MPCA Response:** If an owner or operator makes an error in the screening threshold analysis, the information would be referred to MPCA’s Compliance and Enforcement staff for further investigation. The MPCA would determine if the error is considered a violation based on the circumstances and language of the rule. The MPCA has the authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. The MPCA has an established enforcement process to determine the appropriate enforcement action and associated penalty amount, if applicable, based on the seriousness or repeat violations.
161. Furthermore, the additional risk-based determinations listed in proposed part 7012.0170, subpart 1(D) that may show an exceedance are not necessarily the result of violations or mistakes that a facility made. These additional risk-based determinations are simply additional information the MPCA has received, potentially from a study looking at a group of sources in a geographical area, as explained in the SONAR on page 69.
162. The MPCA disagrees that the AERA situation should be separated from the other risk-based determinations. In the proposed language under part 7012.0170, subpart 1, item D, the MPCA has listed that data from additional risk-based determinations that demonstrate possible exceedances in screening threshold values would require the facility to complete an additional screening threshold analysis. The AERA is included in this rule part because there are other instances when a facility completes an AERA and may have different information than it included in the screening threshold analysis. Information such as air toxics reporting and stack information (such as height and distance to property line) are indicated in an AERA and may be different than what was reported in the initial screening threshold analysis. This information could be due to a facility error. More information on these additional risk-based determinations can be found on page 69 of the SONAR.

De Minimis Thresholds

163. **Stenseth-3:** Jon Stenseth from Delta Air Lines, Inc. stated, “We also urge MPCA to develop either significance thresholds or de minimis thresholds for the listed toxics based on their relative health risks and related factors. As proposed in Minn. R. 7012.0170, subp. 1(B), the Air Toxics Regulation would require a new air toxics risk assessment upon any change in materials that results in

emissions of a new or more of a listed substance. For facilities like ours that use literally hundreds of products, this is not practical for a number of reasons. We cannot plan in advance for product changes, and product changes can be numerous. We may get new formulations that use a new chemical ingredient not previously included. A product may be discontinued and replaced with a new product. Our OEMs may specify a new product required for use in aircraft maintenance. As noted in the introduction, FAA regulations in many cases effectively mandate many of the products we use in our aircraft and engine maintenance operations. In each case, we are relying on product suppliers to provide us with updated product information via Safety Data Sheets. We almost always get notice of product changes after-the fact, which creates obvious challenges for compliance and operational flexibility under the proposed rule. As a practical matter, a new formulation of an already approved product will be in our system before we can assess it. In some cases, if the product is one specified by the OEM, FAA regulations will likely require us to use it. As a practical matter, we cannot stop the maintenance operations and wait for the toxics assessment and approval process.”

164. **MPCA Response:** The MPCA respectfully disagrees that de minimis thresholds for air toxics must be developed. The proposed rules at part 7012.0170 require the MPCA to provide notification when an alteration or modification could lead to an exceedance of a screening threshold value. The rule provides the MPCA discretion to decide which changes “could lead” to an exceedance and presents the burden on MPCA to notify facilities when rescreening is required. It is reasonable to expect that the MPCA will not be aware of every change that occurs at an air toxics facility. The MPCA expects to be made aware of changes via permit applications, notable changes seen in a facility’s emissions inventory, etc. The MPCA agrees it is unreasonable for a facility to evaluate every change made at a facility that could affect air toxics emissions. Since the required screening analysis is based on actual emissions and actual emissions are only required to be reported once every year via the annual emissions inventory required under Minnesota Rules Chapter 7019, it would be unreasonable for the MPCA to require rescreening more than one time every year.

Protocol Approval

165. **Stenseth-4:** Jon Stenseth from Delta Air Lines, Inc. stated, “In addition, we see many changes in products over time. We receive a dozen or more updated Safety Data Sheets every month. The rule as proposed provides that the addition of any new listed substance or any increase requires an assessment, regardless of the amount of the change. Given the context above, we are concerned that we may be continually in some stage of toxics assessment, with new assessments starting before prior assessments are complete, which creates a substantial and potentially unnecessary workload for us and MPCA. We believe MPCA has the authority to establish risk-based significance or de minimis thresholds, which could help reduce the extent of this problem while still protecting public health and the environment. We further urge MPCA to consider a use-pending-approval protocol, which would allow interim use of substances while any required MPCA assessments are pending. As the MPCA can appreciate, MRO activities at MSP must be able to continue uninterrupted except in emergencies, and without exposing Delta to enforcement actions.”
166. **MPCA Response:** The proposed rule does not preclude owners or operators from using, or require owners or operators to cease use of, substances that contain air toxics if it is determined that the substance causes any air toxics emissions to be above screening threshold values. If the substance causes any air toxics emissions to be above screening threshold values, the owner or operator has the option to develop a CDP in accordance with part 7012.0450, or conduct an AERA in accordance with part 7012.0550. While an owner or operator develops a CDP or conducts an AERA, the substance, or substances, causing air toxic emissions to be above screening threshold values may

remain in use. If the owner or operator chooses to develop a CDP, compliance with screening threshold values must be achieved according to the timelines specified in part 7012.0450, subpart 2, item D. It is the responsibility of the owner or operator to determine how to comply with screening threshold values, and the limits, restrictions, controls, or other means used to comply with screening threshold values are not restricted to changes in the use of substances.

167. The MPCA disagrees that de minimis thresholds should be developed. The proposed rules in part 7012.0170 require the MPCA to provide notification when an alteration or modification could lead to an exceedance of a screening threshold value. The rule provides the MPCA discretion to decide which changes “could lead” to an exceedance and presents the burden on MPCA to notify facilities when rescreening is required. It is reasonable to expect that the MPCA will not be aware of every change that occurs at an air toxics facility. The MPCA expects to be made aware of changes via permit applications, notable changes seen in a facility’s emissions inventory, etc. The MPCA agrees it is unreasonable for a facility to evaluate every change made at a facility that could affect air toxics emissions. Since the required screening analysis is based on actual emissions and actual emissions are only required to be reported once every year via the annual emissions inventory required under Minnesota Rules Chapter 7019, it would be unreasonable for the MPCA to require rescreening more than one time every year.

Inhalation Health Benchmarks

168. **Karbo-3:** Mike Karbo from the American Petroleum Institute stated, “The proposed rule relies upon inhalation health benchmarks derived from multiple scientific organizations. API supports using health-based toxicity values but requests additional transparency regarding how existing facilities will be affected when benchmark values change.”
169. **MPCA Response:** The commenter asked about clarification when an inhalation health benchmark is updated what is the process for a facility. Under part 7012.0170, subpart 1, item C in the proposed rules, an additional screening threshold analysis is required when “screening threshold values have been newly established or updated since the last analysis.” Screening threshold values are calculated using inhalation health benchmarks (IHBs), thus if the IHBs are updated the screening threshold values would then be updated and would require an additional screening threshold analysis. However, since these screening threshold values are listed in rule, rulemaking is needed to update these screening threshold values. Page 69 in the SONAR provides more information about the requirement for additional screening threshold analysis when IHBs are updated. Under part 7012.0170, subpart 2 the proposed rule details the notification to a facility for an additional screening threshold analysis. The facility has the ability to dispute the need for an additional screening threshold analysis under part 7012.0170, subpart 2, item C. Additional information on the notification to facilities can be found on pages 70 and 71 in the SONAR.

PART 7012.0200 AIR TOXICS SCREENING THRESHOLD ANALYSIS; SUBMISSION DEADLINES AND CERTIFICATION

Modeling Assumptions and Fugitive Emissions

170. **Lockwood-1:** Helen Lockwood stated, “Modeling depends on assumptions 7012.0200 (Air Toxics Screening Evaluation); 7012.0250 (Compliance Determination Protocol - CDP); 7012.0300 (Air Emissions Risk Analysis - AERA). These sections rely on emissions estimates and dispersion modeling to determine whether risk thresholds are exceeded. If assumptions are inaccurate, risk estimates may be affected.” Additionally, Helen Lockwood stated, “Potential underestimation of fugitive

emissions 7012.0100 (Air Toxics Emissions Inventory); 7012.0200 (Screening Evaluation); 7012.0300 (AERA) Fugitive emissions must be estimated and included in inventories and modeling. The SONAR does not appear to require direct measurement of all fugitive sources. improvement: More direct measurement requirements for fugitive emissions and validation against ambient monitoring.”

171. **MPCA Response:** The MPCA agrees that if emissions estimates or dispersion modeling is incorrect then it will impact the risk estimates. However, when a facility is submitting any document related to the rule (e.g. screening threshold certification, CDP, or AERA) the facility must certify under penalty of law that the information provided is true, accurate, and complete. In the proposed rule under part 7012.0140 the facility must sign and certify that any documents and attachments related to the proposed rule are to the best of the facility’s knowledge and belief, true, accurate, and complete. More information on certifying submissions is found on page 58 of the SONAR.
172. The MPCA agrees that fugitive emissions must be estimated and included in modeling. Proposed part 7012.0550, subpart 2, item A(2) requires fugitive emissions sources to be included in the AERA. MPCA disagrees with including more direct measurement in the rules. The proposed rule does not require direct measurement of fugitive sources because these sources by their nature and by the definition of fugitive emissions in Minn. R. 7005.0100, subp. 12b cannot be measured with traditional stack testing.

Phased Implementation

173. **Morley-2 and Freeman-2:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated the MPCA should revise rules to, “provide a phased implementation schedule tied to risk priority, geography, or environmental justice considerations, rather than a broad simultaneous program for all non-exempt facilities.”
174. **MPCA Response:** MPCA agrees to using a phased implementation schedule. The proposed rules incorporate a phased schedule for existing facilities completing the screening threshold analysis. Part 7012.0200 contains the screening threshold analysis certification submission deadlines staggered over 3 years. When the screening threshold analysis certification is due depends on the permit type. These deadlines provide more time for facilities that are not expected to have as detailed air toxics emissions information to gather this information. The initial air toxics screening threshold analysis deadlines are found in Table 5 in the SONAR on page 72. The SONAR provides more information on the submissions deadlines and reasonableness starting on page 71.
175. MPCA appreciates the suggestion and will consider risk priority, geography, or environmental justice considerations in prioritizing further review of submittals. MPCA disagrees that this requires a revision to the proposed rules as the MPCA has the discretion to prioritize its review of submittals.

PART 7012.0300 AIR TOXICS SCREENING THRESHOLD VALUES; INCORPORATION BY REFERENCE

STRATA Spreadsheet

176. **Bakken-1:** Paul Bakken stated, “The proposed section “7012.0300 AIR TOXICS SCREENING THRESHOLD VALUES; INCORPORATION BY REFERENCE” states that the STRATA electronic spreadsheet is “not subject to frequent change and is available on the agency’s website at <https://www.pca.state.mn.us/get-engaged/incorporations-by-reference>.” Upon checking the website, however, it does not appear to be among the listed and accessible resources. Please make this resource available to the public for inspection and review.”

177. **MPCA Response:** Maggie Wegner from the MPCA did respond to Bakken’s comment online to state that the STRATA spreadsheet is available to the public as SONAR Exhibit 4. A comment was made online to ensure that it was clear that the STRATA spreadsheet was available to the public as a SONAR exhibit.

178. **Morley-20 and Freeman-18:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “the STRATA workbook should be usable, particularly for facilities that will need to input hundreds of data points. Facilities should be able to import emissions data from existing emissions inventory systems or external workbooks rather than manually entering values cell by cell.”

179. **MPCA Response:** The MPCA understands that entering values cell by cell is a tedious task that can lead to errors. The MPCA agrees that the facilities should be able to add their emissions data to the STRATA spreadsheet and then link emissions data in the ‘Inputs’ tab of the STRATA spreadsheet to the imported emissions data. The majority of the STRATA spreadsheet is locked to avoid accidental formula changes. However, the STRATA spreadsheet does allow for tabs to be added. This was done intentionally by the MPCA to allow facilities to add a tab of their air toxics emissions and then the facility is able to link to these emissions in the ‘Inputs’ tab of the STRATA spreadsheet. The MPCA understands that facilities can have many air toxics and hundreds of stacks so the MPCA wanted to make sure that there was a more efficient way for facilities to enter their emissions information.

180. **Karbo-1:** Mike Karbo from the American Petroleum Institute stated, “API supports the concept of a screening methodology as an efficient means of identifying facilities that may warrant further analysis. However, the proposed STRATA methodology combines multiple conservative assumptions simultaneously, including conservative stack parameters, generalized meteorological inputs, generalized terrain, property-line receptors, and health-protective toxicity benchmarks. Each of these assumptions may be appropriate individually. However, MPCA has not demonstrated that layering these assumptions together does not result in an excessive false-positive rate. The SONAR explains how STRATA was developed but does not evaluate how frequently the screening methodology is expected to identify facilities that ultimately present acceptable risks following refined analysis.

API recommends that MPCA:

- perform and publish sensitivity analyses evaluating the cumulative effect of conservative assumptions;
- estimate the anticipated false-positive rate;
- describe the expected percentage of facilities likely to proceed to Stage 2 solely because of conservative screening assumptions; and
- demonstrate that STRATA appropriately distinguishes facilities requiring further review from those that do not.”

181. **Karbo-2:** Mike Karbo from the American Petroleum Institute stated, “The proposed rule explains how STRATA was developed but provides little information regarding validation. Because STRATA will determine whether facilities incur significant additional regulatory obligations, confidence in the methodology is critical.

API recommends that MPCA validate STRATA against available information, including:

- previous Air Emissions Risk Analyses (AERAs);

- MNRISKS evaluations;
- ambient monitoring;
- fence-line monitoring;
- permitting analyses; and
- other available site-specific data.”

182. **MPCA Response:** The MPCA did complete a preliminary analysis to estimate how many facilities could be above screening threshold values. Pages 51 and 52 in the SONAR describe this analysis and the results. Additionally, Table 4 in the SONAR (pages 51 and 52) displays how many facilities by permit type are estimated to be above screening threshold values. From the results of this analysis, around 23 to 32% of facilities may be above screening threshold values. This analysis validates that not all facilities are expected to be above screening threshold values, thus the screening threshold values established are reasonable and will focus agency and facility work to implement the proposed rules. Additionally, the methodology for how the screening threshold values were developed is found in SONAR exhibit 2.

STRATA Default Dispersion Values

183. **Kreidler-1:** Mark Kreidler stated, “STRATA uses dispersion values averaged across seven counties rather than facility-specific dispersion modeling. This averaging may under-represent localized meteorological, terrain, and building-downwash conditions that significantly influence ground-level concentrations of hazardous air pollutants. As a result, screening threshold values may not be sufficiently protective for communities located near high-emitting facilities. Requested Change: The rule should require facility-specific dispersion modeling for screening threshold determinations at any facility with significant emissions of hazardous air pollutants. STRATA may remain a default tool, but facilities should be required to submit site-specific AERMOD modeling when emissions exceed a substantial portion of any screening threshold value or when the facility is located near residential areas or sensitive receptors. This modification ensures screening thresholds reflect real-world dispersion conditions rather than regional averages.”

184. **Satre-1:** Dave Satre stated, “STRATA relies on dispersion values that are averaged across seven counties instead of dispersion modeling tailored to individual facilities. This kind of averaging risks obscuring local meteorological patterns, terrain features, and building-downwash effects that can substantially shape ground-level concentrations of hazardous air pollutants. Consequently, the resulting screening threshold values may fail to adequately protect communities situated near facilities with high emissions. Requested Change: The rule should mandate facility-specific dispersion modeling when determining screening thresholds for any facility emitting significant amounts of hazardous air pollutants. STRATA could continue to serve as the default tool, but facilities should be obligated to submit site-specific AERMOD modeling whenever emissions approach a substantial fraction of any screening threshold value, or when the facility sits near residential neighborhoods or other sensitive receptors. This change would ensure that screening thresholds capture actual dispersion conditions on the ground rather than relying on regional averages.”

185. **MPCA Response:** The STRATA is used as a screening step for facilities to determine if more refined modeling is needed. The default values developed for the STRATA spreadsheet and used within the spreadsheet were developed using modeled concentration values. The model used conservative stack parameters (found on page S-2 4 in SONAR Exhibit 2), which resulted in air concentrations

used to calculate the default dispersion values used in the STRATA. More information on the development of the default screening threshold values and the modeling that was done can be found in SONAR Exhibit 2, specifically pages 1 through 12.

186. Allowing for facilities to submit their own modeled dispersion values would put a strain on the facility and the MPCA. The MPCA would have to verify that all modeled values are correct, and the facility would have to pay for the modeling to be completed. This would result in an iterative process between the facility and the MPCA to confirm modeling results. As stated before, the STRATA is a screening tool to determine if more in depth analysis needs to be done at the facility, at which time the facility has the choice to do more in depth modeling of the facility. The MPCA is estimating that 667 facilities would be subject to this rule, this gives the possibility for all 667 facilities to submit modeling results for the MPCA to review. MPCA does not have the staffing to accommodate allowing for facility-specific modeling for the STRATA spreadsheet. The MPCA does have staffing that will be focused on reviewing products from other portions of the rule such as the CDP, AERA, and ATRP. Given the staffing constraints to confirm modeling and given the STRATA is a screening tool, the MPCA disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA.

187. **Bonneson-1:** Katharine Bonneson from the University of Minnesota stated, “The Screening Threshold Analysis required under proposed Minn R. 7012.0300, subp. 1, uses the Screening Threshold for Regulated Air Toxics Analysis (“STRATA”) to initially determine potential health risks from an air toxics facility. Within STRATA, pollutant concentrations are calculated in a very conservative manner. According to the Statement of Need and Reasonableness (“SONAR”), the Minnesota Pollution Control Agency (MPCA) selected conservative numbers for parameters such as stack diameter, exit velocity, and gas exit temperature to reduce buoyancy from the stack. The consequence of using these more conservative numbers is that they result in higher calculated ground-level pollutant concentrations. While this method captures worst-case scenarios, in many cases, these default parameters are grossly unrepresentative of actual physical conditions. If an individual emission point air toxic exceeds a screening threshold solely due to the discrepancy between default STRATA parameters and actual physical conditions, a facility would be required to advance to a more detailed analysis. Allowing facilities the option to perform refined, site-specific detailed dispersion modeling at this stage would streamline the process by preventing artificial exceedances from triggering the next step, i.e., either an air emissions risk analysis (AERA) or a compliance determination protocol (CDP). This allows the MPCA to prioritize the use of AERA and CDP for facilities of greatest concern. Recommendation: Revise the STRATA to allow for refined dispersion modeling data to be input where available to replace unrepresentative default stack parameters or dispersion characteristics.”

188. **MPCA Response:** Allowing for facilities to submit their own modeled dispersion values would put a strain on the facility and the MPCA. The MPCA would have to verify that all modeled values are correct, and the facility would have to pay for the modeling to be completed. This would result in an iterative process between the facility and the MPCA to confirm modeling results. The MPCA is estimating that 667 facilities would be subject to this rule, this gives the possibility for all 667 facilities to submit modeling results for the MPCA to review. MPCA does not have the staffing to accommodate allowing for facility-specific modeling for the STRATA spreadsheet. The MPCA does have staffing that will be focused on reviewing products from other portions of the rule such as the CDP, AERA, and ATRP.

189. The STRATA is a screening tool to determine if more in depth analysis needs to be done at the facility, which at this time the facility has the choice to do more in depth modeling of the facility.

Additionally, the default dispersion values used in the STRATA are not overly conservative where a majority of facilities in the seven metropolitan counties will continue to either a CDP or AERA. In Table 4 in the SONAR (pages 51-52), the MPCA estimates between 23-32% of facilities could be above screening threshold values and will have to develop a CDP or complete an AERA. From these initial results, the MPCA believes that the default dispersion values used are not too conservative and are a screening step for facilities to determine if more analysis is needed, at which time the facility may complete facility-specific modeling. Given the staffing constraints to confirm modeling and given the STRATA is a screening tool, the MPCA disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA.

Nearest Resident Receptor and Property Line Clarification

190. **Morley-3 and Freeman-3:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Revise STRATA to allow use of nearest resident, sensitive receptor, or ambient air boundary for chronic/cancer screening, or at minimum allow that as a refined Stage 1 option.”
191. **Morley-4 and Freeman-4:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, the MPCA should revise proposed rules to “clarify property-line edge cases, including rail easements, barge docks, shared industrial parcels, and internal property boundaries.”
192. **Stenseth-5:** Jon Stenseth from Delta Air Lines, Inc. stated, “As the Chamber noted in its comments, some facilities present complex property-line and boundary issues, and Delta’s MSP operations illustrate that complexity. Delta’s stationary sources are located on airport property across several leased premises, some contiguous and others not. As a result, defining the relevant “fenceline” is challenging, particularly in an airport setting that includes both public-access areas and restricted areas. Because the proposed rule is intended in part to protect environmental justice communities, Delta recommends revising the environmental justice area elements of the proposed rule to require both the screening and more detailed assessments to use the environmental justice area boundary or the environmental justice area, rather than the facility fenceline or general public-access area.”
193. **Morley-14 and Freeman-13:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “The proposed STRATA approach uses stack height, emissions, and shortest horizontal distance to property line. For annual actual emissions, facilities must use the most recent finalized emissions inventory and current stack parameters. For hourly emissions, the rule generally uses annual actual emissions divided by operating hours but requires individual and capped permit holders to calculate hourly HAP emissions using maximum physical capacity unless specified limitations apply. Several aspects of this structure should be revised. First, the shortest distance to property line is not necessarily a meaningful proxy for resident exposure. For chronic noncancer and cancer endpoints, the relevant exposure assumption is long-term exposure, often residential exposure over extended periods. A property line could be interpreted as a rail easement, dock edge, internal property boundary, industrial neighbor, roadway, or other location with no plausible long-term residential exposure. A rule that evaluates chronic/cancer screening values at such locations will overstate actual resident exposure and create unnecessary Stage 2 obligations.”
194. **Karbo-4:** Mike Karbo from the American Petroleum Institute stated, “The proposed screening methodology evaluates chronic exposures using the shortest horizontal distance to the facility property line. For chronic non-cancer and cancer endpoints, however, the relevant exposure assumption is long-term exposure at locations where people reside or spend substantial time.

Property boundaries frequently include roads, rail corridors, utility easements, industrial parcels, waterways, or other locations that do not represent realistic chronic residential exposure. Consequently, facilities may exceed screening thresholds based solely on conservative property-line assumptions, even where no comparable long-term exposure exists. API supports maintaining a simple, standardized screening methodology; however, the rule should also provide an opportunity for limited refinement before requiring a full Air Emissions Risk Analysis (AERA). Specifically, where a facility exceeds a screening threshold based solely on the property-line assumption, MPCA should allow the facility to demonstrate that the nearest residential or sensitive receptor is located farther away, or otherwise provide representative receptor information, before requiring a full Stage 2 analysis.

API recommends allowing:

- the nearest residential or sensitive receptor for chronic screening; or
- a limited refined Stage 1 analysis using representative receptors before requiring a full Air Emissions Risk Analysis.”

195. **MPCA Response:** The MPCA received multiple comments stating that the shortest distance to property line (or sometimes referred to as fence line within the comments) should not be used when comparing facility emissions to chronic (or annual) screening threshold values and instead the distance to the nearest resident or sensitive receptor should be used. Distance to property line is important to determine if a facility is above screening threshold values. More information on the distance to the property line can be found on page 79 in the SONAR.
196. The MPCA respectfully disagrees that there should be separate distances to property lines for acute and chronic screening threshold values. The MPCA has several concerns with including a different distance to property line for the chronic screening threshold value. First, having two separate distances to property lines is not as health protective as using the shortest distance to property line. Second, if a facility were to use the nearest resident receptor in its screening threshold analysis they may be excluding closer resident receptors as demographics change. For example, a facility may submit a screening threshold analysis saying the nearest resident receptor is 100 meters away. However, in the next year there could be development near the facility and now the nearest resident receptor is now only 20 meters away.
197. There is no language in the proposed rule to state that if the receptors change that an additional screening threshold analysis is required. This leaves a gap in ensuring that all facilities are at or below screening threshold values. A facility from this example may have to complete a repeated screening threshold analysis, but this repeated analysis would either be five or ten years after the initial analysis and would not be representative of the current facility.
198. For most facilities, property lines will not change.; by using the property line in the screening threshold analysis, this ensures that the results of the screening threshold analysis are accurate for the current facility and for the facility until an additional screening threshold analysis is completed (if applicable).
199. Lastly, using the nearest resident or sensitive receptor could be more cumbersome for some facilities and inputting two different distances into the STRATA spreadsheet may be confusing to facilities. Some facilities may not know where their nearest resident or sensitive receptor would be. This would provide more work for the facility to figure out this information and can be confusing for the facility to have to enter two distances into the STRATA spreadsheet. Facilities would have more knowledge about the distance to their property line. Given these concerns the MPCA believes that

the proposed rule language of using the shortest distance to property line is the most health protective and the easiest for facilities to determine and input into the STRATA spreadsheet.

Monitoring Data

200. **Morley-5 and Freeman-5:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Allow monitored fenceline or ambient air data, or a user-imported refined dispersion value, to replace conservative default STRATA dispersion factors where representative data are available.”
201. **Morley-15 and Freeman-14:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Second, STRATA should allow monitored data or refined dispersion information where available. Some facilities already operate fenceline or ambient toxics monitoring programs. That data can provide a more direct measure of local concentrations than a default dispersion spreadsheet using conservative assumptions. MPCA should allow representative, quality-assured monitoring data to be used in Stage 1 where the data correspond to the pollutants and exposure periods at issue. MPCA should also allow a user-imported refined source dispersion concentration, or an equivalent simple modeling refinement, to replace a conservative default STRATA factor when actual stack parameters, dispersion characteristics, or site layout make the default value materially unrepresentative.”
202. **MPCA Response:** The MPCA respectfully disagrees that ambient monitoring data should be used in the STRATA spreadsheet. The STRATA spreadsheet was designed for facilities to input stack information such as stack height, distance to property line, hourly emissions, and annual emissions. The hourly and annual emissions are compared to screening threshold values. Both the emissions and the screening threshold values have the same units, and thus can be compared to each other. The equations for how the MPCA calculated the screening threshold values can be found on pages 29 and 30 in SONAR Exhibit 2. Monitoring data is a measurement of the concentration of a pollutant in the ambient air, in units of micrograms per meter cubed, which is different than the screening threshold values in either pounds per hour or tons per year. Given this discrepancy in the units, monitoring data cannot be used to compare to screening threshold values.
203. Allowing for facilities to submit their own modeled dispersion values in the STRATA spreadsheet would put a strain on the facility and the MPCA. The MPCA would have to verify that all modeled values are correct, and the facility would have to pay for the modeling to be completed. This would result in an iterative process between the facility and the MPCA to confirm modeling results. The MPCA is estimating that 667 facilities would be subject to this rule, this gives the possibility for all 667 facilities to submit modeling results for the MPCA to review. MPCA does not have the staffing to accommodate allowing for facility-specific modeling for the STRATA spreadsheet. The MPCA does have staffing that will be focused on reviewing products from other portions of the rule such as the CDP, AERA, and ATRP.
204. The STRATA is a screening tool to determine if more in-depth analysis needs to be done at the facility, which the facility can choose to do more in-depth modeling of the facility’s operations through the AERA process. Additionally, the default dispersion values used in the STRATA are not so overly conservative where a majority of facilities in the seven metropolitan counties will continue to either develop a CDP or complete an AERA. In Table 4 in the SONAR (pages 51-52), the MPCA estimates between 23-32% of facilities could be above screening threshold values and will have to complete a CDP or an AERA. From these initial results, the MPCA believes that the default dispersion values used are not too conservative and are a screening step for facilities to determine if more analysis is needed, at which time the facility may complete facility-specific modeling. Given the

effort required to confirm modeling and given the STRATA is a screening tool, the MPCA disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA.

205. **Karbo-7:** Mike Karbo from the American Petroleum Institute stated, “The proposal generally requires use of the most recent emissions inventory. However, a single inventory year may not represent typical facility operations. Similarly, many facilities have representative ambient or fence-line monitoring information that may better characterize actual exposure than generalized screening assumptions. API is also concerned that the AERA methodology may require the use of potential-to-emit or maximum physical capacity emissions for certain emission units rather than representative operating conditions. While conservative assumptions may be appropriate for an initial screening analysis, refined risk assessments should reflect realistic operating conditions to provide the most accurate estimate of potential public exposure.

API recommends allowing:

- representative operating years where justified;
 - representative monitoring data;
 - refined dispersion analyses; and
 - other technically appropriate information where these data provide a more realistic characterization of potential exposure.
- clarification of when actual operating data, enforceable permit limits, or representative emissions may be used in lieu of potential-to-emit assumptions during the AERA process.”

206. **MPCA Response:** The MPCA respectfully disagrees that facilities should choose representative operating years. The proposed rule has specific due dates of the initial screening threshold analysis based on permit type (part 7012.0200, subpart 1, item B). It is imperative that the air toxics facility uses the most up-to-date stack and emissions data. This ensures that the screening threshold analysis is conducted for the most current conditions at the facility. Actual emissions can vary from year to year at a facility, so when completing the screening threshold analysis, it is reasonable to require the most recent data to be used to ensure compliance with the rules.

207. Additionally, using the most current conditions at the facility also ensures that all air toxics facilities are using the same parameters, and have consistent expectations and requirements when completing the screening threshold analysis. The first year of emissions inventory data required for air toxics is 2026. Emissions inventory data for 2026 will be submitted by facilities in 2027. The screening threshold analysis certification submittal deadline is staggered over three years; depending on the timeline of these rules, those facilities with the earliest certification deadline may only have one year of emissions inventory submittals to use. Since the due date for the initial screening threshold analysis certification varies based on permit type, if allowed to choose representative years, some facilities would have multiple years of emissions information to choose between, while other facilities may only have one year of emissions information. More information on why the most recent MPCA finalized emissions inventory must be used in the screening threshold analysis can be found on pages 78 and 79 in the SONAR.

208. The MPCA disagrees that ambient monitoring data should be used in the STRATA spreadsheet. The STRATA spreadsheet was designed for facilities to input stack information such as height, distance to property line, hourly emissions, and annual emissions. The hourly and annual emissions are compared to screening threshold values. Both the emissions and the screening threshold values

have the same units, and thus can be compared to each other. The equations for how the MPCA calculated the screening threshold values can be found on pages 29 and 30 in SONAR Exhibit 2. Monitoring data is a measurement of the concentration of a pollutant in the ambient air, in units of micrograms per meter cubed, which is different than the screening threshold values in either pounds per hour or tons per year. Given this discrepancy in the units, monitoring data cannot be used to compare to screening threshold values. Additionally, ambient air monitoring is not possible for all air toxics.

209. The STRATA is a screening tool to determine if more in-depth analysis needs to be done at the facility, which the facility can choose to do more in-depth modeling of the facility's operations through the AERA process. Additionally, the default dispersion values used in the STRATA are not overly conservative where a majority of facilities in the seven metropolitan counties will continue to either develop a CDP or complete an AERA. In Table 4 in the SONAR (pages 51-52), the MPCA estimates between 23-32% of facilities could be above screening threshold values and will have to complete a CDP or an AERA. From these initial results, the MPCA believes that the default dispersion values used are not too conservative and provide a good screening step for facilities to determine if more analysis is needed, at which time the facility may complete facility-specific modeling. Given the effort required to confirm modeling and given the STRATA is a screening tool, the MPCA disagrees that facility-specific dispersion modeling should be used as the screening step instead of default dispersion values in the STRATA.
210. Lastly, potential to emit (PTE) represents the maximum amount of air pollution a facility is legally allowed to release. Enforceable permit limits are included in the calculation of PTE and therefore allowed in the AERA process. The MPCA respectfully disagrees that actual emissions or actual operating data should be used in an AERA as this would not be the maximum emissions legally allowed from a facility and would not estimate the maximum risk that a facility may pose. More information on the decision to use PTE in the AERA process can be found on pages 100 and 101 in the SONAR. A facility has the option to take enforceable emission limits in their permit and then could include those restrictions in their PTE calculations and AERA.

Inhalation Health Benchmarks

211. **Morley-26 and Freeman-25:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis requested a technical clarification to "clarify how updated inhalation health benchmarks will affect facilities that have already completed screening, CDPs, AERAs, or permit amendments."
212. **Karbo-3:** Mike Karbo from the American Petroleum Institute stated, "The proposed rule relies upon inhalation health benchmarks derived from multiple scientific organizations. API supports using health-based toxicity values but requests additional transparency regarding how benchmark revisions will be incorporated into future implementation."
213. **MPCA Response:** The commenters asked for clarification of facility requirements when an inhalation health benchmark is updated. Under part 7012.0170, subpart 1, item C in the proposed rules, an additional screening threshold analysis is required when "screening threshold values have been newly established or updated since the last analysis." Screening threshold values are calculated using inhalation health benchmarks, thus if the IHBs are updated the screening threshold values would then be updated and would require an additional screening threshold analysis. However, since these screening threshold values are listed in rule, rulemaking is needed to update these screening threshold values. Page 69 in the SONAR contains more information about the requirement for additional screening threshold analysis when IHBs are updated. Under part

7012.0170, subpart 2 the proposed rule details the notification to a facility for an additional screening threshold analysis. The facility has the ability to dispute the need for an additional screening threshold analysis under part 7012.0170, subpart 2, item C. Additional information on the notification to facilities can be found on pages 70 and 71 in the SONAR.

214. For a CDP, if the IHBs are updated, the facility would need to submit a revised CDP. There are two options for the revision of the CDP; either facility-initiated revision or agency-initiated revision. For the facility-initiated revision under part 7012.0500, subpart 1, item C, the facility must update the CDP when “screening threshold values are updated or removed.” For the agency-initiated revision under part 7012.0500, subpart 2, item C, the facility must revise its CDP when screening threshold values have been “established or updated that were not included in previous screening threshold or risk analyses.” As stated above, if IHBs are updated then the screening values would be updated. This would require a facility to revise its CDP. SONAR pages 95 and 96 justify why it is necessary to revise a CDP if the IHBs were updated.
215. For an AERA, if IHBs are updated, the IHBs used for any subsequent AERA continues to follow the hierarchy in the proposed rule under 7012.0560, subpart 1, item G and include the updated IHBs. The updated IHBs would be updated and reflected in the RASS spreadsheet. Additionally, there is no condition in the proposed rule to update an AERA based on updated IHBs. The MPCA currently does not require facilities to update any past AERAs to account for IHB changes, and does not require facilities to update their AERAs in the proposed rules.
216. Updated IHBs will not directly impact facilities that have completed permit amendments.
217. **Morley-19:** Andrew Morley from the Minnesota Chamber of Commerce stated, “Sixth, the rule should appropriately treat health risk benchmarks, such as the Minnesota Department of Health’s (MDH) Health Risk Values or Health Benchmark Values, as guidance values rather than “bright lines” that should not be exceeded. MDH intends these benchmarks to be levels below which there is little or no risk to human health. A predicted concentration higher than a benchmark does not indicate a health impact will occur, but only that additional review may be required. Whether in the STRATA or other analyses, the rule must not use these benchmarks as inflexible triggers for action. Such a use does not follow the scientific process or intent behind the development of the benchmarks (Minn. R. 7012.0055, subp. 34; 7012.0300, subp. 1; 7012.0560, subp. 3).”
218. **MPCA Response:** Inhalation health benchmarks are used in the screening threshold analysis and in an air emissions risk analysis (AERA). Inhalation health benchmarks (IHBs) are defined in the proposed rule under part 7012.0055, subpart 27. In the definition of an IHB, the MPCA does not state that if a facility is above these concentrations that health effects will occur. A modeled or monitored air concentration above an IHB doesn’t mean health effects will occur, but instead, an increased risk exists for the associated health effect(s) to occur. It is this increased human health risk that MPCA seeks to further evaluate and potentially mitigate by using the IHBs to trigger additional facility evaluation and possibly further action. In a screening threshold analysis, IHBs are used to calculate screening threshold values for individual air toxics. If a facility is above the screening threshold value, then the facility has the option to either develop a CDP or complete an AERA. This process is similar to the “additional review” that the commenter has suggested. The MPCA respectfully disagrees that the proposed rules use the IHBs as inflexible triggers for action within an AERA. IHBs are one part of the AERA to determine potential risks from a facility’s potential impacts. These potential risks are then compared to acceptable risk levels. The proposed rules establish acceptable risk levels as actionable values. These acceptable risk levels are used in an AERA to determine if changes need to be made by the facility.

219. The use of IHBs such as MDH's air guidance values is consistent with the intent for these values. The MDH website states, "Air guidance values may be used by the public, industry, state and local risk managers, and other stakeholders to help evaluate potential health risks to people from exposures to a chemical in air. These values can be used for assessing risks in the environmental review process, developing air pollution permits, health risk assessments, and other site-specific assessments." It is reasonable for the MPCA to use IHBs to assess risk and identify potential next steps because by definition under part 7012.0055, subpart 28, IHBs are "a concentration in ambient air at or below which an air toxic is unlikely to cause an adverse health effect in a population over a prescribed duration". IHBs are necessary to estimate risk and are widely used in risk assessment to evaluate risk. More information on the IHBs used throughout the proposed rule can be found on pages 104 through 107 in the SONAR. The document, "Air Guidance Values Technical Support Document (PDF)" (<https://www.health.state.mn.us/communities/environment/air/docs/airguidancetech.pdf>) explains the Minnesota Department of Health's scientific methods for developing air guidance values.

Emissions

220. **Morley-16 and Freeman-15:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, "Third, the rule should clarify that screening applies to pollutants known or reasonably expected to be emitted and reported in the annual air toxics emissions inventory. If MPCA's pollutant list includes hundreds of potential air toxics, facilities need a clear and technically grounded method to determine which pollutants must be evaluated. Facilities should not be required to speculate about pollutants when there is no technical expectation of emissions from the source. A known-or-reasonably-expected standard would align the screening process with real facility operations and reduce unnecessary work."
221. **MPCA Response:** The screening threshold analysis will evaluate pollutants, also referred to as air toxics, that are reported in the facility's emissions inventory. If a facility has reported a pollutant in their emissions inventory, they must include that pollutant in their screening analysis if it is also listed in the STRATA. The MPCA defines the term "air toxics" in rule, but also clarifies the meaning of air toxics on page 35 through 37 of the SONAR. The screening threshold analysis and subsequent STRATA spreadsheet only include air toxics that are defined by this proposed rule. More information is found on page 76 of the SONAR.

PART 7012.0400 AIR TOXICS SCREENING THRESHOLD ANALYSIS; METHOD OF CALCULATING EMISSIONS

Fugitive Emissions, Transparency, and Response Timing

222. **Lockwood-1:** Helen Lockwood stated, "Potential underestimation of fugitive emissions 7012.0100 (Air Toxics Emissions Inventory); 7012.0200 (Screening Evaluation); 7012.0300 (AERA) Fugitive emissions must be estimated and included in inventories and modeling. The SONAR does not appear to require direct measurement of all fugitive sources. improvement: More direct measurement requirements for fugitive emissions and validation against ambient monitoring. Limited community verification and transparency. 7012.0400 (Air Toxics Reduction Plan - ATRP); 7012.0550 (Reporting); 7012.0500 (Public Notification) Public notification is required under certain circumstances, but there does not appear to be a requirement for publication of all modeling inputs, raw emissions calculations, or independent technical review. There may be opportunities to strengthen: public access to emissions data, publication of modeling inputs, publication of inspection results, publication of enforcement actions. Greater transparency can allow independent experts and

community members to identify potential issues. Triggering mechanisms and response timing 7012.0400 (ATRP); 7012.0450 (Alternative to ATRP); 7012.0500 (Public Notification). These sections govern what happens after elevated risks are identified, including reduction plans and notifications. Questions remain about how rapidly action must occur and what interim protections are required.”

223. **MPCA Response:** The proposed rule does not require direct measurement of fugitive emissions because by their nature, fugitive emissions cannot be directly measured. The alternative is to estimate fugitive emissions based on the information available.
224. The proposed rule does not require publication of modeling inputs or raw emissions calculations. However, emissions data, inspection results, and enforcement actions are publicly available. As explained on pages 78-79 in the SONAR, the screening threshold analysis must be conducted using the same emissions data reported to the public. Emissions data is publicly available through the MPCA’s interactive data website: Workbook: Air emissions - point source facility data: <https://data.pca.state.mn.us/views/Airemissions-pointsourcefacilitydata/Byfacility?%3Aembed=y&%3AisGuestRedirectFromVizportal=y%20ectFromVizportal=y%20>. Inspection results that are not subject to an active investigation are public information, and are provided to the public upon request per Minn. Stat. § 13.03. The MPCA releases mid-year and end-of-year enforcement reports that summarize closed enforcement actions which are available on the agency website: <https://www.pca.state.mn.us/trending-topics/compliance-and-enforcement>. Additionally, certain types of closed penalty enforcement action documents are publicly available on the What’s in My Neighborhood website: <https://www.pca.state.mn.us/about-mPCA/whats-in-my-neighborhood>. Modeling inputs for criteria pollutants are publicly available through the MPCA’s interactive data website: Workbook: Air dispersion modeling source parameters in e-Service.
225. If an AERA report demonstrates a facility is above any acceptable risk level, part 7012.0570, subpart 2, item C, subitem (2), units (a) and (b) require an owner or operator submitting an ATRP to comply with acceptable risk levels no later than three years after the AERA report is approved if control equipment will be installed, or two years after the AERA report is approved if control equipment will not be installed. Justification for these deadlines is provided on page 140 of the SONAR. An owner or operator has the option to submit an alternative to an ATRP under part 7012.0570, subpart 8. The MPCA has identified the need to clarify the deadlines for compliance with screening threshold values when an owner or operator chooses to utilize this alternative option to an ATRP. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules - Part 7012.0450...” near the beginning of this document.
226. As explained on pages 131-132 of the SONAR, the notification required in part 7012.0568 is to inform the public about potential air toxics emissions that may pose risks to their health and safety so communities can plan and prepare for possible risks. The notification must include a list of actions the facility will take to reduce risk and associated timelines to achieve compliance with acceptable risk levels, per part 7012.0568, subpart 2, item D. As explained on page 135 of the SONAR, providing this information in the notification allows the public to better plan and prepare for potential risks, and make informed decisions on potential health risks.

NESHAP Exemptions

227. **Lansing-7:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0400 Subpart 6: We request that MPCA provide guidance on the likelihood or proportion of emission units for which

a standard has been adopted under 112(d), or which industries are most likely to have emission units for which a standard has been adopted under 112(d). In other words, how common does MPCA expect this exemption to be? Additionally, we are seeking guidance on the best way for us to determine if an emission unit has had a standard adopted under 112(d). Is this information specified in a facility's air permit?"

228. **MPCA Response:** MPCA estimates that 92 of the 114 facilities with individual permits in the seven metropolitan counties have emissions units with an applicable standard under 112(d), also referred to as National Emission Standards for Hazardous Air Pollutants (NESHAPs). This does not include facilities with non-individual permits that could be subject to area source NESHAPs, for which we have no readily searchable data to quantify. Also, MPCA cannot readily determine the number of emissions units at each facility that are subject to a NESHAP.
229. If there is an applicable NESHAP for emission units in an individual permit, the requirements are listed in the permit. The requirements will have a 40 CFR pt. 61 or pt. 63 citation. For non-individual permits, if there is an applicable NESHAP, it would be listed in the application, which in most cases is attached to the permit available through What's In My Neighborhood, but is also publicly available by request.
230. **Bonneson-3:** Katharine Bonneson from the University of Minnesota stated, "Federal National Emission Standards for Hazardous Air Pollutants (NESHAP), promulgated under Section 112(d) of the Clean Air Act, impose emission limits, work practices, monitoring, recordkeeping, and reporting requirements across numerous source categories. These regulations are specifically designed to reduce hazardous air pollutant emissions while considering technological availability and emission unit purpose. Federal NESHAP standards use surrogate pollutants, such as particulate matter (PM for total metal HAP), volatile organic compounds (VOCs for total organic HAP), or sulfur dioxide (SO₂ for total acid gas HAP), that effectively control the entire class of air toxics. Recommendation: The MPCA should revise Minn. R. 7012.0400, subp. 6, to apply to all HAP and non-HAP toxics emitted from a source subject to a Section 112(d) NESHAP standard where the federal standards regulate the chemical class of HAPs".
231. **Morley-22 and Freeman-20:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, "The Stage 1 screening exemption is too limited and should be clarified. MPCA should allow the exemption to apply to all non-HAP toxics emitted from a source subject to a section 112(d) standard where the federal standards regulate the chemical class of HAPs. Many federal standards use surrogate pollutants, such as PM (for total metal HAP), VOC (for total organic HAP), or SO₂ (for total acid gas HAP), that effectively control the entire class of air toxics. MPCA should allow facilities to exclude the chemical class(es) of air toxics that the Section 112(d) standard addresses, in addition to all specific Federal HAP (Minn. R. 7012.0400, subp. 6)."
232. **MPCA Response:** Each air toxics evaluated in the screening threshold analysis has a different inhalation health benchmark that is used to calculate a threshold value that the emissions from a facility are then compared to. Given that each individual air toxics would have a different screening threshold value, it is unreasonable to allow the exclusion of all air toxics under a chemical class of pollutant that may act as surrogate as the commenter proposed. The commenter is correct that federal standards established under section 112(d) of the Clean Air Act, also referred to as National Emission Standards for Hazardous Air Pollutants (NESHAPs), do use surrogate pollutants to effectively control a class of pollutants. However, when developing NESHAP standards, the EPA did not evaluate risks for non-HAP air toxics. Acceptable risk levels for non-HAP air toxics may require

additional control of surrogate pollutants beyond what is required in a particular standard. While the screening threshold analysis must include non-HAP air toxics, any reduction in non-HAPs by control equipment required by a NESHAP can be considered in a screening.

233. Additionally, there are no screening threshold values for the suggested surrogate pollutants in the comment (PM, VOC, and sulfur dioxide). Thus, if this rule change would be made based on this comment, it would effectively eliminate most pollutants (or air toxics) from the screening threshold analysis if a NESHAP applies. Justification as to why the emissions of non-HAPs will need to be evaluated in the screening threshold analysis if its subject to a NESHAP are found on page 87 and 88 in the SONAR.

234. **Morley-7 and Freeman-7:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated that the MPCA should “expand and clarify exemptions for sources and pollutants already controlled or evaluated through federal National Emission Standards for Hazardous Air Pollutants (NESHAP) / Maximum Achievable Control Technology (MACT) programs, residual risk reviews, prior MPCA AERAs, or functionally equivalent analyses”.

235. **MPCA Response:** The proposed rules do exempt some emissions units and emissions from the screening threshold analysis under part 7012.0400, subpart 5 and 6. More information on these exemptions can be found on pages 85 through 88 in the SONAR.

236. **Morley-21 and Freeman-19:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “the proposed rules exclude HAP emissions from an emissions unit for which a 40 CFR Part 63 standard has been adopted under Clean Air Act section 112(d) from the Stage 1 screening threshold analysis (Minn. R. 7012.0400, subp. 6). This reflects an important principle: facilities and units already subject to federal HAP regulations should not be forced to undergo duplicative analysis unless MPCA identifies a specific gap warranting additional review.”

237. **Morley-23 and Freeman-21:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Federal HAP standards adopted in 112(d) impose emission limits, work practices, monitoring, recordkeeping, and reporting requirements across numerous source categories. Many MACT categories have also undergone EPA residual-risk and technology reviews. While the federal program is not identical to MPCA’s proposed facility-specific risk framework, it is a mature regulatory structure specifically designed to reduce hazardous air pollutant emissions and address remaining risks. The proposed rule exempts certain HAP emissions from Stage 1 but appears to bring those same sources back into AERA if the facility proceeds to Stage 2. That approach undermines the efficiency of the Stage 1 exemption and may require facilities to remodel or re-evaluate emissions already addressed through existing programs. MPCA should either extend the exemption into AERA or clearly identify the circumstances in which a section 112(d) source must be included in AERA despite the Stage 1 exemption (Minn. R. 7012.0400, subp. 6; 7012.0550, subp. 2, item A; 7012.0560, subp. 1, items D, H, and I).”

238. **MPCA Response:** The MPCA respectfully disagrees that facilities or stacks subject to section 112(d) of the federal Clean Air Act should be excluded from an AERA. In the screening threshold analysis step, hazardous air pollutants from an emissions unit for which a standard has been adopted under section 112(d) of the federal Clean Air Act are exempt from the screening threshold analysis, but air toxics emissions that are not hazardous air pollutants must be included (7012.0400 subpart 6). More information on this exemption and justification can be found on pages 87 and 88 in the SONAR. The screening threshold analysis is individually looking at each air toxic and comparing the emissions

from a facility of an individual air toxic to a screening threshold value for that individual air toxic. However, an AERA is looking at the cumulative risk of all pollutants emitted at the facility and not just individual pollutants. Excluding emissions of air toxics from an AERA leaves significant gaps in the protection of human health and the environment. More information as to why these sources are included in an AERA can be found on page 99 of the SONAR.

Monitoring Data

239. **Morley-5 and Freeman-5:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Second, STRATA should allow monitored data or refined dispersion information where available. Some facilities already operate fence-line or ambient toxics monitoring programs. That data can provide a more direct measure of local concentrations than a default dispersion spreadsheet using conservative assumptions. MPCA should allow representative, quality-assured monitoring data to be used in Stage 1 where the data correspond to the pollutants and exposure periods at issue. MPCA should also allow a user-imported refined source dispersion concentration, or an equivalent simple modeling refinement, to replace a conservative default STRATA factor when actual stack parameters, dispersion characteristics, or site layout make the default value materially unrepresentative.”
240. **MPCA Response:** The MPCA respectfully disagrees that ambient monitoring data should be used in the STRATA spreadsheet. The STRATA spreadsheet was designed for facilities to input stack information such as height, distance to property line, hourly emissions, and annual emissions. The hourly and annual emissions are compared to screening threshold values. Both the emissions and the screening threshold values have the same units, and thus can be compared to each other. The equations for how the MPCA calculated the screening threshold values can be found on pages 29 and 30 in SONAR Exhibit 2. Monitoring data is a measurement of the concentration of a pollutant in the ambient air, in units of micrograms per meter cubed, which is different than the screening threshold values in either pounds per hour or tons per year. Given this discrepancy in the units, monitoring data cannot be used to compare to screening threshold values.
241. Allowing for facilities to submit their own modeled dispersion values would put a strain on the facility and the MPCA. The MPCA would have to verify that all modeled values are correct, and the facility would have to pay for the modeling to be completed. This would result in an iterative process between the facility and the MPCA to confirm modeling results. The MPCA is estimating that 667 facilities would be subject to this rule, this gives the possibility for all 667 facilities to submit modeling results for the MPCA to review. MPCA does not have the staffing to accommodate allowing for facility-specific modeling for the STRATA spreadsheet. The MPCA does have staffing that will be focused on reviewing products from other portions of the rule such as the CDP, AERA, and ATRP.
242. The STRATA is a screening tool to determine if more in-depth analysis needs to be done at the facility, at which time the facility can choose to do more in-depth modeling of the facility’s operations through the AERA process. Additionally, the default dispersion values used in the STRATA are not so overly conservative where a majority of facilities in the seven metropolitan counties would likely continue to either a CDP or AERA. In Table 4 in the SONAR (pages 51-52), the MPCA estimates between 23-32% of facilities could be above screening threshold values and will have to complete a CDP or an AERA. From these initial results, the MPCA believes that the default dispersion values used are not too conservative and are a screening step for facilities to determine if more analysis is needed, at which time the facility may complete facility-specific modeling. Given the staffing constraints to confirm modeling and given that the STRATA is a screening tool, the MPCA

disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA.

Evaluated Pollutants

243. **Morley-6 and Freeman-6:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated that the MPCA should “clarify that screening should evaluate pollutants known or reasonably expected to be emitted, not require speculation across all listed pollutants”.

244. **MPCA Response:** The screening threshold analysis must include pollutants, also referred to as air toxics, that are reported in the facility’s emissions inventory per 7019.3000. If a facility has reported a pollutant in their emissions inventory, they must include that pollutant in their screening analysis if it is also listed in the STRATA. The MPCA defines the term “air toxics” in rule, but also clarifies the meaning of air toxics on page 35 through 37 of the SONAR. The screening threshold analysis and subsequent STRATA spreadsheet only include air toxics that are defined by this proposed rule. More information is found on page 76 of the SONAR.

Obligations to Other Rules

245. **Morley-27 and Freeman-26:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated that the MPCA should “clarify the relationship between chapter 7012 obligations and the air toxics emissions reporting rule under chapter 7019, including the effect of revised emissions inventory submissions”.

246. **MPCA Response:** The relationship between proposed chapter 7012 obligations and the air toxics emissions reporting rule under chapter 7019 is that the owner or operator must use annual actual emissions from the most recent finalized emissions inventory when completing the STRATA electronic spreadsheet under proposed part 7012.0400, subpart 2. Per pages 78 and 79 of the SONAR, if the emissions data change before the STRATA due date, the updated data must be used.

247. The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. The MPCA understands that revisions to emissions inventory submittals are sometimes needed. Per pages 78 and 79 of the SONAR, facilities can revise emissions after the April 1 emission inventory reporting deadline during the 45-day summary review period.

248. Also, per Minn. R. 7019.3000, Subp. 2, “If an owner or operator discovers an error in the data after having submitted it to the commissioner, the owner or operator must submit corrected data, with a written explanation of the mistake and why it occurred. If the commissioner agrees that the correction is appropriate, the commissioner must correct the data in the inventory.”

Off-Ramp for Facilities

249. **Morley-24 and Freeman-21:** Andrew Morley from the Minnesota Chamber of Commerce stated, “MPCA should also provide an off-ramp for facilities with prior MPCA AERAs or equivalent risk analyses that remain representative of current permitted activities. Requiring a facility to repeat a costly AERA that has already been completed and reviewed does not materially improve public health unless facility operations, emissions, or surrounding receptors have changed in a way that could materially affect risk. The rules should allow prior analyses to satisfy or narrow the rules’ requirements (Minn. R. 7012.0070; 7012.0560, subp. 4).”

250. **MPCA Response:** Under 7012.0560, subpart 4 in the proposed rule, there is language to state that

a previous AERA can be used if the AERA meets the criteria listed in items A through D under this subpart. The MPCA understands that the AERA process can be a lengthy, so the MPCA made sure to include language in the proposed rule to allow facilities to use previously completed AERAs. More information about when a previously completed AERA can be used is found on pages 126 and 127 in the SONAR.

Emissions Validation

251. **Lockwood-Itr-1:** Helen Lockwood stated, “Certain high-risk facilities should be required to have independent third-party verification of emissions inventories.”

252. **MPCA Response:** MPCA respectfully disagrees that third party verification is necessary. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F). The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews the emissions data that facilities submit to us. While the proposed rule does not require third-party audits, the MPCA has established processes for reviewing emissions inventories, modeling data, and other records, and for determining inspection frequencies. Inspections involve reviewing records, such as emissions estimates and other data, and verifying their accuracy and completeness. Some types of permit holders covered by the proposed rule are subject to unannounced routine compliance inspections. All types of permit holders covered by the proposed rule may be subject to random unannounced inspections, which may be more frequent if an owner or operator has repeated violations. If violations are identified through review of submitted data, inspection of a facility, or other means, the MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. Additionally, emissions inventories, modeling data, and other records that are not subject to an active investigation under Minn. Stat. 13.39 are public data per Minn. Stat. 13.03, subdivision 1, and available to the public upon request per Minn. Stat. 13.03, subdivision 3.

Emissions Estimates

253. **Morley-17 and Freeman-16:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Fourth, MPCA should allow facilities to use a representative actual-emissions year. A single most recent finalized inventory year may not reflect normal operations, current equipment, current product mix, or expected future operations. If an inventory year is abnormal, the facility should be allowed to use a representative year or reasonable projected actual emissions with documentation. The goal should be to evaluate actual exposure conditions, not artifacts of an unusual year.”

254. **MPCA Response:** The MPCA believes it is reasonable for facilities to use data from the most recent finalized inventory year while acknowledging actual emissions vary from year to year. This ensures that when the owner or operator is completing the STRATA electronic spreadsheet, the analysis is conducted for the most current conditions and the facility is using the most fully reviewed and most recently finalized emissions, as discussed in the SONAR pages 78 and 79.

255. The MPCA understands the concern that operations, equipment, and product mixes can change at a facility over time and could lead to potential increases in risk to human health. To address this issue and account for changes at a facility over time, the proposed rule includes certain conditions when repeated and additional screening threshold analyses are required to ensure emissions are below screening thresholds as proposed in parts 7012.0160 and 7012.0170. The reasonableness for

repeated and additional screening analyses is described in the SONAR, pages 62 through 71.

256. **Morley-18 and Freeman-17:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “Fifth, the hourly emissions from an emissions unit, as an input to the STRATA, should be consistently applied regardless of the type of permit a facility has. Specifically, requiring an individual or capped permit holder to use its theoretical emissions at maximum physical capacity, while other permit holders may use a more reasonable estimate of the hourly emissions as a function of actual annual emissions and operating hours, could lead to facilities unnecessarily triggering a Stage 2 effort.”
257. **MPCA Response:** In the proposed rule under part 7012.0400, subpart 3(C), facilities with capped and individual air permits are required to calculate the hourly emission rate of HAPs using the maximum physical capacity of equipment for use in the STRATA. As explained on page 82 of the SONAR, this is because an air toxics facility holding one of these types of permits is already required to provide annual HAPs potential to emit calculations in its permit application. Since this information is already known, a conversion of tons/year to pounds/hour is a simple conversion and presents little regulatory burden. Overall, this requirement allows facilities to provide an hourly emission rate for HAPs that will be adequately conservative but present minimal burden to obtain. For all non-HAP air toxics, all air toxics facilities are required under part 7012.0400, subp. 1(A) to calculate hourly emissions using actual annual emissions divided by operating hours, unless it chooses to calculate hourly emissions using maximum capacity of equipment as allowed under part 7012.0400, subp. 1(D).
258. If an owner or operator does not operate an emissions unit at the rate assumed while determining their hourly emission rate based on maximum capacity of equipment, and that hourly emission rate causes them to exceed screening threshold values, the owner or operator has the opportunity to develop a compliance determination protocol (CDP). In developing a CDP, the owner or operator may determine what rate they could operate that emissions unit at to stay at or below screening threshold values and provide that information in the CDP. It is still reasonable for a facility to use an hourly emission rate based on maximum capacity of equipment in the screening analysis because it is not an underestimate and there is an option for an owner or operator to explain why they do not expect to exceed the screening threshold values and how they will accomplish that. The purpose of this rule is to protect human health, and this ensures emissions are not underestimated and provides assurance that risks are addressed.
259. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, “API also recommends that MPCA clarify acceptable emissions estimation methods and monitoring expectations”.
260. **MPCA Response:** Acceptable emission estimation methods are included in proposed Minn. R. 7012.0400 subpart 2, item B. Page 79 of the SONAR contains more information about the estimation methods in 7012.0400, subpart 2, item B.

PART 7012.0450 COMPLIANCE DETERMINATION PROTOCOL

Modeling and Response Timing

261. **Lockwood-1:** Helen Lockwood stated, “Modeling depends on assumptions 7012.0200 (Air Toxics Screening Evaluation); 7012.0250 (Compliance Determination Protocol - CDP); 7012.0300 (Air Emissions Risk Analysis - AERA) These sections rely on emissions estimates and dispersion modeling to determine whether risk thresholds are exceeded. If assumptions are inaccurate, risk estimates may be affected. improvement: Stronger public disclosure of modeling assumptions and

independent technical review for high-risk facilities. There should be language to update the model when modeling assumptions change or are deemed no longer as relevant due to new facts collected on surrounding neighborhood toxins impacts.” Helen Lockwood also stated, “Triggering mechanisms and response timing 7012.0400 (ATRP); 7012.0450 (Alternative to ATRP); 7012.0500 (Public Notification) These sections govern what happens after elevated risks are identified, including reduction plans and notifications. Questions remain about how rapidly action must occur and what interim protections are required.”

262. **MPCA Response:** The MPCA agrees that if emissions estimates or dispersion modeling are incorrect, then it will impact the risk estimates. However, when a facility is submitting any document to comply with the rule (e.g. screening threshold certification, CDP, or AERA) the facility must certify under penalty of law that the information provided is true, accurate, and complete. In the proposed rule under part 7012.0140 the facility must sign and certify that any documents and attachments related to the proposed rule are to the best of the facility’s knowledge and belief, true, accurate, and complete. More information on certifying submissions is found on page 58 of the SONAR. In addition, the MPCA reviews and verifies the emissions data that facilities submit to us, including assumptions that inform emissions data and therefore risk estimates.
263. If an AERA report demonstrates a facility is above any acceptable risk level, part 7012.0570, subpart 2, item C, subitem (2), units (a) and (b) require an owner or operator submitting an ATRP to comply with acceptable risk levels no later than three years after the AERA report is approved if control equipment will be installed, or two years after the AERA report is approved if control equipment will not be installed. Justification for these deadlines is provided on page 140 of the SONAR. An owner or operator has the option to submit an alternative to an ATRP under part 7012.0570, subpart 8. The MPCA has identified the need to clarify the deadlines compliance will be achieved with screening threshold values when an owner or operator chooses to utilize this alternative option to an ATRP. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules - Part 7012.0450...” near the beginning of this document.
264. As explained on pages 131-132 of the SONAR, the notification required in part 7012.0568 is to inform the public about potential air toxics emissions that may pose risks to their health and safety so communities can plan and prepare for possible risks. The notification must include a list of actions the facility will take to reduce risk and associated timelines to achieve compliance with acceptable risk levels, per part 7012.0568, subpart 2, item D. As explained on page 135 of the SONAR, providing this information in the notification allows the public to better plan and prepare for potential risks, and make informed decisions on potential health risks. Interim protections for the public include enforcement of the existing permit and other applicable rules.

Continuous monitoring

265. **Kreidler-3:** Mark Kreidler stated, “The CDP does not require continuous emissions monitoring, fence-line monitoring, or public disclosure of compliance data. Facilities exceeding screening thresholds should be subject to enhanced verification to ensure emissions reductions are real, sustained, and transparent. Requested Change: The rule should require CDPs to include continuous emissions monitoring for metals and other hazardous air pollutants where technically feasible, fence-line monitoring for pollutants with significant health impacts, and public disclosure of CDP compliance data including deviations and corrective actions. These requirements strengthen accountability and ensure communities receive timely information.”
266. **Satre-3:** Dave Satre stated, “The CDP currently lacks requirements for continuous emissions monitoring, fence-line monitoring, or public disclosure of compliance data. Facilities that exceed

screening thresholds should face enhanced verification measures to confirm that emissions reductions are genuine, lasting, and transparent. Requested Change: The rule should require CDPs to incorporate continuous emissions monitoring for metals and other hazardous air pollutants wherever technically feasible, fence-line monitoring for pollutants that pose significant health impacts, and public disclosure of CDP compliance data—including deviations and corrective actions. These requirements would bolster accountability and ensure communities have access to timely information.”

267. **MPCA Response:** While the proposed rule does not require every CDP to include continuous emissions monitoring, part 7012.0450, subpart 2, item E requires a CDP to include performance tests or continuous emissions monitoring, if feasible. If neither of these measurement methods are available or feasible, then the CDP must include indirect measurement methods, such as material balance and operating rates, to calculate emissions. Justification for requiring continuous emissions monitoring or performances tests as well as explanation of restrictions in availability for these methodologies are included on pages 91-92 of the SONAR.
268. Fence-line monitoring, also referred to as ambient air monitoring, is not included as a requirement in a CDP because per pages 150-151 of the SONAR, ambient air monitoring methodology does not exist for all air toxics subject to the proposed rule. Currently, MPCA ambient air monitors can only monitor approximately 74 air toxics out of approximately 338 air toxics that have inhalation health benchmarks or are part of a compound that has an inhalation health benchmark, and is included as part of the proposed rules’ screening threshold analysis. This leaves a gap of approximately 268 air toxics (78%). Private laboratories are able to process samples from monitors for more than 190 air toxics, but this still leaves a sizeable gap. It is therefore not possible to use monitoring to characterize the amount of all air toxics in the ambient air.
269. Monitoring data also is a measurement of the concentration of a pollutant in the ambient air, in units of micrograms per meter cubed, which is different than the screening threshold values in either pounds per hour or tons per year. Given this discrepancy in the units, monitoring data cannot be used to directly compare to screening threshold values. Additionally, ambient air monitoring is resource intensive for the MPCA and facilities. Therefore, the proposed rule allows for ambient air monitoring only when methodology and acceptable reporting limits exist, and when facilities that continue to pose a greater risk over a longer period of time cannot comply with applicable requirements; per part 7012.0650, subpart 1, items A through D.
270. An owner or operator with a CDP must submit semiannual compliance reports, per part 7012.0450, subpart 4. These reports must include deviations from compliance and corrective actions taken. As explained on page 93 of the SONAR, these reports allow the MPCA to ensure compliance with the screening threshold values. These reports are public information, per Minn. Stat. 13.03, and provided to the public upon request.
271. **Lockwood-Itr-2:** Helen Lockwood stated, “Continuous emissions monitoring should be required for certain pollutants or processes where technically feasible.”
272. **MPCA Response:** While the proposed rule does not require every CDP and ATRP to include continuous emissions monitoring, part 7012.0450, subpart 2, item E requires a CDP to include performance tests or continuous emissions monitoring, if feasible, and part 7012.0570, subpart 2, item C, subitem 5 identifies that same requirement for an ATRP. If neither of these measurement methods are available or feasible, then a CDP or an ATRP must include indirect measurement methods, such as material balance and operating rates, to calculate emissions. Justification for requiring continuous emissions monitoring or performances tests as well as explanation of

restrictions in availability for these methodologies are included on pages 91-92 and 140-141 of the SONAR.

Timelines

273. **Lansing-8:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0450 Subpart 2(D): We support the timelines outlined in this section. We request that MPCA provides a timeline infographic or other guidance posted on the webpage demonstrating that the timeline for completing the CDP and the timeline for achieving compliance both begin at the certification of the air toxics screening threshold analysis. It should be clearly noted that the timeline for achieving compliance with the CDP does not begin once the CDP has been submitted.”

274. **MPCA Response:** Thank you for your comment. The MPCA is still working out implementation of the rule, including support materials and guidance documents, and will consider this request.

275. **Stenseth-6:** Jon Stenseth from Delta Air Lines, Inc. stated, “The proposed rule does not appear to address either the achievability of taking limits or the timeline for coming into compliance. As to achievability, the Chamber noted that some sources are subject to federal regulations (Federal Drug Administration, FAA, etc.) that can significantly impact the ability to make product changes. As noted in the introduction, FAA regulations in many cases effectively specify many of the products we use in our aircraft and engine maintenance operations. For example, manufacturers such as Boeing or Airbus specify the paints and solvents to be used on aircraft in their manuals, and the FAA requires Delta to follow those specifications. The FAA regulations thus effectively preclude product changes in many instances. The regulations need to make some provision for the inability of some facilities to make changes to their operations.”

276. **MPCA Response:** The proposed rules allow for the inability of some facilities to make changes to the products used. Both the screening threshold analysis and the air emissions risk analysis (AERA) use other parameters as inputs besides the specific air toxics emissions. The specific air toxics emissions are determined by the product used and the commenter has said are fixed in their situation. Other parameters facilities may be able to change and that can impact either the screening threshold analysis or AERA results include stack location and height, and adding control equipment to reduce emissions. Therefore, depending on their layout, a facility may have variables that are under their control outside of the products they are required to use. Facilities may have additional flexibility based on part 7012.0450, subpart 2(C) related to the terms of a Compliance Determination Protocol. The limits, restrictions, controls and other means that are selected to achieve and remain at or below screening threshold values are not limited to specific product changes.

277. Additionally, if above screening threshold values and CDP timelines are too short, or product change lead times are too long, a facility can move on to an AERA to possibly take limits on potential to emit (PTE) instead of making operational changes to be at or below screening threshold values. In this situation, a facility has the opportunity to look at a worst-case scenario and determine what combination of other parameters would accommodate changes in paints and solvents.

278. **Stenseth-7:** Jon Stenseth from Delta Air Lines, Inc. stated, “The regulations should also clearly contemplate time necessary to make achievable reductions. Federal MACT standards allowed at least three years to come into compliance with new air toxics standards. The MPCA rules should specifically provide for the development of a compliance timeline for any required and achievable changes in operations.”

279. **MPCA Response:** The proposed rule specifies compliance timelines that are dependent upon

whether an owner or operator chooses to submit a CDP, an ATRP, or the alternative to an ATRP to comply with the proposed rule. For a CDP, part 7012.0450, subpart D, specifies that compliance with screening threshold values must be no later than three years after the certification of an air toxics screening threshold analysis is submitted, or the screening threshold analysis certification deadline, whichever is sooner, if control equipment will be installed, or two years after the certification of an air toxics screening threshold analysis is submitted, or the screening threshold analysis certification deadline, whichever is sooner, if control equipment will not be installed. Justification for these timelines is provided on pages 90-91 of the SONAR. For an ATRP, part 7012.0570, subpart 2, item C, subitem (2) specifies that compliance with acceptable risk levels must be no later than three years after the AERA report is approved if control equipment will be installed, or two years after the AERA report is approved if control equipment will not be installed. Justification for these deadlines is provided on page 140 of the SONAR. An owner or operator also has the option to submit an alternative to an ATRP under part 7012.0570, subpart 8. The MPCA has identified the need to clarify the deadlines for compliance with screening threshold values when an owner or operator chooses to utilize this alternative option to an ATRP. To address this, the MPCA is proposing changes as noted under the section titled “Changes to the Proposed Rules.”

Air Dispersion Modeling

280. **Bonneson-2:** Katharine Bonneson from the University of Minnesota stated, “The MPCA should allow refined dispersion parameters as part of a CDP without triggering an AERA. If a facility can demonstrate, through detailed modeling, that one or more conservative STRATA assumptions overstate potential impacts from the sources included in the screening threshold analysis, the facility should be able to use that information as part of the CDP. This type of two-stage modeling process is routinely required under existing rules and guidance for criteria air pollutants. In those cases, a screening analysis can be provided as a first step of compliance demonstration prior to a full-scale modeling exercise that includes sources exempted from the original model. By incorporating a detailed dispersion modeling option into the CDP, the compliance process can be streamlined in a manner that meets the intent of the rule without the combined time and effort required to produce and review the formal AERA procedure.”

281. **MPCA Response:** Allowing for an owner or operator to include detailed dispersion modeling as part of a CDP would still require verification by the MPCA that all modeled values are correct. Using facility-specific dispersion values is not feasible for a screening threshold analysis. If a facility is above screening threshold values, the facility has the option to complete an AERA, in which the facility can use facility-specific dispersion values to show compliance with the acceptable risk levels. If by “refined dispersion parameters” the commenter is referring to distance to property line and stack height, nothing in the proposed rule precludes an owner or operator from refining these parameters to determine limits, restrictions, controls, or other means to include in a CDP. If doing this demonstrates compliance with the screening threshold values, the owner or operator would not need to conduct an AERA. More information on the content required for a CDP can be found on pages 89 through 93 in the SONAR.

CDP Requirements

282. **Morley-11 and Freeman-10:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “The CDP pathway is one of the most important features of the proposed rules because it may allow facilities to reduce or manage actual emissions without moving into full AERA.” Both commenters stated that they “support a practical CDP option, but the proposed rules should clarify several issues. First, the rules should provide a

clear process for terminating or replacing a CDP (Minn. R. 7012.0500, subps. 1 and 2). Facility operations change. Emissions may decrease. Pollutants may be reformulated out of materials. Screening thresholds may be revised. New monitoring or test methods may become available. The rules should not create permanent obligations that remain in place after the basis for the CDP has changed. Second, MPCA should allow refined dispersion parameters, monitoring data, or other real-world information as part of a CDP demonstration without triggering an AERA (Minn. R. 7012.0450, subp. 2; 7012.0530; 7012.0550). If a facility can demonstrate that conservative STRATA assumptions overstate actual impacts, the facility should be able to use that information before being forced into AERA. Third, the CDP timeline should be flexible enough to accommodate source complexity, supply-chain constraints, control-equipment procurement, product approvals, and other operational realities (Minn. R. 7012.0450, subp. 2, item D; 7012.0450, subp. 3). Some industries are subject to Food and Drug Administration, Federal Aviation Administration, or other non-environmental approval requirements that can make reformulation or product changes extremely difficult and, at best, slower than ordinary air permitting timelines.”

283. **MPCA Response:** If an owner or operator wishes to terminate or replace their CDP, they must either demonstrate that actual emissions of all applicable air toxics are below screening threshold values or conduct an AERA. As explained on pages 88-89 of the SONAR, a CDP allows owners or operators of existing facilities to implement actions to comply with screening threshold values, without having to amend their permits, and provides a potential option to keep their permit type if they do not have a permit type that can be amended. If an owner or operator makes alterations or modifications to the air toxics facility, including changes to materials used, that will result in changes to air toxic emissions, the owner or operator must revise their CDP, per part 7012.0500, subpart 1. If alterations or modifications will result in a decrease in air toxic emissions and the owner or operator has reason to believe the alterations will result in all applicable air toxic emissions being at or below screening threshold values, the owner or operator has the option to conduct an additional screening threshold analysis. The owner or operator would need to use air toxic emissions data that is post alterations or modifications, and in accordance with part 7012.0400. If screening threshold values are updated or removed, owners or operators will be required by the MPCA to conduct an additional screening threshold analysis, per 7012.0170, subpart 1, item C. This would also require an owner or operator to revise their CDP per part 7012.0500, subpart 1, item C. As explained on page 95 of the SONAR, “...if screening threshold values were updated, there is a chance the facility may no longer be above screening threshold values and may not need a CDP.” Additionally, if an approved direct physical measurement method of an air toxic becomes available that previously was not available, an owner or operator must revise their CDP, per part 7012.0500, subpart 1, item B. This includes new monitoring or test methods that become available. Justification for this requirement is included on page 95 of the SONAR.

284. Using facility-specific dispersion values is not feasible for a screening threshold analysis. The default dispersion factors were developed specifically for the STRATA spreadsheet. These default dispersion values use terrain and meteorological data that is applicable to the seven metropolitan counties. More information on how screening threshold values were derived is found in SONAR Exhibit 2. If a facility is above screening threshold values, the facility has the option to complete an AERA, and can use facility-specific dispersion values to show compliance with the acceptable risk levels. If by “refined dispersion parameters” and “other real-world information” the commenters are referring to distance to property line and stack height, nothing in the proposed rule precludes an owner or operator from refining these parameters to determine limits, restrictions, controls, or other means to include in a CDP. If doing this demonstrates compliance with the screening threshold values, the

owner or operator would not need to conduct an AERA. More information on the content required for a CDP can be found on pages 89 through 93 in the SONAR. In using the term “monitoring data”, it is unclear if the commenters are referring to continuous emissions monitoring data, ambient air monitoring data, or parametric monitoring data so the MPCA is unable provide a response to this portion of the comment.

285. The CDP timeline allows two or three years, depending upon if control equipment will be installed, for compliance with screening threshold values, per part 7012.0450, subpart 2, item D. Justification for these deadlines is provided on pages 90-91 of the SONAR.

Emissions and Model Refinement

286. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, “API also recommends that MPCA clarify whether facilities must develop hourly and annual emissions estimates for all regulated air toxics or only for pollutants that require further evaluation after screening and allow limited refinement before requiring full Stage 2 analyses when conservative screening assumptions alone drive exceedances”.
287. **MPCA Response:** Refinement of a screening threshold analysis is not feasible. Allowing for facilities to submit their own modeled dispersion values would put a strain on the facility and the MPCA. The MPCA would have to verify that all modeled values are correct, and the facility would have to pay for the modeling to be completed. This would result in an iterative process between the facility and the MPCA to confirm modeling results. As stated before, the STRATA is a screening tool to determine if more in depth analysis needs to be done at the facility, at which time the facility has the choice to do more in depth modeling of the facility. The MPCA is estimating that 667 facilities would be subject to this rule, which gives the possibility for all 667 facilities submitting modeling results for the MPCA to review. MPCA does not have the staffing to accommodate allowing for facility-specific modeling for the STRATA spreadsheet. The MPCA does have staffing that will be focused on reviewing products from other portions of the rule such as the CDP, AERA, and ATRP. Given the staffing constraints to confirm modeling and given the STRATA is a screening tool, the MPCA disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA. If a facility is above screening threshold values, the facility has the option to either develop a CDP or complete an AERA. If a facility decides to develop a compliance determination protocol (CDP), the CDP is only required to address the air toxic(s) that are above the screening threshold values. If the CDP addresses the air toxics that are above screening threshold values in the STRATA so that actual emissions of air toxics remain below the screening threshold values, then an AERA is not required.
288. An AERA assesses the cumulative risk of all the stacks at a facility. Given this, all air toxic emissions must be included in an AERA and not just air toxics that require further investigation after the screening threshold analysis. The required content of an AERA protocol and subsequent AERA report are found in the proposed rule under 7012.0550, subpart 2, item A. More information on the required content for an AERA protocol is available on pages 98 through 101 in the SONAR. There is an exclusion in the proposed rule under 7012.0550, subpart 2, item C that states that if an air toxic does not have an IHB under part 7012.0560, subpart 1, item G, then it is exempt from being included in an AERA. More information on this exclusion can be found on page 101 of the SONAR.

PART 7012.0500 REVISING COMPLIANCE DETERMINATION PROTOCOLS

Transparency and response timing

289. **Lockwood-1:** Helen Lockwood stated, “Limited community verification and transparency 7012.0400 (Air Toxics Reduction Plan - ATRP); 7012.0550 (Reporting); 7012.0500 (Public Notification) Public notification is required under certain circumstances, but there does not appear to be a requirement for publication of all modeling inputs, raw emissions calculations, or independent technical review. There may be opportunities to strengthen: public access to emissions data, publication of modeling inputs, publication of inspection results, publication of enforcement actions. Greater transparency can allow independent experts and community members to identify potential issues. Triggering mechanisms and response timing 7012.0400 (ATRP); 7012.0450 (Alternative to ATRP); 7012.0500 (Public Notification) These sections govern what happens after elevated risks are identified, including reduction plans and notifications. Questions remain about how rapidly action must occur and what interim protections are required.”
290. **MPCA Response:** The proposed rule does not require publication of modeling inputs or raw emissions calculations. However, emissions data, inspection results, and enforcement actions are publicly available. As explained on pages 78-79 in the SONAR, the screening threshold analysis must be conducted using the same emissions data reported to the public. Emissions data is publicly available through the MPCA’s interactive data website: Workbook: Air emissions - point source facility data. Inspection results that are not subject to an active investigation are public information, and are provided to the public upon request per Minn. Stat. § 13.03. The MPCA releases mid-year and end-of-year enforcement reports that summarize closed enforcement actions and are available on the agency website. Modeling inputs for criteria pollutants are publicly available through the MPCA’s interactive data website: Workbook: Air dispersion modeling source parameters in e-Service (<https://data.pca.state.mn.us/views/AirDispersionModelingSourceParametersine-Service/e-ServiceSources?%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Atoolbar=top>). However, the MPCA is still working out implementation of the proposed rule and the location of the modeling inputs for air toxics is currently undecided. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F).
291. If an AERA report demonstrates a facility is above any acceptable risk level, part 7012.0570, subpart 2, item C, subitem (2), units (a) and (b) require an owner or operator submitting an ATRP to comply with acceptable risk levels no later than three years after the AERA report is approved if control equipment will be installed, or two years after the AERA report is approved if control equipment will not be installed. Justification for these deadlines is provided on page 140 of the SONAR. An owner or operator has the option to submit an alternative to an ATRP under part 7012.0570, subpart 8. The MPCA has identified the need to clarify the deadlines for compliance with screening threshold values when an owner or operator chooses to utilize this alternative option to an ATRP. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules.”
292. As explained on pages 131-132 of the SONAR, the notification required in part 7012.0568 is to inform the public about potential air toxics emissions that may pose risks to their health and safety so communities can plan and prepare for possible risks. The notification must include a list of actions the facility will take to reduce risk and associated timelines to achieve compliance with acceptable risk levels, per part 7012.0568, subpart 2, item D. As explained on page 135 of the SONAR, providing this information in the notification allows the public to better plan and prepare for potential risks, and make informed decisions on potential health risks.

Revision of CDP

293. **Lansing-9:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0500 Subparts 1(A) and 2(A): We oppose the language in these sections indicating that the CDP must be revised if a facility alteration or modification has the potential to result in changes to emissions of any air toxic. The CDP will focus only on certain air toxic(s) that were originally over threshold screening values, and therefore CDP revisions should only focus on those same air toxic(s). If other air toxics emissions are potentially changed by a facility change, the facility should cycle back to a rescreening at the threshold screening analysis step, rather than a revision to the CDP. Our recommendation is to clarify in these sections that a CDP revision should only be triggered if the potential emissions changes apply to the air toxic(s) at the focus of the CDP.”
294. **MPCA Response:** The MPCA agrees that an owner or operator must submit an additional screening threshold analysis if air toxics emissions are potentially changed by a facility change. The proposed rule, per part 7012.0170, subpart 1, item B, requires an additional screening threshold analysis when “alterations or modifications to the air toxics facility will result in or have the potential to result in an increase in the amount of one or more air toxics emitted or the addition of an air toxic emitted by the air toxics facility” could lead to an exceedance of a screening threshold value. The MPCA respectfully disagrees that a CDP revision should only be triggered if the potential emissions changes apply to the air toxic(s) at the focus of the CDP. If an additional screening threshold analysis identifies a change in the number of air toxics emitted above screening threshold values, the CDP must be revised to reflect the air toxics above screening threshold values identified in the most recent screening threshold analysis. The MPCA acknowledges the need to clarify the language for when an owner or operator must revise their CDP for alterations or modifications to the air toxics facility. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules – 7012.0500...” near the beginning of this document.
295. **Bonneson-6:** Katharine Bonneson from the University of Minnesota stated, “CDP modifications should only be required if changes to the air toxics facility could lead to an exceedance of a screening threshold value (Minn. R. 7012.0500, subp. 1 and Minn. R. 7012.0500, subp. 2). The Draft Rules require the owner or operator of a facility to revise a CDP when an alteration or modification to the air toxics facility will result in, or have the potential to result in, changes to either the amount or number of air toxics emitted. The MPCA’s justification in the SONAR, however, relies entirely on preventing threshold exceedances: It is reasonable to require a revision when the volume or number of air toxics emitted has changed because if these alterations or modifications result in an exceedance of screening threshold values, the exceedances will need to be addressed by updating the CDP. (emphasis added). The Draft Rules do not align with the SONAR’s given justification. A facility change consisting solely of adding or modifying equipment exempt from the screening analysis has no potential to cause an exceedance of screening threshold values; therefore, no revision of the CDP should be required.”
296. **MPCA Response:** The MPCA respectfully disagrees that CDP modifications should only be required if changes to the air toxics facility could lead to an exceedance of a screening threshold value. If alterations or modifications decrease air toxic emissions and result in any one or more air toxics to be at or below screening threshold values, the CDP would need to be revised to reflect the air toxics that are above screening threshold values. The MPCA acknowledges the need to clarify the language for when an owner or operator must revise their CDP for alterations or modifications to the air toxics facility. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules – 7012.0500...” near the beginning of this document.

297. **Bonneson-7:** Katharine Bonneson from the University of Minnesota stated, “The Draft Rules include mandatory revision protocols for CDPs but do not include a way for a facility to modify or terminate the CDP. Because facility operations and emissions change over time, a clear process for revising or terminating a CDP is necessary. The MPCA recognizes this issue in the SONAR, stating: “Once a CDP is developed there may be changes to an air toxics facility that may not be reflected in the original CDP. It is reasonable to allow facilities to initiate a revision to a CDP, when necessary, but it is also reasonable to allow the agency to require a revision.” However, the Draft Rules only account for revisions to the CDP in certain mandatory circumstances. Recommendation: Revise the Draft Rules to allow for a facility to undergo a discretionary CDP modification and to create a clear process for terminating the CDP.”
298. **MPCA Response:** The MPCA respectfully disagrees that a discretionary CDP modification process is needed in addition to the facility-initiated revision requirements specified in part 7012.0500, subpart 1. The commenter states, “Because facility operations and emissions change over time, a clear process for revising or terminating a CDP is necessary.” Part 7012.0500, subpart 1, item A specifies that a CDP must be revised when “alterations or modifications to the air toxics facility will result in or have the potential to result in changes to either the amount of any one or more air toxics emitted or the number of air toxics emitted.” The requirement applies to when facility operations and emissions change over time. Therefore, the MPCA does not see the need to add a discretionary CDP modification process to the proposed rule. The MPCA has identified a need to clarify the language for when an owner or operator must revise their CDP for alterations or modifications to the air toxics facility. To address this, the MPCA is proposing changes as noted under the section “Changes to the Proposed Rules – 7012.0500...” near the beginning of this document.
299. If an owner or operator wishes to terminate their CDP, they must demonstrate that actual emissions of all applicable air toxics are below screening threshold values. As explained on pages 88-89 of the SONAR, a CDP allows owners or operators of existing facilities to implement actions to comply with screening threshold values, without having to amend their permits, and provides a potential option to keep their permit type if they do not have a permit type that can be amended. If facility alterations or modifications will result in a decrease in air toxic emissions and the owner or operator has reason to believe the alterations or modifications will result in all applicable air toxic emissions being at or below screening threshold values, the owner or operator has the option to conduct an additional screening threshold analysis. The owner or operator would need to use air toxic emissions data that is post alterations or modifications, and in accordance with part 7012.0400.
300. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, “API also recommends that MPCA clarify acceptable emissions estimation methods and monitoring expectations”.
301. **MPCA Response:** The proposed rule provides clarification of acceptable emission measurement methods in the “Required content” sections for both a CDP and ATRP. For a CDP, part 7012.0450, subpart 2, item E requires a CDP to include performance tests or continuous emissions monitoring, if feasible, and part 7012.0570, subpart 2, item C, subitem (5) identifies the same requirement for an ATRP. If neither of these measurement methods are available, then a CDP or ATRP must include indirect measurement methods, such as material balance and operating rates, to calculate emissions. Indirect measurement method requirements are specified under part 7012.0450 subpart 2, item F for a CDP and part 7012.0570, subpart 2, item C, subitem (6) for an ATRP. Justification for requiring continuous emissions monitoring or performances tests as well as explanation of restrictions in availability for these methodologies are included on pages 91-92 and 140-141 of the SONAR.

302. Additionally, the proposed rule requires an owner or operator developing either a CDP or ATRP to include a description of records kept to verify compliance. This is specified in part 7012.0450, subpart 2, item G for a CDP, and part 7012.0570, subpart 2, item C, subitem (8) for an ATRP. The proposed rule does not include further clarification of monitoring, or recordkeeping, expectations because MPCA needs to provide flexibility for owners or operators to choose the types of records to keep to demonstrate compliance with the rule. Flexibility in recordkeeping to verify compliance is necessary because owners and operators also have flexibility in choosing the limits, restrictions, or controls they take to comply with the rule. The recordkeeping needed to verify compliance might vary depending upon which option an owner or operator chooses.

PART 7012.0550 AIR EMISSIONS RISK ANALYSIS PROTOCOL

Modeling and transparency

303. **Lockwood-1:** Helen Lockwood stated, “Modeling depends on assumptions 7012.0200 (Air Toxics Screening Evaluation); 7012.0250 (Compliance Determination Protocol - CDP); 7012.0300 (Air Emissions Risk Analysis - AERA) These sections rely on emissions estimates and dispersion modeling to determine whether risk thresholds are exceeded. If assumptions are inaccurate, risk estimates may be affected. improvement: Stronger public disclosure of modeling assumptions and independent technical review for high-risk facilities. There should be language to update the model when modeling assumptions change or are deemed no longer as relevant due to new facts collected on surrounding neighborhood toxins impacts.” Helen Lockwood also stated, “Limited community verification and transparency 7012.0400 (Air Toxics Reduction Plan - ATRP); 7012.0550 (Reporting); 7012.0500 (Public Notification) Public notification is required under certain circumstances, but there does not appear to be a requirement for publication of all modeling inputs, raw emissions calculations, or independent technical review. There may be opportunities to strengthen: public access to emissions data, publication of modeling inputs, publication of inspection results, publication of enforcement actions. Greater transparency can allow independent experts and community members to identify potential issues”.

304. **MPCA Response:** The MPCA agrees that if emissions estimates or dispersion modeling is incorrect then it will impact the accuracy of the risk estimates. However, when a facility is submitting any document related to the rule (e.g. screening threshold certification, CDP, or AERA) the facility must certify under penalty of law that the information provided is true, accurate, and complete. In the proposed rule under part 7012.0140 the facility must sign and certify that any documents and attachments related to the proposed rule are to the best of the facility’s knowledge and belief, true, accurate, and complete. More information on certifying submissions is found on page 58 of the SONAR.

305. The proposed rule does not require publication of modeling inputs or raw emissions calculations. However, emissions data, inspection results, and enforcement actions are publicly available. As explained on pages 78-79 in the SONAR, the screening threshold analysis must be conducted using the same emissions data reported to the public. Emissions data is publicly available through the MPCA’s interactive data website: Workbook: Air emissions - point source facility data. Inspection results that are not subject to an active investigation are public information, and are provided to the public upon request per Minn. Stat. § 13.03. The MPCA releases mid-year and end-of-year enforcement reports that summarize closed enforcement actions, which are available on the agency website. Modeling inputs for criteria pollutants are publicly available through the MPCA’s interactive data website: Workbook: Air dispersion modeling source parameters in e-Service (<https://data.pca.state.mn.us/views/Airdispersionmodelingsourceparametersine-Service/e->

ServiceSources?%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Atoolbar=top). While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA's powers under Minn. R. 1400.2100(F).

Air Emissions Risk Analysis

306. **Kreidler-4:** Mark Kreidler stated, "AERA relies primarily on modeled concentrations and does not require ambient air measurements, sensitive receptor analysis, or cumulative impact evaluation. Modeled concentrations alone may not fully capture real-world exposure patterns, especially near residential areas or sensitive populations. Requested Change: The rule should require AERA to include ambient air monitoring data where available, sensitive receptor analysis including residential areas and schools, and cumulative impact assessment incorporating multiple pollutants and multiple nearby sources. These additions ensure AERA reflects actual exposure conditions and modern public health standards."
307. **Satre-4:** Dave Satre stated, "AERA depends chiefly on modeled concentrations and does not call for ambient air measurements, analysis of sensitive receptors, or evaluation of cumulative impacts. Relying on modeled concentrations alone may not fully capture real-world exposure patterns, particularly near residential areas or vulnerable populations. Requested Change: The rule should require AERA to incorporate ambient air monitoring data where it exists, sensitive receptor analysis covering residential areas and schools, and cumulative impact assessment that accounts for multiple pollutants and multiple nearby sources. These additions would ensure AERA captures actual exposure conditions and aligns with modern public health standards."
308. **MPCA Response:** The AERA process does include sensitive receptor analysis (part 7012.0560, subpart 1, item C) and cumulative impact evaluation (part 7012.0560, subpart 2, item D). Information on both the sensitive receptor analysis and cumulative impact evaluation can be found on pages 112 through 115 in the SONAR. The MPCA manages an ambient air pollution monitoring network, information on which can be found in the SONAR, pages 20 and 21. Ambient air monitoring data is not used in an AERA as the AERA uses potential to emit (PTE) to estimate the risk at a given facility. The MPCA respectfully disagrees that current ambient air monitoring data should be used in the AERA as this data only looks at current conditions of the air near the facility and may not include all pollutants that are emitted at the facility. PTE represents the maximum amount of air pollution a facility is legally allowed to release. Enforceable permit limits are included in the calculation of PTE and therefore allowed in the AERA process. A facility has the option to take enforceable emission limits in their permit and then could include those restrictions in their PTE calculations and AERA. The MPCA believes that the current way of conducting an AERA by using PTE is more health protective as it accounts for the maximum emissions that a facility can emit.

Air Models

309. **Lee-2:** Rebecca Lee stated in response to Kreidler-4, "Agree. In our close working with the MPCA for a year, I have not seen any confirmation of air models yet they clearly pointed to an area of maxima lead concentration for early 2025 violations when they don't even have a monitor facing that direction. Hoping that the mobile monitor can properly assess different wind directions from the stack but evaluations need to be longer and at different distances from the stack at different times of year when wind patterns change. One monitor alone is not sufficient to protect the health of the nearby neighbors. There is an elementary school, day care, and soccer fields all within a 1 mi radius as well as many neighborhoods built in the 90's around this facility. Appropriate consequences to

repeat violators can be the purchase of additional monitoring equipment and manpower with immediate notification to neighborhoods.”

310. **MPCA Response:** Lead is a pollutant that is considered an air toxic as well as a criteria pollutant. Criteria pollutants are subject to the National Ambient Air Quality Standards (NAAQS). Siting of monitors to demonstrate compliance with the NAAQS is done in consultation with EPA to meet EPA requirements. In addition, regulated parties may demonstrate compliance with applicable statutes and rules via an air dispersion modeling demonstration or with monitoring that follows an agency approved ambient air monitoring plan. This ambient air monitoring plan ensures that a regulatory monitor is sited correctly and is representative of ambient air concentrations near a given facility. The terms of the modeling and/or monitoring will then be included in any applicable permits to ensure compliance. Should a violation of the NAAQS or the permit stipulations occur then the MPCA will initiate an enforcement action to bring the regulated party back into compliance with the NAAQS.

Rule Language

311. **Lansing-10:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0550 Subpart 1: Typo correction needed in this sentence: “The an owner or operator of a facility must submit...””
312. **MPCA Response:** The MPCA agrees the typo should be corrected and included it in the “Changes to the Proposed Rules” section.

Flexibility for Insignificant Activities

313. **Bonneson-4:** Katharine Bonneson from the University of Minnesota stated, “The University has significant concerns regarding Minn. R. 7012.0550, subp. 2.A(2), which requires the inclusion of “all emissions sources, including emissions units, both stack and fugitive emission sources; insignificant activities under part 7007.1300; and conditionally insignificant activities as defined under part 7005.0100.” (emphasis added) The inclusion of the word “all” creates an overly rigid standard that strips the MPCA of regulatory flexibility needed to make practical, site-specific determinations with respect to what equipment and activities to include in a resource-intensive AERA. Additionally, the requirement to include all insignificant activities and conditionally insignificant activities poses substantial technical and administrative challenges for a large public research and educational institution. The University provides facilities for medical, educational, and research activities vital to the state’s well-being. Rather than being concentrated in a centralized footprint, these activities are highly dispersed across a 1,200-acre campus. Many of the buildings where these activities take place contain numerous emission sources defined as insignificant activities, which include:

1. Small emergency generators that provide backup electricity for critical life-safety systems in dormitories, classrooms, and other facilities during power outages;
2. Small boilers used for comfort-heating in buildings that are not on the main steam system, or serving as redundant backups to safeguard critical research; and
3. Laboratories and demonstration activities where relatively small emissions are generated for instruction and research.

314. Emergency generators sit idle for 99% of the year. Outside of actual power grid failures, their operation is limited to brief reliability testing that typically lasts one hour or less each month. Although they do not operate often, emergency generators as a backup power source are essential to the provision of life-safety power, the preservation of critical research, and the continuous operation of vital medical and clinical facilities. Small comfort-heating boilers have a similar

operational profile. Facilities install parallel, identical boilers for redundancy. Because these units alternate to share the seasonal heating load, their actual combined throughput is just 15% of their theoretical annual maximum. In both cases, this equipment exists to protect life safety. Laboratories and demonstration activities at the University are intermittent and do not follow a routine production schedule, as is the case with a typical manufacturing process. These activities can change multiple times during the year, depending on specific project or educational goals. Cataloging and modeling thousands of chemical usage rates, fume hood configurations, and stack parameters for activities the MPCA considers insignificant is technically and administratively impossible at a public teaching and research institution like the University. Additionally, requiring all emission units and insignificant activities in an AERA protocol directly contradicts the MPCA's stated intent for emergency engines. According to the SONAR for Minn. R. 7012.0560, subp. 2.B, emergency engine data is collected specifically "to determine if these engines may need to be included in the AERA" (emphasis added). The proposed rule text fails to preserve this intended screening mechanism."

315. **MPCA Response:** The AERA is an iterative process that does allow for refinement of sources included in the AERA by the facility. However, the facility must first include these sources in an AERA to demonstrate the source's risk before excluding the source from an AERA. More information on why all emissions units must be included in an AERA can be found on page 99 in the SONAR.

Deadline Extension

316. **Bonneson-5:** Katharine Bonneson from the University of Minnesota stated, "The Draft Rules establish rigid deadlines for the submission and resubmission of various analyses, reports, protocols, plans, and permit amendments without a mechanism for requesting a deadline extension or case-by-case submission schedules. This lack of flexibility is unreasonable and fails to account for the variability between regulated facilities. Two examples of processes with rigid deadlines are: (1) the AERA protocol submittal and (2) an AERA protocol resubmittal. Both proposed deadlines are arbitrary because they fail to account for facility-specific complexities and lack adequate justification within the SONAR. The MPCA justifies the one-year AERA protocol deadline based on a survey conducted of smaller facilities. The SONAR states: Based on this survey to smaller facilities, most of these facilities stated that they could complete an AERA between six months and one year. Since the survey results determined that most of the facilities agreed to six months to a year, a year is a reasonable amount of time to complete an AERA. The MPCA's reliance on this survey is arbitrary because it fails to consider the operational scale of large or complex facilities. The smaller facilities surveyed operate fewer emission units and insignificant activities, resulting in a smaller analysis than what is required for a large facility. It is unreasonable to apply the same rigid compliance timelines to larger facilities without a mechanism to extend deadlines or establish schedules on a case-by-case basis. The Draft Rules contain internal contradictions regarding the timeline for resubmitting a disapproved AERA protocol. Under proposed Minn. R. 7012.0550, subp. 4, the Commissioner's notification of disapproval must specify a deadline for resubmitting the protocol and establish a schedule for submitting supplemental information. Yet, Minn. R. 7012.0550, subp. 5 strips away this intended flexibility by imposing a 60-day resubmittal deadline. Furthermore, the MPCA's attempt to justify this 60-day deadline in the SONAR is logically flawed. The MPCA attempts to benchmark this timeline against its standard 30-day resubmittal deadline for incomplete air permit applications, stating: An AERA protocol generally contains more complex and detailed information about a facility compared to an air permit application. Therefore, it is reasonable to allow 60 calendar days for the resubmittal of an AERA protocol due to the added complexity compared to a permit application. The MPCA's justification lacks a rational basis. The agency explicitly acknowledges that an AERA protocol is vastly more complex and detailed than a standard air permit application. However, it fails to

establish a rational connection demonstrating why simply doubling the timeline of a less complex process (from 30 days to 60 days) provides sufficient or reasonable time for a facility to address deficiencies in a highly complex modeling protocol.”

317. **MPCA Response:** The MPCA describes why a one-year timeline was decided for an AERA protocol submittal on page 103 in the SONAR. The MPCA did use information from a survey to small businesses to aid in the decision, but it was not the only factor in making the decision on the one-year timeline.
318. For the protocol resubmittal, in the proposed rule under part 7012.0550, subpart 4, this subpart lists the criteria for the notification that the commissioner must provide in the disapproval of an AERA protocol. Under part 7012.0550, subpart 4, item C in the proposed rule the commissioner must “specify the deadline for resubmitting the protocol”. This deadline is not different than the deadline specified in part 7012.0550, subpart 5 in the proposed rule but including the deadline in the notification to the facility ensures that both the facility and the MPCA understand the deadline for the protocol resubmittal. The AERA process is iterative, with many facilities resubmitting the AERA protocol multiple times. A facility has the ability to resubmit an AERA protocol more than once. To ensure that the facility is completing the AERA in a timely manner, a 60-calendar day timeline was established for an AERA protocol resubmittal. More information on the 60-calendar day timeline is found on page 103 in the SONAR.

NESHAP Exemption

319. **Morley-7 and Freeman-7:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “the proposed rules exclude HAP emissions from an emissions unit for which a 40 CFR Part 63 standard has been adopted under Clean Air Act section 112(d) from the Stage 1 screening threshold analysis (Minn. R. 7012.0400, subp. 6). This reflects an important principle: facilities and units already subject to federal HAP regulations should not be forced to undergo duplicative analysis unless MPCA identifies a specific gap warranting additional review. The Stage 1 screening exemption is too limited and should be clarified. MPCA should allow the exemption to apply to all non-HAP toxics emitted from a source subject to a section 112(d) standard where the federal standards regulate the chemical class of HAPs. Many federal standards use surrogate pollutants, such as PM (for total metal HAP), VOC (for total organic HAP), or SO₂ (for total acid gas HAP), that effectively control the entire class of air toxics. MPCA should allow facilities to exclude the chemical class(es) of air toxics that the Section 112(d) standard addresses, in addition to all specific Federal HAP (Minn. R. 7012.0400, subp. 6). Federal HAP standards adopted in 112(d) impose emission limits, work practices, monitoring, recordkeeping, and reporting requirements across numerous source categories. Many MACT categories have also undergone EPA residual-risk and technology reviews. While the federal program is not identical to MPCA's proposed facility-specific risk framework, it is a mature regulatory structure specifically designed to reduce hazardous air pollutant emissions and address remaining risks. The proposed rule exempts certain HAP emissions from Stage 1 but appears to bring those same sources back into AERA if the facility proceeds to Stage 2. That approach undermines the efficiency of the Stage 1 exemption and may require facilities to remodel or re-evaluate emissions already addressed through existing programs. MPCA should either extend the exemption into AERA or clearly identify the circumstances in which a section 112(d) source must be included in AERA despite the Stage 1 exemption (Minn. R. 7012.0400, subp. 6; 7012.0550, subp. 2, item A; 7012.0560, subp. 1, items D, H, and I).”
320. **Stenseth-2:** Jon Stenseth from Delta Air Lines, Inc. stated, “In addition, as noted in the Chamber’s comments, when a federal toxics standard uses a surrogate to regulate a class of substances, as they

often do, that class of substances should be excluded from the state-level analysis.”

321. **MPCA Response:** The MPCA respectfully disagrees that facilities or stacks subject to a standard under section 112(d) of the federal Clean Air Act should be excluded from an AERA. In the screening threshold analysis step, hazardous air pollutants from an emissions unit for which a standard has been adopted under section 112(d) of the federal Clean Air Act are exempt from the screening threshold analysis, but air toxics emissions that are not hazardous air pollutants must be included (part 7012.0400, subpart 6). More information on this exemption and justification can be found on pages 87 and 88 in the SONAR. The screening threshold analysis is individually looking at each air toxic and comparing the emissions of the individual air toxic to a screening threshold value for that individual air toxic. However, an AERA is looking at the cumulative risk of all pollutants emitted at the facility and not just individual pollutants. Excluding emissions of air toxics from an AERA leaves significant gaps in the protection of human health and the environment. More information as to why sources subject to section 112(d) of the federal Clean Air Act are included in an AERA can be found on page 99 of the SONAR.
322. The commenters have also stated that surrogate classes (PM, VOC, and SO₂) should be excluded from the AERA analysis. The MPCA respectfully disagrees that surrogate classes should be excluded from the AERA analysis. The AERA estimates the risk from individual pollutants that are then summed across different exposure periods and health endpoints. Assessing individual pollutants, instead of using surrogates, can more accurately assess total risk when all pollutants are included in the AERA. As previously stated, the AERA assesses the cumulative risk at a facility. If any emissions are excluded from this analysis, then the estimated risk at a facility may be underestimated. Past and current AERAs do not exempt these sources from being included in an AERA. More information on the gaps of the current air toxics regulatory structure can be found on pages 7, 8, 14, and 15 in the SONAR.
323. **Stenseth-1:** Jon Stenseth from Delta Air Lines, Inc. stated, “MPCA’s proposed air toxics regulation allows these federal standards to be accounted for initially by allowing sources to exclude regulated air toxics in the screening stage but then ignores them in subsequent stages of the analysis. Instead, the proposed rule would require including all state-listed air toxics in the facility’s potential to emit. These are very rigorous federal standards, and the rule should be revised to factor them through all stages of analysis.”
324. **Karbo-5:** Mike Karbo from the American Petroleum Institute stated, “Many affected facilities are already subject to comprehensive federal hazardous air pollutant programs, including MACT standards, NESHAP requirements, and EPA residual risk and technology reviews. While the proposal appropriately recognizes certain federal requirements during the initial screening process, additional clarification is needed regarding when already-regulated emission units must undergo additional facility-specific analyses. API recommends that MPCA further clarify or expand exemptions where existing federal programs have already evaluated and addressed hazardous air pollutant emissions unless MPCA identifies a specific regulatory gap warranting additional review. This approach would reduce duplication while maintaining protection of public health.”
325. **MPCA Response:** Hazardous air pollutants from an emissions unit for which a standard has been adopted under section 112(d) of the federal Clean Air Act are exempt from the screening threshold analysis, but air toxics emissions that are not hazardous air pollutants must be included (7012.0400 subpart 6). More information on this exemption and justification can be found on pages 87 and 88 in the SONAR. The screening threshold analysis is individually looking at each air toxic and comparing the emissions of the individual air toxic to a screening threshold value for that individual air toxic.

However, an AERA is looking at the cumulative risk of all pollutants emitted at the facility and not just individual pollutants. Thus, if a facility is above screening thresholds in the STRATA and makes the determination to complete the AERA process, those exempted emissions from the screening threshold analysis will need to be included in the AERA so the MPCA can accurately assess total risk from the facility. Additionally, the AERA process uses potential to emit emissions and not actual emissions, excluding emissions would underestimate the risk that a facility may pose. More information about the requirements for the AERA protocol and the justification for these requirements can be found on pages 100 and 101 in the SONAR.

Pollutant Refinement

326. **Morley-8 and Freeman-8:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated the MPCA should revise the proposed rules to “add a pollutant/source winnowing step before requiring a full AERA”.
327. **MPCA Response:** The screening threshold analysis was developed to be a “winnowing step” before an AERA. The MPCA developed the screening threshold analysis as the first step in the process to exclude facilities that are not potentially posing an increased risk. Table 4 in the SONAR (pages 51 and 52) shows that between 23 and 32% of facilities potentially subject to the proposed rule could be above screening threshold values and will need to either develop a CDP or complete an AERA. This initial analysis shows that not all facilities subject to this proposed rule will have to complete an AERA. Additionally, if a facility is above screening threshold values, the facility has the option to either develop a CDP or complete an AERA. This means that the 131 to 178 facilities estimated (from Table 4 in the SONAR) to be above screening threshold values do not all have to complete an AERA, they have the option to develop a CDP instead. The MPCA has developed proposed rule language that would not require all facilities subject to the proposed rule to complete an AERA. The MPCA thinks that based on the proposed rule language, this “winnowing step” that the commenter has referred to is already included in the proposed rule language.

PART 7012.0558 INCORPORATIONS BY REFERENCE; AIR EMISSIONS RISK ANALYSIS

Inhalation Health Benchmarks

328. **Morley-26 and Freeman-25:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis requested a technical clarification to “clarify how updated inhalation health benchmarks will affect facilities that have already completed screening, CDPs, AERAs, or permit amendments.”
329. **MPCA Response:** The commenters asked for clarification of the process for a facility when an inhalation health benchmark is updated. Under part 7012.0170, subpart 1, item C in the proposed rules, an additional screening threshold analysis is required when “screening threshold values have been newly established or updated since the last analysis.” Screening threshold values are calculated using inhalation health benchmarks, thus if the IHBs are updated the screening threshold values would be then updated and would require an additional screening threshold analysis. However, since these screening threshold values are listed in rule, rulemaking is needed to update these screening threshold values. Page 69 in the SONAR has more information about the requirement for additional screening threshold analysis when IHBs are updated.
330. For a CDP, if the IHBs are updated the facility would need to submit a revised CDP. There are two options for the revision of the CDP; either facility-initiated revision or agency-initiated revision. For

the facility-initiated revision under part 7012.0500, subpart 1, item C, the facility must update the CDP when “screening threshold values are updated or removed.” For the agency-initiated revision under part 7012.0500, subpart 2, item C, the facility must revise its CDP when screening threshold values have been “established or updated that were not included in previous screening threshold or risk analyses.” As stated above, if IHBs are updated then the screening values would be updated through a rulemaking. This would require a facility to revise its CDP. Pages 95 and 96 in the SONAR justify why it is necessary to revise a CDP if the IHBs were updated.

331. For an AERA, updated IHBs used for an AERA would continue to follow the hierarchy in the proposed rule under 7012.0560, subpart 1, item G. The updated IHBs would be updated and reflected in the RASS spreadsheet. Additionally, there is no condition in the proposed rule to update an AERA based on updated IHBs. The MPCA currently does not require facilities to update any past AERAs to account for IHB changes, and does not require facilities to update their AERAs in this proposed rule. Therefore, updated IHBs will also not affect facilities that have completed permit amendments that might be required to implement an ATRP or CDP, or a permit amendment for any other reason under Minnesota Rules.

332. **Karbo-3:** Mike Karbo from the American Petroleum Institute stated, “The proposed rule relies upon inhalation health benchmarks derived from multiple scientific organizations. API supports using health-based toxicity values but requests additional transparency regarding:

- the hierarchy used when multiple toxicity values exist;
- the scientific rationale for selecting among competing values;”

333. **MPCA Response:** If multiple inhalation health benchmarks (or toxicity values referenced in the comment) exist for a given air toxic then the value used would follow the hierarchy detailed in part 7012.0560, subpart 1, item G. For example, if an air toxic had an IHB from both the Integrated Risk Information System (IRIS) and the Agency for Toxic Substances and Disease Registry (ATSDR), under the established hierarchy, the value from IRIS should be used. The rationale for this hierarchy and the selection among competing values is on pages 116 through 119 in the SONAR.

PART 7012.0560 AIR RISK EMISSIONS ANALYSIS REPORT

Acceptable Risk Levels

334. **Bakken-2:** Paul Bakken stated, “In proposed section 7012.0560, Subp. 3. “Acceptable risk levels,” the draft language states in pertinent part that “The owner or operator of an air toxics facility must not cause or allow the facility-wide air toxics emissions to result in a predicted maximum ambient impact that exceeds the acceptable risk levels in this subpart. The owner or operator must use the following risk levels in air emissions risk analyses: A. cancer risk of 1 in 100,000;...” How does the MPCA account for the deposition of heavy metals such as lead in a neighborhood surrounding an air toxics facility that has occurred cumulatively over 50+ years of emissions and for which there is a demonstrated increase in cancer risk to the residents at or in excess of 1 in 100,000? Do these standards only apply to a three-month rolling average monitoring window, or do they take into account the effects of decades of deposition and exposure? Is this accounted for in 7012.0055, Subp. 38. Urban gardener cancer multipathway risk?”

335. **MPCA Response:** In the proposed rule language, cancer risk is defined under 7012.0050, subp. 11, as “the probability that a hypothetical human receptor will develop cancer based on an assumed set of exposure...”. Given this definition, the exposure timeframe for the cancer risk assessed in an AERA is for the duration of a person’s lifetime, which is typically assumed to be up to 70 years. It does not,

however, address past accumulation. This cancer risk referenced from the commenter is solely focused on the inhalation cancer risks. However, as the comment stated there are other multipathway risks such as resident, farmer, and urban gardener that take into account the deposition of pollutants near a facility. Cancer risks are how MPCA accounts for the lifetime exposure to pollutants.

336. The commenter asked about the deposition of heavy metals. Many heavy metals have an inhalation unit risk that can be used in an AERA to estimate the potential cancer risks from these heavy metals over a lifetime. Additionally, an AERA estimates the risks at the facility fence line and past the fence line into neighborhoods surrounding the facility. The standards do not apply to a three-month rolling average monitoring window. To estimate the potential cancer risks at a facility, the facility can either use default dispersion modeled values included in the risk assessment screening spreadsheet (RASS) or model its facility. The facility would take the highest average annual concentration at any of the receptors along the facility's fence line or at any receptor past the facility's fence line and use the annual concentration along with an inhalation unit risk to estimate the potential cancer risks. The AERA does not use monitoring information. Additionally, as stated in 7012.0050, subp. 28, the inhalation unit risk (IUR) is the "upper-bound excess lifetime cancer risk...". By using the IUR to estimate the cancer risk, the estimated risk level takes into account decades of exposure. Lastly, an AERA does assess the multipathway risk near a facility. These multipathway risks assess different exposure scenarios including inhalation, ingestion, and dermal based on deposition near a facility that could be from facility air emissions. The multipathway risks assess both noncancer and cancer risks, which both of these risks are assumed to be over an individual's lifetime.

337. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, "API also recommends that MPCA:

- provide additional explanation regarding cumulative hazard index calculations and target-organ grouping;
- clarify whether facilities must develop hourly and annual emissions estimates for all regulated air toxics or only for pollutants that require further evaluation after screening".

338. **MPCA Response:** The hazard index is defined in the proposed rule under part 7012.0055, subpart 23. The hazard index is the sum of all the hazard quotients for multiple substances with similar exposure periods or health endpoints. The equation for the hazard index can be found on page 126 in the SONAR. In an AERA, the hazard index is calculated for inhalation risks, multipathway risks, and health endpoints. The health endpoints (or what the commenter refers to as "target-organ grouping") are defined in the proposed rule under part 7012.0055, subpart 25. This definition lists examples of body organs or systems that are defined as health endpoints. These health endpoints are determined by the adverse effects identified through the evaluation of toxicological and/or epidemiology studies used in developing the inhalation health benchmarks.

339. An AERA assesses the cumulative risk of all the stacks at a facility. Given this, all air toxic emissions must be included in an AERA and not just air toxics that require further investigation after the screening threshold analysis. The required content of an AERA protocol and subsequent AERA report are found in the proposed rule under 7012.0550, subpart 2, item A. More information on the required content for an AERA protocol is available on pages 98 through 101 in the SONAR. There is an exclusion in the proposed rule under 7012.0550, subpart 2, item C that states that if an air toxics does not have an IHB under part 7012.0560, subpart 1, item G, then it is exempt from being included in an AERA. More information on this exclusion can be found on page 101 of the SONAR.

Reliance on self-reporting

340. **Lockwood-1:** Helen Lockwood stated, “Reliance on facility self-reporting 7012.0100 (Air Toxics Emissions Inventory); 7012.0600 (Record Keeping); 7012.0550 (Reporting) The rule requires facilities to calculate emissions, maintain records, and submit inventories. The SONAR repeatedly describes facility-generated emissions estimates as the basis for screening and risk determinations .improvement: Independent verification of emissions inventories for facilities with significant toxic emissions or a history of violations”.
341. **MPCA Response:** MPCA respectfully disagrees that third party verification is necessary. The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews the emissions data that facilities submit to us.
342. While the proposed rule does not require third-party audits, the MPCA has established processes for reviewing emissions inventories, modeling data, and other records, and for determining inspection frequencies. Inspections involve reviewing records, such as emissions estimates and other data, and verifying their accuracy and completeness. Some types of permit holders covered by the proposed rule are subject to unannounced routine compliance inspections. All types of permit holders covered by the proposed rule may be subject to random unannounced inspections, which may be more frequent if an owner or operator has repeated violations. If violations are identified through review of submitted data, inspection of a facility, or other means, the MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. Additionally, emissions inventories, modeling data, and other records are public data per Minn. Stat. 13.03, subdivision 1, and available to the public upon request per Minn. Stat. 13.03, subdivision 3.

Emissions

343. **Morley-10 and Freeman-9:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated, “the proposed rules use actual emissions at Stage 1 but then shift to potential-to-emit calculations in AERA. AERA can be a useful refined analysis, but PTE-based modeling can significantly overstate actual community exposure. In many cases, PTE reflects theoretical maximum capacity, not representative operations. Furthermore, because the AMS/EPA Regulatory Model (AERMOD) itself is designed to be a conservative dispersion model, coupling AERMOD with PTE assumptions for all emissions units, insignificant activities, and conditionally insignificant activities can convert a refined risk analysis into an unrealistically conservative exercise (Minn. R. 7012.0550, subp. 2, item A; 7012.0560, subp. 1, items H and I). The Chamber requests that MPCA revise the AERA provisions to allow actual, representative historical emissions or reasonable projected actual emissions where those values better represent exposure (Minn. R. 7012.0550, subp. 2, item A, subitem 3; 7012.0560, subp. 1, item I). PTE may be appropriate in some permitting contexts, particularly where a facility seeks enforceable limits tied to potential emissions, but it should not be the only path for demonstrating risk where actual exposure is the relevant public health question.

Specifically, the rules should allow facilities to:

- refine only STRATA-exceeding pollutants or the pollutants that materially drive risk;
- exclude low-risk source/pollutant pairs unless MPCA demonstrates they materially affect risk;
- use MNRISKS or other MPCA-approved tools as an intermediate refinement;
- rely on representative ambient monitoring data where available; and

- use actual emissions instead of PTE in the AERA.”

344. **MPCA Response:** Potential to emit (PTE) represents the maximum amount of air pollution a facility is legally allowed to release. The MPCA respectfully disagrees that actual emissions should be used in an AERA as this would not be the maximum emissions possible from a facility and would not estimate the maximum risk that a facility may pose. More information on the decision to use PTE in the AERA process can be found on pages 100 and 101 in the SONAR.
345. The MPCA respectfully disagrees that only pollutants exceeding screening threshold values in the STRATA should be evaluated in an AERA. An AERA assesses the cumulative risk of all the stacks at a facility. Given this, all air toxic emissions must be included in an AERA and not just air toxics that require further investigation after the screening threshold analysis. The required content of an AERA protocol and subsequent AERA report are found in the proposed rule under 7012.0550, subpart 2, item A. More information on the required content for an AERA protocol is available on pages 98 through 101 in the SONAR.
346. The MPCA respectfully disagrees that low-risk sources and pollutants should be excluded in the proposed rule. There is an exclusion in the proposed rule under 7012.0550, subpart 2, item C that states that if an air toxic does not have an IHB under part 7012.0560, subpart 1, item G, then it is exempt from being included in an AERA. More information on this exclusion can be found on page 101 of the SONAR. The AERA is an iterative process that does allow for refinement of sources included in the AERA by the facility. However, the facility must first include these sources in an AERA to demonstrate they are a low-risk source.
347. The MPCA respectfully disagrees that MNRISKS or other tools should be used as an intermediate refinement. The proposed rule states that facilities must complete a screening threshold analysis as the first step in the process. This will eliminate some facilities from continuing through the process. Based on Table 4 in the SONAR (pages 51 and 52), an estimated 23-32% could be above screening threshold values and will continue on to either develop a CDP or complete an AERA. The MPCA believes that this is the “intermediate refinement” that the commenter had mentioned. Based on the preliminary analysis, not all facilities will be above screening threshold values and facilities that are above screening threshold values will have the option to either develop a CDP or complete an AERA.
348. Lastly, the MPCA respectfully disagrees that ambient monitoring data should be used when available. The ambient monitoring data can be compared to IHBs in certain situations to determine if any air toxics are above IHBs. However, monitoring data will only show actual concentrations in the air near a facility for a limited number of air toxics, and not the potential maximum emissions. As stated earlier, PTE must be used to assess the maximum potential emissions at a facility. Since actual emissions can be variable, the maximum must be used in an AERA.
349. **Karbo-7:** Mike Karbo from the American Petroleum Institute stated, “The proposal generally requires use of the most recent emissions inventory. However, a single inventory year may not represent typical facility operations. Similarly, many facilities have representative ambient or fence-line monitoring information that may better characterize actual exposure than generalized screening assumptions. API is also concerned that the AERA methodology may require the use of potential-to-emit or maximum physical capacity emissions for certain emission units rather than representative operating conditions. While conservative assumptions may be appropriate for an initial screening analysis, refined risk assessments should reflect realistic operating conditions to provide the most accurate estimate of potential public exposure.

API recommends allowing:

- representative operating years where justified;
- representative monitoring data;
- refined dispersion analyses; and
- other technically appropriate information where these data provide a more realistic characterization of potential exposure.
- clarification of when actual operating data, enforceable permit limits, or representative emissions may be used in lieu of potential-to-emit assumptions during the AERA process.”

350. **MPCA Response:** The MPCA respectfully disagrees that facilities should choose representative operating years. It is imperative that the air toxics facility uses the most up-to-date stack and emissions data. This ensures that the screening threshold analysis is conducted for the most current conditions at the facility. Actual emissions can vary from year to year at a facility, so when completing the screening threshold analysis, it is reasonable to require the most recent data to be used to ensure compliance with the rules.

351. Additionally, using the most current conditions at the facility also ensures that all air toxics facilities are using the same parameters, and have consistent expectations and requirements when completing the screening threshold analysis. The proposed rule has specific due dates of the initial screening threshold analysis based on permit type (part 7012.0200, subpart 1, item B). Since the due date for the initial screening threshold analysis varies based on permit type, if allowed to choose representative years, some facilities would have multiple years of emissions information to choose between, while other facilities only have one year of emissions information. More information on why the most recent MPCA finalized emissions inventory must be used in the screening threshold analysis can be found on pages 78 and 79 in the SONAR.

352. The MPCA respectfully disagrees that ambient monitoring data should be used in the STRATA spreadsheet. The STRATA spreadsheet was designed for facilities to input stack information such as height, distance to property line, hourly emissions, and annual emissions. The hourly and annual emissions are compared to screening threshold values. Both the emissions and the screening threshold values have the same units and thus can be compared to each other. The equations for how the MPCA calculated the screening threshold values can be found on pages 29 and 30 in SONAR Exhibit 2. Monitoring data is a measurement of the concentration of a pollutant in the ambient air, in units of micrograms per meter cubed, which is different than the screening threshold values in either pounds per hour or tons per year. Given this discrepancy in the units, monitoring data cannot be directly compared to screening threshold values. Additionally, ambient air monitoring is not possible for all air toxics.

353. The STRATA is a screening tool to determine if more in-depth analysis needs to be done at the facility, which at this time the facility has the option to do more in-depth modeling of the facility's operations through the AERA process. Additionally, the default dispersion values used in the STRATA are not so overly conservative where a majority of facilities in the seven metropolitan counties will continue to either develop a CDP or complete an AERA. In Table 4 in the SONAR (pages 51-52), the MPCA estimates between 23-32% of facilities could be above screening threshold values and will have to complete a CDP or an AERA. From these initial results, the MPCA believes that the default dispersion values used are not too conservative and are a screening step for facilities to determine if more analysis is needed, at which time the facility may complete facility-specific modeling. Given

the effort required to confirm modeling and given the STRATA is a screening tool, the MPCA respectfully disagrees that facility-specific dispersion modeling should be used instead of default dispersion values in the STRATA as the first step.

354. Potential to emit (PTE) represents the maximum amount of air pollution a facility is legally allowed to release. Enforceable permit limits are included in the calculation of PTE and therefore allowed in the AERA process. The MPCA respectfully disagrees that actual emissions or actual operating data should be used in an AERA as this would not be the maximum emissions possible from a facility and would not estimate the maximum risk that a facility may pose. More information on the decision to use PTE in the AERA process can be found on pages 100 and 101 in the SONAR.

Off-Ramp for Facilities

355. **Morley-24 and Freeman-21:** Andrew Morley from the Minnesota Chamber of Commerce stated, “MPCA should also provide an off-ramp for facilities with prior MPCA AERAs or equivalent risk analyses that remain representative of current permitted activities. Requiring a facility to repeat a costly AERA that has already been completed and reviewed does not materially improve public health unless facility operations, emissions, or surrounding receptors have changed in a way that could materially affect risk. The rules should allow prior analyses to satisfy or narrow the rules' requirements (Minn. R. 7012.0070; 7012.0560, subp. 4).”
356. **MPCA Response:** Under 7012.0560, subpart 4 in the proposed rule there is language to state that a previous AERA can be used if the AERA meets the criteria listed in items A through D under this subpart. The MPCA understands that the AERA process can be a lengthy process, so the MPCA made sure to include language in the proposed rule to allow facilities to use previously completed AERAs. More information about when a previously completed AERA can be used is found on pages 126 and 127 in the SONAR.

Public disclosure

357. **Lockwood-ltr-4:** Helen Lockwood stated, “There should be stronger public disclosure and independent review of modeling assumptions and source data. There should be language to update the model when modeling assumptions change or are deemed no longer as relevant due to new facts collected on surrounding neighborhood toxins impacts.”
358. **MPCA Response:** MPCA agrees that the public should have access to all emissions data for review, including modeling inputs and emissions calculations. Under 40 CFR 2.301, all emission data and supporting information is public data and available for public inspection and copying. Both the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations require that “emission data” submitted to the MPCA under Title V or Minnesota’s State Implementation Plan must be available to the public. Modeling inputs for criteria pollutants are publicly available through the MPCA’s interactive data website: Workbook: Air dispersion modeling source parameters in e-Service (<https://data.pca.state.mn.us/views/Airdispersionmodelingsourceparametersine-Service/e-ServiceSources?%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Atoolbar=top>). However, the MPCA is still working out implementation of the proposed rule and the location of the modeling inputs for air toxics is currently undecided.
359. The MPCA reviews all modeling assumptions and source data that accompanies an AERA submittal for accuracy and completeness. The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews and verifies the emissions data that facilities submit to us. While outside parties may take it upon themselves to review public

information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA's powers under Minn. R. 1400.2100(F).

360. In an AERA, the modeling done by a facility investigates how the emissions released from a facility impact human health and the environment near the facility. The modeling uses potential to emit (PTE), which represents the maximum amount of air pollution a facility is legally allowed to release under their permit; if the PTE or other modeling parameters at a facility change, a facility's permit requirements may require remodeling. In addition, language under part 7012.0170, subpart 1, that states if parameters used under an AERA do not accurately represent the facility and could lead to an exceedance of screening threshold values then the facility would have to conduct an additional screening threshold analysis. More information on an additional screening threshold analysis is found on pages 67 through 70 in the SONAR.

PART 7012.0568 NOTIFICATION TO POTENTIALLY IMPACTED RESIDENTS

Notification to Residents

361. **Kreidler-6:** Mark Kreidler stated, "Notification is only required after unacceptable risk levels are found. Communities should be informed earlier in the process, including when screening thresholds are exceeded or when an air emissions risk analysis is initiated. Additionally, the rule does not require plain-language summaries, public meetings, or translation services. Requested Change: The rule should require notification to residents when screening thresholds are exceeded, when an air emissions risk analysis is initiated, or when ambient monitoring detects elevated concentrations. Notification should include plain-language summaries, public meetings, and translation services where appropriate. Early and accessible communication strengthens community trust and engagement."

362. **Satre-6:** Dave Satre stated, "Under the current rule, notification only kicks in after unacceptable risk levels have already been identified. Communities should instead be informed earlier in the process—including when screening thresholds are exceeded or when an air emissions risk analysis gets underway. The rule also falls short by not requiring plain-language summaries, public meetings, or translation services. Requested Change: The rule should require resident notification when screening thresholds are exceeded, when an air emissions risk analysis is initiated, or when ambient monitoring detects elevated concentrations. Such notification should include plain-language summaries, public meetings, and translation services where appropriate. Communicating earlier and more accessibly would strengthen community trust and engagement."

363. **MPCA Response:** Multiple commenters made statements about public involvement and transparency. The Agency appreciates the comments related to increased public involvement and more requirements for the notification process. The rule requires notification at the point of the air toxics reduction plan so the information can be verified and the public can be made aware of the air toxics the permitted party is emitting and actions it will take to reduce risk. Analyzing the screening threshold analysis and performing the air emissions risk analysis before broadly sharing information allows the facility and Agency to have a greater understanding of the potential risk and what will be done to reduce the risk.

364. The Agency recognizes the importance of communicating directly with the public. The Session law directing this rulemaking did not mandate public meeting requirements. The notifications required by the proposed rules are a form of reporting about actions the facility will take to reduce risk, and reporting requirements are required by the session law. More information about the notifications starts on page 131 of the SONAR. Public meetings may be necessary in certain instances, and the

rule does not preclude public meetings. The rule also does not preclude the public from requesting a public meeting nor the Agency from subsequently holding one in response.

365. Commenters also made statements regarding the content and format of the notifications. The permitted parties must include the required information currently in part 7012.0568, subpart 2. These requirements establish what is required at a minimum, but more information can be included in the notifications—including the information the commenter requested to be included in the notifications. Regarding the accuracy and transparency of the information the regulated parties share, per Minnesota Administrative Rules part 7000.0300, there is a duty of candor that regulated parties must adhere to. The rule requires them to “to act in good faith and with complete truthfulness, accuracy, disclosure, and candor” when communicating with the Agency. This includes the notifications and information they submit to the Agency. While this doesn’t guarantee the notifications are written in plain language, it will likely help improve the accuracy of the notifications and help reduce the chances of misleading or inaccessible information going out to the public.

366. Commenters also expressed concerns over translated notifications. The MPCA understands the importance of language accessibility. Translated materials is something the Agency will continue to consider. Currently, translated notifications and communication of other forms are not required in the session law language. However, the session law language does not preclude the facility from providing translated notifications and materials, even if it is not specified as a rule requirement.

367. **Bonneson-8:** Katharine Bonneson from the University of Minnesota stated, “If an AERA indicates risk above acceptable levels, the Draft Rules require facilities to notify every residence or business within a circle, centered on the facility, with the radius extending to the farthest point where modeled risk estimates are equal to 90% of the acceptable risk level. While the University supports a modeling-based approach to ensure that all potentially impacted residents are notified, the simplified circle methodology is flawed, particularly when applied to expansive public institutions. The University’s Twin Cities campus covers approximately 1,200 acres across Minneapolis and St. Paul, spanning a distance greater than three miles. Centering a notification circle on the geographic center of a sprawling campus, rather than on the emission source causing the exceedance, inflates the notification area unnecessarily. For the University, the geographic center could be located more than 1.5 miles away from the emission source causing the exceedance, resulting in a much larger notification radius than necessary. For example, if modeling demonstrates that the actual risk impacts were located in the Cedar-Riverside neighborhood of Minneapolis, applying a radius from the University’s geographic center would require sending notifications to residents as far away as Roseville. This outcome directly contradicts the SONAR, which explicitly states the rules’ intent is to limit mailers to areas of potential impacts. This overly broad notification methodology can also create undue alarm and stress on unimpacted residents. This approach would also create unnecessary concern and present false information to residents who are within the general radius of the facility but not located in the areas where the modeled risk estimates are equal to 90% based on the meteorological conditions and terrain. The modeling results from an AERA can be plotted on a map and used to provide a detailed significant impact area representing 90% modeled risk estimates. The current MPCA modeling practices manual uses this approach in a significant impact area (SIA) analysis to identify the extent for the National Ambient Air Quality Standard (NAAQS) receptor grid based on modeled Significant Impact Level (SIL) results. In addition, the University intends to comply with any public notice requirements, but notes that for a public facility like the University, mailed notices can be a burdensome task with the potential for minor errors. Accordingly, consistent with other requirements for public notice understate law, the University recommends that the rules be revised to add that a bona fide attempt to comply with the notice requirements. See, e.g., Minn. Stat. § 216I.05, subd. 8(d).”

368. **MPCA Response:** In review of the comments received regarding this part of rule, the MPCA agrees that a revision may be helpful for facilities spanning large geographic areas. The MPCA would consider changes to clarify this subpart but is still determining what specific changes would be needed.
369. MPCA is seeking input on this revision. One option the MPCA is considering is including in part 7012.0568, subpart 1(A) that “or, provided that potentially impacted residents are not excluded from receiving notifications, facilities that contiguously span a distance of 3 miles or greater, a residence or business located anywhere the risk levels are 90 percent of acceptable risk levels.” The full text of item A would read as follows:
- A. a residence or business located within a circle with the air toxics facility at the center and a radius determined by the farthest point identified where risk estimates are equal to 90 percent of acceptable risk levels; or, provided that potentially impacted residents are not excluded from receiving notifications, for facilities considered a single source by the MPCA and that contiguously span a distance of 3 miles or greater, a residence or business located anywhere the risk levels are 90 percent of acceptable risk levels; and
370. **Lockwood-ltr-4:** Helen Lockwood stated, “There should be stronger public disclosure and independent review of modeling assumptions and source data. There should be language to update the model when modeling assumptions change or are deemed no longer as relevant due to new facts collected on surrounding neighborhood toxins impacts.”
371. **MPCA Response:** MPCA agrees that the public should have access to all emissions data for review, including modeling inputs and emissions calculations. Under 40 CFR 2.301, all emission data and supporting information is public data and available for public inspection and copying. Both the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations require that “emission data” submitted to the MPCA under Title V or Minnesota’s State Implementation Plan must be available to the public. Modeling inputs for criteria pollutants are publicly available through the MPCA’s interactive data website: Workbook: Air dispersion modeling source parameters in e-Service (<https://data.pca.state.mn.us/views/Airdispersionmodelingsourceparametersine-Service/e-ServiceSources?%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Atoolbar=top>). However, the MPCA is still working out implementation of the proposed rule and the location of the modeling inputs for air toxics is currently undecided.
372. The MPCA reviews all modeling assumptions and source data that accompanies an AERA submittal for accuracy and completeness. The responsible official for each facility is required to sign and certify the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews and verifies the emissions data that facilities submit to us. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F).
373. In an AERA, the modeling done by a facility investigates how the emissions released from a facility impact human health and the environment near the facility. The modeling uses potential to emit (PTE), which represents the maximum amount of air pollution a facility is legally allowed to release under their permit; if the PTE or other modeling parameters at a facility change, a facility’s permit requirements may require remodeling. In addition, language under part 7012.0170, subpart 1, that states if parameters used under an AERA do not accurately represent the facility and could lead to an exceedance of screening threshold values then the facility would have to conduct an additional screening threshold analysis. More information on an additional screening threshold analysis is

found on pages 67 through 70 in the SONAR.

Public Notification

374. **Aranguren-1:** Megan Aranguren stated, “7012.0500 (Public Notification), Concern: Public notification is required under certain circumstances, but there does not appear to be a requirement for publication of all modeling inputs, raw emissions calculations, or independent technical review. Suggestion: Opportunities are there to strengthen public access to data, publication of inspection results and publication of enforcement actions.”
375. **Lee-6:** Rebecca Lee stated in response to Aranguren-1, “So Agree!!”
376. **MPCA Response:** The MPCA appreciates the public comments related to data access. The MPCA agrees that the public should have access to all emissions data for review, including modeling inputs and emissions calculations.
377. Under 40 CFR 2.301, all emission data and supporting information is public data and available for public inspection and copying. Both the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations require that “emission data” submitted to the MPCA under Title V or Minnesota’s State Implementation Plan must be available to the public.
378. While not required in rule, MPCA the MPCA provide on our website emissions inventory data and copies of all air emission permits for all permitted facilities. The website can be found here: <https://data.pca.state.mn.us/views/Airemissions-pointsourcefacilitydata/Byfacility?%3Aembed=y&%3AisGuestRedirectFromVizportal=y>. For higher profile facilities, the MPCA has created project specific webpages that often proactively includes additional information, such as modeling results and nearby ambient air monitor results, so that this information is available to the public without needing a formal request.
379. According to 40 CFR 2.301(f): ***Availability of information not entitled to confidential treatment.*** [Section 2.210](#) does not apply to information to which this section applies. Emission data, standards or limitations, and any other information provided under section 114 or 208 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Emission data and standards or limitations provided in response to a subpoena issued under section 307(a) of the Act shall be available to the public notwithstanding any other provision of this part. Information (other than emission data and standards or limitations) provided in response to a subpoena issued under section 307(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under [5 U.S.C. 552\(b\)](#) for reasons other than reasons of business confidentiality and cannot or should not be made available to the public. [https://www.ecfr.gov/current/title-40/part-2/section-2.301#p-2.301\(f\)](https://www.ecfr.gov/current/title-40/part-2/section-2.301#p-2.301(f))
380. The MPCA respectfully disagrees that third party verification by an independent technical review is necessary. The responsible official for each facility is required to sign and certify the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews the emissions data that facilities submit to us. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F).
381. **Morley-13 and Freeman-12:** Andrew Morley from the Minnesota Chamber of Commerce and Chris

Freeman from Cordia Energy Center Minneapolis stated, “Public notification must also be accurate and contextual. Conservative screening results, PTE-based modeling results, and preliminary analyses can be easily misinterpreted as actual exposure or final health determinations, if released without explanation. The proposed rules require notification to potentially impacted residents after an AERA identifies risks above acceptable levels and an air toxics reduction plan is approved (Minn. R. 7012.0568, subps. 1 through 3; 7012.0570, subp. 2). The notification should be revised to clearly distinguish modeled potential impacts from measured actual exposure. If an AERA uses PTE, the notice should explain that the analysis is based on conservative assumptions and potential emission rates, not actual emissions or actual exposure. Where a facility's risk-reduction actions require a permit amendment, MPCA should rely on the existing public notice process for that permit action rather than creating duplicative processes (Minn. R. 7012.0560, subp. 8; 7012.0570, subp. 6). Where a facility makes voluntary or operational changes that reduce emissions and no permit amendment is required, public disclosure or meetings should generally remain within the facility's discretion unless MPCA has identified a concrete public health basis for additional notice. As a general transparency measure, MPCA could provide a public-facing dashboard or “What's in My Neighborhood?” status indicator identifying whether a facility has completed Stage 1, submitted a CDP, submitted an AERA, or completed an ATRP. That type of process-status transparency is less likely to mislead the public than publication of conservative preliminary technical results without context.”

382. **MPCA Response:** MPCA agrees that the notifications should be clear about the basis of the modeling. The proposed rules require the notifications to specify “potential air toxics emissions’ impacts” because potential emissions are used in an AERA. The proposed rules list the minimum information the notifications must contain. If further distinctions help clarify that modeled impacts are not necessarily the same as impacts from actual emissions and that the model may contain conservative assumptions, that information can be added. The proposed rules do not limit the content of the notifications.

383. Where a facility's risk-reduction actions require a permit amendment, MPCA respectfully disagrees that relying on the existing public notice process for that permit action is sufficient and disagrees that the proposed notification process is duplicative.

384. The ATRP would be developed before a permit amendment is submitted to the MPCA and therefore would be submitted at least several months before a public notice period for the permit amendment. The ATRP is submitted up to 1.5 years after the initial AERA protocol is due, or 2.5 years after the screening threshold certification due date of an air toxics screening threshold analysis that identifies the facility as emitting one or more air toxics above the screening threshold values. This notifications timeline should not be extended further when permitting timelines can vary from months to years. The MPCA wishes to provide notifications as soon as reasonably possible, while also considering the nuance of what is communicated and the desire to not raise unnecessary alarm for recipients. There are also comments asking for the rule to require earlier notifications that MPCA must consider. For example, comment **Satre-6** states, “the rule should require resident notification when screening thresholds are exceeded, when an air emissions risk analysis is initiated, or when ambient monitoring detects elevated concentrations.”

385. Another difference between the ATRP notifications and the public notice of a draft permit is the format and content. The notifications to potentially impacted residents provide information directly to potentially impacted residents about potential risks and a plan to address them, and then provide notice when all actions are completed. The public notice of a draft permit is only required to be mailed to individuals if they request in writing to be included on a mailing list (Minn. R. 7007.0850,

subp. 2(A)(1)), seeks input from the public on the contents of the draft permit, and does not include additional public notice when actions outlined in the permit are complete. The ATRP notifications serve a different purpose than the public notices for permit amendments and must be sent even if there was no request for such a notice to ensure people potentially impacted are notified.

386. The MPCA appreciates the suggestions for transparency measures and will consider them for implementation purposes.

387. **Morley-13 and Freeman-12:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated the MPCA should revise the proposed rule to “calibrate public notification to avoid presenting conservative modeled potential impacts as actual exposure or final risk determinations.”

388. **MPCA Response:** MPCA agrees that the notifications should be clear about the basis of the modeling. The proposed rules require the notifications to specify “potential air toxics emissions’ impacts” because potential emissions are used in an AERA, not actual emissions. The MPCA respectfully disagrees that modifications to the rule are needed for this purpose. The proposed rules list the minimum information the notifications must contain. If further distinctions help clarify that modeled impacts are not necessarily the same as impacts from actual emissions, the facility can add that information. The proposed rules do not limit the content of the notifications.

Clarification on Notification

389. **Lansing-11:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0568: We request clarification on whether notification to potentially impacted residents is required for facilities who conduct an air emissions risk analysis that results in risks above acceptable risk levels but decide to submit a compliance determination protocol in lieu of an air toxics reduction plan, as allowed by 7012.0570 Subpart 8.”

390. **MPCA Response:** A notification to potentially impacted residents is not required for facilities who submit a compliance determination protocol in lieu of an air toxics reduction plan.

PART 7012.0570 AIR TOXICS REDUCTION PLAN; REQUIREMENTS

Continuous Compliance

391. **Lansing-12:** Jenni Lansing from the Minneapolis Health Department stated, “7012.0570 Subpart 2(C)(8): We support the requirement that the air toxics reduction plan includes a description of what records will be kept on site to verify continuous compliance. We request that MPCA establishes a mechanism to confirm continuous compliance and enforce on noncompliance, either incorporated into general air permit inspections or through a different inspection protocol. If this mechanism already exists, we request that MPCA provide clarification on how continuous compliance will be confirmed on a routine basis.”

392. **MPCA Response:** Owners or operators with permit types that are allowed an ATRP as an option to comply with acceptable risk levels are required to report deviations from compliance at least semiannually, per Minn. R. 7007.0800, subpart 6, item B, subitem (2). This requirement would apply to any facility with an ATRP. The MPCA has established processes for reviewing and investigating submitted reports that identify deviations from compliance. Additionally, permit types that are allowed an ATRP are subject to routine compliance inspections by the MPCA. If violations are identified through a review, investigation, or inspection of a facility, the MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9.

Compliance Confirmation

393. **Lansing-13:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0570 Subpart 7(C): We support the requirement that the facility must notify MPCA once compliance has been achieved. We request that MPCA establishes a protocol to confirm that compliance has been achieved, through on-site inspection, review of calculations, or other appropriate methods.”
394. **MPCA Response:** Owners or operators with permit types that are allowed an ATRP as an option to comply with acceptable risk levels are subject to routine compliance inspections by the MPCA. As part of these inspections, MPCA would inspect for compliance with the proposed rule, including compliance with an ATRP and acceptable risk levels where applicable. Additionally, all submissions required by the proposed rule, including compliance notifications under part 7012.0570, subpart 7, item C, must be certified under penalty of law, per part 7012.0140, that the information submitted is true, accurate, and complete.

Monitoring

395. **Lockwood-ltr-2:** Helen Lockwood stated, “Continuous emissions monitoring should be required for certain pollutants or processes where technically feasible.”
396. **MPCA Response:** While the proposed rule does not require every CDP and ATRP to include continuous emissions monitoring, part 7012.0450, subpart 2, item E requires a CDP to include performance tests or continuous emissions monitoring, if feasible, and part 7012.0570, subpart 2, item C, subitem 5 identifies that same requirement for an ATRP. If neither of these measurement methods are available, then a CDP or an ATRP must include indirect measurement methods, such as material balance and operating rates, to calculate emissions. Justification for requiring continuous emissions monitoring or performances tests as well as explanation of restrictions in availability for these methodologies are included on pages 91-92 and 140-141 of the SONAR.
397. **Karbo-9:** Mike Karbo from the American Petroleum Institute stated, “API also recommends that MPCA clarify acceptable emissions estimation methods and monitoring expectations;”
398. **MPCA Response:** The proposed rule provides clarification of acceptable emission measurement methods in the “Required content” sections for both a CDP and ATRP. For a CDP, part 7012.0450, subpart 2, item E requires a CDP to include performance tests or continuous emissions monitoring, if feasible, and part 7012.0570, subpart 2, item C, subitem (5) identifies the same requirement for an ATRP. If neither of these measurement methods are available, then a CDP or ATRP must include indirect measurement methods, such as material balance and operating rates, to calculate emissions. Indirect measurement method requirements are specified under part 7012.0450 subpart 2, item F for a CDP and part 7012.0570, subpart 2, item C, subitem (6) for an ATRP. Justification for requiring continuous emissions monitoring or performances tests as well as explanation of restrictions in availability for these methodologies are included on pages 91-92 and 140-141 of the SONAR.
399. Additionally, the proposed rule requires an owner or operator developing either a CDP or ATRP to include a description of records kept to verify compliance. This is specified in part 7012.0450, subpart 2, item G for a CDP, and part 7012.0570, subpart 2, item C, subitem (8) for an ATRP. The proposed rule does not include further clarification of monitoring, or recordkeeping expectations because MPCA needs to provide flexibility for owners or operators to choose the types of records to keep to demonstrate compliance with the rule. Flexibility in recordkeeping to verify compliance is necessary because owners and operators also have flexibility in choosing the limits, restrictions, or controls they take to comply with the rule. The recordkeeping needed to verify compliance might

vary depending upon which option an owner or operator chooses.

Timing

400. **Lockwood-ltr-2:** Helen Lockwood stated, “ 7012.0400 (ATRP); 7012.0450(Alternative to ATRP); 7012.0500 (Public Notification). These sections govern what happens after elevated risks are identified, including reduction plans and notifications. Questions remain about how rapidly action must occur and what interim protections are required.

Improvement:

- Address How quickly must facilities report anomalies?
- Address When is additional testing mandatory?
- Address When must nearby residents be notified?
- Address What constitutes sufficient evidence to require operational changes.”

401. **MPCA Response:** Owners or operators of emission facilities must report any anomaly, or deviation, from compliance with an applicable requirement or permit condition that could endanger human health or the environment immediately after discovery of the deviation, per Minn. R. 7019.1000, subpart 1. Owners or operators with permit types that are allowed an ATRP as an option to comply with acceptable risk levels are required to report all other deviations from compliance at least semiannually, per Minn. R. 7007.0800, subpart 6, item B, subitem (2). These requirements would apply to any facility with an ATRP.

402. If performance testing is included in an owner’s or operator’s approved ATRP, additional testing would be required if the owner or operator fails a performance test that is required by their ATRP. Requirements for retesting following a failed performance test are specified in Minn. R. 7017.2025, subpart 4. Justification for when performance testing must be included in an ATRP is provided on pages 140-141 of the SONAR.

403. An owner or operator must notify potentially impacted residents within 21 calendar days after the ATRP is approved, per part 7012.0568, subpart 3, item B. Justification for the notification deadline is included on page 136 of the SONAR.

404. If an owner’s or operator’s AERA demonstrates risks above acceptable risk levels identified under part 7012.0560, subpart 3, the owner or operator must submit an ATRP that specifies limits, restrictions, controls, or operational changes that will be implemented to comply with acceptable risk levels. Justification for when an ATRP is required is provided on page 137 of the SONAR.

PART 7012.0600 RECORD KEEPING

Self-Reporting, Audits, and Inspection Resources

405. **Lockwood-1:** Helen Lockwood stated, “Reliance on facility self-reporting 7012.0100 (Air Toxics Emissions Inventory); 7012.0600 (Record Keeping); 7012.0550 (Reporting) The rule requires facilities to calculate emissions, maintain records, and submit inventories. The SONAR repeatedly describes facility-generated emissions estimates as the basis for screening and risk determinations. improvement: Independent verification of emissions inventories for facilities with significant toxic emissions or a history of violations. It Lacks universal independent third-party audit requirement 7012.0600 (Record Keeping); 7012.0650 (Ambient Air Monitoring Requirements) The SONAR discusses MPCA audits and inspections but does not appear to require independent third-party verification of emissions inventories, modeling, or records. MPCA audits are discretionary rather

than automatic. improvement: Periodic third-party audits funded by the facility but selected or overseen by MPCA” Helen Lockwood also stated, “Limited inspection resources 7012.0600 (Record Keeping); 7012.0650 (Ambient Air Monitoring Requirements); Session Law implementation provisions The SONAR acknowledges MPCA resource limitations for reviewing plans, auditing equipment, and monitoring compliance. improvement: Have Risk-based inspection schedules with mandatory minimum inspection frequencies and dedicated funding for enforcement. Could be random unannounced inspections to gain more trust and integrity in facility inspection results”.

406. **MPCA Response:** MPCA respectfully disagrees that third-party verification is necessary. The responsible official for each facility is required to sign and certify that the information provided is accurate and complete when submitting their inventory data to MPCA per Minn. R. 7019.3000. In addition, the MPCA reviews and verifies the emissions data that facilities submit to us. While outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA’s powers under Minn. R. 1400.2100(F).
407. While the proposed rule does not require third-party audits, the MPCA has established processes for reviewing emissions inventories, modeling data, and other records, and for determining inspection frequencies. Some types of permit holders covered by the proposed rule are subject to unannounced routine compliance inspections. All types of permit holders covered by the proposed rule may be subject to random unannounced inspections, which may be more frequent if an owner or operator has repeated violations. If violations are identified through review of submitted data, inspection of a facility, or other means, the MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. Additionally, emissions inventories, modeling data, and other records are public data per Minn. Stat. 13.03, subdivision 1, and available to the public upon request per Minn. Stat. 13.03, subdivision 3.

Recordkeeping and Public Access

408. **Kreidler-8:** Mark Kreidler stated, “Recordkeeping requirements do not require public access to air toxics records. Transparency is essential for community trust and informed public participation. Requested Change: The rule should require facilities to make all air toxics records publicly accessible, including emissions data, screening threshold analyses, air emissions risk analysis results, ambient monitoring data, compliance determination protocols, air toxics reduction plans, and deviation reports. Public access ensures accountability and supports informed community engagement.”
409. **Lee-4:** Rebecca Lee stated in response to Kreidler-8, “Very much agree there should be transparency of data to the public”.
410. **Satre-8:** Dave Satre stated, “The recordkeeping requirements do not extend to public access for air toxics records. Transparency is essential to building community trust and enabling meaningful public participation. Requested Change: The rule should require facilities to make all air toxics records publicly accessible, including emissions data, screening threshold analyses, air emissions risk analysis results, ambient monitoring data, compliance determination protocols, air toxics reduction plans, and deviation reports. Making these records publicly available would ensure accountability and support informed community engagement.”
411. **MPCA Response:** MPCA agrees that the public should have access to all emissions data for review, including screening threshold analyses, air emissions risk analysis results, ambient monitoring data, compliance determination protocols, air toxics reduction plans, and deviation reports. Under 40 CFR

2.301, all emission data and supporting information is public data and available for public inspection and copying. Both the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations require that “emission data” submitted to the MPCA under Title V or Minnesota’s State Implementation Plan must be available to the public. Actual emissions data is publicly accessible via the MPCA website after it has gone through a QA/QC process. All facility submittals to MPCA are public data which may be obtained through a Minnesota Data Practices Act request. Screening threshold analyses are not required to be submitted to the MPCA, only the certifications. However, MPCA may request a facility’s screening analysis in the future via an inspection or other request. At that time, a facility’s screening threshold analysis becomes public data. However, the MPCA is still working out implementation of the proposed rule and the location of additional air toxics data is currently undecided.

While not required in rule, MPCA typically provides emissions inventory data and copies of all air emission permits for all permitted facilities on the MPCA website. The website for accessing emissions inventory data can be found here: <https://data.pca.state.mn.us/views/Airemissions-pointsourcefacilitydata/Byfacility?%3Aembed=y&%3AisGuestRedirectFromVizportal=y> . Permits can be accessed via <https://www.pca.state.mn.us/about-mpca/whats-in-my-neighborhood>. For higher profile facilities, the MPCA has created project specific webpages that often proactively includes additional information, such as modeling results and nearby ambient air monitor results, so that this information is available to the public without needing a request.

Inspections

412. **Lansing-14:** Jenni Lansing from the City of Minneapolis Health Department stated, “7012.0600 Subpart 6: We support the requirement for MPCA to conduct inspections for each air toxics facility. The current language requires an inspection “at least once” at each facility. We recommend that MPCA specifies a time frame for completion of this inspection, such as “at least once within the first five years after the initial screening threshold analysis is completed.” Additionally, we support the intent of the inspection “to review the air toxics facility’s most current screening threshold analysis and supporting documentation, records, equipment, practices, or operations.” We recommend expanding the scope of the inspection to also include reviewing the CDP and/or air toxics reduction plan (and associated monitoring results, if applicable), and determining compliance with the CDP and/or air toxics reduction plan. We recommend that MPCA clarifies the mechanism for inspection and enforcement on these plans.”

413. **MPCA Response:** MPCA respectfully disagrees that the rules should specify a time frame for completion of the inspections or the specific documents for inspection in part 7012.0600, subpart 6. Specifying a time frame for completion of inspections in part 7012.0600, subpart 6 is not feasible because the MPCA received a limited number of staff for implementation of the proposed rule. Additionally, there are currently limited MPCA compliance and enforcement staff to conduct facility inspections and limited MPCA risk evaluation and air modeling staff to review screening threshold analysis data. In addition to the inspection requirements of the proposed rule, the MPCA has annual statewide facility inspection commitments to the United States Environmental Protection Agency that must be met, which is the primary inspection responsibility of current air compliance and enforcement staff. Although there will be overlap, the proposed rule is not a factor used in determining this commitment. Therefore, the MPCA needs flexibility in the proposed rule to be able to manage inspection commitments effectively and successfully. The MPCA has established processes for determining which facilities to inspect and the frequency of inspections, and the MPCA is still working out implementation of the proposed rule.

414. The MPCA does not include specific documents, such as a CDP, ATRP, or modeling results, to be inspected in part 7012.0600, subpart 6 because it is too restrictive and would limit the MPCA to inspecting and enforcing upon only the documents listed in rule. Additionally, any documents specified may not apply to all facilities subject to the proposed rule and could cause confusion. The term “supporting documentation” in part 7012.0600, subpart 6 includes CDPs, ATRPs, modeling results, and other information and records used by an owner or operator to comply with the proposed rule. As explained on page 150 of the SONAR, facility inspections allow the MPCA to ensure compliance with the proposed rule. The MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9.
415. **Lockwood-ltr-3:** Helen Lockwood stated, “There should be unannounced inspections and stack testing.”
416. **MPCA Response:** Inspections are required per part 7012.0600, subpart 6, and justification for inspections are specified on page 150 of the SONAR. The MPCA has established processes for conducting inspections and inspections are unannounced unless they are not possible otherwise. Unannounced stack testing, also referred to as performance testing, is not required by the proposed rule because Minn. R. 7017.2001 through 7017.2060 includes specific requirements for performance testing, many of which do not accommodate flexibility for unannounced performance testing. For example, Minn. R. 7017.2020, subparts 1 and 2 require an owner or operator to arrange a third-party testing company to conduct a performance test when required by an applicable requirement or compliance document and at additional times if requested by the MPCA. Although unannounced stack tests are not required or feasible, performance testing is required, when applicable and if feasible, in parts 7012.0450, subpart 2, item E and 7012.0570, subpart, 2, item, C, subitem (5). Justification for these requirements is provided on pages 91-92 and 140-141 of the SONAR. Additionally, Minn. R. 7017.2020, subpart 1 provides the authority to request a performance test at any time deemed necessary based on the terms listed, including to “quantify the emissions from an emission facility where the commissioner has determined a possible environmental or public health concern,” which could be applied to the proposed rule.
417. **Lockwood-ltr-5:** Helen Lockwood stated, “Facilities with repeated violations should face more frequent audits and inspections than facilities with strong compliance records. ~ 10 years is way too long.”
418. **MPCA Response:** Requiring an owner or operator to repeat the screening threshold analysis every five or ten years, as required under part 7012.0160, subpart 3 is not the only process for oversight by the MPCA to ensure compliance with the screening threshold values. The MPCA has established processes for reviewing and investigating submitted reports, such as those required under part 7012.0450, subpart 4, that identify deviations from compliance. These reports will be required from any owner or operator with a CDP and on the ten-year timeframe to repeat a screening threshold analysis. Additionally, some types of permit holders covered by the proposed rule are subject to routine compliance inspections by the MPCA, which are more frequent than every ten years. All types of permit holders covered by the proposed rule may be inspected more frequently if the owner or operator has repeated violations.

Environmental Justice

419. **Morley-25 and Freeman-24:** Andrew Morley from the Minnesota Chamber of Commerce and Chris Freeman from Cordia Energy Center Minneapolis stated the MPCA should provide technical clarification to “Clarify whether the proposed environmental justice area recordkeeping

requirement should use census block, census tract, or another geography, and align it with the applicable statutory and cumulative impacts definitions. We believe that the term census tract, not census block, should be used in the rule.”

420. **MPCA Response:** The MPCA appreciates the comment calling attention to the terms used for documenting a facility presence in an environmental justice area. The MPCA proposes to change the rule language from “census block” to “census tract.” This will align the language with existing maps used by the MPCA, the definition used by the MPCA, and the designation formats existing in other agency rules. See section on *Changes to Proposed Rules*, at the beginning of this document.

PART 7012.0650 AMBIENT AIR MONITORING REQUIREMENTS

Auditing, Continuous Monitoring, and Inspection Resources

421. **Lockwood-1:** Helen Lockwood stated, “It Lacks universal independent third-party audit requirement 7012.0600 (Record Keeping); 7012.0650 (Ambient Air Monitoring Requirements) The SONAR discusses MPCA audits and inspections but does not appear to require independent third-party verification of emissions inventories, modeling, or records. MPCA audits are discretionary rather than automatic. improvement: Periodic third-party audits funded by the facility but selected or overseen by MPCA. Limited continuous monitoring 7012.0650 (Ambient Air Monitoring Requirements) Monitoring is treated as one compliance option rather than a universal requirement. The SONAR discusses resource constraints and limitations of monitoring programs. improvement: More continuous emissions monitoring where technically feasible. Expanded fence-line monitoring. Independent community monitoring networks.” Helen Lockwood also stated, “Limited inspection resources 7012.0600 (Record Keeping); 7012.0650 (Ambient Air Monitoring Requirements); Session Law implementation provisions The SONAR acknowledges MPCA resource limitations for reviewing plans, auditing equipment, and monitoring compliance. improvement: Have Risk-based inspection schedules with mandatory minimum inspection frequencies and dedicated funding for enforcement. Could be random unannounced inspections to gain more trust and integrity in facility inspection results”.
422. **MPCA Response:** As the commenter has mentioned there are constraints and limitations of the monitoring program which allows facilities that can comply to part 7012.0650, subpart 1 in the proposed rule to monitor. Pages 150 through 152 in the SONAR describe why monitoring is limited in the proposed rule and the criteria that are needed for a facility to monitor. Independent community monitoring is not feasible as the MPCA must verify the monitoring results in the same manner described in the SONAR on page 151 for industrial air monitoring, involving resources to approve monitoring plans, regularly audit equipment, and review monitoring data.
423. While the proposed rule does not require third-party audits, the MPCA has established processes for reviewing emissions inventories, modeling data, and other records, and for determining inspection frequencies. Some types of permit holders covered by the proposed rule are subject to unannounced routine compliance inspections. All types of permit holders covered by the proposed rule may be subject to random unannounced inspections, which may be more frequent if an owner or operator has repeated violations. If violations are identified through review of submitted data, inspection of a facility, or other means, the MPCA has authority to pursue enforcement for identified violations, per Minn. Stat. 115.071 and 116.07, subpart 9. Additionally, emissions inventories, modeling data, and other records are public data per Minn. Stat. 13.03, subdivision 1, and available to the public upon request per Minn. Stat. 13.03, subdivision 3.

Ambient Monitoring

424. **Kreidler-7:** Mark Kreidler stated, “Ambient monitoring is discretionary and may not be required even for facilities with significant emissions. The rule does not specify required pollutants, monitoring duration, or minimum number of monitors. Requested Change: The rule should require ambient monitoring for facilities emitting hazardous air pollutants above screening thresholds. Monitoring should include metals such as arsenic, cadmium, chromium VI, and lead compounds, as well as polycyclic aromatic hydrocarbons, volatile organic compounds, and acid gases. The rule should specify minimum monitoring duration and require monitors to be placed at locations representing maximum public exposure.”
425. **Lee-3:** Rebecca Lee stated in response to Kreidler-7, “Agree! Maximum public exposure areas should be clearly identified and confirmed. Facilities emitting the most hazardous substances should be required to cover financially for monitors and ideally 3 for each one. Distance from smokestack should be based on best practices and consider stack height.”
426. **Satre-7:** Dave Satre stated, “As written, ambient monitoring is discretionary and may not be required even for facilities with substantial emissions. The rule does not identify which pollutants must be monitored, how long monitoring should last, or the minimum number of monitors needed. Requested Change: The rule should mandate ambient monitoring for facilities emitting hazardous air pollutants above screening thresholds. Required pollutants should include metals such as arsenic, cadmium, chromium VI, and lead compounds, along with polycyclic aromatic hydrocarbons, volatile organic compounds, and acid gases. The rule should also specify a minimum monitoring duration and require that monitors be sited at locations reflecting maximum public exposure.”
427. **MPCA Response:** The MPCA respectfully disagrees that there should be changes made to the proposed rule as these requirements are already listed in the proposed rule. In the proposed rule, under part 7012.0650, subpart 2, item B, the rule language states what information must be included in the ambient air monitoring plan. The proposed rule does list that the ambient air monitoring plan must include air toxics that contribute to exceedances of acceptable risk levels (part 7012.0650, subpart 2, item B(1)), sampling durations (part 7012.0650, subpart 2, item B(5)), the number of air monitors with at least two monitors placed (part 7012.0650, subpart 2, item B(3)), and the monitor location based on dispersion modeling results (part 7012.0650, subpart 2, item B(4)). This plan will be submitted by facilities and approved by the MPCA according to part 7012.0650, subpart 3. More information on the ambient air monitoring plan and the approval of the plan can be found on pages 153 through 156 in the SONAR. Additionally, the commenters state that monitoring should occur if a facility is above screening threshold values for certain HAPs. On pages 150 and 151 in the SONAR, the MPCA discusses why monitoring was chosen after an exceedance in acceptable risk levels and not after a facility is above screening threshold values.

Audits and Inspections

428. **Aranguren-2:** Megan Aranguren stated, “The SONAR discusses MPCA audits and inspections but does not appear to require independent third-party verification of emissions inventories, modeling, or records. MPCA audits are discretionary rather than automatic. Suggestion: Periodic third-party audits funded by the facility but selected or overseen by MPCA.”
429. **MPCA Response:** MPCA requires facilities to make air monitoring equipment available to MPCA for performance audits of the equipment. Audit requirements are set forth in the monitoring plan (under part 7012.0650, subpart 2, item B(9)) and must be adhered to upon MPCA approval of the monitoring plan (under part 7012.0650, subpart3). MPCA is not

involved in regular operations or maintenance of facility monitors. Therefore, MPCA acts independently as the auditing authority, and third-party audits are not required. And while outside parties may take it upon themselves to review public information, requiring third-party or independent reviews would be an impermissible delegation of the MPCA's powers under Minn. R. 1400.2100(F).