Office of the Revisor of Statutes
Administrative Rules

TITLE: Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees

AGENCY: Minnesota Pollution Control Agency

REVISOR ID: R-4828

MINNESOTA RULES: Chapter 7026

The attached rules are approved for
publication in the State Register

Cindy K. Maxwell

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Assistant Deputy Revisor

Minnesota Pollution Control Agency

Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees

7026.0010 DEFINITIONS.

Subpart 1. **Applicability.** Terms used in this chapter have the meanings given in this part and, unless otherwise provided in this part, Minnesota Statutes, section 116.943.

Subp. 2. **Authorized representative.** "Authorized representative" means a person designated by a manufacturer to report on behalf of the manufacturer.

Subp. 3. **Brand name.** "Brand name" means a name, symbol, word, or mark that identifies a product and attributes the product to the owner of the brand.

Subp. 4. **Brief description of the product.** "Brief description of the product" means a character-limited description of a product or grouping of similar products with similar components that includes, whenever applicable, brand name, product model, and other characteristics that distinguish the product or grouping of products from similar products made or sold by other manufacturers.

Subp. 5. **Chemical identifying number.** "Chemical identifying number" means a Chemical Abstracts Service Registry number (CASRN), European Community (EC) number, United States Environmental Protection Agency Toxic Substances Control Act accession number, or another unique alphanumeric or numeric identifier used in commerce, in research, and by governments to cross-reference all information available on a particular chemical. A particular chemical may have more than one chemical identifying number.

Subp. 6. **Chemical name.** "Chemical name" means a systematic nomenclature that follows the internationally recognized conventions established by the International Union of Pure and Applied Chemistry (IUPAC).

Subp. 7. **Component.** "Component" means a distinct and identifiable element or constituent of a product. Component includes packaging only when the packaging is inseparable or integral to the final product's containment, dispensing, or preservation.

Subp. 8. **Consumer.** "Consumer" means a person who acquires a product from a manufacturer for personal, residential, commercial, or industrial purposes.

Subp. 9. **Distribute for sale.** "Distribute for sale" means to ship or otherwise transport a product with the intent or understanding that the product will be sold or offered for sale by a receiving party after the product is delivered.

Subp. 10. **Fully fluorinated carbon atom.** "Fully fluorinated carbon atom" means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

Subp. 11. **Function.** "Function" means the explicit purpose or role served by PFAS when intentionally incorporated at any stage in the process of preparing a product or its constituent components for sale, offer for sale, or distribution for sale.

Subp. 12. **Homogenous material.** "Homogenous material" means one material of uniform composition throughout or a material, consisting of a combination of materials, that cannot be disjointed or separated into different materials by mechanical actions.

Subp. 13. **Identifiable element.** "Identifiable element" means an element that can be recognized, distinguished, or discerned, even when not visually evident, as in the case of a mixture or formulation.

Subp. 14. **Manufacturer.** "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or

the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.

Subp. 15. **Numeric product code.** "Numeric product code" means a numeric code that a manufacturer assigns to a product being reported and that is recognizable to purchasers on labels, listings, invoices, or receipts, including a universal product code (UPC), stock keeping unit (SKU), harmonized tariff schedule (HTS) code, or other numeric code assigned to the product.

Subp. 16. **Packaging.** "Packaging" has the meaning given under Minnesota Statutes, section 115A.03.

Subp. 17. **Publicly available.** "Publicly available" means lawfully available to the public from federal, state, or local government records or disclosures made to the public that are required by federal, state, or local law.

Subp. 18. **Significant change.** "Significant change" means a change in the composition of a product that results in the addition of a specific PFAS not previously reported in a product or component or a measurable change in the amount of a specific PFAS from the initial amount reported that would move the product into a different concentration range listed under part 7026.0030, subpart 1, item C.

Subp. 19. **Substantially equivalent information.** "Substantially equivalent information" means information that the commissioner can identify as conveying the same information required under part 7026.0030 and Minnesota Statutes, section 116.943, subdivision 2. Substantially equivalent information includes an existing notification by a person who manufactures a product or component when the same product or component is offered for sale under multiple brands.

Subp. 20. **Used product.** "Used product" means a product that has been installed, operated, or utilized for its intended purpose by at least one owner or operator or that is

otherwise not pristine. Used product does not include a product that has been returned to a retailer or that is otherwise offered for resale if the product was not installed, operated, or utilized before resale.

7026.0020 PARTIES RESPONSIBLE FOR REPORTING.

Subpart 1. **Scope.** A manufacturer or group of manufacturers of a product sold, offered for sale, or distributed in the state must submit a report for each product or component that contains intentionally added PFAS.

Subp. 2. **Reporting on behalf of other manufacturers.** All manufacturers must assume responsibility to report unless manufacturers in the same supply chain enter into an agreement to establish their respective reporting responsibilities. A manufacturer may submit the information required for reporting on behalf of another manufacturer in accordance with part 7026.0030 if the following requirements are met:

A. the reporting manufacturer must notify any other manufacturer that is a party to the agreement that the reporting manufacturer has fulfilled the reporting requirements;

B. all manufacturers must maintain documentation of a reporting responsibility agreement in accordance with part 7026.0080, subpart 3, and must provide the documentation to the commissioner upon request;

C. all manufacturers must verify, in a format specified by the commissioner, that the data submitted on their behalf is accurate and complete in accordance with parts 7026.0030 and 7026.0040; and

D. for the verification required under item C to be considered complete, all manufacturers must submit the fee required under part 7026.0100, subpart 2 or 3, as applicable.

7026.0030 REPORT; REQUIRED INFORMATION.

Subpart 1. **Report required.** A manufacturer or group of manufacturers of a product that is sold, offered for sale, or distributed in the state and that contains intentionally added PFAS must submit a report to the commissioner on or before January 1, 2026. A manufacturer or group of manufacturers of a new product with intentionally added PFAS after January 1, 2026, must submit a report before the product can be sold, offered for sale, or distributed in the state. The report must include the following information in a format specified by the commissioner:

A. a product description that includes:

(1) a brief description of the product or grouping of similar products. Once established, the identical brief description of the product must be used during any reporting updates on the product.

(a) The manufacturer may group together similar products comprised of homogenous materials if the products meet the following criteria:

i. the PFAS chemical composition in the products are the same;

ii. the PFAS chemicals in the products fall into the same reporting concentration ranges;

iii. the PFAS chemicals in the products provide the same function in each product; and

iv. the products have the same basic form and function and only differ in size, color, or other superficial qualities that do not impact the composition of the intentionally added PFAS.

(b) If the product consists of multiple PFAS-containing components, the manufacturer must report each component under the product name provided in the brief

description of the product. The manufacturer may group similar components listed within a product if the components meet the following criteria:

i. the PFAS chemical composition in the components are the same;

ii. the PFAS chemicals in the components fall into the same reporting concentration ranges;

iii. the PFAS chemicals in the components provide the same function in each product component; and

iv. the components have the same basic form and function in the final product and only differ in size, color, or other superficial qualities that do not impact the composition of the intentionally added PFAS; and

(2) the numeric product codes assigned to the product. The numeric product codes are listed in units (a) to (d) in a hierarchy of the most preferred to least preferred for reporting. The most preferred numeric product code available must be reported. The multiple numeric product codes listed in unit (a) are equal in preference and any may be reported:

(a) a code with root digits harmonized under the Global Product Classification system for consumer products, including brick or universal product codes or the harmonized tariff schedule code for imported products;

(b) a nonharmonized code such as stock keeping units;

(c) a numeric code that will be used on labels, listings, invoices, or receipts; or

(d) if no numeric code has been assigned, report "none";

B. PFAS chemicals used in the product or its components as identified by:

(1) the chemical name; and

(2) the Chemical Abstracts Service Registry number (CASRN) or, if no CASRN exists, another chemical identifying number;

C. the concentration of PFAS chemicals in a product or components of a product made up of homogenous material. A manufacturer must report the concentration of PFAS chemicals as identified in subitem (1) or (2):

(1) within the following ranges:

(a) practical detection limit to <100 parts per million (ppm);

(b) 100 ppm to <1,000 ppm (0.1 percent);

(c) 1,000 ppm to <10,000 ppm (one percent);

(d) 10,000 ppm to <150,000 ppm (15 percent);

(e) 150,000 ppm to <300,000 ppm (30 percent);

(f) 300,000 ppm to <600,000 ppm (60 percent);

(g) 600,000 ppm to <900,000 ppm (90 percent);

(h) 90 to 100 percent; or

(i) present but the amount or concentration range is unknown; or

(2) the total organic fluorine, determined using commercially available analytical methods, if the amount of each PFAS is not known within applicable due diligence standards under part 7026.0080;

D. the function that each PFAS chemical provides to the product or its components;

E. manufacturer information, including:

(1) name;

(2) address; and

(3) the North American Industry Classification System (NAICS) code, or if a NAICS code does not exist, the Standard Industrial Classification (SIC) code;

F. information for the authorized representative of the manufacturer who has the authority to execute or direct others to execute reporting to the state, including the representative's:

(1) name;

(2) address;

(3) email address; and

(4) phone number; and

G. an alternative to the authorized representative under item F, including:

(1) name;

(2) address;

(3) email address; and

(4) phone number.

Subp. 2. **Fee required.** For submission of the report required under subpart 1 to be considered complete, a manufacturer or group of manufacturers must submit the fee required under part 7026.0100, subpart 2.

Subp. 3. **Failure to submit.** A manufacturer that fails to submit the initial report under this part or the applicable fee under part 7026.0100 is subject to penalties under Minnesota Statutes, section 116.072.

7026.0040 REPORTING UPDATES.

Subpart 1. **Updates required.**

A. By February 1 each year, a manufacturer or group of manufacturers must submit an update to the report submitted under part 7026.0030 if during the previous 12 months:

(1) a significant change was made to a product;

(2) new product information was provided to a manufacturer; or

(3) a new product was sold, offered for sale, or distributed in or into the state.

B. The update must include the information required under part 7026.0030.

Subp. 2. **Annual recertification.** If an update is not required under subpart 1, a manufacturer or group of manufacturers must recertify the report submitted under part 7026.0030 by February 1 each year.

Subp. 3. **Voluntary updates.** A manufacturer or group of manufacturers may voluntarily update the initial report of information required under part 7026.0030 whenever a PFAS is reduced or eliminated from a product or component or there is a change in the information required under part 7026.0030, subpart 1, items E to G. Voluntary updates submitted under this subpart are not subject to a fee according to part 7026.0100, subpart 6.

Subp. 4. **Fee required.** For submission of the updates and recertifications under subparts 1 and 2 to be considered complete, a manufacturer or group of manufacturers must submit the fee required under part 7026.0100, subpart 3.

Subp. 5. **Failure to submit.** A manufacturer or group of manufacturers that fails to submit an annual update or recertification under this part or to pay the applicable fee under part 7026.0100 is subject to penalties under Minnesota Statutes, section 116.072.

7026.0050 WAIVERS.

Subpart 1. **Waiver eligibility.** Upon request of a manufacturer or group of manufacturers, the commissioner must waive all or part of the information required under part 7026.0030 if the commissioner determines that substantially equivalent information is publicly available. Gaining access to the information must not impose an undue burden in terms of resources required for collection. When determining whether access imposes an undue burden, the commissioner must consider fees, the number of locations to be accessed, and other relevant factors.

Subp. 2. **Waiver request.** A manufacturer or group of manufacturers requesting a waiver must submit the request annually in a format specified by the commissioner. The request must contain:

A. the information required under part 7026.0030, subpart 1, items E to G;

B. a description of the products or components for which a waiver is requested;

C. a list of the requirements under part 7026.0030 for which the manufacturer seeks a waiver;

D. a description of the publicly available records that contain substantially equivalent information to the information required under part 7026.0030;

E. a statement that the publicly available information identified in item D is accurate and that the data is verified by the manufacturer or group of manufacturers. Verification may include certification from a third-party contractor with expertise in the relevant field to ensure accuracy and compliance; and

F. a link to or copy of all publicly available and substantially equivalent information described by the manufacturer.

Subp. 3. **Requirements not waived.** A manufacturer or group of manufacturers must still submit a report for any requirements under part 7026.0030 that are not waived.

Subp. 4. **Waiver request deadline.**

A. A manufacturer or group of manufacturers must submit the waiver request to the commissioner at least 30 days before the applicable reporting due date.

B. If the commissioner denies a waiver request, the manufacturer or group of manufacturers must submit their report according to part 7026.0030 or 7026.0040 within 30 days of the notice of denial or by the established reporting due date, whichever is later.

Subp. 5. **Fee required.** For submission of the waiver request under subpart 2 to be considered complete, a manufacturer or group of manufacturers must submit the fee required under part 7026.0100, subpart. 4.

7026.0060 EXTENSIONS.

Subpart 1. **Authority.** The commissioner must extend the deadline for submitting information under part 7026.0030 if the commissioner determines that more time is justified by the manufacturer or group of manufacturers to comply with the reporting requirements.

Subp. 2. **Extension request.** A manufacturer or group of manufacturers requesting an extension must submit the request in a format specified by the commissioner. The request must contain:

A. the information required under part 7026.0030, subpart 1, items E to G;

B. the reason for the extension request, including a detailed explanation of the circumstances that prevent timely submission;

C. supporting documentation, including any relevant documents that substantiate the need for an extension, such as communication records with other manufacturers, evidence of technical challenges, or third-party testing delays; and

D. a plan for completion, including an outline of how the manufacturer will submit the remaining work by the new deadline.

Subp. 3. **Extension request deadline; approval or denial.**

A. A manufacturer or group of manufacturers must submit the request for an extension to the commissioner at least 30 days before the reporting due date established in part 7026.0030. The request must include documentation demonstrating that the extension is justified, based on the materials submitted under subpart 2, to allow the manufacturer or group of manufacturers to comply with the reporting requirements.

B. If the commissioner determines that the requestor has demonstrated that an extension is justified, based on the materials submitted under subpart 2, the commissioner must grant a 90-day extension of the established reporting due date.

C. If an extension request is denied by the commissioner, the manufacturer or group of manufacturers must submit a report according to part 7026.0030 within 30 days after the notice of denial or by the established reporting due date, whichever is later.

Subp. 4. **Fee required.** For submission of the extension request under subpart 2 to be considered complete, a manufacturer or group of manufacturers must submit the fee required under part 7026.0100, subpart 5.

7026.0070 TRADE SECRET DATA REQUEST.

Subpart 1. **Procedure for trade secret data request.** A manufacturer or group of manufacturers may request that the commissioner maintain trade secret data as not public information according to part 7000.1300. Trade secret data that is eligible to be considered not public information includes:

A. chemical name;

B. chemical identifying number; and

C. specific supply chain information identified in part 7026.0080, subpart 2.

Subp. 2. **Public data; alternative data requirement.**

A. If the required data under subpart 1 is trade secret information as defined in Minnesota Statutes, section 13.37, then in addition to the information required under part 7026.0030, subpart 1, item B, the manufacturer or group of manufacturers must submit a chemical subclass to designate as public data.

B. If the required data is not trade secret information as defined in Minnesota Statutes, section 13.37, the data must be designated as public data.

7026.0080 DUE DILIGENCE.

Subpart 1. **Reporting due diligence.** A manufacturer must assume responsibility for reporting products containing intentionally added PFAS unless notification from another manufacturer is received according to part 7026.0020, subpart 2, confirming that the reporting requirements under part 7026.0030 have been fulfilled.

Subp. 2. **Supply chain requests.** A manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain until all required information is known.

Subp. 3. **Documentation and recordkeeping.**

A. A manufacturer or group of manufacturers must maintain documentation of all communication with other manufacturers, including emails, letters, and responses regarding PFAS reporting compliance and reporting responsibility agreements as provided in part 7026.0020, subpart 2.

B. A manufacturer or group of manufacturers must provide the documentation under item A to the commissioner upon request.

C. A manufacturer or group of manufacturers must maintain records according to this subpart for at least five years after products containing intentionally added PFAS are removed from the supply chain.

7026.0090 REPORTING EXEMPTIONS.

The following are exempt from the reporting requirements under parts 7026.0020 to 7026.0080:

A. a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority;

B. a product regulated under Minnesota Statutes, section 325F.072 or 325F.075;

C. the sale or resale of a used product;

D. a product reported to the Department of Agriculture as meeting the reporting waiver requirements under Minnesota Statutes, section 116.943, subdivision 3, paragraph (b); and

E. information regarding PFAS-containing products or components that is provided to any federal government agency and that is classified information as defined in United States Code, title 18, section 798.

7026.0100 FEES.

Subpart 1. **Fees required.** A manufacturer of products or components that is required to submit a report under part 7026.0030 or 7026.0040 or that submits a request under part 7026.0050 or 7026.0060 must pay a fee for the submittal to be considered complete.

Subp. 2. **Initial report.** A manufacturer must pay a $1,000 fee to submit the initial report under part 7026.0030, subpart 1. If a group of manufacturers is reporting or a manufacturer is reporting on behalf of multiple manufacturers as allowed under part 7026.0020, subpart 2, each individual manufacturer must pay a $1,000 fee.

Subp. 3. **Annual update or recertification.** A manufacturer must pay a $500 flat fee for the annual update according to part 7026.0040, subpart 1, or annual certification update according to part 7026.0040, subpart 3. If a group of manufacturers is reporting or a manufacturer is reporting on behalf of multiple manufacturers as allowed under part 7026.0020, subpart 2, each individual manufacturer must pay the $500 fee.

Subp. 4. **Waiver request.**

A. A manufacturer or group of manufacturers that submits a reporting waiver request under part 7026.0050 must still pay the fee required under subpart 2 or 3, as applicable.

B. If the commissioner denies a waiver request, the manufacturer or group of manufacturers must submit a report according to part 7026.0030 or 7026.0040 but is not subject to duplicative fees under subpart 2 or 3.

Subp. 5. **Extension request.** A manufacturer that submits an extension request under part 7026.0060 must pay a $300 fee as part of the extension request application. If a group of manufacturers requests an extension as allowed under part 7026.0060, subpart 4, each individual manufacturer must pay the $300 fee.

Subp. 6. **Fees waived.** No fee is required for voluntary updates made in accordance with part 7026.0040, subpart 4.

Subp. 7. **Inflation.** Beginning July 1, 2027, and each odd-numbered year thereafter, the unadjusted fee in subparts 2 to 5 must be adjusted for inflation using the aggregated annual consumer price index and becomes the new unadjusted fee rounded to the nearest dollar.