MINNESOTA POLLUTION CONTROL AGENCY

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828

Resource Management & Assistance Division

April 2025

General information:

1) Availability: The *State Register* notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: https://www.pca.state.mn.us/public-notices
2) View older rule records at: https://www.revisor.mn.gov/rules/status/
3) Agency contact for information, documents, or alternative formats: Upon request, this SONAR can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Quinn Carr, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2722; 1-800-657-3864; email Quinn.Carr@state.mn.us; or use your preferred telecommunications relay service.
4) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
5) How to read a sample Minnesota Rules citation: Minn. R. 7150.0205, subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

Contents

Acronyms, abbreviations, or definitions

ACA - American Coatings Association
ACC - American Chemistry Council
AEM - Association of Equipment Manufacturers
AHAM - Association of Home Appliance Manufacturers
AHI - Animal Health Institute
AHRI - Air-Conditioning, Heating, and Refrigeration Institute
APA – Administrative Procedures Act
ALJ – Administrative Law Judge
ASDWA – Association of State Drinking Water Administrators
ATCS – Alliance for Telomer Chemistry Stewardship
ATSDR – Agency for Toxic Substances and Disease Registry
AWA - American Watch Association
BAJ - Battery Association of Japan
BIFMA - Business Institutional Furniture Manufacturers Association
CASRN - Chemical Abstract Service Registry Numbers
CBA - Cookware & Bakeware Alliance
CBI – Confidential Business Information
CDC – Centers for Disease Control and Prevention
CDR – Chemical Data Reporting Rule
CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act
CPI - Center for the Polyurethanes Industry
CUC - Chemical Users Coalition
CUU – Currently Unavoidable Use
CWA – Clean Water Act
DNR – Minnesota Department of Natural Resources
DOD - U.S. Department of Defense
DTSC - California Department of Toxic Substances Control
ECOS - Environmental Council of the States
EJ – Environmental Justice
EJ Table - Minnesota Environmental Justice Table
EMA - Truck and Engine Manufacturers Association
EPA - U.S. Environmental Protection Agency
ERIS - Environmental Research Institute of the States
EWG - Environmental Working Group
FDA - Food and Drug Administration
FSSA - Fire Suppression Systems Association
FTE – Full-time Equivalent
FY – Fiscal Year
HARC - Halon Alternatives Research Corporation Inc.
HBV - Health-Based Value
HFPO-DA - Hexafluoropropylene oxide dimer acid or “GenX”
HCPA - Household & Commercial Products Association
HTS - harmonized tariff schedule
IC2 - Interstate Chemicals Clearinghouse
ITRC - Interstate Technology and Regulatory Council

IUPAC - International Union of Pure and Applied Chemistry
JBMIA - Japan Business Machine and Information System Industries Association
JEMIMA - Japan Electric Measuring Instruments Manufacturers' Association
JFMA - Japan Fluorocarbon Manufacturers Association
JFMDA - Japan Federation of Medical Devices Association
JP4EE - Japanese electric and electronic industrial associations
LDL - Low-density lipoprotein
MassDEP - Massachusetts Department of Environmental Protection
MCL - Maximum Contaminant Level
MDA – Minnesota Department of Agriculture
MDH - Minnesota Department of Health
Minn. R. – Minnesota Rules
Minn. Stat. – Minnesota Statutes
MMB – Minnesota Management and Budget
MN – Minnesota
MNIT - Minnesota Information Technology Services Agency
MnTAP - Minnesota Technical Assistance Program
MPCA or Agency – Minnesota Pollution Control Agency
MRAA - Marine Retailers Association of the Americas
NAICS - North American Industry Classification System
NECA - Nippon Electric Control Equipment Industries Association
NEMA - National Electrical Manufacturers Association
NEWMOA - Northeast Waste Management Officials Association
NIH - National Institutes of Health
NGO - Non-governmental organization
NMMA - National Marine Manufacturers Association
NPDWR – National Primary Drinking Water Regulation
NRDC - National Resources Defense Council
OAH – Office of Administrative Hearings
OEHHA – California Office of Environmental Health Hazard Assessment
OPEI - Outdoor Power Equipment Institute
PCTFE - Polychlorotrifluoroethylene
PFAS – Per-and polyfluoroalkyl substances
PFHxS - Perfluorohexane sulfonate
PFNA – Perfluorononanoic acid
PFOA - Perfluorooctanoic acid
PFOS - Perfluorooctane sulfonic acid
PMI - Plumbing Manufacturers International
PPWG - PFAS Pharmaceutical Working Group
PTFE - Polytetrafluoroethylene
Ppb – Parts per billion
Ppm – Parts per million
Ppt - Parts per trillion
PWS – Public water system
RCRA - Resource Conservation and Recovery Act
RFC – Request for Comments
§ – Section
SBEAP – Minnesota Pollution Control Agency's Small Business Environmental Assistance Program

SIA - Semiconductor Industry Association
SIC - Standard Industrial Classification
SKU - Stock Keeping Unit
SONAR – Statement of Need and Reasonableness
SPAN - Sustainable PFAS Action Network
TOF - Total organic fluorine
TRI - Toxic release inventory
TSCA - Toxic Substances Control Act
TURA - Toxics Use Reduction Act
TURI - Toxics Use Reduction Institute
UPC - universal product code
WMFTS - Watson-Marlow Fluid Technology Solutions
WSIA - Water Sports Industry Association
WWTP – Wastewater Treatment Plant
XPSA - Extruded Polystyrene Foam Association

1. Introduction and overview

A. Introduction

Minnesota's 2023 Products Containing PFAS law, Minn. Stat. § 116.943 (Amara's Law), requires a manufacturer or group of manufacturers to submit to the Minnesota Pollution Control Agency (MPCA or Agency) information about products containing intentionally added per- and polyfluoroalkyl substances (PFAS) that are sold, offered for sale, or distributed in the State. Minn. Stat. § 116.943 also provides the MPCA with the authority to adopt rules necessary to implement the various program elements required to comply with the law, including reporting and fee collection. Manufacturers and groups of manufacturers (collectively "manufacturer(s)") are required to report PFAS in products information on or before January 1, 2026. Therefore, the MPCA is adopting rules to clarify whether the statute applies to the manufacturer, clarify which product reporting requirements may apply, and specify how and what to report to the MPCA.

PFAS are a group of synthetic chemicals that contain carbon-fluorine bonds and have been manufactured in the United States since the 1940s. The carbon-fluorine bond is strong and stable, which extends useful properties such as heat, oil, and water resistance when used in products.[1] However, this stability also makes PFAS extremely persistent – they do not readily break down over time. This persistence causes PFAS to accumulate in humans, animals, and the environment. The persistence of PFAS in the environment has led to the nickname of "forever chemicals." Many PFAS have been proven to be toxic, associated with adverse health outcomes such as altered immune and thyroid function, liver disease, kidney disease, adverse reproductive and developmental outcomes, and cancer.[2]

The use of PFAS in products causes pollution through every stage of the life cycle of the product. First, the PFAS chemicals must be made. The manufacturing of PFAS results in pollution through disposal or discharge in wastewater, stormwater, or air emissions. Then, the use of PFAS to manufacture a product, whether intentionally added to the product itself or otherwise used in the manufacturing process, causes similar routes of pollution from manufacturing waste and byproducts. Finally, the product that contains intentionally added PFAS will be disposed when it is no longer useful.

Disposal of PFAS and products containing intentionally added PFAS during the various stages of a product's life cycle causes pollution, whether disposed at a landfill or incinerator. Products containing intentionally added PFAS placed in a landfill can cause PFAS pollution that ends up in soil, leachate, groundwater, and stormwater. Due to years of PFAS disposal, landfills are now major sources of PFAS pollution to the environment. Products that contain intentionally added PFAS that are not destroyed in the incineration process are emitted into the air.

PFAS are also discharged to wastewater treatment plants (WWTP). PFAS inputs to a WWTP come from industrial sources, domestic sources, landfill leachate, and other sources. Many WWTP are not equipped to remove PFAS from the water, so while other contaminants are removed during the treatment process, PFAS are ultimately discharged to surface waters. Biosolids from a WWTP may also contain PFAS and can be a source of pollution when used in land application to agricultural fields. Stormwater is

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[1] *Buck, R.C., Franklin, J., Berger, U., Conder, J.M., Cousins, I.T., de Voogt, P., Jensen, A.A., Kannan, K., Mabury, S.A. and van Leeuwen, S.P. (2011), Perfluoroalkyl and polyfluoroalkyl substances in the environment: Terminology, classification, and origins. Integrated Environmental Assessment and Management, 7(4), 513-541. https://doi.org/10.1002/ieam.258*

[2] *Fenton, S.E., Ducatman, A., Boobis, A., DeWitt, J.C., Lau, C., Ng, C., Smith, J.S. and Roberts, S.M. (2020), Per- and polyfluoroalkyl substance toxicity and human health review: Current state of knowledge and strategies for informing future research. Environmental Toxicology and Chemistry, 40(3), 606-630. https://doi.org/10.1002/etc.4890*

another route in which PFAS enter the environment, and it can carry PFAS from industrial or domestic sources to pollute land and water.

Pollution prevention is the most cost-effective way to reduce PFAS exposure and reduce the need for expensive treatment and remediation efforts. The cost to buy PFAS to make consumer products is $50-$1,000 per pound, while the cost to remove and destroy PFAS from municipal wastewater is $2.7 - $18 million per pound.

Once PFAS enter the environment they are difficult to track for many reasons. One reason is the large variety of chemicals in the class. Although the commonly used EPA Test Method 1633 can test for the presence of 40 PFAS, there are potentially millions of PFAS chemicals that meet the statutory definition of "PFAS" in Minn. Stat. § 116.943. It is very difficult to track such a broad-based chemical constituent with limited testing methods and resources.[3] The proposed reporting program will address the inability to test for specific PFAS chemicals intentionally added to consumer products by requiring manufacturers to report the PFAS used in their products.

Another reason that PFAS are difficult to track is due to the extensive use of PFAS in products. A scientific article published in 2020 describes the conclusion of a non-exhaustive study of PFAS in products that found more than 200 uses of PFAS in products across 64 use categories and identified 1,400 individual PFAS in use.[4] The same study identified nearly 300 functions of PFAS within those products and properties that make them valuable to product performance such as non-flammability, high stability, low reactivity, and many others. The study reaffirmed known uses of PFAS in industries such as semiconductor manufacturing and firefighting foam but also discovered uses of PFAS in undocumented use categories including PFAS in ammunition, climbing ropes, guitar strings, artificial turf, and soil remediation. Another article published in 2023 provided a meta-analysis of 52 global PFAS product testing studies and found 107 PFAS in 1,040 consumer products.[5] Among the household items that were tested, textiles, household chemicals, and cosmetics contained the highest average concentrations of PFAS. Minnesota's PFAS reporting requirements, as established by this rulemaking, will be essential to inform the public about where PFAS are used and to fill gaps in the research of the extent of PFAS use in products.

Minn. Stat. § 116.943, subdivision 2 outlines the information that a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS must submit on or before January 1, 2026. Subdivision 3 grants the commissioner the authority to waive all or part of the information required if substantially equivalent information is already publicly available, and to grant an extension on the deadline for submission if more time is needed to comply with the submission requirements. Subdivision 6 grants the commissioner the authority to establish by rule a fee associated with the reporting requirements under subdivision 2 to cover the costs of program implementation. This proposed rulemaking clarifies each of these subdivisions within Minn. Stat. § 116.943.

A Request for Comments (RFC) for the PFAS in products reporting rulemaking was published in the *State Register* on September 25, 2023. An RFC for the PFAS in products fees rulemaking was published in the *State Register* on September 25, 2023.The two rules were combined, and a new RFC was published in

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[3] Environmental Protection Agency (EPA). (2024, June 10). PFAS Analytical Methods Development and Sampling Research. https://www.epa.gov/water-research/pfas-analytical-methods-development-and-sampling-research

[4] Glüge, J., Scheringer, M., Cousins, I., DeWitt, J. C., Goldenman, G., Herzke, D., Lohmann, R., Ng, C., Trier, X., & Wang, Z. (2020). An overview of the uses of per- and polyfluoroalkyl substances (PFAS). Environmental Science: Processes & Impacts, 22(12), 2345–2373. https://doi.org/10.31224/osf.io/2eqac

[5] Dewapriya, P., Chadwick, L., Gorji, S., Schulze, B., Valsecchi, S., Samanipour, S., Thomas, K., & Kaserzon, S. (2023), Per- and polyfluoroalkyl substances (PFAS) in consumer products: Current knowledge and research gaps. Journal of Hazardous Materials Letters, Volume 4. 100086, ISSN 2666-9110. https://doi.org/10.1016/j.hazl.2023.100086.

the *State Register* on November 18, 2024. The MPCA considered comments received during these comment periods and all comments received during this rulemaking in developing the rule language.

This document fulfills the requirements of the Minnesota Administrative Procedures Act (APA), which requires a Statement of Need and Reasonableness (SONAR) justifying and explaining the need for the proposed rule amendments (Minn. Stat. § 14.131). It also addresses the statutory requirements associated with the proposed administrative rules.

B. Statement of General Need

The Agency needs this rule to meet the legislative directive to improve data collection on products containing intentionally added PFAS. This data may provide the information needed to guide future regulation that is protective of human health and Minnesota's environment. The purpose and need of the proposed rule is to fulfill the requirements set forth by Minn. Stat. § 116.943 to require manufacturers to report information on products containing intentionally added PFAS. The specific reasonableness of the requirement to report is listed in Section 5(B) of this SONAR.

This proposed PFAS in Products Reporting and Fees Rule is expected to clarify some of the definitions in subdivision 1 of Minn. Stat. § 116.943 which relates to the reporting process and its scope, including "manufacturer," "PFAS," "intentionally added," "product," and "product component". While the definition in Minn. Stat. § 116.943 still applies, in some cases, there are terms within the definitions themselves that also require clarity. Additionally, there are other undefined terms used in Subdivision 2, "Information required," and Subdivision 3 "Information requirement waivers; extensions," which require clarity related to reporting requirements.

In addition to clarifying the statute, this rule proposes to outline the process by which a manufacturer must report the information required under Minn. Stat. § 116.943 subdivision 2, how a manufacturer must submit an application for a waiver or extension to the reporting requirements (subdivision 3), and how the fees payable by the manufacturer are established (subdivision 6). The information submitted by manufacturers and assessed by the Agency as a result of this rule will be used in various applications.

Increased Awareness of PFAS in the Environment

This PFAS in Products Reporting and Fees Rule will lead to the unprecedented disclosure of the presence and quantity of intentionally added PFAS in products and their components. This information will allow Minnesotans to make informed choices about their PFAS exposure, inform whether to avoid purchasing certain products, and inform future Agency program development and rulemaking, such as the PFAS in Products Currently Unavoidable Use rule. Fewer purchases of PFAS-containing products will reduce environmental impacts from product manufacture, use, and disposal. In addition, manufacturers may be more inclined to seek alternatives to PFAS in products due to customer pressure and increased public awareness. The reporting process will also establish a database of products are subject to the 2032 PFAS in products ban as outlined in Minn. Stat. § 116.943.

Scope of PFAS use in Products

As discussed in the introduction of this SONAR, pollution prevention is the most cost-effective way to reduce PFAS exposure. However, in order to implement an effective pollution prevention program, more data is needed to identify the source of the pollution. With this rule, manufacturers will submit information not only on the types of products containing intentionally added PFAS, but also the concentration of PFAS within those products. This will allow the MPCA and other agencies with a vested interest in human health and the environment to better understand the correlation between PFAS in products and PFAS pollution throughout the life cycle of a product.

Informed consumers are key to reducing PFAS exposure and pollution. By providing clear, accessible information on which products contain intentionally added PFAS, the proposed rule empowers consumers to make educated purchasing decisions. As awareness grows about the environmental and health impacts of PFAS, consumers are likely to favor products that do not contain these chemicals. This shift in purchasing habits can encourage manufacturers to explore safer alternatives, ultimately reducing the presence of PFAS in the marketplace and minimizing environmental contamination throughout the product life cycle.

Funding Program Implementation
This rule proposes the assessment of fees on manufacturers who submit PFAS reports. The fees will support the development, maintenance, and oversight of the reporting system, as well as data analysis and compliance activities. A flat fee will be required for initial reports, with lower fees for annual recertifications. Additionally, a fee will be assessed for any extension requests. These fees are necessary to ensure the MPCA can efficiently manage the reporting system, analyze data, and enforce compliance, all while maintaining a balanced and sustainable program that does not overburden the state's budget. The fee structure has been carefully designed to minimize the economic impact on manufacturers while ensuring adequate resources for the program.

C. Scope of the proposed new chapter:

The following new sections of the new chapter 7026 of Minnesota Rules are proposed:

1) Chapter 7026.0010 "Definitions" to add definitions that are applicable to rules regulating PFAS in products.
2) Chapter 7026.0020 "Parties Responsible for Reporting" to establish who must report products containing intentionally added PFAS to the Agency.
3) Chapter 7026.0030 "Information Required in Report" to establish what information must be provided to the Agency in the report.
4) Chapter 7026.0040 "Reporting Updates" to establish when and how a manufacturer must provide updates to the initial report submitted to the Agency.
5) Chapter 7026.0050 "Waivers" to establish when and how a manufacturer may request a waiver to the reporting requirements.
6) Chapter 7026.0060 "Extensions" to establish when and how a manufacturer may request an extension to the reporting deadline.
7) Chapter 7026.0070 "Trade Secret Data Request" to establish when and how a manufacturer may request data to be considered not public information.
8) Chapter 7026.0080 "Due Diligence" to establish the extent to which a manufacturer must consult its supply chain to acquire the information required in the report.
9) Chapter 7026.0090 "Reporting Exemptions" to establish products that are exempt from the reporting requirements in this rule.
10) Chapter 7026.0100 "Fees" to establish the fees required to be submitted with the initial report, report updates, waiver requests, and extension requests.

2. Background

PFAS are man-made chemicals that are synthetically formed by taking a molecule with a carbon backbone and replacing the carbon-hydrogen bond(s) with a much stronger carbon-fluorine bond(s). The resulting molecule is a PFAS; known to be resistant to biological and chemical degradation. Even when treated, some long-chain PFAS only break down into new shorter-chain PFAS. They do not degrade easily in the natural environment, which makes them useful in man-made product applications. However, PFAS persist in the environment for long periods, accumulating in soil, water, and living organisms. This persistence, combined with growing evidence of their toxicity, has raised significant concerns regarding human health and environmental impacts.

The first PFAS, polychlorotrifluoroethylene (PCTFE), was discovered in 1934, and manufactured on a commercial scale in the early 1950s.[6] Another PFAS, polytetrafluoroethylene (PTFE) and later trademarked as "Teflon," was later discovered and used during World War II for a variety of uses including in nuclear warheads, liquid-fuel tanks, and in pipes and other vessels used to contain toxic chemicals. Today, PTFE is still used in a variety of products from medical technologies to non-stick cook- and bakeware. Around the same time, perfluorooctane sulfonic acid (PFOS) was developed to treat fabric stains and act as a water-repellant. Today there are thousands of PFAS chemicals, many of which are used in consumer products. Originally PFAS was considered a "wonder chemical" because of its unique properties and numerous useful functions in products. Now, PFAS have been dubbed "forever chemicals" as new information continues to emerge on the risks of PFAS exposure to human health and the environment through persistence and bioaccumulation.

PFAS compounds are particularly concerning due to their persistence in the environment and their tendency to bioaccumulate in both wildlife and humans. Research from the Centers for Disease Control and Prevention (CDC) has shown that PFAS can be detected in the blood of nearly 97% of Americans, indicating widespread exposure. The accumulation of these chemicals in the body is slow, and their half-life in humans can range from several years to decades, especially for long-chain PFAS compounds such as perfluorooctanoic acid (PFOA) and PFOS.[7] These long-chain PFAS are more bioaccumulative and are generally toxic at lower doses than their short-chain counterparts, making them a significant concern for public health.[8] The most studied PFAS include PFOA, PFOS, GenX (HFPO-DA), and perfluorohexane sulfonate (PFHxS). These chemicals are widely used for their water- and grease-resistant properties in products such as nonstick cookware, stain-resistant fabrics, and firefighting foams. Research has linked certain PFAS to a variety of health effects. PFOA and PFOS, in particular, have been associated with adverse health outcomes such as increased cholesterol levels, changes in liver enzymes, immune system suppression, and developmental effects in fetuses and infants. Additionally, prolonged exposure to higher levels of these PFAS has been linked to kidney and testicular cancer, as well as thyroid disruption.[9] The persistence of PFAS in the environment and their bioaccumulative nature further amplify their potential health impacts across populations.

The Committee on the Guidance on PFAS Testing and Health Outcomes conducted a thorough review of

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[6] Perera, D. C., & Meegoda, J. N. (2024). Pfas: The journey from Wonder Chemicals to Environmental Nightmares and the search for solutions. Applied Sciences, 14(19), 8611. https://doi.org/10.3390/app14198611

[7] Centers for Disease Control (CDC). 2022. National Report on Human Exposure to Environmental Chemicals. https://www.cdc.gov/exposurereport/index.html

[8] Olsen, G. W., Church, T. R., Miller, J. P., Burris, J. M., Hansen, K. J., Lundberg, J. K., Armitage, J. B., Herron, R. M., Medhdizadehkashi, Z., Nobiletti, J. B., O'Neill M. E., Mandel, J. H., and Zobel, L. R. (2003). Perfluorooctane sulfonate and other fluorochemicals in the serum of American Red Cross adult blood donors. Environmental health perspectives, 111(16):1892-1901. https://doi.org/10.1289/ehp.6316

[9]Agency for Toxic Substances and Disease Registry (ATSDR). (2021). Toxicological Profile for Perfluoroalkyls. https://wwwn.cdc.gov/TSP/ToxProfiles/ToxProfiles.aspx?id=1117&tid=237

recent epidemiologic studies related to PFAS exposure.[10] Although various PFAS have different properties, the committee opted to provide strength-of-evidence conclusions for all PFAS as a group, considering the complex exposure to PFAS mixtures. They found sufficient evidence of an association between PFAS exposure and several health outcomes, including decreased antibody response, dyslipidemia, reduced infant and fetal growth, and an increased risk of kidney cancer. Additionally, limited or suggestive evidence linked PFAS to increased risks of breast cancer, liver enzyme alterations, pregnancy-induced hypertension, testicular cancer, thyroid disease, and gastrointestinal diseases, such as ulcerative colitis.

PFAS have also been linked to adverse health effects, particularly affecting lipid profiles in women undergoing menopausal transitions. A recent study[11] associated PFAS exposure with unfavorable changes in blood lipids, including higher levels of total cholesterol and low-density lipoprotein (LDL) cholesterol, key risk factors for cardiovascular diseases. Researchers analyzed serum concentrations of PFAS such as PFOA, PFHxS, and PFOS in women aged 45–56 over a 15-year period. This study identified a strong correlation between higher PFAS exposure and elevated cholesterol levels, while also noting an inverse association with triglycerides in some cases. These findings suggest that PFAS may disrupt lipid homeostasis, contributing to an increased risk of cardiovascular and metabolic diseases during this vulnerable life stage.

The MPCA recognizes the importance of understanding the potential human health risks associated with exposure to PFAS through various routes. PFAS exposure can occur via several pathways, including ingestion, inhalation, and dermal contact, each of which presents unique health risks.

Ingestion: One of the primary routes of PFAS exposure is through the consumption of contaminated water and food. Studies have demonstrated that PFAS can accumulate in fish, livestock, and wildlife; leading to higher concentrations in those that are consumed by humans. Additionally, PFAS can be present in drinking water supplies due to industrial discharges, landfills, and wastewater treatment facilities. The Minnesota Department of Health (MDH) has established consumption guidelines to mitigate risks associated with PFAS in fish, particularly for vulnerable populations such as pregnant women and children.

Inhalation: Inhalation exposure to PFAS may occur through airborne emissions from industrial sources, contaminated dust, and the use of products containing PFAS. Limited data exist regarding the specific health effects related to inhalation; however, emerging research suggests potential links between PFAS exposure via this route and various adverse health outcomes, including respiratory issues and decreased immune response.

Dermal Contact: Dermal exposure to PFAS can occur through the use of consumer products such as stain-resistant fabrics, water-repellent outdoor gear, and certain cosmetics. Although the extent of dermal absorption remains uncertain, there is growing concern about this pathway of exposure.

PFAS contamination is increasingly being detected in various environmental settings, including waterways, landfills, and soil, as well as in wildlife. Research and reports, such as Minnesota's *PFAS*

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[10] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Division on Earth and Life Studies; Board on Population Health and Public Health Practice; Board on Environmental Studies and Toxicology; Committee on the Guidance on PFAS Testing and Health Outcomes. (2022). Guidance on PFAS Exposure, Testing, and Clinical Follow-Up. Potential Health Effects of PFAS. Washington (DC): National Academies Press (US). https://www.ncbi.nlm.nih.gov/books/NBK584690/

[11] Kang, H., Ding, N., Karvonen-Gutierrez, C. A., Mukherjee, B., Calafat, A. M., & Park, S. K. (2023). Per- and Polyfluoroalkyl substances (PFAS) and lipid trajectories in women 45-56 years of age: The Study of Women's Health Across the Nation. Environmental Health Perspectives, 131(8), 87004. https://doi.org/10.1289/EHP12351

Blueprint,[12] provide comprehensive insights into where these chemicals are being found and their impact.

Studies have shown that PFAS are prevalent in surface water, groundwater, and drinking water sources across the US. The EPA and state agencies have detected PFAS in numerous rivers, lakes, and reservoirs, particularly near industrial sites and military installations where PFAS-containing firefighting foams were used. In Minnesota, MDH and MPCA identified multiple water systems contaminated with PFAS, especially near waste disposal sites, manufacturing facilities, and military bases. The state's PFAS Blueprint outlines specific areas of concern, including the Mississippi River and nearby lakes.

Since 2004, thousands of fish from over 200 lakes, rivers, and streams have been analyzed for PFAS, revealing that approximately 85% of tested waters contain fish with detectable levels of these substances. However, most levels are below those considered unsafe by the MDH. PFOS is frequently identified in fish tissue, along with other types of PFAS. The Minnesota Department of Natural Resources (DNR) conducts routine fish sampling, and additional testing occurs based on suspected local contamination. This ongoing effort is part of Minnesota's comprehensive PFAS Blueprint and involves close collaboration among state agencies. MDH issues Safe-Eating Guidelines that inform the public about safe fish consumption, particularly for vulnerable populations such as pregnant women and children. These guidelines are regularly updated based on current research regarding the health effects of PFAS exposure. To date, MDH has established statewide guidance for PFOS and specific guidelines for 51 water bodies.[13] Understanding the presence of PFAS in fish also provides insights into broader environmental contamination and the potential pathways through which PFAS affect humans and wildlife. The recent legislative support for expanding fish monitoring programs reflects Minnesota's commitment to addressing PFAS pollution.

Landfills are major collection points for PFAS due to the disposal of products that contain these chemicals. Minnesota's 2022 *PFAS Blueprint* highlights landfills as a key concern, with monitoring data showing significant PFAS levels in landfill leachate. A concern also exists for PFAS contamination in lined landfills, as many products containing PFAS have historically been disposed of in landfills before their dangers were understood. The 2024 PFAS Monitoring Report[14] went on to recommend reducing the amount of PFAS in leachate that is land applied and to monitor leachate for PFAS.

PFAS have been found in soils, especially in agricultural areas where contaminated water or biosolids have been used for irrigation or fertilization. This contamination not only affects plants and wildlife but also poses risks to humans through the food chain. If groundwater polluted with PFAS in used to irrigate forage crops, PFAS can integrate into the leaf tissue and bioaccumulate. When a cow eats the grass, the PFAS can be detected in milk and meat products. When those products are then consumed by humans, the PFAS bioaccumulates in the human body. Studies also indicate that PFAS accumulate in wildlife, including fish and birds, raising concerns about ecosystem health and bioaccumulation in food sources.

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[12] *MPCA. (2021, February). Minnesota's PFAS Blueprint: A plan to protect our communities and our environment from per- and polyfluorinated alkyl substances. https://www.pca.state.mn.us/waste/pfas-studies-and-reports*

[13] *MDH (2024, October). Fish Consumption Guidance. https://www.health.state.mn.us/communities/environment/fish/index.html*

[14] *MPCA (2024, May). PFAS Monitoring Plan: Initial findings and next steps. https://www.pca.state.mn.us/sites/default/files/p-gen1-22h.pdf*

In response to growing evidence of PFAS-related health risks, regulatory agencies like the U.S. EPA have begun to take action. The EPA originally set health advisory levels for PFOA and PFOS in drinking water at 70 parts per trillion (ppt) in 2016, but recent studies have led to even stricter limits for the enforceable Maximum Contamination Level (MCL)[15].

Table 1. Legally enforceable MCLs in drinking water established by EPA.

Compound	MCL (ppt)
PFOA	4.0
PFOS	4.0
PFHxS	10
PFNA	10
HFPO-DA (commonly known as GenX Chemicals)	10
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index

Some states, such as Minnesota, California and New York, have already implemented more stringent PFAS regulations, including bans on PFAS in food packaging and lower allowable limits for PFAS in drinking water.[16] (OEHHA 2717).

Despite these efforts, many PFAS compounds in commercial use still lack comprehensive toxicity data. The EPA and other research agencies are working to close this gap, but the sheer number of PFAS chemicals and their widespread use across industries make this an ongoing challenge for public health officials and regulators. The main agencies performing research on PFAS include:

- Federal Resources: U.S. EPA, Agency for Toxic Substances and Disease Registry (ATSDR), National Institutes of Health (NIH), Food and Drug Administration (FDA), U.S. Department of Defense (DOD), and branches of the military (Navy, Air Force).
- State Resources: Association of State Drinking Water Administrators (ASDWA), Interstate Technology and Regulatory Council (ITRC), Environmental Council of the States (ECOS), Environmental Research Institute of the States (ERIS).

Minnesota is proactively addressing PFAS contamination through initiatives that align with and enhance federal actions. The MPCA collaborates with MDH and other state agencies to implement strategies for managing PFAS in the environment. As part of this approach, MDH develops health-based guidance values (HBVs) for PFAS contaminants in drinking water[17]. These HBVs indicate levels that can be present in water without posing significant health risks over a lifetime, including for sensitive populations.

[15] *EPA. (2025, February). Final PFAS National Primary Drinking Water Regulation. https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas*

[16] *California Office of Environmental Health Hazard Assessment (OEHHA). (2017, October). Chemicals Listed Effective October 27, 2017 as Known to the State of California to Cause Cancer: N,N-Dimethylformamide, 2-Mercaptobenzothiazole, and Tetrabromobisphenol A. https://oehha.ca.gov/proposition-65/crnr/chemicals-listed-effective-october-27-2017-known-state-california-cause-cancer*

[17] *MDH. (2024, November). PFAS and Health. https://www.health.state.mn.us/communities/environment/hazardous/topics/pfashealth.html*

Table 2. HBVs for PFAS in drinking water as established by MDH.

PFAS Detected in Minnesota	Drinking Water Guidance Value (ppt)
Perfluorobutane sulfonate (PFBS)	100
Perfluorobutanoate (PFBA)	7,000
Perfluorohexane sulfonate (PFHxS)	47
Perfluorohexanoate (PFHxA)	200
Perfluorooctane sulfonate (PFOS)	2.3
Perfluorooctanoate (PFOA)	0.0079

At the federal level, the EPA has introduced new National Primary Drinking Water Regulations, establishing MCLs for several PFAS compounds. Minnesota's strategy mirrors these federal efforts by requiring testing of public water systems for PFAS while distinguishing itself through the integrated and collaborative framework established in the Minnesota PFAS Blueprint. This blueprint addresses a wide range of issues related to PFAS, including prevention, remediation, and risk assessment.

The Minnesota PFAS Blueprint outlines both short- and long-term opportunities for action, as well as legislative steps, to manage and mitigate the impact of PFAS on the environment, families, and communities. These initiatives aim to protect public health by reducing PFAS contamination in air, water, and soil. Over the next several years, state agencies, in partnership with local communities, will continue developing strategies to address the complexities of PFAS management. In the short term, efforts will focus on progressing toward statewide water quality standards for PFAS in drinking water, creating monitoring plans for PFAS in groundwater and permitted facilities, and developing performance testing for PFAS emissions from air sources. Long-term goals include assessing wildlife risks, requiring air toxics reporting, providing assistance to businesses transitioning away from PFAS, and potentially developing new water quality standards for aquatic ecosystems. This collaborative approach aims to prevent, manage, and clean up PFAS pollution while engaging stakeholders and ensuring a comprehensive response to these persistent chemicals.

The exact extent of PFAS use in products remains largely unknown, highlighting a critical gap in our understanding of their environmental and health impacts. This uncertainty is one of the driving factors behind the need for comprehensive regulations and reporting requirements. As research continues to unveil the potential risks associated with PFAS exposure, including links to serious health issues, it is increasingly important for state agencies to monitor and manage these substances effectively.

As a result, the 2023 Minnesota Legislature passed Minn. Stat. § 116.943, also known as Amara's Law, to require manufacturers to report information about products containing intentionally added PFAS that are sold, offered for sale, or distributed in the State to the MPCA. This proposed rule is intended to clarify the law and establish how reporting must be conducted.

3. Public participation and stakeholder involvement

A. Request for comments published in *State Register*

The MPCA published its notice of RFC for this rulemaking on September 25, 2023, in the *State Register* (S-28). An RFC for the PFAS in products fees rulemaking was published in the *State Register* on September 25, 2023. The two rules were combined, and a new RFC was published in the *State Register* on November 18, 2024. These RFCs specifically requested comments on the new PFAS reporting requirement process and fees needed to cover the Agency's costs to implement the reporting process. A

summary of the stakeholders who submitted comments is provided below. The MPCA also posted a PDF of all written comments on its website along with a summary of comment topic areas. The MPCA considered all comments received that were within the scope of this rulemaking. Below includes entities that submitted comments for this first RFC:

- AdvaMed, the MedTech Association
- Alliance for Automotive Innovation
- Alliance for Telomer Chemistry Stewardship Performance Fluoropolymer Partnership & Center for the Polyurethanes Industry (ATCS)
- American Chemistry Council's Performance Fluoropolymer Partnership
- American Coatings Association (ACA)
- Animal Health Institute (AHI)
- Association of Equipment Manufacturers (AEM)
- Association of Home Appliance Manufacturers (AHAM)
- Best Technology
- Beveridge & Diamond, PC
- Business Institutional Furniture Manufacturers Association
- Clean Water Action Minnesota
- Chemical Users Coalition (CUC)
- Coalition of Manufacturers of Complex Products
- Consumer Brand Association
- Consumer Technology Association
- DuPont de Nemours, Inc.
- Gujarat Fluorochemicals Limited
- Honeywell
- Household & Commercial Products Association (HCPA)
- Japanese electric and electronic industrial associations (JP4EE)
- Kindeva Drug Delivery L.P.
- Lac-Mac Limited
- MN Chamber of Commerce
- Medical Alley
- Minnesota Grocers Association
- National Marine Manufacturers Association (NMMA), the Marine Retailers Association of the Americas (MRAA) and the Water Sports Industry Association (WSIA)
- OE Electrics Inc
- Personal Care Products Council
- PFAS Pharmaceutical Working Group (PPWG)
- Polar Semiconductor
- SEMI
- Solvay America, Inc.
- Sustainable PFAS Action Network (SPAN)

- Truck and Engine Manufacturers Association (EMA)
- W. L. Gore & Associates, Inc.

Topics covered in comments submitted to the MPCA during the RFC period included:

- The definition of PFAS and the scope for which PFAS reporting will be required. Commentors also sought clarification on the level of detail for reporting and whether PFAS will be reported by categories or by each individual PFAS chemical.
- The definition of manufacturer and clarification on who exactly in the economic supply chains will be required to report intentionally added PFAS.
- How a product will be defined, and if this will entail packaging, resold or reused materials as well as how manufacturers address products with potentially thousands of components that may or may not have PFAS.
- Testing for PFAS – regulated parties are seeking clarification and instruction on how testing can be implemented while addressing issues where not all PFAS has a Chemical Abstract Service Registry Number (CASRN) or when PFAS is added in small volumes that are difficult to measure.
- Confidential business information – there was support to implement similar processes for handling sensitive information that the federal EPA has implemented under the Toxic Substances Control Act (TSCA), a preference by commenters to report data in categories or more general terms, as well as being able to clearly note in the data submission process that information is confidential.
- The fee structure and method of collection – Different approaches were considered such as tiered fees by the size of the business, a per-product or per-company fee, a per-PFAS or PFAS amount fee, other state or agency fee models as well as how often fees should be collected while asking for commenters to provide other issues for submitting fees.

B. Webpages

The MPCA maintains the following webpages that are publicly accessible and relevant to this rulemaking:

- **PFAS in products: Reporting** (https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting) on September 11, 2023 in order to provide the public with background and other information relevant to this rulemaking, Once the RFC was published on September 11, 2023, the MPCA updated the webpages to include rulemaking documents, including a supplement to the RFC that provided more detail on rule concepts; a target schedule for rule adoption; and information on opportunities to provide input, including dates and locations for public meetings around the state. This webpage was updated to **PFAS in Products: Reporting and Fees** (https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting-and-fees) on November 18, 2024 to incorporate a second RFC that combined this rule with the PFAS in products fee rule to better align the fee and reporting processes.
- A PFAS in products webpage (https://www.pca.state.mn.us/get-engaged/pfas-in-products) was also created to provide background on the other rulemakings tied to the same 2023 legislation Amara's Law (Minn. Stat. § 116.943).
- Minnesota Rulemaking at (https://www.pca.state.mn.us/get-engaged/proposed-rules). The MPCA's rulemaking webpage provides the public with centralized information about current rulemaking projects and the rulemaking process. It also explains how the public can receive notice of rule changes. The MPCA's "Public Rulemaking Docket," updated monthly, is located on

this webpage and includes information about current rulemaking projects such as the rule webpage, contact person, and timeline.

C. GovDelivery and electronic notifications

- The MPCA uses a self-subscription service called "GovDelivery" to provide notice electronically (via email) to interested and affected persons of various updates and public notices issued on a wide range of topics, including administrative rulemakings. Any person may visit the GovDelivery subscription page at http://public.govdelivery.com/accounts/MNPCA/subscriber/new to subscribe and choose the notifications they want to receive. Request for US Mail service is also available.
- The MPCA lists rule projects on the Public Rulemaking Docket (see above). Once a rule project becomes active (i.e., it is no longer listed as a future project), a GovDelivery self-subscription list for that specific rulemaking is established. GovDelivery alerts individuals who have signed up to receive notice for all rulemakings to notify them of new rule projects.

D. Meetings

i) Public meetings

After the first RFC was published and the agency received comments, the MPCA sent a GovDelivery notice to subscribers on June 17, 2024, to announce an initial public meeting. The MPCA held this webinar on July 18th to provide a presentation on preliminary rule writing for the PFAS in products reporting, fees and currently unavoidable use rules. The presentation was provided on our external website along with a recording of the session.

ii) Technical meetings

The MPCA also held technical meetings to allow for focused conversations with variety of stakeholders that are impacted by this rule. Below are the specific meetings and their purpose:

April 25, 2024, 10-11:30 am at the MPCA St. Paul Office and virtually via Microsoft Teams: The first manufacturers meeting to solicit feedback and input on developing this rule.

May 2, 2024, 10-11:30 am at the MPCA St. Paul Office and virtually via Microsoft Teams: The first non-manufacturers meeting to solicit feedback and input on developing this rule.

June 18, 2024, 10-11:30 am at the MPCA St. Paul Office and virtually via Microsoft Teams: The second manufacturers meeting to solicit feedback and input on developing this rule.

July 2, 2024, 10-11:30 am at the MPCA St. Paul Office and virtually via Microsoft Teams: The second non-manufacturers meeting to solicit feedback and input on developing this rule.

iii) Stakeholder meetings

The MPCA sought input on this rulemaking from organizations that create and manage products with intentionally added PFAS. The MPCA sought focused input from organizations that use complex products that may not have obvious replacements or have intricate processes to make products. Stakeholder meetings were held prior to publishing Notice of Intent to Adopt.

MPCA staff met with interested parties, as listed below, to discuss the proposed concepts and solicit input on the anticipated effects of the proposed rule. These included The United States Department of Commerce, Alliance for Automotive Innovation and more. In its communications, MPCA staff offered to meet with any interested party to discuss their concerns. Some stakeholders opted not to meet with

MPCA staff. This list is not exhaustive and does not include the many emails, phone conversations, and informal discussions that took place between MPCA staff and individual stakeholders throughout the process of developing the rule amendments.

- Association of Home Appliances on 2/7/2024
- Emerson on 5/8/2024
- United States Department of Commerce on 5/10/2024
- Apple Inc. on 5/14/2024
- Business Institutional Furniture Manufacturers Association (BIFMA) furniture industry association on 7/11/2024
- RTX Corporation with subsidiary Collins Aerospace on 9/11/2024
- Alliance for Automotive Innovation on 10/2/2024

iv) Informal Check-in Groups

The MPCA invited various industry groups, businesses, non-governmental organizations (NGOs), regulatory, and academic groups to participate in informal check-in groups to advise the MPCA on PFAS in products rulemaking. Many of the participants participating provided meaningful and constructive public comments to the reporting and fees RFC. Participants helped provide the MPCA with technical answers to their proposed rule concepts and helped explain in-depth issues that could arise during product reporting and what could be reasonably done to rectify those issues.

<u>Manufacturing and Industry</u>

- 3M
- Alliance for Automotive Innovation
- American Chemistry Council (ACC) - Alliance for Telomer Chemistry Stewardship
- Association of Home Appliance Manufacturers (AHAM)
- Boston Scientific
- Business Institutional Furniture Manufacturers Association (BIFMA)
- Consumer Brands Association
- GreenSoft
- Honeywell
- Household & Commercial Products Association (HCPA) HCPA
- Medical Alley
- MillerKnoll
- Minnesota Chamber of Commerce
- National Marine Manufacturers Association (NMMA), the Marine Retailers Association of the Americas (MRAA), and the Water Sports Industry Association (WSIA)
- SEMI
- Sustainable PFAS Action Network (SPAN) SPAN
- Target

<u>Academia and Environmental</u>

- California Department of Toxic Substances Control (DTSC)
- Clean Water Action

- Defend Our Health
- Environmental Working Group (EWG)
- Essential Use paper authors
- Maine Department of Environmental Protection
- Minnesota Environmental Justice Table (EJ Table)
- Minnesota Technical Assistance Program (MnTAP)
- National Resources Defense Council (NRDC)
- Northeast Waste Management Officials Association (NEWMOA)
- Toxic-Free Future
- Toxics Use Reduction Institute (TURI)
- University of St. Thomas
- Washington Department of Ecology

4. Statutory authority

The MPCA has specific authority to adopt these rules under Minn. Stat. § 116.943, Minnesota Session Law – 2023, chapter 60, article 3, section 21, subdivision 2 as follows:

Subd. 2. Information required. ***(a) On or before January 1, 2026, a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS must submit to the commissioner information that includes:***

(1) A brief description of the product, including a universal product code (UPC), stock keeping unit (SKU), or other numeric code assigned to the product;

(2) The purpose for which PFAS are used in the product, including in any product components;

(3) The amount of each PFAS, identified by its chemical abstracts service registry number, in the product, reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes by the commissioner;

(4) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(5) Any additional information requested by the commissioner as necessary to implement the requirements of this section.

(b) With the approval of the commissioner, a manufacturer may supply the information required in paragraph (a) for a category or type of product rather than for each individual product.

(c) A manufacturer must submit the information required under this subdivision whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state and update and revise the information whenever there is significant change in the information or when requested to do so by the commissioner.

(d) A person may not sell, offer for sale, or distribute for sale in the state a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under this subdivision and the person has received notification under subdivision 4.

In addition, the MPCA has specific authority to adopt these rules under Minn. Stat. § 116.943, Minnesota Session Law – 2023, chapter 60, article 3, section 21, subdivision 9 as follows:

> *Subd. **9.** Rules. **The commissioner may adopt rules necessary to implement this section. Section 14.125 does not apply to the commissioner's rulemaking authority under this section.***

Under these state statutory provisions, the MPCA has the necessary statutory authority to adopt the proposed amendments into Minnesota Rules.

5. Reasonableness of the amendments

A. General Reasonableness

Minnesota's PFAS Blueprint identifies strategies for PFAS management, from most desirable to least desirable, as preventing PFAS pollution wherever possible, managing PFAS pollution when prevention is not feasible, and cleaning up PFAS contaminated sites. To begin this work, the MPCA needs data on where PFAS are being used, and that starts with this proposed PFAS in products reporting and fees rule.

The MPCA currently has no rules that regulate PFAS in products. In the past several years, the Minnesota Legislature has recognized the need for regulation of PFAS chemicals and passed several laws to that effect. Those laws, to date, include:

- Minn. Stat. § 325F.072 Firefighting Foam prohibits certain uses of class B firefighting foam in Minnesota. The prohibition on testing and training with such foam took effect on July 1, 2020. A further prohibition on the manufacture, sale, distribution, and use of class B firefighting foam in the state took effect on January 1, 2024;
- Minn. Stat. § 325F.075 Food Packaging; PFAS, which took effect January 1, 2024, to prohibit the manufacture, distribution, and sale of a food packaging that contains intentionally added PFAS in the state; and,
- Minn. Stat. § 116.943 Products Containing PFAS, more commonly known as, "Amara's Law," which contains several stages of PFAS in products prohibitions and requirements for the agency to undergo rulemaking, including this proposed reporting and fees rule.

This proposed rule is reasonable because the Minnesota Legislature authorized the MPCA to develop rules related to products containing PFAS, as outlined in Minn. Stat. § 116.943. Even without the legislative authority for this rulemaking, and as outlined in this SONAR, PFAS chemicals pose risks to human health and the environment. As data pertaining to the toxicity associated with PFAS exposure continues to develop in coming years, having the information reported to the MPCA because of this rulemaking will contribute to ongoing monitoring and be crucial to future informed decision-making.

On the federal level, the EPA has initiated steps to regulate PFAS in products, as well as in other media. The EPA has expanded existing federal rules and acts to incorporate requirements for PFAS reporting and other regulations. Those rules, to date, include:

- In October 2023, the EPA published a final rule under 40 CFR Part 705 – Reporting and recordkeeping requirements for certain per- and polyfluoroalkyl substances, which outlines reporting and recordkeeping procedures for manufacturers (including importers) of PFAS under section 8(a)(7) of the Toxic Substances Control Act (TSCA);
- In October 2023, the EPA released a final rule pertaining to 40 CFR Part 372 Toxic Chemical Release Reporting: Community Right-to-Know, to eliminate an exemption that allowed facilities to avoid reporting PFAS emissions when those chemicals were used in small concentrations;

- In January 2024, the EPA finalized a new rule under 40 CFR Parts 9 and 721 – Per- and Poly-Fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory; Significant New Use Rule, that prevents manufacturers from resuming the use of 329 PFAS that are listed as "inactive" on the TSCA Inventory without EPA review and risk determination;
- In April 2024, the EPA issued the first national drinking water standard under 40 CFR Part 141 Subpart Z – Control of Per- and Polyfluoroalkyl Substances (PFAS), which establishes maximum contaminant levels in community water-systems and non-transient, non-community water systems for six PFAS; and
- In April 2024, the EPA finalized a rule the designates two PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

In addition to federal regulations, state of Minnesota agencies have established PFAS-related regulations including:

- The MDH has established HBVs for PFAS in drinking water; and
- Minn. Stat. § 115B contains the Minnesota Environmental Response and Liability Act (MERLA) requiring responsible parties to undergo remediation and cleanup of "hazardous substances," PFAS are included under Minnesota's definition of hazardous substances.

In addition to these finalized rules, the EPA has taken several other actions to address PFAS including nationwide monitoring for PFAS in drinking water, publishing toxicity assessments for specific PFAS, expanding data collection efforts on PFAS, requiring toxic release inventory (TRI) reporting of PFAS air emissions, initiation of rulemaking efforts to clean up PFAS contamination through the Resource Conservation and Recovery Act (RCRA), releasing effluent limitation guidelines for PFAS concentrations in leachate discharges from landfills, and releasing methods to measure PFAS in the environment.

As detailed above, the current regulatory framework surrounding PFAS in products includes several measures, notably those established by the EPA. This proposed rule is reasonable because it builds upon existing regulations while addressing the evolving challenges posed by PFAS contamination. The MPCA intends to utilize the data reported by manufacturers to inform future policy decisions and guide rulemaking processes. By leveraging this data, the MPCA aims to enhance its understanding of PFAS prevalence and impacts in products, which will be instrumental in shaping effective regulatory strategies moving forward. This approach aligns with the objectives outlined in the PFAS Monitoring Plan and Blueprint.

Ultimately, the legislative directive requiring manufacturers to report information on products containing intentionally added PFAS compels the MPCA to act, but the MPCA is committed to ensuring that Minnesota addresses the pressing issue of PFAS contamination and its effects on public health and the environment.

B. Specific Reasonableness

Minn. Stat. § 14.131 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. Explained in this section is the specific reasonableness of the proposed rules, together with an explanation of the need for each change.

This proposed chapter 7026 applies to all manufacturers of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS.

7026.0010 DEFINITIONS

Subpart 1. **Applicability.** A subpart 1 is proposed to establish that the following definitions will apply to all of chapter 7026 regulating PFAS in products. It is reasonable to propose a scope that identifies what rule chapter the definitions apply to for clarity.

Subpart 2. **Authorized representative.** A definition of "Authorized representative" is added to the rule to identify that each manufacturer must appoint a person to report on their behalf. The purpose of including this definition in rule is also to require manufacturers to include a point of contact in their reporting so that the agency can reach out if additional information or clarifications are needed. It is reasonable to define "authorized representative" because the agency intends to promote flexibility and understands that a variety of entities may be submitting reports, so including this definition will allow reporting by consultants, groups of manufacturers, associations, or any other identified representative.

Subpart 3. **Brand name.** A definition of "Brand name" is added to the rule so the MPCA can attribute a product containing intentionally added PFAS to the correct owner. This term is used in the Minn. Stat. § 116.943 definition of "Manufacturer" which means "the person that creates or produces a product or whose brand name is affixed to the product." However, the term "brand name" itself is not statutorily defined. It is reasonable to define the term "brand name" because it clarifies who the manufacturer of a product is, and therefore who is responsible for reporting intentionally added PFAS in a product.

Subpart 4. **Brief description of the product**. A definition of "Brief description of the product" is added to the rule to outline how manufacturers should describe a product or group of products in order to distinguish them from other products offered for sale by other manufacturers. While other numerical codes will be useful to the agency for data analysis, providing a brief description of the products being reported will ensure public transparency. It is reasonable to propose a definition of "Brief description of the product" because it will allow the public to easily identify the types of products that manufacturers are reporting.

Subpart 5. **Chemical identifying number**. A definition of "Chemical identifying number" is added to the rule that provides a means to identify and cross-reference any and all information available on a particular chemical and provides examples of such identifiers. It is reasonable to propose a definition of "Chemical identifying number" because Minn. Stat. § 116.943 only required manufacturers to report CASRN, but not all PFAS compounds have CASRN affixed to them. By allowing manufacturers to report other "Chemical identifying numbers" for PFAS without a CASRN, the MPCA will receive more complete data. The legislature may not have anticipated that certain PFAS compounds lack CASRN, creating a gap in the statutory reporting requirements. The Agency has been given statutory authority to request any additional information as necessary to implement the requirements of this section, which includes asking for the specific amounts of each PFAS. Following input from PFAS working groups, the MPCA identified the need to expand chemical identification methods within the rule. Consequently, the MPCA included provisions recognizing alternative chemical identifiers. This approach is reasonable because it ensures that all PFAS types, including those without CASRN, are accurately identifiable and reportable, thereby supporting comprehensive data collection and effective regulatory oversight.

Subpart 6. **Chemical name.** A definition of "Chemical name" is added to the rule to identify the specific nomenclature of a chemical that has been established by the International Union of Pure and Applied Chemistry (IUPAC). Chemicals often have other names associated with them such as abbreviations, trade names, common names, and CASRN, so this definition is needed to distinguish the chemical name being cited. It is reasonable to propose a definition of "Chemical name" to provide clarity.

Subpart 7. **Component.** A definition of "component" is added to the rule to establish what elements are included or constituents of a product. The term "component" is used in the statutory definition of

“product” and “product component”; but, it is not defined itself. Similarly, the statute does not define packaging and, where packaging is considered an integral “component” and/or that packaging is the sole component of a product containing intentionally added PFAS, then the responsible manufacturer must report on that product. For clarity, this definition addresses what the term “packaging” means in the given context and references an existing definition for packaging found in Minn. Stat. § 115A.03. It is reasonable to reference an existing definition because it provides clarity to those subject to the rule.

Subpart 8. **Consumer.** A definition of “Consumer” is added to the rule to identify the persons receiving a product that is sold. The term consumer is used in the Minn. Stat. §116.943 definition of “product” but is not otherwise defined in statute. In the statutory definition of “product,” the consumer is referred to when they are using the product for personal, residential, commercial, or industrial use. The statute is specific to list commercial and industrial use and does not refer only to items sold at retail, for household or residential use. Because the statute refers to products also used in commercial or industrial settings it is reasonable to propose a definition of “Consumer” that refers more broadly to persons that acquire a product, regardless of its use in a residential or commercial setting.

Subpart 9. **Distribute for sale**. A definition of “Distribute for sale” is added to the rule to identify any means of transferring a product if the intention is to disseminate that product to a consumer. This phrase is used several times throughout Minn. Stat. §116.943 but is never defined. It is reasonable to propose a definition of “Distribute for sale” because it is used in other definitions in rule to identify the party responsible for reporting intentionally added PFAS in a product.

Subpart 10. **Fully fluorinated carbon atom**. Minn. Stat. §116.493 defines PFAS as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom; however, the term “fully fluorinated carbon atom” is not defined in Minn. Stat. §116.493. In order to clarify the statutory definition of PFAS, the rule clarified the term “fully fluorinated carbon atom.” The Agency definition of “fully fluorinated carbon atom” mirrors the definition adopted by the U.S. Geological Survey, the National Defense Authorization Act (NDAA), and other federal regulatory bodies. It is reasonable to incorporate the USGS definition of "fully fluorinated carbon atom" in this rule because it is an existing definition used in regard to PFAS substances and emerging contaminates as they relate to United States Code Title 15 Commerce and Trade. This ensures consistency with existing regulatory frameworks and supports effective enforcement of PFAS-related regulations.

Subpart 11. **Function**. A definition of “Function” is added to the rule to specify the role that the addition of PFAS serves when intentionally added to a product. Manufacturers reporting products or components with intentionally added PFAS will be required to report the function that the PFAS provides to the product or component. It is reasonable to propose a definition of “Function” because the MPCA’s list of Functional Use Categories and codes will include the 117 used by reporting manufacturers in the U.S. EPA’s TSCA Chemical Data Reporting (CDR) and PFAS reporting programs, plus additional functional use categories and codes from other authoritative organizations or reporting systems or commonly used by manufacturers in the “Other” category descriptions in U.S. EPA’s TSCA reporting programs. The MPCA received comments suggesting that the agency leverage the existing functional use categories and “F codes” which the U.S. EPA requires for its recurring CDR and current one-time PFAS reporting rule programs. The MPCA has done this, augmenting those with additional categories and codes from other reporting programs and from companies use and suggestions. The Agency's purpose is to get as many responses into standardized function categories rather than as customized, free-text entry descriptions by individual companies. Discouraging free-text entry of custom descriptions may also help in keeping descriptions of articles (finished products or components) out of function reporting and in product or component descriptions where they belong.

Subpart 12. **Homogenous material.** A definition of “Homogenous material” is added to define materials that are either uniform in their makeup or materials that cannot be separated into different materials by mechanical means. It is reasonable to propose a definition of “Homogenous material” because the MPCA is allowing manufacturers to group similar products comprised of these materials for the purposes of reporting. In order to allow that grouping, the MPCA needs to identify what constitutes “homogenous material” so that manufacturers are reporting their products containing intentionally added PFAS to the correct level of detail.

Subpart 13. **Identifiable element**. A definition of “Identifiable element” is added to the rule to narrow the scope of elements to the most distinct unit of an item that can be recognized. The term “identifiable element” is used in the definition of “component” as proposed in the rule. Because manufacturers are required to report any products or product components containing intentionally added PFAS, it is reasonable to propose a definition of “Identifiable Element” to provide clarity.

Subpart 14. **Manufacturer**. The proposed definition of “Manufacturer” in the rule clarifies the definition in Minn. Stat. §116.493. The rule inserts the phrase “has a product created or produced” into the definition to clarify the parties responsible for reporting under this rule. Similarly, the definition encompasses parties that either import or are the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute the product for sale in the state. It is reasonable to define “Manufacturer” in this way in the rule to clarify that companies that do not manufacture their own products are subject to the rule reporting and fee requirements. If the original manufacturer of a product lacks a presence in the United States, requiring the importers and first domestic distributors of those products to report ensures potential regulatory gaps are closed.

This comprehensive approach ensures all products entering Minnesota's market are subject to the same standards, regardless of origin, supporting transparency and enforcement.

Subpart 15. **Numeric product code.** A definition of “numeric product code” is added to the rule to outline the types of numeric codes affixed to a product that fall under this definition. Not all products have the same code system assigned to them. Common numeric codes include universal product code (UPC), stock keeping unit (SKU), harmonized tariff schedule (HTS) code, and others. It is reasonable to propose a definition of “Numeric product code” to provide clarity to manufacturers on the types of numeric codes that are included in this definition.

Subpart 16. **Packaging.** A definition of “packaging” is added to the rule to refer back to the Minn. Stat. § 3.9 section 115A.03. It is reasonable to refer back to an existing statute to ensure consistency in definitions.

Subpart 17. **Publicly available.** A definition of “Publicly available” is added to the rule because it is not defined but is used in 116.943 in subd. 3, specific to information requirement waivers, which may be provided if all or part of information required to be submitted is substantially equivalent and already publicly available. It is reasonable to propose a definition of “Publicly available” to clarify what data meets the requirements in statute. The definition excludes PFAS product data elements reported to EPA under their new TSCA PFAS reporting rule which are approved by the EPA as confidential business information (“trade secret” or “not public” in Minnesota) for two reasons: 1) those data would not be lawfully available to the general public, and 2) while MPCA could establish a way to get this confidential business information (CBI) data from EPA, the process is time-consuming, inefficient, and expends resources that are subject to change from one administration to another.

Subpart 18. **Significant change**. A definition of “Significant Change” is added to the rule because if the composition of a product changes, which results in the addition of a specific PFAS not previously

reported or a change in the amount of a specific PFAS being used in the product, it could move the product into a different concentration range as designated in the rule. It is reasonable to propose a definition of “Significant Change” because the reporting system will allow the MPCA to account for changes in how regulated parties are using PFAS in their products after initial information is reported. This will also allow the MPCA to track trends in PFAS use within products if there is a shift in the types of PFAS being used to fulfill a desired function in a product’s performance, or if the overall use of PFAS in products begins to increase.

Subpart 19. **Substantially equivalent information.** A definition of “substantially equivalent information” is add to the rule to clarify circumstances in which waivers may be granted. It is reasonable to propose a definition of “substantially equivalent information” because gaining access to complete information should not impose an undue burden in terms of resources required for collection and implementation. This approach encompasses fees, the number of locations to be accessed, and other relevant factors.

Subpart 20. **Used**. A definition of “Used” is added to the rule because the term “used” appears in Minn. Stat. § 116.943, subd. 8. Exemptions, but is not statutorily defined. The statute states that the Products containing PFAS section does not apply to ”the sale or resale of a used product”. The proposed definition refers to products that have already been installed, operated, or utilized for their intended purpose or that are otherwise not pristine, but also identifies that products that have been returned to a retailer without having been installed, operated, or utilized are not included in the definition, regardless of the product’s physical condition. It is reasonable to define this term because it eliminates a potential loophole to the reporting requirements while also establishing the instances in which a product meets the definition of “used.”

7026.0020 PARTIES RESPONSIBLE FOR REPORTING

Subpart 1 identifies the entities that are required to report products containing intentionally added PFAS. It is reasonable to provide the scope of a proposed section of rule so that affected parties know whether a particular section applies to them or not. It is reasonable to notify all members of the supply chain that they must be aware of PFAS in the products that are being sold and to report the product containing PFAS accordingly.

Subpart 2 is proposed to allow one entity to report for the entire supply chain, but each entity within the supply chain will need to produce documentation that demonstrates that another manufacturer is reporting on their behalf. It is reasonable to allow a manufacturer to submit the reporting requirements for another manufacturer because of the large overlap in common components used throughout the manufacturing of complex products. The MPCA will allow a manufacturer to report on behalf of another manufacturer only if they meet the requirements proposed in this rule under items A to D. Detailed guidance on how reporting entities can submit on behalf of multiple manufacturers will be included in the reporting system instructions or in a supplemental guidance document. This information will be available once the reporting system’s functional capabilities are fully established, ensuring that entities have clear, practical steps for submission on behalf of multiple manufacturers.

Item A is proposed to require the reporting manufacturer to notify the other manufacturer that the reporting requirements have been fulfilled. This is needed because without this line of communication between manufacturers, there may otherwise be multiple reports submitted by multiple manufacturers for each product. This item is reasonable because it will prevent the submittal of duplicative data under the reporting requirements as the Agency seeks accurate data that is useful information for regulators and the public. This requirement is also reasonable to reduce the burden for manufacturers required to report by ensuring that manufacturers are not reporting information that has already been submitted on their behalf by another manufacturer.

Item B is proposed to require the manufacturer to maintain and provide documentation of the agreement reached with other manufacturer(s) in the supply chain to fulfill the reporting requirement. This section acknowledges that manufacturers may consolidate the reporting requirement through an agreement and clarifies that manufacturers should maintain and provide documentation of the agreement so it is clear which manufacturer is fulfilling the reporting requirement for that product or component. This requirement is reasonable because it is the responsibility of manufacturers to report on a product containing intentionally added PFAS. This item also requires the manufacturer to provide the documentation of their reporting responsibility agreement to the commissioner upon request. It is reasonable to require manufacturers to submit their reporting responsibility agreement so that the MPCA can verify that all reporting requirements for every manufacturer has been met.

Item C is proposed to require the manufacturer to verify that the data submitted on their behalf is still accurate and complete. This requirement is reasonable to ensure that the data submitted is representative of the products containing intentionally added PFAS being sold, offered for sale, or distributed in the state by the manufacturer.

Item D is proposed to require all manufacturers being represented in a submitted report to pay the associated fee regardless of whether the report is being submitted on behalf of a single manufacturer or a group of manufactures. This requirement is reasonable to ensure fair fee amounts to every manufacturer required to report.

7026.0030 INFORMATION REQUIRED IN REPORT

Subpart 1 identifies and clarifies the information that must be submitted to the commissioner in the required report. It is reasonable to notify the manufacturer of the data required in the report. The proposed deadline for submission of this report is January 1, 2026. This deadline is reasonable because it mirrors the statutory requirement in Minn. Stat. 116.943, subd. 2.

Subpart 1 also establishes the information that must be included in the report in items A to G.

Item A requires that the report include a product description. Under this item, subitems (1) and (2) are also proposed.

Subitem (1) is proposed to require manufacturers to submit a brief description of the product in their report. The term “brief description of the product” is defined in part 7026.0010 subpart 4. It is reasonable to require manufacturers to report a brief description of the product because it will allow the MPCA and the public to differentiate between the types of products that contain intentionally added PFAS. The brief description of the product is also proposed to be reported for any updates on the product in subsequent years.

This subitem also provides options under units (a) and (b) for a manufacturer to group similar products and components when reporting and sets forth the criteria in subunits i. to iv. for such grouping. It is reasonable to reduce the reporting burden on the manufacturer and to allow manufacturers to group similar products and components as it fulfills the reporting requirements. Grouping products or components by similar form, function, PFAS chemical concentrations, and chemical compositions allows for very complex products with a large number of components to be more easily reported and reduces the potential for collection of redundant information.

Subitem (2) is proposed to require manufacturers to submit numeric product codes associated with the product in their report. The term “numeric product code” is defined in part 7026.0010 subpart 15. It is reasonable to require manufacturers to report numeric product codes because it will allow the MPCA to track products using standardized codes. This subitem also contains a hierarchy of the most preferred to least preferred numeric product codes in units (a) to (d) and establishes that the most preferred

numeric product code must be reported if available. It is reasonable to offer multiple options for reporting numeric product codes because not all products have the same standardized codes assigned to them. It is reasonable to establish a hierarchy for the most preferred codes to ensure that the MPCA has data using the same codes for products, provided that the information is available to the manufacturer.

Unit (a) identifies codes with root digits harmonized under Global Product Classification system for consumer products, including brick or UPC codes, or the HTS system for imported products. It is reasonable to require manufacturers to report these codes, if available, because they facilitate accurate tracking and identification of products across supply chains and regulatory frameworks. By using existing standardized product codes, it enables more efficient data collection and analysis regarding PFAS content.

Unit (b) identifies non-harmonized codes such as Stock Keeping Units (SKUs). It is reasonable to allow manufacturers to report SKUs if the codes listed under unit (a) are unknown because SKUs provide an alternative method for tracking and identifying products within a specific company's inventory system where it does not make sense to use other codes such as UPC or HTS codes. Allowing the use of SKUs ensures that manufacturers can still comply with reporting requirements even if standardized codes are not available, thereby maintaining a level of accountability and transparency in product disclosure. It is reasonable to require manufacturers to report these codes, if available, because SKUs can facilitate internal tracking and management of products, assisting in the identification of items that may contain PFAS. This flexibility helps regulators and stakeholders access vital information about product compositions, enabling more effective monitoring of compliance with PFAS reporting requirements.

Unit (c) identifies numeric codes such as those listed on labels, listings, invoices, or receipts. It is reasonable to allow manufacturers to report these numeric codes if the codes listed under units (a) and (b) are unknown because having some sort of numeric code assigned to the product is more valuable than having none. It is reasonable to require manufacturers to report these codes, if available, because it will allow the MPCA to still distinguish the product from other products in the database. Even if the code is not exhaustive, having any form of numeric identifier enhances the MPCA's ability to effectively track, categorize, and manage products. This added detail strengthens data accuracy and ensures more efficient oversight compared to the absence of any product code.

Unit (d) identifies that if no numeric codes have been assigned, the manufacturer may report “none.” It is reasonable to allow manufacturers to report no numeric product codes only if the codes listed under units (a), (b), and (c) are unknown because there may be some situations where a product does not have any numeric product codes assigned.

Item B requires that the report include the PFAS chemicals used in the product or components. Under this item, the manufacturer must report both the chemical name under subitem (1) and the chemical identifying number under subitem (2). The terms “chemical name” and “chemical identifying number” are defined in part 7026.0010 subparts 6 and 5, respectively. It is reasonable to require manufacturers to report this information because different PFAS chemicals have different levels of toxicity and persistence, and it is important for the MPCA to have specific data on the types of PFAS being used in products.

Item C requires that the report include the amount of PFAS chemicals in a product or components of a product made up of homogenous material. Under this item, subitems (1) and (2) are proposed as options to report the amount of PFAS chemicals in a product or components. Subitem (1) identifies PFAS concentrations that fall into ranges listed in units (a) to (i). This proposed rule language provides chemical concentration ranges to help manufacturers group similar products or components and to conceal sensitive trade secret or confidential business information related to chemical formulations used in the products reported. It is also reasonable to ask for concentration ranges instead of exact amounts to account for variation that may occur in product testing results, especially at lower concentration levels.

The Agency intends to require reporting of products that have <1% PFAS concentrations as they are not captured in other chemical reporting requirements such as federal PFAS TSCA reporting. The Agency proposed narrow ranges for the <1% concentration range but received feedback that some of the ranges would be too narrow to allow for claims of trade secrecy or CBI. Based on the recommendations received, the Agency combined some of the smaller concentration ranges in the proposed rule. Additionally, using the TSCA reporting ranges would leave a large gap between the 1% and 30% concentrations, so one additional PFAS concentration range is included in the proposed rule. The Agency considered narrow ranges within the <1% concentration bracket but received feedback from working groups that certain ranges were too specific to protect trade secrets or CBI. In response, the Agency combined some of these smaller concentration ranges. TSCA reporting ranges create a significant gap between the 1% and 30% concentration levels, prompting the inclusion of an additional PFAS concentration range in the proposed rule to address this issue.

Subitem (2) allows manufacturers to report Total Organic Fluorine (TOF) within each product or component if the amount of each PFAS is not known. It is reasonable to provide additional options for reporting PFAS to close gaps in product knowledge between supply chains and manufacturers. Manufacturers may provide a TOF concentration for a product or a component as an option when a supply chain is not able or not willing to provide exact PFAS data downstream. It is reasonable to allow facilities to report TOF because TOF levels are considered as a reporting option when specific chemicals are not known due to the difficulty and lack of standardized test methods for the majority of PFAS chemicals in various matrices.

Item D requires a manufacturer to report the function that each PFAS chemical provides to the product or its components. The term “function” is defined in part 7026.0010 subpart 11. It is reasonable to require manufacturers to report the function of PFAS in the product because PFAS chemicals can provide a wide range of properties to products. Knowing specifically why a certain PFAS is used in a product will help the Agency better understand the potential need for its use or if an alternative exists that can be used in its place. This information may also drive future policy and decision-making, and directly relates to whether the use of PFAS within the product is a “currently unavoidable use.”

Items E to G require the manufacturer to report manufacturer information as identified in subitems (1) to (3), authorized representative information as identified in subitems (1) to (4), and an alternative authorized representative’s information as identified in subitems (1) to (4).

Under item E, subitems (1) and (2) request general contact information for the manufacturer including name and address. It is reasonable to require a manufacturer to submit their name and location because this information will be used to differentiate between the data sets submitted to the Agency. Subitem (3) requests that the manufacturer provides their Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) codes. NAICS codes were requested from manufacturers based on internal feedback from MPCA staff that there would be a benefit to collecting NAICS codes for deeper understanding of the different industries that are using PFAS. SIC codes were

also added to account for manufacturers reporting from outside the countries covered by NAICS codes (Canada, Mexico, and the United States). It is reasonable to request manufacturers submit NAICS or SIC codes because they are standardized codes applied to industries and can typically be found publicly for a business. Manufacturers that possess NAICS codes should provide that code preferentially. This request can help streamline data analysis and reporting processes, as NAICS codes are designed to offer more detailed insights into industry sectors, particularly within North America.

Companies may have both a NAICS and an SIC code, especially if they operate in multiple countries or if their classification falls under different standards. Some companies might also only have one code based on their primary business activities or the region in which they operate. Therefore, specifying a preference for NAICS codes while allowing SIC codes acknowledges this duality and ensures comprehensive reporting. The collection of standardized codes, whether NAICS or SIC, enhances the Agency's ability to differentiate data sets effectively, analyze industry-specific trends, and assess the usage of PFAS across various sectors. This clarity in the rule could facilitate better compliance and cooperation from manufacturers.

Under items F and G, subitems (1) to (4) request general contact information for an authorized representative and an alternative to the authorized representative including name, address, email, and phone number. An authorized representative for each manufacturer was added to ensure that each reporting manufacturer can be contacted in case of employee turnover or change. It is reasonable to require manufacturers to submit contact information for the authorized representative and an alternative to the authorized representative because the MPCA may need to contact someone with follow-up questions or clarifications after the report is submitted.

Subpart 2 asserts that the manufacturer must submit the applicable fee under part 7026.0100, subpart 2, for the report submission to be considered complete. It is reasonable to add rule language that provides clarification indicating to which parts of the rule manufacturers should refer in order to meet the reporting requirements.

Subpart 3 asserts that a manufacturer that fails to submit the reporting requirements may be subject to penalties under Minn. Stat. §116.072. It is reasonable to add rule language that outlines the penalties should a regulated party fail to comply with the rule.

7026.0040 REPORTING UPDATES

Minn. Stat. § 116.943, subd. 2(5)(c), requires manufacturers to update their reporting information when a significant change has occurred.

Subpart 1 is proposed to provide clear expectations that updates to the initial report must be submitted annually by February 1. This deadline is reasonable because it allows one month for manufacturers to collect and sort any data needed to report that may have changed during the last year, especially in the months leading up to the start of a new calendar year.

Under subpart 1, items A to C establish under what circumstances an update to the initial report is needed.

Item A identifies a significant change in a product. The term “significant change” is defined in part 7026.0010, subpart 18. It is reasonable to require manufacturers to update their initial report following a significant change in a product because the Agency wants to ensure data is accurate and reflects what consumers will likely find when purchasing the products. Reporting significant changes also allows the Agency to follow trends that manufacturers may be taking to reduce or increase the use of PFAS chemicals in their products.

Item B identifies new product information provided to a manufacturer. It is reasonable to require manufacturers to update their initial report when new product information is provided to a manufacturer because the Agency has already received feedback from manufacturers that are working on collecting PFAS data from their supply chains that this is a scenario they have experienced. Due to complex international supply chains, there are often delays in responses or difficulties crossing language barriers to receive the proper information back.

Item C identifies a new product that is sold, offered for sale, or distributed in or into the state. It is reasonable to require manufacturers to update their initial report if a new product is sold in the state because the new product will also be subject to the proposed reporting rules and would not have been reported previously.

Subpart 2. outlines the information that must be included in the annual update to the initial report under part 7026.0030. It is reasonable to require the manufacturer to verify that the information submitted in the initial report under part 7026.0030 is still correct to ensure that the MPCA has the most accurate data available for those products.

Subpart 3. outlines that if no annual update to the initial report is needed, the manufacturer must still submit an annual certification of the information previously submitted. Requiring an annual certification is reasonable because it reduces the reporting burden for manufacturers that made changes by requiring them to only update their information once a year or reverify that the information previously provided has not changed. This also provides MPCA staff a clear time frame during which to expect updated data for further analysis and provides expectations for compliance.

Subpart 4 allows manufacturers the option to voluntarily update the initial report whenever PFAS is reduced or eliminated from a product or component or a change in manufacturer information occurs. It is reasonable to allow manufacturers to voluntarily submit this information because the MPCA wants information on when PFAS is reduced or eliminated as soon as it is available and will not charge manufacturers a fee to provide this information. This will also help keep consumers up to date on product information and allow the Agency to monitor trends in PFAS reduction or elimination as it occurs. The Agency did not want additional fees to hamper manufacturers from reporting a reduction or elimination of PFAS from their products, so it was determined that these voluntary updates outside of the required annual update and certification should be at no cost to the manufacturer.

Allowing manufacturers to submit a voluntary update for changes to manufacturer information will account for changes to a manufacturer's name, address, or SIC and NAICS codes. It is reasonable to require manufacturers to update their report if any of this information changes to ensure that the report reflects the correct information regarding the products containing intentionally added PFAS that are produced by that manufacturer. It is also reasonable to allow manufacturers to update their initial report when there is a change in contact information because the MPCA needs up-to-date contact information in order to contact the authorized representative or alternative to the authorized representative with any follow-up questions to the report. It is reasonable to assume that some contact information may change over the years as people change jobs or companies for which they work.

Subpart 5 asserts that the manufacturer must submit the applicable fee under part 7026.0100, subpart 3, for the annual update or certification submissions to be considered complete. It is reasonable to add rule language that provides clarification referring manufacturers to specific rule provisions in order to meet the reporting requirements.

Subpart 6 asserts that a manufacturer that fails to submit an update or recertification may be subject to penalties under Minn. Stat. §116.072. It is reasonable to add rule language that outlines the penalties should a regulated party fail to comply with the rule.

7026.0050 WAIVERS

Minn. Stat. § 116.943 subd. 3 allows the commissioner to waive all or part of the information required in reporting. The MPCA believes that waivers were added by the legislature to Minn. Stat. § 116.943 to reduce redundant PFAS reporting if similar information was required in other states proposing similar PFAS laws, or the new PFAS TSCA reporting requirements by EPA. At this point in time, there are no equivalent PFAS reporting requirements at the state or federal level that are collecting the data required by Minn. Stat. § 116.943.

Subpart 1 is proposed to reiterate the commissioner's authority to waive reporting requirements if substantially equivalent information is publicly available. Both the terms "substantially equivalent" and "publicly available" are defined in part 7026.0010, subparts 19 and 17, respectively. It is reasonable to establish under what circumstances the commissioner may waive reporting requirements so that manufacturers are not submitting waiver requests where information is not substantially equivalent nor publicly available. Waiver requests are intended to be used if a manufacturer decides to provide their information publicly.

Subpart 2 outlines the information required for a manufacturer to request a waiver from reporting. Under subpart 2, items A to F list the requirements of a waiver request.

Item A references the information required under chapter 7026.0030, subpart 1, items E to G. The proposed rule requires manufacturers to provide contact information when submitting a waiver request.

It is reasonable to request manufacturer information such as the company's name, address, and relevant industry classification codes (SIC or NAICS codes) to ensure that the Agency can accurately identify and categorize the manufacturer based on its industrial activities and regulatory obligations.

It is reasonable to request authorized representative information to ensure that the MPCA has contact information for an individual that has sufficient authority to oversee compliance with state regulations, provide accountability, and to ensure that the reporting process is properly managed.

It is reasonable to request alternative to the authorized representative information to ensure continuity of communication between the MPCA and the manufacturer, and to prevent delays in case of personnel changes or unavailability.

Item B identifies that the waiver request must include a description of the products or components. It is reasonable to require manufacturers to submit a description of the products or components they are requesting a waiver for because the Agency will need to know what products will be accounted for elsewhere if not reported into the Agency-approved reporting system.

Item C identifies that the waiver request must include a list of requirements under part 7026.0030 for which the manufacturer seeks a waiver. It is reasonable to require manufacturers to identify which requirements they seek a waiver for because it will help determine if the manufacturer is seeking a full waiver or partial waiver to the reporting requirements. Manufacturers may also submit a partial waiver if they have another entity reporting on behalf of some of the product components they use in their final product.

Item D identifies that the waiver request must include a description of any publicly available records that contain substantially equivalent information to that required under part 7026.0030. It is reasonable to require manufacturers to submit this information in the waiver request because, as outlined in subpart 1, the commissioner will only waive reporting requirements if it is determined that substantially equivalent information is publicly available. The Agency will have to confirm the publicly available information cited in the request in order to approve or deny the request.

Item E identifies that the waiver request must include a statement that verifies that the publicly available information is accurate. It is reasonable to require manufacturers to submit this information in the waiver request because, as outlined in subpart 1, the commissioner will only waive reporting requirements if it is determined that substantially equivalent information is publicly available. Manufacturers using the reporting system will be required to verify a similar statement of accuracy, so it is reasonable that those using the waiver to be held to the same standard. It is also reasonable to allow manufacturers to include verified data from third-party contractors with expertise in the relevant field to ensure the accuracy and compliance of publicly available information, providing an additional layer of credibility and consistency in the waiver review process.

Item F identifies that the waiver request must include a link to or copy of all publicly available and substantially equivalent information. It is reasonable to require manufacturers to submit this information in the waiver request because, as outlined in subpart 1, the commissioner will only waive reporting requirements if it is determined that substantially equivalent information is publicly available.

Subpart 3 asserts that the manufacturer must still submit a report for requirements that are not waived by the commissioner. It is reasonable to require the manufacturer to submit a report on the information not waived to ensure that the MPCA is still receiving any data that is not substantially equivalent or publicly available from another source.

Subpart 4 establishes that waiver requests to be submitted at least 30 days prior to the reporting due date. This deadline is reasonable because it provides the Agency time to review requests and provide a response to the reporting entity.

Under subpart 4, item A provides required actions if a request is denied by the commissioner. It is reasonable to allow 30 days from the notice of denial for the manufacturer(s) to report into the Agency-approved system due to the assumption that the manufacturer(s) requesting a waiver already has the required information available elsewhere outside of the reporting system.

Subpart 5 asserts that the manufacturer must submit the applicable fee under part 7026.0100, subpart 4, for the waiver request to be considered complete. It is reasonable to add rule language that clarifies to which parts of the rule manufacturers should refer in order to meet the reporting requirements.

7026.0060 EXTENSIONS

Minn. Stat. §116.943, subd. 3, allows for extensions on submitting the required information to the Agency if it is determined that more time is needed by the manufacturer to comply with submission requirements. Subpart 1 is proposed to reiterate the commissioner's authority to extend the deadline for submission of the report under part 7026.0030. It is reasonable to establish under what circumstances the commissioner may extend the deadline for reporting so that manufacturers can submit extension requests appropriately.

Subpart 2 establishes the necessary information that a manufacturer must provide when requesting an extension to the reporting deadline. These requirements ensure that the extension process is clear, transparent, and consistent for all reporting entities, while providing the MPCA with sufficient information to evaluate whether an extension is warranted. It is reasonable to require manufacturers to provide this information in extension requests to ensure that they have made progress toward fulfilling their obligations and are actively working to gather and report the required data. This provision helps maintain transparency and allows the Agency to assess whether the extension request is warranted based on the completeness of the data submitted.

The following items A to D outline the specific details that must be included in the request:

Item A references the information required under chapter 7026.0030 subpart 1 items E to G. The proposed rule requires manufacturers to provide contact information when submitting an extension request.

It is reasonable to request manufacturer information such as the company's name, address, and relevant industry classification codes (SIC or NAICS codes) to ensure that the Agency can accurately identify and categorize the manufacturer based on its industrial activities and regulatory obligations.

It is reasonable to request authorized representative information to ensure that the MPCA has contact information for an individual that has sufficient authority to oversee compliance with state regulations, provide accountability, and to ensure that the reporting process is properly managed.

It is reasonable to request alternative to the authorized representative information to ensure continuity of communication between the MPCA and the manufacturer, and to prevent delays in case of personnel changes or unavailability.

Item B requires the manufacturer to submit a reason for the extension request including a detailed explanation of the circumstances that prevent timely submission. This item requires the manufacturer to provide a detailed explanation of why additional time is needed to comply with the reporting requirements. It is reasonable to require that manufacturers clearly articulate the challenges they are facing in meeting the deadline, such as supply chain delays, lack of access to necessary information, or logistical issues. Requiring this justification ensures that the commissioner can assess whether the extension is necessary and appropriate.

Item C requires the manufacturer to submit supporting documentation, including any relevant documents that substantiate the need for an extension. This may include communication records with other manufacturers in the supply chain, evidence of technical challenges, or third-party testing delays. It is reasonable to require this evidence to prevent unwarranted extension requests and to ensure that requests are supported by verifiable issues that are beyond the manufacturer's control. This requirement enhances the integrity of the extension process and ensures that necessary and appropriate extensions are granted.

Item D requires the manufacturer to submit a plan for completing the required reporting within the extended deadline. The plan must outline how the manufacturer intends to address outstanding issues and ensure timely compliance by the new deadline. Requiring a plan for completion is reasonable because it provides the commissioner with assurance that the manufacturer has intent to meet the reporting requirements. It also prevents unnecessary delays and ensures that manufacturers are committed to completing their obligations in a timely manner.

Subpart 3 is proposed to require an extension request be filed 30 days before the reporting due date because the Agency needs sufficient time to review extension requests. This will also limit the extension to a reasonable deadline to ensure timely submission or continuation of good faith effort from the manufacturer(s) submitting a report.

Items A and B allows a 90-day extension which gives reasonable time for a manufacturer to procure more data from their supply chain or receive testing information from labs to compile the required information needed in reporting. This proposal is reasonable because the Agency recognizes that less than 90 days is too short a timeframe for most labs to turn around PFAS data based on known wait times from PFAS testing labs, or to receive more information from a supply chain based on feedback from manufacturers' experience.

Item C requires, in the event of an extension request denial, that a manufacturer must submit their report within 30 days of the notice of denial or the reporting due date, whichever is later. It is reasonable to require manufacturers to submit their report on this timeline should the extension be denied because it ensures that the data required in the report is still submitted in a timely fashion.

Subpart 4 asserts that the manufacturer must submit the applicable fee under part 7026.0100, subpart 5, for the waiver request to be considered complete. It is reasonable to add rule language that clarifies to which parts of the rule manufacturers should refer to meet the reporting requirements.

7026.0070 TRADE SECRECT DATA REQUEST

During public request for comments on the PFAS reporting rule, the Agency received many comments requesting provisions to protect trade secret and confidential business information (CBI) during reporting.

Minn. Stat. § 13.37 governs data practices protocol and classifies data. In compliance with chapter 13, Subpart 1 of the rule establishes that some of the data submitted in the report may be classified as trade secret and, in items A to C, identifies data that may be considered in the trade secret data request. Such data includes the chemical name, chemical identifying number, and other data elements required by the commissioner through this rule which are not defined in Minn. Stat. § 116.943. These “other data elements” were expanded upon in subitems (1) and (2), including specific supply chain information such as customer lists, or other data that meet the definition of “trade secret information” as defined in Minn. Stat. § 13.37.

Subpart 1 is proposed to reference the procedure for a manufacturer to assert that the data they submit is a trade secret. The MPCA references existing rule language under part 7000.1300 that requires a person to submit a written request setting forth the statutory grounds and the reasons that justify the classification of records or other information as not public pursuant to Minn. Stat., § 13.37. It is reasonable to identify the process for manufacturers to affirmatively request data as not public and to allow the commissioner to efficiently, effectively, and uniformly, approve or deny the request. There may be instances where a manufacturer requests data as not public that does not meet the definition of trade secret information, and in those instances that information will be made public.

Items A and item B , which reference “chemical name” and “chemical identifying number” as defined in rule, are identified as trade secret data that may be considered as not public information because chemical names and chemical identifying numbers may be critical components of proprietary formulations. Public disclosure of this information could enable competitors to replicate or reverse-engineer products, undermining a manufacturer’s competitive advantage. Because these data points are reporting elements that may constitute a “formula” with independent economic value under Minn. Stat. § 13.37, it is reasonable to allow manufacturers to request trade secret protection. This approach aligns with established regulatory frameworks that balance transparency with the need to safeguard confidential business information.

Item C specifies supply chain details, including customer lists, represent critical business assets. Public disclosure could unfairly expose competitive strategies, supplier relationships, and market positioning, leading to economic harm. Protecting this information as a trade secret prevents competitive disadvantages and aligns with the broader intent of Minn. Stat. § 13.37 to safeguard proprietary business interests.

Subpart 2 requires a manufacturer with an approved request to provide the chemical subclass of intentionally added PFAS as public data. If a trade secret request is made for information required under part 7026.0030 subp. 1 item B, the PFAS chemical subclass must still be included in public-facing reports. This requirement is reasonable because it allows the manufacturer to maintain trade secrets while still providing data that is of interest to the public and environmental groups.

Subpart 3 is proposed to clarify that if a request for trade secret information is denied, it will be designated as public data. It is reasonable to add rule language identifying classification of the data if a request is denied.

Initially the Agency considered allowing manufacturers to request a specific amount of PFAS in the product be considered as "not public data"; but, in considering the administrative burden for approving not public data requests, and in the interest of protecting chemical formulations, the Agency decided to allow manufacturer(s) to report concentration ranges. The Agency also received feedback from stakeholders that the original concentration ranges may expose trade secrets, so the Agency adjusted some of the lower ranges of concentration allowed for reporting as addressed in rule under part 7026.0030 above.

7026.0080 DUE DILIGENCE

The MPCA recognizes that manufacturers rely on complex global supply chains, making it difficult to identify PFAS at various stages of production. The MPCA's proposed rules under this section outline the steps manufacturers must take to gather information from other manufacturers in the supply chain, ensuring compliance with Minn. Stat. § 116.943 and this proposed rule.

Subpart 1 is proposed to make clear that a manufacturer must assume responsibility for reporting unless notification has been received from a manufacturer in the supply chain in accordance with part 7026.0020, subpart 2, confirming that the reporting requirements have been fulfilled. This subpart also states that if the manufacturer has not received this notification from another manufacturer in the supply chain, then they are subject to subparts 2 and 3. It is reasonable to propose rule language that clarifies the provisions manufacturers should follow in order to meet the reporting requirements.

Subpart 2 is proposed to require manufacturers or a group of manufacturers to actively engage with their supply chain to obtain the information required in the proposed part 7026.0030 of rule. It is reasonable to require manufacturers or a group of manufacturers to continue to request information from their supply chain until the reporting requirements can be fulfilled because PFAS can be present at various stages of product manufacturing and may be introduced at different points within the supply chain. By ensuring that manufacturers trace PFAS usage through multiple tiers of manufacturers in the supply chain, the MPCA can gather comprehensive and accurate data on PFAS in products, thereby preventing gaps in reporting that could undermine the rule's effectiveness. This thorough approach ensures that all relevant PFAS data is captured, regardless of where in the supply chain the chemicals were introduced, promoting transparency and accountability across the entire manufacturing process. It also helps mitigate the risk of non-compliance, ensuring that no stage of the production process is overlooked and that the ultimate responsibility for accurate reporting is fulfilled.

By establishing these due diligence requirements, the MPCA aims to improve transparency regarding PFAS in products and reduce the risk of non-compliance. The framework allows manufacturers to share reporting responsibilities within the supply chain, minimize duplicative reporting and promote collaboration. Ultimately, the due diligence requirements support the MPCA's broader goal of protecting public health and the environment by providing accurate and comprehensive information on PFAS use in Minnesota.

The rule also addresses expectations on retention time requirements for documentation related to reporting as outlined in subpart 3, items A to C. Item A requires a manufacturer or a group of manufacturers to maintain documentation of all communications between themselves and other manufacturers regarding PFAS reporting compliance. It is reasonable to require manufacturers to maintain this documentation because it provides proof that the manufacturer has met the due diligence requirements to engage with their supply chain. By maintaining these records, manufacturers demonstrate that they have actively engaged with their supply chain to gather the necessary information on PFAS content and usage. This engagement is essential to ensure the accuracy and completeness of the reported data. Without such documentation, it would be challenging to prove that the manufacturer has taken the required steps to investigate and obtain relevant PFAS information, especially if other manufacturers within the supply chain are reluctant or slow to provide data. The retention of these records ensures that, should a discrepancy or non-compliance issue arise, manufacturers can substantiate their efforts, protect themselves, and enhance overall transparency within the supply chain.

Item B requires a manufacturer or a group of manufacturers to provide requested records to the commissioner. It is reasonable to require manufacturers to provide these records because it ensures that the MPCA can monitor compliance effectively across all manufacturers and promote fair and equitable treatment in the enforcement of PFAS reporting requirements. Access to these records allows the MPCA to verify that manufacturers have taken the necessary steps to meet their obligations and have actively engaged with their supply chain. Additionally, by having access to this documentation, the MPCA fulfills its responsibility of providing accurate and complete data to the public regarding PFAS in products, which is crucial for transparency and maintaining public trust.

Item C requires a manufacturer or a group of manufacturers to maintain the records for at least five years after the products containing intentionally added PFAS are removed from the supply chain. It is reasonable to require a manufacturer to maintain these records because it ensures that documentation will be available for future reference or investigations related to PFAS use, even after the products are no longer on the market. This extended retention period allows the MPCA to verify compliance and trace the lifecycle of PFAS-containing products, which is particularly important given the long-term environmental and health risks associated with PFAS. The MPCA initially considered requiring manufacturers to maintain records for five years following the report submission, but this shorter retention period was deemed insufficient. The persistence of PFAS in the environment and their potential for long-term human exposure necessitate a longer record-keeping timeframe. Maintaining records for five years after the product is removed from the supply chain better aligns with the ongoing need for monitoring and enforcement, ensuring that the MPCA can access relevant data if questions or issues arise years after the initial reporting.

7026.0090 REPORTING EXEMPTIONS

Subpart 1 is proposed to list the products or information in items A to E that are exempt from the reporting requirements in this rule.

Items A to C reiterate the exemptions outlined in Minn. Stat. §116.943, subd. 8. It is reasonable to restate the exemptions provided in statute to provide clarity to manufacturers for what products are excluded from the reporting requirements.

Item D exempts items under Minn. Stat. § 116.943 subd 3(b) reported to the Minnesota Department of Agriculture (MDA). This exemption is applicable only to the component (i.e. a pesticide regulated under chapter 18B, a fertilizer, an agricultural liming material, a plant amendment, or a soil amendment regulated under chapter 18C) and not the product it is applied to. It is reasonable to provide an

exemption to these components because the data regarding intentionally added PFAS is already being reported to another state agency.

Item E is proposed because the Agency determined an additional exemption should be made to account for information that may be considered "classified information" under the US government classification system. The Agency received feedback and public comments questioning how sensitive data related to national security would be handled. Ultimately the Agency determined that MPCA staff would not have clearance to review that information, so it should not be required to be reported to the Agency. It is reasonable to provide an exemption for products or components considered classified information because it ensures that sensitive information related to national security is appropriately protected. Requiring the disclosure of classified information would create a significant risk of unauthorized access, as MPCA staff do not possess the necessary security clearances to handle such data. This exemption aligns with federal requirements for safeguarding sensitive information and prevents potential conflicts with national security protocols. Furthermore, it acknowledges the need to balance transparency in PFAS reporting with the protection of data that could compromise government security interests. By exempting classified information, the MPCA ensures that manufacturers can comply with both state regulations and federal security protocols without risk of violating confidentiality requirements.

Notably, certain safety and design standards (Federal Aviation Administration, DoD, Underwriters Laboratories, etc.) require the use of PFAS in materials and components; however, this general category is not specifically exempted from reporting. Only products or product components used for national defense under the classified information system are considered for exemption. If the same product or product components are used in applications not related to national defense, the use of PFAS in those products must be reported to the agency. To address this nuance, the proposed rule includes language that the products or components must meet the definition of "classified information" as defined in United Stated Code, title 18, section 798. Under this section of code, "classified information" means, "information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution." It is reasonable to reference this definition to make clear the types and scope of products that are exempt from the rule.

The MPCA received public comments and additional concerns during the informal check-in work groups about information that would be considered classified for national defense reasons. The MPCA ultimately decided there should be an additional exemption added to reduce manufacturer(s) and Agency burden of attempting to get clearance to review classified information. The MPCA determined that requiring reporting of classified information was not within the intent of Minn. Stat. § 116.943 and did not want to risk compromising that information by requiring it in product reporting. The Agency was able to review the DoD's report on Mission Critical PFAS Uses[18] and can use this report to help supplement product reporting later in rule writing for the PFAS in Products Currently Unavoidable Use (CUU) rule.

7026.0100 FEES

Minn. Stat. §116.943, subd. 6, authorizes the Agency to establish fees to cover reasonable costs to implement the reporting rule.

Limited information on the number of manufacturers using PFAS in the state or country was available due to the limited scope of other federal reporting requirements (such as TSCA) or release or emissions

[18] *Department of Defense (DoD). (2023, August). Report on Critical Per- and Polyfluoroalkyl Substance Uses.* *https://www.acq.osd.mil/eie/eer/ecc/pfas/docs/reports/Report-on-Critical-PFAS-Substance-Uses.pdf*

reporting (such as TRI). Due to the unknown scope of PFAS in products, the Agency made calculations based on estimations made by the EPA for PFAS TSCA reports and based on the amount of reporting extensions the state of Maine received for their original reporting requirements. The state of Maine received over 2,700 extension requests from manufacturers before their PFAS reporting laws were amended. In the EPA's report, "Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances,"[19] they estimated that there are 131,157 importers of articles potentially containing PFAS, and using their best professional judgement, estimated that around 10% or 13,116 of those importers would be reporting under TSCA. The MPCA does not expect that all parties that report under TSCA will have to report under this proposed rule due to differences in the respective requirements.

The Agency did not want to impose a per-product fee that would deter manufacturers from reporting to avoid excessive costs or to avoid manufacturers potentially grouping products beyond what was allowed for in rule. It was ultimately determined that a flat fee was the most reasonable approach and should be used on a per-manufacturer basis.

Subpart 1 states that a manufacturer must pay the associated fee in order for the submittal to be considered complete. It is reasonable to require manufacturers to submit the fee as part of a complete report or request because it ensures that the regulatory process is adequately funded and that the resources necessary for processing these submissions are available. By requiring the fee as part of a complete report, it promotes accountability and encourages manufacturers to provide thorough and accurate information from the outset. This approach also streamlines the review process, allowing regulatory agencies to prioritize and manage submissions effectively, thereby reducing delays and improving overall compliance with the reporting requirement.

Subpart 2 establishes a $1000 flat fee per manufacturer for the initial report. It is reasonable to establish a fee to cover costs incurred for initial program implementation resulting from this rule. The MPCA estimates that between 5,000-10,000 manufacturers will be required to submit an initial report, and this fee would yield enough revenue to cover the costs associated with the implementation of the rule. More detail on the projected costs of program implementation can be found under section 10 of this SONAR.

Subpart 3 establishes a flat fee of $500 per manufacturer for annual updates to the initial report. It is reasonable to establish a fee for annual updates because it will support the ongoing costs of maintaining the reporting platform and the administrative costs of maintaining and updating the reports. More detail on the projected ongoing costs of program maintenance can be found under section 10 of this SONAR.

Subpart 4 establishes the fee required for a reporting waiver. The manufacturer is required to pay the $1000 flat fee associated with the initial report in subpart 2, or the $500 flat fee associated with an annual update to the initial report in subpart 3. It is reasonable to establish a fee for waiver requests to cover allocated time to review and either approve or deny a waiver request from a manufacturer.

Under this subpart, item A is proposed to establish that if the waiver request is denied, the manufacturer would still be subject to the reporting requirements but would not be required to submit an additional fee. Although the review process for both approved and denied requests requires the same amount of staff time, the MPCA is proposing that waiver requests that are denied will not incur an additional fee when submitting the initial report or an annual update to the initial report. This approach

[19] *EPA (2024, November). Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances.* *https://www.epa.gov/system/files/documents/2022-11/2070-AK67_TSCA%208a7%20IRFA_11-25-22%20clean.pdf*

ensures that manufacturers are not subject to duplicative fees and maintains fairness in the fee structure.

Subpart 5 establishes the fee required for an extension request. A $300 flat fee per manufacturer is proposed. It is reasonable to establish a fee for extension requests due to the additional administrative work it will take to track a potential large amount of extension requests in a limited time frame. More detail on the projected costs can be found under section 10 of this SONAR.

Subpart 6 establishes conditions under which the fees are waived by referencing the proposed section of rule regarding voluntary updates (7026.0030 subpart 4). The MPCA is proposing that no fee is required for updates to a manufacturer's contact information. It is reasonable to waive the fee for a manufacturer to update their contact information because it is information that the MPCA needs, and it does not require staff time to review. This provision also proposes that no fee is required for updates to report the reduction or removal of PFAS chemicals from a product. It is reasonable to waive the fee for a manufacturer to report the reduction or removal of PFAS chemicals from a product because the MPCA wants information on when PFAS is reduced or eliminated as soon as it is available and will not charge manufacturers a fee to provide this information. This will also help keep consumers up to date on product information and allow the Agency to monitor trends in PFAS reduction or elimination as it occurs. The Agency did not want additional fees to hamper manufacturers from reporting reduction or elimination from their products so it was determined these voluntary updates outside of the required annual update would not cost anything.

Subpart 7 establishes adjustments to the fee schedule to account for inflation. Because the Agency set low flat rate fees for reporting to support ongoing administrative costs for this rule, the MPCA wants to ensure that the fees will be adjusted with inflation in future years to support the staff needed to review the data reported. Reporting is expected to run beyond 2032 and will have ongoing maintenance and administrative costs. It is reasonable to account for inflation in the fees because it will support the ongoing costs of maintaining the reporting platform and the administrative costs of maintaining and updating the reports.

6. Regulatory analysis

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The purpose of the proposed rule is to require reporting of PFAS in products offered for sale in Minnesota by manufacturers as defined in Minn. Stat. § 116.943 and this proposed rule. This rule will allow the MPCA to inform the public of PFAS in products and continue to pursue its mission to protect human health and the environment. The parties that will be most affected are manufacturers that sell products containing intentionally added PFAS that will be required to report, and the MPCA who will review the data reported, monitor, and enforce the rule. An indirect result of this rule is that Minnesotans will have a database to consult so they can be better informed of which consumer products contain PFAS and can take action to safeguard their health. The following are categories of affected groups. See section 6(E) for an analysis and presentation of the costs and benefits of the proposed rule to these groups.

i. Manufacturers that sell products containing intentionally added PFAS

As the PFAS in products reporting and fees rule is a unique reporting requirement in the country with no other similar requirements found in other state rules, it is difficult to estimate the number of manufacturers required to report. The required reporting will help the Agency understand the

widespread use of PFAS in products and narrow the scope of manufacturers that use PFAS in their products. The Agency estimates approximately 5,000-10,000 manufacturers may report into the new reporting system. This range is based on early estimates of expected manufacturers that will be required to report to the EPA under the federal PFAS reporting rule, 40 CFR Part 705, and based on the number of manufacturers that requested PFAS in product reporting extensions in the state of Maine prior to a statutory amendment altering such reporting.

Manufacturers are anticipated to bear minimal costs to comply with the reporting rule. The largest anticipated cost to manufacturers is the staff hours the manufacturer will need to compile complex data sets and format them for the reporting platform. Reporting fees will also be a cost to each manufacturer but are minimal flat fees.

Since reporting fees are minimal, the MPCA does not foresee costs passing to consumers. There is a potential for a reduction in product sales from consumers if they decide not to buy a product based on the presence of PFAS as reflected in the public-facing side of the reports. There is a possibility that a manufacturer will choose not to sell a PFAS containing product in the state of Minnesota if they determine that the burden and cost of reporting is too much. However, the MPCA anticipates most manufacturers will be minimally impacted by the cost of reporting.

ii. The MPCA

The MPCA will be the sole Minnesota government agency responsible for implementing, administering, and enforcing the proposed rule. This will require additional MPCA staff time from different programs within the Agency. The specific MPCA programs that will require additional staff and the anticipated costs for these staff are detailed below in Section 6(B).

iii. The public

While the proposed rule will not directly reduce PFAS in products, there are indirect and secondary benefits from the MPCA having more information about PFAS in products. This information could enable the MPCA to respond more quickly and effectively to new health-based data from PFAS exposure and pollution. However, consumers will be able to access new chemical data related to the products they are considering buying and help make more informed purchase choices. The reporting information will also increase awareness to the public about the widespread uses of PFAS. While the reporting is specific to products containing PFAS being sold in Minnesota, anyone will have access to the public facing information, even those outside of Minnesota.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The MPCA will be the only Minnesota state agency with a responsibility to implement and enforce the proposed rule. Various programs within the MPCA will be involved, including data analysis, green chemistry and safer products, compliance and enforcement, and small business environmental assistance program (SBEAP).

An estimation of $6.027 million has been posed as the cost of implementing PFAS reporting, fees, and currently unavoidable use rules over a period of nine years. The fees section of the reporting rule was developed to help recover the costs to implement rules related to Minn. Stat. § 116.943. Initial cost estimates from the "HF1000-1E-PFAS in Certain Products Prohibited Consolidated Fiscal Note"[20] are detailed below. These cost estimates account for full-time equivalent (FTE) staffing needs for rule and

20 Brand, Jeff. (2023, March). HF1000-1E-PFAS in Certain Products Prohibited Consolidated Fiscal Note. https://mn.gov/mmbapps/fnsearchlbo/?number=HF1000&year=2023

program development, reporting system platform creation and maintenance, product purchasing and laboratory testing costs, and compliance and enforcement needs.

The Agency anticipates utilizing the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System; an application that allows manufacturer(s) to submit data on chemicals in products, and for participating states and the public to access that reported data. The Agency is already a member of this association. However, the fiscal note estimated there to be an upfront cost of $80,000 to integrate the system to accommodate Minnesota-specific requirements with annual ongoing maintenance costing an additional $17,000 per year. After working with the contractors on the scope of work for build the system, the estimated cost is closer to $260,000. To facilitate use of the data, the Agency may need to configure existing Agency data systems to acquire data from the IC2 data system and develop technology infrastructure for issuing waivers and conducting enforcement. The cost for information technology staff (0.25 FTE) and contractor time (232 hours) is estimated to be $153,240.

Two program staff started in fiscal year 2024 (FY24): 1.5 FTE program staff to assist with rulemaking in FY24 and FY25 with the remaining 0.5 FTE focused on program development. At the close of rulemaking, these positions will transition to reviewing, analyzing, and responding to priorities identified, and enable and maintain the fee collection process. An additional two FTE will start in FY25 to aid with waiver generation and to monitor compliance with the reporting requirement. The MPCA hopes to realize efficiencies in compliance by sharing information among other states with similar notification laws. Starting in FY25, project dollars will include $70,000 for purchase and testing of up to 80 products per year.

Program staff time not associated with rulemaking: $140,000 x 0.5 FTE = $70,000 in FY24 (program development and outreach), $140,000 x 3.5 FTE = $490,000 in FY25 and $140,000 x 4 FTE = $560,000 in FY26 and beyond (outreach, purchasing products and conducting testing, reviewing and analyzing data, processing waivers, and compliance and enforcement activities).

Rulemaking costs are assumed as follows:

Calculation for costs to complete the rulemaking required by the bill. Total of $617,618.

a) MPCA program staff, rule coordinator, and legal costs would be split over FY24 and FY25; Office of Administrative Hearings (OAH) and most *State Register* and miscellaneous costs are placed in FY25.

b) Program staff: 140,000 x 1.5 FTE = $210,000 FY24 and FY25

c) Rule coordinator: 140,000 x 0.5 FTE = $70,000 FY24 and FY25

d) Legal: $148/hr x 86 hr = $12,728 ($6,364 in FY24 and FY25)

e) OAH: $245/hr x 135 hr = $33,075 in FY25

f) *State Register* = $7,890 ($270 in FY24; $7,620 in FY25)

g) Hearing room, communication and general expenses = $3,925 FY25

Additional information technology costs will be incurred to transfer data to Agency systems, build a user interface, and implement waiver generation technology. Costs are assumed as follows:

a) MPCA data staff to complete analysis, build requirements, and test reports for internal systems: 0.5 FTE at $140,000 = $70,000 ($35,000 in FY24 and $35,000 in FY25)

b) Contractor to build reports for internal systems: 232 hours at $175/hr = $40,600 ($20,300 in FY24 and $20,300 in FY25)

c) Minnesota Information Technology Services Agency (MNIT) staff to set up data: 0.25 FTE at $82/hr = $42,640 ($21,320 in FY24 and $21,320 in FY25)

Starting in FY25; the Agency would budget $70,000 annually for the acquisition and testing of products for PFAS. The price of products varies widely; more products may be purchased in a given year based on identified priority products and their price points. Products purchased and tested are limited by laboratory capacity and will be focused on verifications for products not already tested and reported by other states.

a) $150 per product (purchasing) for 80 products ($12,000)

b) $725 per product for analytical analysis for 80 products ($58,000)

*The annual cost of 1.0 FTE is $140,000 in FY2023-2027. Annual costs for 1.0 FTE include salary, fringe, and non-specialized employee support costs (workspace, computer and office supplies, office equipment, local travel, etc.)

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The purpose of this rule is to clarify the reporting process for manufacturers of PFAS in products offered for sale in Minnesota. This rule will allow the MPCA to inform the public and continue to pursue its mission to protect human health and the environment. Although the MPCA considered alternative methods for achieving this purpose, the MPCA reached the conclusion that there is no other thorough and effective way to achieve this purpose and meet the legislative intent.

The MPCA considered other methods of gathering information on PFAS in products, but they would not have the same results as the proposed rule. Those methods include:

- Using new data reported under TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances; however this reporting requirement has very different parameters required in reporting. The TSCA PFAS reporting asks for information on PFAS chemical manufacturing and PFAS containing article importation. The data is a retrospective look only at manufacturing and importation since January 1, 2011.
- Originally, at the time when Minn. Stat. § 116.943 as signed into law, the law provided that manufacturers could request a waiver if the data they reported was publicly available elsewhere, such as through the state of Maine's PFAS in products reporting system. The MPCA could have gathered existing information to reduce reporting burden and cost; however Maine's law has since been amended and broad PFAS in products reporting is no longer required in a way that would be sufficient to meet the requirements of Minnesota's required reporting.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The MPCA has examined the alternatives to this rule, which would ultimately require alternatives to the statute, that provide information to the public on PFAS in products and broaden the MPCA's understanding of where PFAS is widely used. Alternatives include:

<u>Product Labeling</u>

Product labeling alternatives would require PFAS chemical labels on products to gain knowledge on where PFAS is being used in products. This strategy was outlined in the Minnesota PFAS Blueprint; but, posed multiple challenges to implement. Only requiring product labeling would result in incomplete and inequivalent data that would be difficult to compile for larger public awareness and education without a

central database. This would also require manufacturers to make a change in their product production process which could lead to bigger costs to comply with Minn. Stat. § 116.943. Lastly, it would be extremely difficult for the MPCA to make sound data driven regulatory considerations in the future without a central database to capture all the information placed on product labels.

Testing Products

Testing products is a much more intrusive and costly endeavor to obtain knowledge on where and how PFAS is being used in products. The high cost of staff time and expenses to run lab analysis on such tests made this alternative infeasible. In addition, without knowing exactly what chemicals to test for, it would be nearly impossible to get an accurate picture of what PFAS are used in which products. The Agency would also be unable to determine the function of the PFAS within the product. There is no realistic means to comprehensively test all relevant products to cover the scope of the reporting requirements proposed in rule.

Voluntary Reporting by Manufacturers

The MPCA has previously developed voluntary reporting for other programs, but with varying degrees of success. When reporting is voluntary, there is no incentive to report accurate data. The MPCA could attempt to curb this barrier by increasing the ease of reporting, but without a mandatory reporting rule there will still be manufacturers that fail to report or report conservatively rather than accurately.

Per Product Fees

Fees for reporting are based on a "per manufacturer" flat rate. The Agency considered using a "per product" fee structure, however, there were concerns that it would lead to manufacturers under reporting. A "per product" fee structure could also have a potential to result in disproportionate impact to small businesses.

No Reporting

The last consideration would be to forgo the reporting requirements under Minn. Stat. § 116.943. This option would require an amendment to the current law and would result in a loss of crucial data needed for the MPCA to make sound regulatory decisions. The PFAS in products rules set out to gather an unprecedented amount of data on PFAS chemicals uses and functions in products. While the reporting rule is limited to those manufacturers that are selling products containing intentionally added PFAS in Minnesota, the publicly available data from the reports would be useful to a wide breadth of interested parties outside of the state as well. The total extent of PFAS uses are still widely unknown and only in the recent years have started to be understood. Without the proposed reporting rule and the data collected as a result, the Agency would not be able to make well informed decisions on future PFAS regulation such as the currently unavoidable use PFAS rule. Consumers will also lack a centralized database to help make informed purchasing decisions for products they use every day.

E. 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.

As detailed in Section 6(A), the primary party that will be affected and will bear the costs associated with the proposed rule will be manufacturers that sell products containing intentionally added PFAS. Costs to manufacturers may include internal staff costs or costs of hiring external consultants to complete the reporting obligations. Fees associated with reporting will be minimal—$1000 for the initial year of reporting and $500 annually afterwards. Besides additional staff time, whether internal staff or external consultants, and reporting fees, it is not expected that manufacturers affected by this rule will need any other operational or capital resources to fulfill the reporting obligations.

The MPCA has determined that it will likely need to hire additional staff to cover the need for product testing for compliance and enforcement. The Agency has already started testing food packaging products for PFAS in a related PFAS prohibition law (Minn. Stat. § 325F.075) and has found the process of procuring, prepping, cataloging, and analyzing results to be more time consuming than originally anticipated. Since reporting is such a wide scope for this rule, it is expected that testing result follow up and enforcement actions will also require additional staff.

This rule will not cost anything to the public to implement.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The alternative to not adopting the proposed rule would result in a continuation of the current lack of reporting and knowledge of products containing intentionally added PFAS. The main consequence of not adopting the proposed rule is forgoing the benefits that PFAS in products reporting would provide. These benefits are not necessarily quantifiable, but rather qualitative data that could be used to drive future policy and rulemaking.

Without the PFAS in products reporting and fees rule, the MPCA will be unable to clarify the legislative directive under Minn. Stat. § 116.943 that requires manufacturers to report. The Agency will face difficultly making sound, data-driven decisions if the extent of PFAS in products remains unknown. The MPCA has begun to document locations where PFAS is found in the environment and how it is impacting Minnesota citizens' health. Without knowing the actual sources of PFAS within products, it is difficult to make decisions on a product's essential use within society. The MPCA aims to pinpoint where PFAS is entering the environment, from cradle to grave, and make the most impactful decisions based on a comprehensive database.

The PFAS in products reporting will create an educational public resource where people will be able to understand what toxic substances may be present in a product they purchase. The data required to be reported in this rule will help increase awareness of potential exposure routes to PFAS as well. The data can also help increase understanding of where it is essential in society to use these chemicals and why they are being used. The Agency understands the benefit these chemicals can provide to product function, but also considers the potential for negative impacts to human health and the environment. Having access to a comprehensive wealth of data on the use of these chemicals will be critical to working towards preserving function in products that are essential to the health, safety, and functioning of society without sacrificing the health and wellbeing of those within that society.

Without the required reporting rule, businesses would continue to operate in a "business as usual" manner and may lack a deeper understanding of the potentially toxic chemicals they are using in their products. Without being required to work through their supply chains to gain this knowledge, they may never address the use of these chemicals in their products. PFAS has been relatively unregulated until recently, and often industry will not work to replace these toxic substances unless legally required or enough public pressure is put on the industry to change. In addition, some businesses may not know these chemicals are in their products until required to research the use of them within their products. Without implementation of the reporting rule, it would be difficult for industry and regulators to fully understand where PFAS chemicals need to be regulated in the first place. Lastly, it would be difficult for manufacturers to argue the essential need of PFAS in their products for the upcoming Currently Unavoidable Use (CUU) rule if the manufacturers and the Agency do not fully understand where and why the chemicals are being used.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Minn. Stat. § 14.131 requires that the MPCA consider the proposed amendments in relation to the corresponding federal requirements. In addition to this requirement to benchmark with the federal program, there is an additional requirement in Minn. Stat. § 116.07, subd. 2 (f), that requires the MPCA to benchmark with the federal program, other states bordering Minnesota, and other states within US EPA Region 5. The assessment is discussed in section 13 of the SONAR.

The MPCA submitted a report to the legislature in February of 2024 on the potential for fee collection options for PFAS reporting implementation and took an in-depth look at existing chemical reporting requirements on other state and federal levels. Below is an overview of existing chemical reporting that was outlined in that report.

Federal EPA TSCA Reporting:

The CDR under the TSCA requires that facilities report on the manufacture, processing, or use of chemical substances in commerce exceeding 25,000 pounds per year. Data collection under the CDR occurs approximately every four years. Reporting requirements change to some degree for each data collection cycle. Note that reporting under the CDR includes facilities producing or manufacturing PFAS within Minnesota or importing PFAS into the country; interstate importation is not covered by this reporting requirement. There is only one Minnesota business that has reported either the manufacture or use of PFAS since 1998.

A new TSCA rule promulgated in October 2023, under TSCA Section 8(a)(7), will require onetime retroactive reporting for PFAS manufacture for commercial purposes, in any amount, from 2011 through December 2022. Facilities that are importers of PFAS as a chemical substance, chemical mixture, and/or articles containing or that may contain PFAS are also subject to reporting requirements under this rule.

The new reporting requirement under Section 8(a)(7) will capture data from facilities that may manufacture or have historically manufactured quantities of PFAS less than the 25,000-ton minimum threshold for CDR reporting and have therefore not reported thus far. Further, unlike the CDR, the new TSCA rule does not have any small manufacturer exemptions, nor are importers of articles containing or potentially containing PFAS exempt from reporting.

Reporting under the new Section 8(a)(7) rule is due in 2026 (the due date has been extended out from the original 2025 date due to delay in updating the reporting system). As under the CDR, considerations for CBI will apply, so it is likely that many reporters under the new Section 8(a)(7) rule will claim confidentiality, making access to data more difficult to anyone outside of the EPA. The new TSCA Section 8(a)(7) rule will provide additional onetime information about historical PFAS use, but the reporting requirement is not ongoing.

The TSCA PFAS reporting requirements will provide a lot of new chemical manufacturing data but will be historical information from a limited time frame and does not cover the detail of use of those chemicals in the wide breadth of products the Minnesota reporting rule is aiming to capture.

<u>State Required Reporting:</u>

Some states have promulgated rules to address gaps in the understanding of PFAS use. For example, the Massachusetts Department of Environmental Protection (MassDEP) specifically requires reporting on PFAS use under the Toxics Use Reduction Act (TURA). MassDEP's reporting requirements are based on TRI-reportable PFAS compounds and thresholds, so limitations remain for facilities using less than 100 pounds of PFAS per year.

Many states have introduced bills to require PFAS in products reporting including the following:

- Kentucky introduced H.B.1169 in 2024, the bill establishes a reporting requirement for manufacturers that intentionally include PFAS in products manufactured for sale or distribution in the state.
- Virginia introduced HB245, in 2024, the bill requires all facilities that have engaged since January 1, 2021, in the manufacture of or knowing use in the production process of one or more chemicals listed as PFAS to produce a one-time report on the use of such chemicals.
- Illinois introduced HB 3092 in 2023, the bill establishes a publicly accessible data collection interface that manufacturers shall use to report certain data about products that contain intentionally added PFAS.

Most notably, the state of Maine passed 38 M.R.S. §1614, Products Containing PFAS, which the state of Minnesota based their own product reporting requirements on. The state of Maine has since amended their law and now only requires reporting information on products seeking a currently unavoidable use exemption.

At this point in time, Minnesota is leading the way on gathering unique in-depth reporting information on where and why PFAS chemicals are used in products.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

Minnesota’s PFAS in products reporting requirements are the only of its kind on the state or federal level. There will be no significant cumulative burden to report this information to the state. The data will also be available to the public so other states’ government agencies will have access to our information. Other state agencies looking to implement PFAS in products reporting may be able to leverage this publicly available data to reduce reporting burden on affected parties.

7. Environmental justice policy

The MPCA has a long-standing commitment to addressing environmental justice (EJ) concerns, particularly in communities that have historically been disproportionately impacted by environmental hazards. The Agency's formal engagement with environmental justice began in the mid-1990s, following national directives aimed at safeguarding vulnerable populations. This commitment was reinforced through Presidential Executive Order 12898, issued in 1994, which directed all federal agencies to prioritize environmental justice by identifying and mitigating disproportionate environmental and health effects on minority and low-income communities.

This executive order built on Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin. As a recipient of federal funding, the MPCA is required to adhere to these standards, ensuring that its programs, policies, and enforcement actions do not contribute to unjust environmental outcomes. The Agency’s Environmental Justice Framework, last updated in 2022, serves as a guide for integrating these principles into all facets of its work, including the development of regulations such as the PFAS reporting rule.

To emphasize this commitment, the MPCA's environmental policies and regulatory efforts are guided by a core principle: ensuring that all communities, particularly those historically marginalized, have an equitable voice in environmental decision-making. As part of this approach, the MPCA affirms:

> *"The Minnesota Pollution Control Agency expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns."*
> *Meaningful Involvement happens when:*

- *People have an opportunity to participate in decisions about activities that may affect their environment and/or health;*
- *The public's contribution can influence the regulatory agency's decision;*
- *Community concerns are considered in the decision-making process; and*
- *The decision makers seek out and facilitate the involvement of those potentially affected.*
- *Communities of color, indigenous communities, and low-income residents have a right to live in conditions that support a healthy and fulfilling life. The MPCA is committed to using its authority and influence to identify and support opportunities that improve environmental conditions and reverse generations of environmental inequities in areas of concern, enhancing environmental quality, and providing economic opportunities for future generations of Minnesotans."*

As outlined in the MPCA's Environmental Justice (EJ) Framework[21], the Agency is committed to ensuring that its rules and policies are fair, equitable, and developed with input from all Minnesotans, particularly those from communities most affected by environmental issues. When undertaking rulemaking, the MPCA carefully considers how the impacts of a proposed rule are distributed across Minnesota and actively works to engage all residents in the rule development process. This proactive approach ensures that all voices, particularly those historically underrepresented, are heard and included in decision-making. Although this level of analysis is not required under the Administrative Procedures Act (Minn. Stat. ch. 14), the MPCA includes a review of the impacts and meaningful involvement as part of the SONAR to align with the Agency's broader mission of addressing disparities in exposures and impacts.

The MPCA defines areas of concern for EJ as areas in Minnesota that, based on the most recent data published by the United States Census Bureau, meets one or more of the following criteria[22]:

- 40 percent or more of the area's total population is nonwhite;
- 35 percent or more of households in the area have an income that is at or below 200 percent of the federal poverty level;
- 40 percent or more of the area's residents over the age of five have limited English proficiency; or
- The area is located within Indian country, which is defined as federally recognized reservations and other Indigenous lands.

Equity analysis

The MPCA does not anticipate that the proposed rule will result in negative environmental consequences. Rather, the Agency expects that the rule will yield benefits for communities in

[21] *Brooks, Ned (MPCA). (2022, May). Environmental Justice Framework. https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf*
[22] *Understanding environmental justice in Minnesota. (Accessed October 25, 2024). https://www.pca.state.mn.us/about-mpca/environmental-justice*

environmental justice areas. The intent of the PFAS reporting rule is to enhance transparency and accountability regarding the presence of PFAS in products sold or distributed within Minnesota. By requiring manufacturers to report the intentional addition of PFAS in their products, the rule aims to:

- Protect Public Health: Gather critical data on PFAS usage to assess and mitigate potential health risks associated with exposure to these substances, especially in vulnerable populations.
- Inform Regulatory Decisions: Enable the MPCA and other stakeholders to make informed decisions regarding the management, regulation, and remediation of PFAS contamination in the environment.
- Enhance Environmental Justice: Address the disproportionate impacts of PFAS exposure on low-income and communities of color by prioritizing the collection of data in areas where these communities are more likely to be affected.
- Promote Transparency: Provide the public with accessible information about the presence of PFAS in consumer products, empowering communities to make informed choices and engage in advocacy for environmental health.
- Support Remediation Efforts: Facilitate the identification and cleanup of contaminated sites by establishing a clear inventory of PFAS-containing products, aiding in the reduction of environmental pollution.
- Encourage Alternatives: Stimulate the development and use of safer alternatives to PFAS in manufacturing processes and products, ultimately reducing reliance on these harmful substances.

Table 3: Benefits for low-income communities, people of color, and Native American lands.

Requirements beyond EPA:	Expected added benefits:
Comprehensive PFAS Reporting for All Products	Increased transparency regarding PFAS presence in consumer products, enabling informed choices, especially for vulnerable communities.
Community Engagement and Outreach Programs	Enhanced awareness and education about PFAS risks, empowering low-income communities and communities of color to advocate for their health.
Specific Health Risk Assessments for Affected Communities	Targeted public health interventions can be implemented to reduce exposure in populations disproportionately affected by PFAS contamination.
Public Access to PFAS Data	Communities can actively monitor and address local contamination issues, facilitating collective action and remediation efforts.
Inclusion of Local Knowledge in Decision-Making	Empowering community members to share their experiences and insights can lead to more effective regulatory actions tailored to local needs.
Development of Culturally Relevant Health Resources	Tailored information and resources that resonate with the specific needs of diverse communities, improving understanding and compliance.
Regulatory Oversight on PFAS	Enforcement of regulations that may disproportionately impact low-income communities and communities of color.
Reporting on PFAS Commitments and Progress	Increases accountability and transparency, enabling communities to track progress and understand the impact of regulations on their health and environment.

Meaningful involvement

To ensure meaningful involvement in the development of the proposed PFAS reporting rules, the MPCA has actively engaged with stakeholders throughout the process to solicit input and feedback. Recognizing the critical importance of including all voices, particularly those from historically marginalized communities, the MPCA has undertaken targeted outreach efforts to inform and involve affected populations. This outreach has included hosting public meetings, informational sessions, and distributing accessible materials designed to explain the proposed rules and their potential impact on public health. These efforts aim to ensure that communities most affected by PFAS contamination are not only informed but have the opportunity to contribute meaningfully to the rulemaking process. Through these engagements, the MPCA strives to foster trust, transparency, and a more equitable regulatory approach.

Throughout the development of the proposed PFAS reporting rules, the MPCA has engaged stakeholders to gather input and feedback. The MPCA has made concerted efforts to inform affected communities about the proposed rule. This outreach includes meetings, informational sessions, and distribution of materials that explain the implications of PFAS reporting and its importance for public health.

During the formal public comment period, all interested parties, including community members and organizations, are encouraged to submit their comments and perspectives regarding the proposed rule. The MPCA recognizes that community input is vital in shaping effective regulations and addressing the unique concerns of those most impacted by PFAS contamination.

Data collected on PFAS will play a crucial role in future health risk modeling and assessments, informing both the public and decision-makers about the risks associated with these pollutants. The MPCA encourages community members to identify areas of concern based on reported data. By sharing information about PFAS sources, the Agency aims to empower communities to advocate for their health and environmental well-being.

Once the PFAS reporting rule is implemented and emissions data is routinely updated, communities will have the opportunity to engage with this information on a publicly available website. This ongoing engagement will allow residents to track changes and identify emerging areas of concern, fostering a proactive approach to community health and safety.

8. Notice plan

Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to people or classes of person who may be affected by the proposed rule or must explain why these efforts were not made.

The MPCA uses GovDelivery, a self-subscription service for interested and affected parties to register to receive rule-related notices and other information. Request for notification by US Mail is also available. The Agency lists its rule projects on its Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription GovDelivery list for that specific rule is established and an electronic notice sent to all subscribers to the MPCA's New Rulemaking list, encouraging everyone interested in the topic of the new project to subscribe to its list. The webpage for each rulemaking project also includes a link to subscribe to its GovDelivery topic listing.

In addition, the Agency purchases email lists from the Association of Minnesota Counties and the League of Minnesota Cities to reach out to new government officials who may not be familiar with the MPCA's GovDelivery service—these officials include Commissioners, County Board Chairs, Planning and Zoning Administrators, Solid Waste Officers, City Managers, Administrators, Assistant Administrators, Clerks, Deputy Clerks, and other chief appointed city officials. The MPCA periodically sends an electronic message inviting these individuals to subscribe to topics that interest them; the most recent copy of this message went to the listed government officials on March 4, 2024.

A. Notice

Request for Comments

For this rulemaking, the first notice required by Minn. Stat. § 14.101, subd.1, is the Request for Comments (RFC). The MPCA published the RFC on Planned New Rules Governing Reporting by Manufacturers Upon Submission of Required Information About Products Containing PFAS, in the State Register on September 25, 2023. An RFC for the PFAS in products fees rulemaking was published in the *State Register* on September 24, 2023. The two rules were combined, and a new RFC was published in the *State Register* on November 18, 2024. To inform the public, the MPCA notified interested parties who are subscribed to the "Rulemaking: PFAS" GovDelivery list, of the RFC the same day it was published. The GovDelivery notice was sent to the 2,175 subscribers to the list, at that time. Also on the same date, the MPCA provided specific notice of the RFC to the designated water tribal contact persons for Minnesota Tribal Nations. This electronic notice contained the information in the September 25, 2023, GovDelivery notice about the RFC. The MPCA maintains a list of contacts for the 11 federally recognized tribes in Minnesota. As explained in Section 3 above, GovDelivery is a self-subscription service for interested and affected persons to register to receive rule-related notices via email.

In addition, the MPCA also posted the RFC, the same day it was published in the *State Register*, on the MPCA's webpage for this rulemaking at https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting-and-fees.

The remaining required notifications are listed below with a description of how the MPCA will comply with each.

1. Minn. Stat. § 14.14, subd. 1a. On the day the proposed rules are published in the *State Register*, the MPCA will send an electronic notice using GovDelivery with a hyperlink to the webpage where electronic copies of the Notice, SONAR and the proposed rules can be viewed. The GovDelivery notice will be sent to all parties who have registered with the MPCA to receive notices of "Rulemaking: PFAS." Parties who are registered to receive non-electronic notice will receive copies of the Notice and the proposed rules via U.S. mail. Both the electronic and U.S. mail notice will be sent at least 33 days before the end of the public comment period.
2. Minn. Stat. § 14.116. The MPCA will send a cover letter by electronic or U.S. mail to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. The letter will include a link to electronic copies of the notice, proposed rules, and SONAR. This notice will be sent at least 33 days before the end of the comment period.
3. Minn. Stat. § 14.116 also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This requirement applies because Minnesota Session Law – 2023, Chapter 60, H.F. No. 2310 (Minn. Stat. § 116.943) which was

authored within the past two years grants the MPCA rulemaking authority specifically for these rules.

4. Minn. Stat. § 14.111. If the rule affects agricultural land or farming operations, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the *State Register*. The proposed rule is not expected to impact agricultural land or farming operations. However, as a courtesy the MPCA will send an electronic copy of the proposed rules to the Commissioner of Agriculture at least 30 days before publication in the *State Register*.

B. Additional notice plan

Minn. Stat. § 14.14 requires that in addition to its required notices:

> *"each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication."*

The MPCA considered these statutory requirements governing additional notification and, as detailed in this section, intends to fully comply with them. In addition, as described in Section 2, Public participation and stakeholder involvement, the MPCA has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.

The MPCA intends to request that the Office of Administrative Hearings (OAH) review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The MPCA's plan to notify additional parties includes the following:

1. Publish its Notice, proposed rules, and SONAR on the MPCA's webpage for this rulemaking at https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting-and-fees.
2. Provide specific notice to tribal authorities. The MPCA maintains a list of the 11 federally recognized tribes in Minnesota and updates the list quarterly. The MPCA will send electronic notice to the designated tribal contact of Minnesota's tribal communities. The notice will be sent on or near the day the proposed rules are published in the *State Register* and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rules, and SONAR can be viewed.
3. Provide specific notice to the 35 commenters that submitted comments during the RFC public comment period. Electronic or U.S. mail notice will be sent to these commenters on or near the day the proposed rules are published in the *State Register* and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rules, and SONAR can be viewed.
4. Provide specific notice to associations and environmental groups. Electronic or U.S. mail notice will be sent to the following associations and environmental groups on or near the day the proposed rules are published in the *State Register* and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rules, and SONAR can be viewed.

- AdvaMed
- Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
- Alliance for Automotive Innovation
- Alliance for Telomer Chemistry Stewardship
- American Chemistry Council's Performance Fluoropolymer Partnership

- American Coatings Association (ACA)
- American Honda Motor Co.
- American Watch Association (AWA)
- Animal Health Institute (AHI)
- Asahi Kasei Corporation, Japan
- Association of Equipment Manufacturers (AEM)
- Association of Home Appliance Manufacturers (AHAM)
- Association of Metropolitan Municipalities
- Association of Minnesota Counties
- Baker Hughes
- Battery Association of Japan (BAJ)
- Best Technology
- Beveridge & Diamond, PC
- BioPhorum
- Business Institutional Furniture Manufacturers Association (BIFMA)
- Center for the Polyurethanes Industry (CPI)
- Chemical Users Coalition (CUC)
- Claigan Environmental Inc.
- Clean Water Action Minnesota
- Clean Water Minnesota
- Commscope
- Coalition of Manufacturers of Complex Products
- Coalition of Greater Minnesota Cities
- Cookware & Bakeware Alliance (CBA)
- Consumer Brand Association
- Consumer Technology Association
- Datwyler Pharma Packaging USA Inc.
- DuPont de Nemours, Inc
- Electric Hydrogen
- Emerson Electric Co.
- Extruded Polystyrene Foam Association (XPSA)
- Fire Suppression Systems Association (FSSA)
- Flow Control Coalition
- Fluid Sealing Association
- FUJIFILM Holdings America Corporation
- Garmin International Inc.
- Georg Fischer Piping Systems
- Gujarat Fluorochemicals Limited

- Halon Alternatives Research Corporation Inc. (HARC)
- Hitachi Enery USA Inc.
- Honeywell
- Hussmann Corporation
- Household & Commercial Products Association (HCPA)
- IDEXX Laboratories Inc.
- Intel Corporation
- Iwaki America
- Izaak Walton League Minnesota Chapter
- Japan Business Machine and Information System Industries Association (JBMIA)
- Japan Electric Measuring Instruments Manufacturers' Association (JEMIMA)
- Japan Fluorocarbon Manufacturers Association (JFMA)
- Japanese Federation of Medical Devices Association (JFMDA)
- Japanese Electric and Electronic Industrial Associations (JP4EE)
- John Crane Inc.
- Kindeva Drug Delivery L.P.
- King County (WA) Hazardous Waste Program
- Kluber Lubrication NA LP
- Lac-Mac Limited
- League of Minnesota Cities
- Leech Lake Band of Ojibwe
- Medical Alley
- MEMA, The Vehicle Suppliers Association
- Metropolitan Council
- Minnesota Association of Small Cities
- Minnesota Chamber of Commerce
- Minnesota City/County Management Association
- Minnesota Center for Environmental Advocacy
- Minnesota Environmental Partnership
- Minnesota Environmental Science and Economic Review Board
- Minnesota Grocers Association
- Motorcycle Industry Council, Specialty Vehicle Institute of America, and Recreational Off-Highway Vehicle Association
- Mozarc Medical
- National Electrical Manufacturers Association (NEMA)
- National Marine Manufacturers Association (NMMA)
- Natural Resources Defense Council (NRDC)
- Nippon Electric Control Equipment Industries Association (NECA)

- OE Electrics Inc
- Outdoor Power Equipment Institute (OPEI)
- Pacific Industrial Co.
- Panasonic Corporation of North America
- PCB Piezotronics
- Performance Fluoropolymer Partnership
- Personal Care Products Council
- PFAS Pharmaceutical Working Group (PPWG)
- Plumbing Manufacturers International (PMI)
- Polar Semiconductor
- Polaris Industries Inc.
- Power Tool Institute
- PSG
- ResMed Pty Ltd
- RTX (Aerospace and defense company)
- SEMI
- Semiconductor Industry Association (SIA)
- Sierra Club North Star Chapter
- Smith Sport Optics
- SPX Flow Technology Germany
- Solvay America, Inc.
- Steam Thermal Solutions
- Sustainable PFAS Action Network (SPAN)
- Syensqo Group
- Taco, Inc.
- Tecan US Inc.
- The Rechargeable Battery Association
- Thermo Fisher Scientific
- Trelleborg Sealing Solutions
- Truck and Engine Manufacturers Association (EMA)
- Unigasket Group
- Valmet Inc. and Valmet Flow Control Inc.
- Viking Enterprise Solutions (a division of Sanmina Corp.)
- Vision Council
- W. L. Gore & Associates
- Water Legacy
- Watson-Marlow Fluid Technology Solutions (WMFTS)
- Waygate Technologies

- Whirlpool Corporation
- Wilo USA LLC
- Window & Door Manufacturers Association
- YAGEO Group

Note: some members of these entities may already subscribe to receive GovDelivery notices about this rulemaking.

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's proposed rules webpage (https://www.pca.state.mn.us/get-engaged/proposed-rules) and the webpage for this rulemaking will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

9. Performance-based rules

Minnesota Stat. § 14.002 requires that state agencies, whenever feasible, develop rules that are flexible and not overly prescriptive, ensuring they focus on achieving regulatory objectives while providing maximum flexibility for both the regulated parties and the MPCA. In alignment with this statute, the MPCA aims to create rules that offer clarity and adaptability, making compliance as straightforward as possible for manufacturers and other regulated entities. The MPCA fulfills this requirement by employing various approaches designed to balance the need for effective regulation with flexibility in implementation. These approaches include:

Product Grouping: Manufacturers can report similar products and similar product components together rather than individually, simplifying the reporting process and reducing the administrative burden.

Concentration Ranges: The rule allows manufacturers to report PFAS content in concentration ranges instead of requiring precise measurements, offering flexibility in data submission and protecting trade secrets.

Trade Secret Protections: The rule includes provisions for manufacturers to protect confidential business information by submitting trade secret requests, ensuring sensitive data is safeguarded.

Extension Requests: Manufacturers facing challenges in meeting deadlines can request extensions, allowing for more time to ensure compliance with the reporting rule.

Reporting on behalf of other entities: The rule provides options for a manufacturer to report on behalf of another manufacturer if they provide products in various supply chains. This reduces the burden of duplicative reporting on manufacturers.

10. Consideration of economic factors

In accordance with Minnesota Stat. § 116.07, subdivision 6 and Minnesota Stat. § 115.43, subdivision 1, the MPCA must give due consideration to a range of economic factors when exercising its regulatory powers. These statutes require the MPCA to account for:

"…the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances…"

In developing the proposed PFAS reporting rules, the MPCA has carefully evaluated the economic impact on businesses, municipalities, and other stakeholders. The objective is to implement a regulatory framework that achieves environmental goals without imposing undue financial burdens. To ensure this balance, the MPCA has adopted a fee structure designed to minimize costs for reporting entities while maintaining regulatory oversight and effectiveness.

Manufacturer(s) will face low initial and annual fees. For the initial report, each manufacturer will pay a flat fee of $1000. If an entity reports on behalf of multiple manufacturers, each manufacturer will still be subject to the $1000 fee. For annual updates to the initial report, a flat fee of $500 will apply per manufacturer. Additionally, manufacturers requesting an extension to the reporting deadline will be charged a $300 fee for the application. Waivers, where manufacturers can apply for an exemption from reporting directly into the state's reporting system if the information is already substantially equivalent and publicly available, will still be required to provide the payment of the initial $1000 reporting fee.

This fee structure ensures that businesses can comply with the PFAS reporting requirements at a reasonable cost while maintaining the MPCA's ability to monitor and manage PFAS data effectively. By keeping fees low, the MPCA supports economic feasibility for manufacturers without compromising public health and environmental protection.

To meet these statutory requirements, the MPCA conducted an economic analysis as discussed in Section 6 of this SONAR, " Regulatory Analysis." This analysis examines the potential economic impacts of the proposed PFAS reporting rules, ensuring they remain practical and feasible while balancing regulatory obligations.

11. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). The MPCA will do this by sending MMB copies of the documents sent to the Office of the Governor for review and approval on the same day we send them to the Governor's Office. The MPCA will do this before publishing the Notice of Hearing in the *State Register*. The documents will include the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will include a copy of the cover correspondence and any response received from MMB in the rulemaking record the MPCA submits to the Office of Administrative Hearings (OAH) at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review.

12. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule.

The MPCA has determined that the proposed amendments will not have any effect on local ordinances or regulations. Local governments are not required to oversee reporting or fees for chemicals in products in their ordinances, so there will be no additional burden or effect on them.

13. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees." A small business may face costs that exceed $25,000 when it comes to

the FTE's or cost to hire a consultant to assist with reporting. The MPCA's SBEAP may be able to assist small businesses with understanding and complying with the reporting requirements under this rule. The SBEAP currently assists small businesses with other MPCA reporting requirements, such as the annual air emissions inventory, and may be able to offer similar assistance to small businesses subject to this rule.

There will be no cost to facilities to use the Agency's reporting database with exceptions of minimal flat fees charged per manufacturer to submit a report.

There should be no cost of complying with the rule for cities, because cities are not manufacturing nor distributing for sale products containing intentionally added PFAS.

14. Differences with federal and other state standards

Minn. Stat. § 116.07 subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar standards in states bordering Minnesota; and similar standards in states within the US EPA Region 5; and a specific analysis of the need and reasonableness of each difference.

A. Differences with Federal Standards

Minnesota's proposed PFAS reporting rule offers a proactive framework that aligns with federal regulations under the Toxic Substances Control Act (TSCA), specifically Section 8(a)(7). This section requires comprehensive reporting of PFAS manufactured or imported in the U.S. since 2011, focusing on historical data collection to enhance accountability. The EPA aims to characterize the sources and quantities of manufactured PFAS, ensuring a clearer understanding of their prevalence in the market.

However, the implementation of this federal requirement has faced challenges, including significant delays attributed to budget constraints and resource limitations. The EPA's ongoing efforts to fully discern the data reported as a result of the TSCA reporting requirements has been hampered by inadequate funding, impacting their ability to effectively monitor and manage PFAS-related risks.

Minnesota's rule addresses these challenges by establishing a robust and efficient reporting system that actively monitors PFAS in products sold within the state. This proactive approach ensures that Minnesota can gather essential data on PFAS while the federal program faces delays, effectively safeguarding public health and the environment from potential contaminants.

The TSCA PFAS reporting requirements will provide new chemical manufacturing data; however, the data will consist of historical information from a limited time frame that does not cover the detail of PFAS use within the myriad of products reported. For that reason, the EPA's rule and the MPCA's proposed rule are not directly comparable, but it is reasonable to propose a reporting rule that accounts for ongoing use of PFAS in products so the Agency can understand trends in PFAS use over time. This information will also be crucial as ongoing studies occur and data is published on the persistence and toxicity of PFAS and how exposure may affect the environment and human health.

B. Differences with Other State Standards

In contrast to Minnesota's approach, Maine has recently changed its PFAS reporting requirements under Public Law 2021, c. 477, An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution due to an amendment made to their PFAS reduction laws under Public Law 2023, c. 630, An Act to Support

Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances. As a result of this amendment, product reporting in Maine will only be required now for products applying for currently unavoidable use exemption. Minnesota aims to fill the knowledge gap of PFAS in products by implementing a comprehensive and flexible reporting system. It is reasonable to propose a rule that requires manufacturers to report all products containing intentionally added PFAS to the Agency, not just those seeking a currently unavoidable use exemption, to understand the full scope of PFAS use within products.

Additionally, Minnesota's rule incorporates critical elements such as product grouping, concentration ranges, and trade secret protections, allowing manufacturers flexibility while still achieving regulatory objectives. Minnesota's reporting rule is the first and only of its kind at this point in our country. Many states are looking at our state as a leader in this area. It is reasonable to propose a rule that is not directly comparable to rules promulgated by other states, because the data collected as a result of this rule will include public information that may inform future policy and decision-making in those other states as well.

Minnesota's proactive PFAS reporting rule stands as a necessary response to the limitations of both federal and state-level monitoring efforts. By establishing a strong framework, Minnesota can better protect public health and the environment from PFAS impacts, setting a precedent for effective regulatory practices in neighboring states facing similar challenges.

Unlike other state rules, the MPCA is proposing to charge a fee associated with the reporting requirements in rule. These fees will cover some of the costs of implementation of the rule. Minnesota's PFAS reporting rule is distinguished as one of the only comprehensive programs nationally that requires manufacturers report products containing intentionally added PFAS. Unlike Maine's revised reporting requirements, which now apply solely to currently unavoidable use (CUU) applications with a corresponding fee, Minnesota's rule takes a broader approach, incorporating a fee structure to support thorough data collection and analysis on PFAS usage in products. This fee structure is essential for enabling the MPCA to manage program administration efficiently, including processing submissions, maintaining the reporting system, and ensuring regulatory compliance, without additional costs to taxpayers.

The inclusion of fees in Minnesota's rule is a reasonable measure, as it allows the Agency to uphold a comprehensive reporting system with minimal financial impact on public funds. Given the significant public health and environmental benefits expected from enhanced PFAS monitoring, Minnesota's rule presents a viable and sustainable framework for PFAS regulation. This approach may serve as a model for other states considering similar legislation, offering an effective way to address PFAS impacts on both state and national levels.

15. Authors, witnesses, and SONAR exhibits

A. Authors

1) Andria Kurbondski, PFAS Pollution Prevention Program Lead, Resource Management and Assistance Division, MPCA, is a technical lead in this rulemaking.
2) Joshua Swanson, PFAS Pollution Prevention Program Specialist, Resource Management and Assistance Division, MPCA, is a technical lead in this rulemaking.

3) Peder Sandhei, Green Chemistry and Safer Product Program Coordinator, Resource Management and Assistance Division, MPCA, is a technical lead in this rulemaking.

4) Derric Pennington, Economic Policy Analyst, Environmental Analysis and Outcomes Division, MPCA, is the economist for this rulemaking.

B. Witnesses and other staff

1) For the scheduled hearing, the Agency anticipates having the listed authors testify as witnesses in support of the need for and reasonableness of the rules.
2) Emily McMillan, MPCA. Emily is a associate general counsel attorney to the Agency and will introduce the required jurisdictional documents into the record.
3) Quinn Carr, MPCA. Quinn is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.
4) Megan Saley, MPCA. Megan works in compliance and enforcement for the Agency and provided insight into the implementation of the proposed rule.

16. Conclusion

In this SONAR, the Agency has established the need for and the reasonableness of each of the proposed rules under new Minn. R. Ch. 7026. The Agency has provided the necessary notifications and, in this SONAR, documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Katrina Kessler

Katrina Kessler, P.E.
Commissioner

March 28, 2025
Date