MINNESOTA POLLUTION CONTROL AGENCY

PFAS in Products: Reporting and Fees

Part One Pre-Hearing and Hearing Response to Comments

RD-4828; OAH Docket No. 5-9003-40410

June 16, 2025

Contents

Introduction

67 commenters submitted comments to the Office of Administrative Hearing's eComments website or via US mail by May 21, 2025, in response to the Minnesota Pollution Control Agency's (MPCA's) Notice of Intent to Adopt Rules published April 21, 2025. 11 comments were heard as verbal testimony during the rule hearing on May 22, 2025. Many of the comments received included multiple components. The agency has provided its responses to those comments below, and where possible, has grouped similar comments together to provide a single response. Please note that this is "Part One" of the MPCA's response to comments. The remaining comments not listed in this document will be addressed in a "Part 2" response to comments document. The MPCA will respond to comments received during the post hearing comment period in a future rebuttal document.

Changes to the Proposed Rules

The MPCA appreciates the thoughtful and thorough comments that were received during the pre-hearing comment period and the hearing testimony for this rule. The MPCA has reviewed these comments and the suggested changes to the proposed rule. As a result, the MPCA has identified some parts of the proposed rule that require clarification, or that the agency would consider minor, non-substantive changes to. The MPCA does not believe that these potential changes will result in rules that are "substantially different" as defined in *Minnesota Rules* part 1400.2010 subp. 10.

7026.0020 PARTIES RESPONSIBLE FOR REPORTING

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

Reasoning: In review of the comments received regarding this part of rule, the MPCA agrees that this language does not clearly articulate the agency's intent to allow manufacturers to submit a single initial report. The MPCA would consider changes to clarify this subpart but is still determining what specific changes would be needed.

7026.0030 REPORT; REQUIRED INFORMATION

Subpart 1. **Report required.** ...A manufacturer or group of manufacturers of a new product with intentionally added PFAS after January 1, 2026, must submit a report before the product can be sold, offered for sale, or distributed in the state....

Reasoning: In review of the comments received regarding this part of rule, the MPCA agrees that this language does not align with part 7026.0040 of the proposed rule. The agency intends to have new products that contain intentionally added PFAS reported in the annual updates under part 7026.0040 subp. 1; by February 1 of each year. The MPCA would consider changes to clarify this subpart but is still determining what specific changes would be needed.

Subpart 1, item A, subitem (2), unit (a):

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

Reasoning: The MPCA received comments requesting that manufacturers should be able to report the harmonized tariff schedule code for products regardless of whether they are imported. The MPCA agrees that this is a reasonable request that can be accommodated in the proposed rule.

7026.0040 REPORTING UPDATES

Subpart 1. **Updates required.**

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

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

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

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

Reasoning: The MPCA received comments that submitting an update to the initial report on "the previous 12 months" was undesired, as it would require manufacturers to consider any of the scenarios in subitems (1) to (3) beginning February 1 of the previous year up until February 1 of the year the update was submitted. The MPCA believes that changing this language from

"the previous 12 months" to "the previous calendar year" will provide clarity to manufacturers on the period of time they are considering for annual updates and will give them time at the beginning of the year to compile any updated information that they need to submit.

7026.0100 FEES

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

Reasoning: The MPCA received many comments regarding fees, and many of the commenters expressed concerns that the fees would be charged on a per product/component basis. The MPCA's intent is to require manufacturers to pay a single fee for the initial report, regardless of how many products or components are included, and regardless of manufacturer size. The MPCA is proposing to add the term "flat" to the proposed rule language to make this clearer, and "the" when referring to the fee required for a group of manufacturers to make it clear that they are each required to pay the $1,000 flat fee referenced in the first sentence for the initial report.

General Comments

The MPCA received 49 general comments not specific to any rule part which are listed and responded to as follows.

Undue burden:

Prero-1: "In the Statement of Need and Reasonableness for the Proposal (the "SONAR"), MPCA states that the reports to be received containing PFAS-in-products information will have utility both for MPCA and consumers. Specifically, it notes that "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." CUC believes that the goal of educating and informing consumers to make educated purchasing decisions is not met with this reporting requirement. As discussed further below, the information to be gathered by the proposed reporting requirements will not provide the state, nor consumers, with information which is informative of the potential risks of the specific PFAS which might be present in products, nor the likelihood of PFAS being released in a meaningful way from a product about which information is being gathered. Unfortunately, the regulations proposed will impose reporting burdens on submitters and administrative burdens on state government officials who will need to collect and process information being submitted."

Sloan-1: "MPCA indicates in the SONAR Statement of General Need that this rule "will lead to the unprecedented disclosure of the presence and quantity of intentionally added PFAS in products and their components."5 The requirements in the proposed rule, however, are exceedingly complicated and do not foster compliance with state law, particularly for manufacturers of complex products such as those in the automobile, appliance, and construction sectors. Providing the unprecedented amount of data that this proposal requires is further challenged by the unreasonable timeline MCPA has created, even considering the limited provisions allowing for an extension."

> **RESPONSE:** The MPCA acknowledges concerns about the utility and feasibility of the proposed PFAS in products reporting requirements. As stated in the Statement of Need and Reasonableness (SONAR), the agency's primary intent is to comply with the statutory directive in Minn. Stat. § 116.943 to require manufacturers to report intentionally added PFAS in products sold, offered for sale, or distributed in Minnesota.
>
> Regarding the concerns that the scope and complexity of the rule may not foster compliance particularly for manufacturers of complex products; the MPCA recognizes

these challenges and has incorporated options such as product grouping, concentration ranges, TOF testing for unknown PFAS chemical identities, and a 90-day extension process to provide flexibility. The agency also notes that guidance will be made available prior to reporting.

As explained in the SONAR on page 13, "*informed consumers are key to reducing PFAS exposure and pollution*." While the initial reporting requirements do not include product-specific exposure or risk assessments, the SONAR outlines the value of disclosure in helping consumers make choices and enabling the state to track PFAS use and inform future policy actions.

Regarding complexity and compliance feasibility; the rule allows product grouping where appropriate (Minn. R. 7026.0030, subp. 1 item E) and provides a process to request deadline extensions (Minn. R. 7026.0060), as described in the SONAR on pages 29–31. The MPCA recognizes that reporting will require effort, especially for manufacturers with complex supply chains. To support compliance, the MPCA is developing detailed guidance, and a reporting system intended to be user-friendly and similar to other regulatory systems' High Priority Chemicals Data System (HPCDS).

PFAS chemical class approach:

Prero-2: "The adoption of the class-wide approach to regulating PFAS reflected in this Proposal fails to recognize that (as defined) the term "PFAS" comprises a group of thousands of synthetic chemicals that are used widely throughout the world, in a broad range of applications. Chemically, toxicologically, and physically, PFAS differ widely. Included in the category as PFAS are substances in the solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols), and gaseous (e.g., hydrofluorocarbon refrigerants) forms. The fundamental physical, chemical, and biological properties of solids, liquids, and gases are clearly different from one another. Furthermore, PFAS vary substantially in their physicochemical properties and may include polymers and non-polymers; solids, liquids, and gases; volatile and non-volatile compounds; and compounds that are water soluble and water insoluble."

RESPONSE: The MPCA uses the statutory definition of PFAS in Minn. Stat. § 116.943, subd. 1 (p), which defines PFAS based on molecular structure—specifically, "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.". The statute does not limit reporting to specific subclasses of PFAS or include risk-based exemptions, and the MPCA must implement rules consistent with that legislative directive.

As the SONAR explains on page 11, the statutory definition intentionally adopts a broad, class-based approach to ensure transparency regarding the wide range of PFAS use in commerce and to support the state's goals of identifying and reducing unnecessary use of these chemicals.

The rule does not impose uniform restrictions or risk assessments across all PFAS but requires disclosure of intentionally added PFAS and the function they serve in products. This information will allow MPCA and other stakeholders to distinguish between types and uses of PFAS and to evaluate them more effectively over time. The agency acknowledges the diversity within the class of PFAS but emphasizes that this proposed approach is consistent with legislative intent and reflects the current scientific understanding that many PFAS share similar environmental persistence and mobility characteristics, even if their toxicological profiles differ.

By collecting data across the full class of PFAS, the MPCA can support more nuanced evaluations and future decisions informed by specific use patterns and chemical properties. The reporting requirement is therefore not a regulatory restriction but a necessary step to build a comprehensive dataset that can support science-based risk assessment and policy development.

Risk-based approach:

Bretecher-1: "NFA further contends that heavy vehicles (mainly operated as commercial vehicles) are unlike consumer products in the potential risks that PFAS-containing components would pose to the general public, based on the following: a) Reduced exposure to the PFAS containing components relative to consumer products. The amount of an individual's exposure is limited to passenger trip times, compared to the ever-present consumer product in a home or business. b) Reduced frequency of disposal of heavy vehicles and their components. The minimum expected lifespan of a transit bus or motor coach in North America is 12 years and is often much longer. Unlike passenger vehicles, heavy vehicles are often overhauled to extend their lifetime."

Prero-3: "The simple reporting of data on thousands of unique substances and the products in which they appear, even in some minute quantities, fails to inform the consumer that there are significant differences among the unique substances included within the broad definition of PFAS the legislation provides and that many PFAS may not pose any risk of harm to human health or the environment. Furthermore, there may be extremely limited to no exposure to consumers from the PFAS within reported products, as the PFAS may not be present on a product's surface nor migrate into the environment. The reporting requirement provides no

scientific context for any of the information provided and will not truly inform or educate consumers in a meaningful way. The information being gathered will be subject to misinterpretation and will be likely to exaggerate risks."

Choiniere-1: Regulatory Certainty and Federal Alignment
Highlight concerns that regulatory uncertainty around PFAS threatens U.S. competitiveness and that broad, non-risk-based PFAS regulation could negatively impact mission-critical applications. Urge MPCA to focus on high-risk PFAS.

Bretecher-2: "NFA further contends that heavy vehicles (mainly operated as commercial vehicles) are unlike consumer products in the potential risks that PFAS-containing components would pose to the general public, based on the following:

a) Reduced exposure to the PFAS containing components relative to consumer products. The amount of an individual's exposure is limited to passenger trip times, compared to the ever-present consumer product in a home or business.

b) Reduced frequency of disposal of heavy vehicles and their components. The minimum expected lifespan of a transit bus or motor coach in North America is 12 years and is often much longer. Unlike passenger vehicles, heavy vehicles are often overhauled to extend their lifetime."

Palin-1 (pre-hearing comment and hearing testimony): "The Messages the SONAR is Communicating on PFAS: Auto Innovators has concerns about the way the SONAR communicates about PFAS. PCA notes that "[m]any 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[,]" but Amara's Law's broad scope covers many more PFAS chemicals that do not have scientific evidence regarding the risks and harms of those substances.

Additionally, the SONAR discusses a broad brush illustration of potential pollution risks from cradle to grave of products, but it should be noted for consumers that this high-level explanation misses the actual risks and realities for various products. For example, the end-of-life management of vehicles as a product is much different from many other products, as there is a vibrant parts recovery and resale market, and around 86% of a vehicle is recycled or reused at end-of-life."

Bennett-1 (hearing testimony): "...and we've already taken many proactive steps to reduce our impact. For example, we use environmentally friendly insulation that contains no PFAS, has zero ozone depletion potential and no global warming potential. We utilize natural refrigerant in many of our products, which is a sustainable alternative with a global warming potential of just three and zero ozone depletion potential (hearing testimony page 75)".

RESPONSE: The MPCA acknowledges that PFAS encompass a diverse group of chemicals with varying physical, chemical, and toxicological properties. However, the Minnesota Legislature explicitly chose to define PFAS broadly in Minn. Stat. § 116.943 subd. 1 (p) to capture the full scope of intentionally added PFAS used in commerce. The statute does not limit reporting to specific subclasses of PFAS or include risk-based exemptions, and the MPCA must implement rules consistent with that legislative directive.

The goal of the rule is not to assess risk or restrict products at this stage but to increase transparency and generate foundational data on the use of intentionally added PFAS in products sold in Minnesota. As described in the SONAR (pages 5–6 and 11), the collection of product-level PFAS data is necessary to inform future policymaking, support exposure reduction efforts, and enable better public understanding. While the agency recognizes that many PFAS may present different levels of concern, the lack of comprehensive information about which products contain PFAS makes any risk-based prioritization premature.

Additionally, as noted in the SONAR (pages 10–11, 16, and 20), exposure to PFAS is not always obvious, and even products that do not appear to pose high exposure potential may contribute to cumulative or indirect environmental loading through waste, manufacturing, or use. The rule does not presume toxicity or prohibit use; rather, it lays the groundwork for future evaluation and action, whether related to risk prioritization, safer alternatives, or exemption determinations.

Regarding consumer communication, the MPCA is committed to presenting reporting results in a clear and accessible format that minimizes misinterpretation. The data collected will inform the agency's broader efforts to contextualize PFAS use and support targeted public health messaging, regulatory alignment, and informed decision-making.

Phased approach:

Prero-4: "CUC notes that the scope of the regulation is impractically large. CUC recommends that reporting should be implemented as a phased approach. Instead of requiring reporting on all products, whether for industrial or consumer use, and for all PFAS, at one time, the focus of an initial round of reporting could be limited. It could provide for reporting on both a specific subset of PFAS and product categories, namely those of highest concern, and the scope of subsequent reporting could be revisited thereafter. By limiting the initial scope and breadth of PFAS and products for which reporting requirements are initially imposed, MPCA can provide a more reasonable and practical opportunity for suppliers of products and components that are incorporated within complex articles to determine the presence of PFAS in their supply chain

and to begin evaluating opportunities to phase out certain uses of PFAS where possible. This also will permit the development and submission of more accurate reporting."

Bemus-1 (pre-hearing comment and hearing testimony): "To further ease the burden, both on MPCA and manufacturers, SPAN suggests that MPCA consider phasing in the reporting requirements, looking at a finite number of PFAS and product categories to start…"

Keane-1: "AHAM recommends that the MPCA consider imposing the reporting requirements incrementally. Under this scenario, MPCA would analyze different product categories on a risk-based approach for likelihood to cause contamination of the environment in Minnesota. This would be done by identifying PFAS by CAS number as there are roughly 15,000 PFAS that could potentially be reported. With respect to the home appliance industry, refrigerants or foam blowing agents, or other PFAS materials found in internal components, are inaccessible to consumers and warrant separate assessments. This will allow manufacturers to more effectively identify the chemicals that need to be disclosed. MPCA should prioritize the types of PFAS releases they are seeking to prevent, and subject those to scrutiny before uses that pose far less risk. Once an initial round of reporting has been completed, MPCA can then move to the next group. Such a phased approach will permit both MPCA and the regulated community to adjust the new requirements and address any practical issues that may arise. MPCA can then make any adjustments to reporting requirements if needed."

> **RESPONSE:** The MPCA considered a phased implementation of the proposed rule but determined that a comprehensive approach is necessary to meet the statutory intent of Minn. Stat. § 116.943. The Legislature directed the agency to require reporting for all products containing intentionally added PFAS by January 1, 2026. This directive did not include provisions for staggered implementation based on chemical, product category, or risk. As described in the SONAR (pages 12–13 and 18), MPCA's approach is aligned with the scope and structure required by statute, which sets a broad definition of PFAS and a uniform reporting date.
>
> The agency acknowledges the scale and complexity of the reporting obligation and has included several provisions in the rule to support feasible compliance. These include the ability to group similar products and components for reporting (7026.0030, subp. 2), the option to request deadline extensions (7026.0060), and the development of detailed guidance and a user-friendly reporting system (SONAR, pages 26–27, 42). MPCA also emphasizes that it will continue to engage stakeholders to improve clarity and usability during rule implementation and system rollout.
>
> While the rule itself cannot delay initial reporting requirements through a phased approach, the information gathered through this first year of reporting, will inform future potential actions related to PFAS, including any prioritization for exemptions, safer alternatives, or prohibition determinations.

Submission on behalf of multiple entities:

Nustad-1: "In its Statement of Need and Reasonableness, MPCA indicated that it will provide guidance for how reporting entities can submit on behalf of multiple manufacturers. We agree that clear, practical steps for this submission approach are essential. Given the January 1, 2026 reporting deadline, it is critical that MPCA provide this guidance as early as possible to ensure reporting entities—particularly retailers—have sufficient time to adapt systems, coordinate with partners, and meet compliance requirements effectively.

We support efforts to phase out chemicals like PFAS when alternatives are feasible and effective. However, the proposed rule must account for the realities of complex retail supply chains, the limits of retailer control and knowledge, and the need for balanced, practical implementation timelines and responsibilities. We encourage MPCA to revise the rule to clarify roles, protect confidential business data, and ensure the regulation is workable for the retail sector."

> **RESPONSE:** The MPCA appreciates the support for the ability to submit reports on behalf of multiple manufacturers and agrees that clear, timely guidance is essential for successful implementation. Rule part 7026.0020, subpart 2, allows for submissions by an authorized representative on behalf of multiple manufacturers in the same supply chain. The agency will provide guidance on how to structure such submissions, including the process for designation of representatives, data formatting, and how confidentiality claims can be made while maintaining compliance with Minn. R. part 7026.0070.
>
> The MPCA recognizes the complexity of supply chains and the limits of direct knowledge about upstream product composition. Guidance will be released as early as possible following final rule adoption to ensure adequate time for coordination and system development. The agency is committed to protecting confidential business data in accordance with Minn. Stat. § 13.37 and the applicable rule provisions. MPCA will also continue engaging with retailers and trade associations to ensure the reporting system and instructions accommodate sector-specific challenges.

Reporting system and guidance:

Palin-2 (pre-hearing comment and hearing testimony): "Auto Innovators Proposal for Vehicle Reporting: Each auto manufacturer has multiple vehicle models, and a single vehicle has tens of thousands of individual parts at the lowest component level built into sub-assemblies and assemblies. Reporting on each one of those individual components will not only overwhelm the

data management system, it will also place an unreasonable burden on automobile manufacturers. All other sectors that provide complex durable goods to consumers will have the same issue—hundreds if not thousands of individual parts in the finished product. Investigating tens of thousands of parts in the automotive industry would be costly and would result in fragmented and duplicated information that may overwhelm the database while providing little value to Minnesota consumers, who are likely to be purchasing a whole vehicle (and concerned about the risks in that whole vehicle) as opposed to any individual component.

The automotive industry, through Auto Innovators, has developed an alternative proposal for PFAS reporting that we believe will provide information that is useful to Minnesota consumers about PFAS present in various parts of the vehicle without placing unnecessarily burdensome obligations on reporting entities.

Auto Innovators believes that reporting the total amount of PFAS in a vehicle family (the product), plus the higher-level locations of those PFAS present in various parts of the vehicle, would be clearer for Minnesotans browsing the data than digging through thousands of lines of redundant small component parts reporting data.

Here is an image of what reporting would look like using our proposed template:

This proposed reporting looks at a vehicle, looks at the various PFAS chemicals that are present in the vehicle, and then organizes them by larger comprehensible systems/areas: Body, Chassis, Electrical, Interior (which would likely be of particular interest for consumers), Powertrain, or Unassigned. This reporting also uses the classification breakdown that our IMDS reporting system has, so that data would be more comparable across automakers. In that way, a consumer can see what PFAS chemicals are present in the interior of a vehicle they are considering without having to discern or aggregate all of the individual product components that might make up the interior passenger cabin.

We would be happy to discuss this reporting proposal with PCA in greater detail. But, as currently proposed, we do not have a clear indication that the PFAS in Products: Reporting and Fees Rule would allow reporting in this manner, for the reasons discussed above."

> **RESPONSE:** It appears that the commenter's intent behind this request is to have the ability to group the information reported, and the MPCA has allowed for the grouping of such product and components for the purposes of reporting in the proposed rule under part 7026.0030 subpart 1. The MPCA has been working on a reporting system to meet the specific needs of this proposed rule, and given the January 1, 2026 statutory deadline for reporting, does not intend to create a new system at this point in time. This commenter asserts that their reporting information will overwhelm the database, however, the MPCA has no indication that this will be a concern in the implementation of this rule.

Kallen-1 (pre-hearing comment and hearing testimony): "The proposed rule states within 7026.0030 Subpart 1 that reports must be submitted to the commissioner, in a format specified by the commissioner. The MPCA should provide clarification regarding the format of the report, as well as the submission process. Ideally, the MPCA would develop an online platform for submission instead of emailing a report to the commission. Furthermore, the MPCA would help reduce the reporting burden if it worked towards developing a joint online reporting platform with other states."

> **RESPONSE:** The MPCA will not be receiving submissions via email; an online reporting platform is being developed for report submissions.

Frisbie-1: "Consider that in the Statement of Need and Reasonableness ("SONAR") for the Proposed Rule, MPCA acknowledges (regarding Part 7026.0020, Subp 2, Item A) that it does not have the reporting instruction manual and/or guidance document ready at this time. This is just one example of the type of critical information/guidance that is needed, but is not yet available, to manufacturers in order to meet the reporting goals and requirements. More broadly, MPCA recognizes that significant diligence may be required for manufacturers with complex supply chains to gather information that is required to be reported. Without a final rule (and possibly guidance and/or instructions), it will prove to be infeasible for most manufacturers to digest the final rule requirements and to-be issued instructions and/or guidance, perform all required diligence, vet the information obtained, discuss the information with relevant stakeholders, come to agreements with multiple manufacturers in the supply chain for combined reporting, and fill out the information in the reporting system."

Sloan-2: "MPCA acknowledges this lack of clarity in the SONAR, indicating that "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," but that "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." No timeline is provided for release of this critical information. CPI has significant concerns about MPCA's reliance on forthcoming, nonbinding guidance to improve the ambiguities of the current proposal, especially without access to additional details and insight about the reporting system capabilities and how these regulatory requirements will be addressed in the reporting system."

Friest-1: "The timeline for reporting is even more unreasonable considering that the system is unknown, has yet to be fully developed, has not been beta-tested and it is uncertain when it will be available for testing by manufacturers. It is unreasonable to assume that the system will

be released and beta-tested without need for further refinement and development and that process will take time. Moreover, we are unable to assess and provide comment on the reporting system because it does not currently exist. It is fundamentally unfair to deny manufacturers an opportunity to assess and comment on the reporting system that will be at the center of compliance responsibilities. System design and implementation issues could frustrate compliance. Manufacturers are also unable to proactively, fully prepare data for submission, in the absence of knowledge and user experience of the reporting system. Beta-testing by manufacturers, consideration of feedback, and refinement of the reporting system cannot reasonably be expected to be complete in less than six to eight months. There is no timeline provided for the development, completion, and testing of the system. However, the MPCA Statement of Need and Reasonableness on page 27 states "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."

Friest-2: "MPCA is expressing that the functional capabilities for the reporting system are not fully established. Additionally, the proposed rule fails to identify how reporting identities can report on behalf of other manufacturers. MPCA indicates that these critical details will be included in other documents i.e. system instructions or supplemental guidance. Guidance documents and reporting instructions are nonbinding. This failure of the MPCA to provide critical detail in the rule, that is necessary for manufacturers to determine how to comply with the reporting requirements, is unreasonable and denies manufacturers the opportunity to assess and comment on the reporting approach. Manufacturers are also unable to effectively plan and coordinate a reporting strategy with other manufacturers, without the detail to understand the practical implications and requirements of such an approach. Although this feature is touted as a tool to reduce the burden for manufacturers, it cannot be viewed as such in the absence of detail that supports its usefulness. In the absence of the detail, and given the timeline for reporting, coordination between multiple manufacturers is more likely to delay reporting, rather than facilitate compliance."

Friest-3: "The absence of an operational data reporting system and the lack of real experience and knowledge of the operational characteristics of the system, means that data input efforts, which are anticipated to be very time-consuming, will be further slowed as users work to develop proficiency in using the system when it becomes accessible. The failure of the MPCA to complete development and testing of the reporting system, reasonably in advance of compliance deadlines, and the failure to provide complete details related to a primary reporting approach, in the rule (rather than yet to be developed, nonbinding guidance and reporting instructions) further compounds the unreasonableness of the proposed rule.

A functionally complete and tested reporting system and a complete rule that includes critically important details including how entities can report on behalf of other entities must be available for review and comment by manufacturers. Moving forward without these crucial details and an opportunity for comment, is unreasonable."

Hardwick-1: "While the proposed rules purport to address the substance of the required reporting, the rules do not clearly address the logistics of conveying the required information to MPCA. For example, MPCA's Statement of Need and Reasonableness indicates that it plans to use the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System as the reporting portal. However, the platform is unlikely to be accessible before late 2025, giving companies very little time to familiarize themselves with the platform, the specifics of the required information, and the logistics of the submission."

Keane-2: "Manufacturers should have clarity on reporting requirements, format for submission, and the necessary time to adjust their submissions to meet the platform's design specifications. MPCA must be forthcoming with those specifications if they are available. If they are not readily available, a delay in the compliance date is entirely appropriate. MPCA must also consider its testing of the system and the time required to fix any problems."

Branstad-1: "In our view, studying the current Interstate Chemical Clearinghouse (IC2) database is an inadequate surrogate and therefore an unreasonable surrogate. The reporting requirements in this proposed rule are significantly more complex than what we see in the current IC2 database. At this time, manufacturers do not understand whether they will be responsible for submitting a single report covering all products requiring reporting, or if multiple, separate reports for each product (or similar products made of homogeneous materials) will be required. We strongly recommend that reporting should not be required until months after MPCA has accounted for feedback on a test version of the reporting system and verified that the reporting system is ready to receive reports from manufacturers. This is especially important in light of the large number of manufacturers that will likely be reporting under the proposed rule, over a compressed reporting period."

Palin-3 (pre-hearing comment and hearing testimony): "Little Information is Currently Available on How to Report: Although the draft PFAS in Products: Reporting and Fees Rule gives an indication about what will be required from reporting, it gives little direction about how manufacturers will be required to report, and an understanding of this is truly critical for regulated entities to understand the actions required and to comprehend the resources that will be needed to execute those tasks. Auto Innovators believes these issues have implications for the reporting on behalf of other manufacturers concept as well. Auto Innovators would prefer to share information with PCA via an Excel file upload, which we believe will be the least burdensome for industry. However, we do understand that PCA is in the process of developing an online reporting system. Auto Innovators is interested in information on the reporting system as soon as it is available. Furthermore, Auto Innovators volunteers to help PCA beta test

the reporting system and help provide feedback as complex durable goods manufacturers. Auto Innovators expects that the automotive industry will be one of the largest submitting industries with potentially very high volumes of data, and we believe our input will be critical. We agreed to help EPA beta test their TSCA 8(a)(7) reporting system as well, until that beta testing period was recently canceled by the agency."

Palin-4 (pre-hearing comment and hearing testimony): "MPCA's Goal of a Public Database: Auto Innovators understands that part of PCA's goal with respect to PFAS reporting is to develop a public database on PFAS in products that can be used by Minnesota consumers. However, as mentioned above, PCA must be very thoughtful in developing its standards for reporting to ensure the data populated i is legible and useful for consumers. As discussed above, we think reporting at a low component level will create confusion, and that consumers would best benefit from a higher level overview of the presence of PFAS in automotive systems and areas. Auto companies' major product is a complete vehicle, not the litany of parts it contains."

RESPONSE: The MPCA appreciates the support for the ability to submit reports on behalf of multiple manufacturers and agrees that clear, timely guidance is essential for successful implementation. Rule part 7026.0020, subpart 2, allows for submissions by an authorized representative on behalf of multiple manufacturers in the same supply chain. The agency will provide guidance on how to structure such submissions, including the process for designation of representatives, data formatting, and how confidentiality claims can be made while maintaining compliance with Minn. R. part 7026.0070.

The MPCA recognizes the complexity of supply chains and the limits of direct knowledge about upstream product composition. Guidance will be released as early as possible following final rule adoption to ensure adequate time for coordination and system development. The agency is committed to protecting confidential business data in accordance with Minn. Stat. § 13.37 and the applicable rule provisions. MPCA will also continue engaging with retailers and trade associations to ensure the reporting system and instructions accommodate sector-specific challenges.

The agency has been working on developing a system based off an existing reporting platform and building it out to meet our requirements. The agency plans on beta testing the program before the system is open for actual reporting. The agency understands the concerns for working on a tight timeline for developing and testing the system prior to report submittals are due.

Regulations under other jurisdictions:

Kooy-1: "General BIFMA Comment: BIFMA and its members continue to encourage harmonization amongst all states seeking to report and remove PFAS. Businesses have limited resources; therefore more resources are used to support individual state programs reporting requirements and fees which leads to less resources investigating PFAS-free alternatives."

> **RESPONSE:** The MPCA agrees that harmonization with other states reduces the burden of reporting but understanding where and why PFAS are used in products is crucial to identifying alternatives. Without comprehensive reporting, manufacturers, regulators and consumer cannot assess how widespread the use of intentionally added PFAS is in products or make informed decisions about product design, regulation or use. Identifying PFAS-free alternatives requires knowing where PFAS are intentionally added and for what purpose. This is one of the fundamental goals of the reporting rule. The MPCA also notes that Minnesota is a leader in developing comprehensive reporting framework for intentionally added PFAS in products, and this proposed rule is setting the standard among states.

McArdell-1: "Manufacturers selling into multiple states already face a patchwork of differing PFAS disclosure requirements. To the extent possible, MPCA should:

- Align reporting categories and data elements with the Maine PFAS in Products program and the Washington State Safer Products initiative.
- Accept equivalent reports submitted to other states or federal agencies, including the EPA's TSCA PFAS reporting rule, where appropriate.

This harmonization will promote compliance, reduce duplicative work, and ensure consistent data quality"

lizuka-1: "Fundamental request: US states that broadly regulate PFAS should harmonize their operations."

Mwanza-1: "Adopting an approach consistent with other state-level PFAS reporting frameworks, such as those implemented in Maine and New Mexico, would promote harmonization, reduce administrative burden, and support a more coherent strategy for managing PFAS in essential industries."

Erny-1 (pre-hearing comment and hearing testimony): "Each RV contains at least 10,000 individual parts and in some cases over 100,000 per unit for larger, more complex units. RVIA

recommends that MPCA adopt the following definition of complex durable goods, which is similar to that outlined in Section 6 of the Toxic Substances Control Act (TSCA) and is being considered in other jurisdictions. This would provide better consistency with other jurisdictions."

Nustad-2: "We encourage MPCA to consider opportunities to harmonize its reporting system with those of other states implementing similar PFAS reporting requirements. Retailers and manufacturers that operate nationally or regionally face significant burdens in preparing unique reports for each state. A coordinated or interoperable system would reduce redundancy, lower compliance costs, and improve data consistency. We urge MPCA to engage with other state agencies and stakeholders to explore ways to align reporting formats, definitions, and submission processes wherever possible."

Thomas-1: "New Mexico and Maine's amended law have exempted medical devices in their PFAS laws recognizing that medical devices and drugs are distinct from many of the other products that are subject to this rule. In fact, New Mexico exempted fluoropolymers from their recently passed law recognizing not all PFAS is the same. A reporting exemption for medical devices and drugs would also allow MPCA to focus on PFAS-containing products that are not subject to the same rigorous regulatory scrutiny as medical technologies."

MPCA should ensure that reporting requirements are both practical and clearly understandable within the reporting system design and functionality. For example, MPCA should allow manufacturers to group similar models and parts under a single reporting entry, similar to the way U.S. Department of Energy (DOE) permits certification of "basic model numbers" to streamline reporting under the Energy Policy and Conservation Act. The reporting system should also include standardized dropdowns for PFAS functions and product/component categories to facilitate accurate and consistent submissions."

Fowler-1: "EL requests that MPCA establish a threshold for reporting of medical devices. For example, limit reporting of medical devices to those with intentionally added PFAS at or above a specified threshold based on a specific list of PFAS with CAS numbers. This is similar to the Canadian Environmental Protection Act ("CEPA") PFAS reporting regulations, which imposes minimum thresholds for reporting, depending on the type of manufactured items being reported. This would minimize the burden of reporting on manufacturers of medical devices."

Fowler-2: "As a global company, EL is subject to many laws and regulations worldwide. EL appreciates MPCA's inclusion of Subdivision 3 and every effort MPCA can make to adopt regulations consistent with federal and other state laws."

Cleet-1: "Issue: The MCPA rule differs from several existing reporting requirements, including the State of Maine and US Environmental Protection Agency (EPA). Harmonization with these reporting requirements will both reduce the administrative burden on reporting manufacturers and the compliance burden of the Agency…

…Third, the State of Maine's reporting requirement applies only to products sold in Maine after an applicable sales ban takes effect, and for which the Maine Department of Environmental Protection (DEP) has made an unavoidable use determination. Minnesota should look to harmonize reporting definitions, scope and requirements.

Fourth, the State of Maine exempts "non-consumer laboratory equipment or electronics." Products considered as B2B professional products are not consumer products, not intended for use at home or by consumers should be excluded from registration or limited to only product category registrations. Recommendation: Harmonize the rules to reporting requirements from the US EPA and State of Maine."

Cleet-2: "Minnesota should modify its reporting to mirror Maine's new reporting program only for those product categories that receive a Currently Unavoidable Use (CUU) determination from the Department."

Choiniere-2: "Ask MPCA to explicitly allow manufacturers to use data submitted to EPA to fulfill Minnesota reporting obligations, minimizing redundant reporting and aligning information requirements."

> **RESPONSE:** The MPCA recognizes the benefits of harmonizing reporting requirements with other jurisdictions, including EPA and the state of Maine, to reduce the burden on manufacturers. However, this rule is focused on reporting and fees, not currently unavoidable use (CUU) determinations. Unlike Maine's program, which limits reporting to products subject to sales bans or CUU determinations, Minnesota's statute requires reporting for all products with intentionally added PFAS that are sold, offered for sale, or distributed in the state regardless of product type or user. As described in the SONAR (Section 4. C), Minnesota's statutory requirements under Minn. Stat. § 116.943 are distinct in that they mandate reporting on all intentionally added PFAS in products sold, offered for sale, or distributed in the state, regardless of risk or use category, unless specifically exempted by rule or statute.
>
> The statute does not distinguish between consumer and non-consumer products for reporting purposes, so the MPCA cannot exclude business-to-business (B2B) or professional-use products from this requirement. That said, the MPCA will align data

elements with other programs where possible (e.g., CASRN, function codes) and will offer clear guidance to support compliance.

General support:

Whitney-1: "We collected 302 signatures who support the proposed rule to ensure the MPCA is upholding the safest interpretation of the 2023 PFAS legislation. Members have signed on with this statement:

"I support the full and complete implementation of the 2023 PFAS law. Minnesotans have the right to know what's in the products they use every day. Informed consumers make better choices—for themselves, their families, and their communities.

We don't want harmful substances hidden in the things we buy. The first step toward safer products is transparency from manufacturers. Just like we check food labels to protect our families, we should also be able to check whether clothing, cookware, or other items contain PFAS.

Everyone deserves to shop with confidence, knowing that they're making safe, informed decisions."

Callahan-1: "The PFAS associated with fluorination processes comes with alarming environmental and public health effects. PFAS has a significant negative impact on an assortment of bodily systems, and the most hazardous types, including PFOA and PFOS, are bioaccumulative and almost impossible to remove. Additionally, as we now know, these chemicals are everywhere – in our water, packaging, clothes, food, and more. When you consider the breadth of exposure to PFAS on a daily basis, it is alarming to say the least. Looking at the scale of this issue, the American public has been robbed of their autonomy to decide for themselves the dose of this constant poison that they are exposed to. Fluorination is just one piece of the puzzle but an important one."

> **RESPONSE:** The MPCA appreciates the strong public support for the full implementation of Minnesota's Reporting and Fees PFAS law.

Cost estimations:

Palin-5 (pre-hearing comment and hearing testimony): "The PCA Underestimates Costs: In the SONAR, PCA states that "[m]anufacturers are anticipated to bear minimal costs to comply with the reporting rule." Auto Innovators disagrees with this characterization, and expects that the costs manufacturers will have to undertake will be substantial, as already somewhat described above.

To conclude that manufacturers will have minimal costs while the state estimates its own implementation cost to be just over $6 million is disingenuous. Companies with compliance obligations will have multiple staff members, for example both technical and legal staff, reviewing the PCA's final rule and associated documentation in order to best understand the regulatory requirements and the agency's expectations for compliance. Just as PCA will have to build data systems to collect data, manufacturers will need to build IT systems to collect and report the extensive data required. Previous surveys of our membership have anticipated that OEMs may spend about 30 hours on rule familiarization, and suppliers may spend closer to 80 hours on the same. For EPA's TSCA 8(a)(7) PFAS reporting rule, Auto Innovators estimated that OEMs may spend around 50 hours searching the IMDS system to obtain information on the presence of PFAS in products. We also anticipated that OEMs could spend around 120 hours to search production, service parts, and purchasing records in order to identify suppliers they would need to contact in order to obtain PFAS content information. Auto Innovators expects that further follow-up with all of the suppliers for a product like a vehicle could be as many as a few thousand hours. From just this information it is clear that the burden to reporters should not be expected to be "minimal." It is difficult to more exactly pinpoint expected costs for the industry without more substantive details about how reporting will actually take place and what the system will look like.

PCA should look at cost estimates for similar regulatory efforts to better inform its own cost estimate for the proposed PFAS in Products: Reporting and Fees Rule. For example, PCA should consider the estimates of the reporting burden developed by the EPA for its TSCA 8(a)(7) rule which, although low, recognizes that there are substantial costs for industry to collect and report data. Auto Innovators expects that the process for compliance with Amara's Law will be very similar to the process for compliance with the TSCA 8(a)(7) rule. PCA should also review comments in that docket and revise its costs."

> **RESPONSE:** As the agency detailed in the SONAR, and as this commenter states, the costs to the manufacturer expected as a result of this rule include internal staff time or the cost to hire an external consultant to complete reporting obligations. This cost to collect and compile required reporting information will vary from manufacturer to manufacturer. Initial costs may be higher but are expected to decrease over time as manufacturers build internal systems, gain experience with the process, and complete due diligence requirements within their supply streams. As PFAS information is shared

and verified throughout the supply chain, and parties develop agreements, the overall burden on individual entities is likely to decline. Manufacturers may be able to rely on shared data or declarations from upstream suppliers, further reducing the need for repeated data collection or individual testing. This mirrors the MPCA's findings in other reporting programs, such as air toxics, where initial compliance costs were higher but declined after systems were established. The MPCA anticipates a similar pattern here as reporting systems mature and supply chain communication improves.

The MPCA anticipates that there will be some overlap between EPA's TSCA reporting and this proposed rule. This will result in some shared costs; where manufacturers reporting under TSCA can use some of that information to report under Minnesota's PFAS in product reporting rule. The MPCA would like to note that TSCA reporting requires manufacturers to retroactively report PFAS in product information dating back to January 1, 2011 and other items not in the proposed rule, whereas the proposed rule requires manufacturers to report current PFAS in product information.

The MPCA would also like to clarify that the estimated $6 million implementation cost is over a period of nine years and includes the cost to implement the CUU rule.

Unrelated PFAS rule comments:

Cortina-1 "The halogenated clean agents (HCAs) used for fire protection that meet the definition of PFAS in the Minnesota law are FK-5-1-12, HFC-227ea, HFC-125, HFC-236fa, 2-BTP and HCFC Blend B. On March 1, 2024, HARC submitted comments to MPCA on the need for a currently unavoidable use determination for HCAs used in fire protection. HARC's comments noted that there are important uses of HCAs in facility, aviation and military applications for which nonPFAS alternatives do not exist and are not currently in development. As such we expect there to be continuing uses of HCAs for fire protection well beyond January 1, 2032."

Mwanza-2: included an attachment with an abstract that stated, "This document provides a comprehensive overview of the potential impacts of prohibiting or restricting PFAS on the BioPharma industry. It aims to advocate for the industry and serve as an educational resource for regulatory and government bodies, ensuring that BioPharma is recognized as a significant user case in PFAS-related consultations. The paper highlights the critical role of PFAS in manufacturing processes and products within the BioPharma sector, emphasizing the potential consequences of restricting these substances. It underscores the importance of balancing environmental concerns with the need to maintain the supply of essential medicines to patients... BioPhorum's response advocates for full exemptions or time-unlimited derogations for essential PFAS materials used in biopharmaceutical manufacturing, highlighting the industry's commitment to patient safety and environmental integrity."

Thomas-2: "Terumo BCT urges MCPA to consider expeditiously issuing a request for comments on "current unavoidable use" of PFAS, under subdivision 5. While FDA regulated medical technology is exempt from subdivision 5, our suppliers are not. The industry is extremely concerned about the resiliency of our supply chain if additional suppliers exit the market without substitutes that meet the unique properties necessary to maintain FDA standards for medical devices and packaging.

Advancing the rulemaking process for subdivision 5(c) and issuing a list of products not subject to the ban well in advance of 2032 would provide clarity to manufacturers about the potential supply chain risks and prevent disruptions to critical infrastructure, including health care.

We are also encouraging MPCA to pursue some form of information collection request (ICR) to better inform the regulator of the current state on PFAS by industry type before finalizing a rule. This could be done confidentially without the need for disclosing proprietary information and would allow for a more considered approach to addressing this issue. This has been done in the past and did give the regulator a better footing for a risk reduction-based approach in a final rule."

Friest-4: "The MPAC has chosen to treat the currently unavoidable use (CUU) determination as a separate rule but they have yet to release a rule proposal related to the criteria to be used and the process that will be implemented to make CUU determinations. They have sought initial input on the CUU determination process and EMA submitted comments on February 28, 2024.

The reporting rule and the CUU determination process cannot reasonably be considered in isolation from each other. EMA's members are manufacturers of complex products with a significant number of components that may contain PFAS. It is also likely that substitutes for the use of PFAS will not be readily available for many of the current uses in the products that EMA members produce. Manufacturers will need to seek CUU determinations to allow them to continue to sell products in Minnesota that contain PFAS. The initial information shared by MPCA in 2024 related to the approach to CUU determinations, outlined an approach that is extremely burdensome, time-consuming and challenging. That information was preliminary in nature and a rule proposal has yet to be released. The failure of the MPAC to complete and make available for comment, a CUU rule proposal, concurrently with the reporting and fees rule proposal, severely undermines the ability of manufacturers to fully assess, comprehend and comment on the aspects of the PFAS approach that have been released for comment. The impacts of reporting and the process for seeking CUU determinations are cumulative in impact and will apply to the same entities.

Manufacturers will need to consider the reasonableness of the CUU determination process, and assess their ability to seek and secure CUU determinations where necessary, while also

considering the burden of PFAS reporting. Manufacturers must also consider the feasibility of the reporting system that has yet to be identified and tested and whose functional capabilities are not fully established, according to MPCA.

Furthermore, contrary to the assertion of MPCA on page 46 of the Statement of Need and Reasonableness, manufacturers can support the essential need of PFAS in their products for the CUU rule, without the burden of the reporting rule. The reporting rule should not be viewed as a necessary precursor to the CUU determination.

The reporting rule and the CUU determination each have the potential to impact product availability in the state and manufacturers will consider the feasibility of the reporting rule and their ability to successfully secure CUU determinations as they assess the implications of the PFAS reporting rule and yet to be proposed CUU rule. In fact, it is unreasonable to separate the assessment of the reporting rule and the CUU rule. If the CUU proposed rule is infeasible, manufacturers will be unwilling to assume the burden of reporting, knowing that they will be unable to clear the hurdle of the CUU determination. Moreover, if the burden of reporting, or the burden of seeking a CUU determination, or the combined burden, is too excessive, manufacturers will act accordingly. The burden of each rule rests on the same entity and must be considered together to fairly assess the need and reasonableness of each part."

Rydkin-1 (pre-hearing comment and hearing testimony): "The absence of a finalized rule, and no published Currently Unavoidable Use (CUU) rule, creates uncertainty and makes it difficult for affected parties to begin the necessary preparations for compliance. Changes in the final rule, or adopted provisions in a CUU rule, could necessitate significant and costly adjustments to any preliminary steps taken."

Malcore-1: Submitted a comment meant for the Maine Department of Environmental Protection.

Turner-1: "Exemptions in the planned Rule-Request that MPCA promulgate a rulemaking designating fluoropolymer (and fluoropolymer-containing products) used in industrial applications as " Currently unavoidable uses" and therefore, exempt from and future sale or distribution prohibitions in the state of Minnesota Pursuant Section 116.943."

Palin-6 (pre-hearing comment and hearing testimony): "Upcoming Currently Avoidable Use Rulemaking: Auto Innovators is also interested in further information on PCA's upcoming currently unavoidable use rulemaking, as members of the automotive industry will be applying for currently unavoidable use status for PFAS used in vehicles. We hope that PCA will be issuing that rulemaking soon, as the sooner that it is finalized and the automotive industry can apply for a currently unavoidable use finding, the sooner it will provide certainty for the automotive

industry, which could use this sort of information given its long development and production timelines.

Auto Innovators wonders whether reporting is required if a manufacturer receives a currently unavoidable use exemption grant, and whether the answer to that question changes after 2032 when the complete phase-out takes effect. We recommend that manufacturers that receive a currently unavoidable use exemption should not be required to report, as this will lessen the reporting burden on those uses."

> **RESPONSE:** While the MPCA appreciates that commenters are interested and engaged in the PFAS in Products CUU rule, these comments are out of scope for the purposes of the reporting and fees rule. The information reported to the agency under this rule may be considered during the implementation of the CUU rule, however, the two rules are distinct.
>
> Pursuant to Minn. Stat. § 116.943 subd. 2, "...a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS must submit to the commissioner...", whereas under subd. 5, "The commissioner may specify specific products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use." Based on this language provided in statute by the Legislature, a manufacturer must report, and the commissioner may make CUU determinations. Because the term "must" is mandatory, and the term "may" is permissive, the MPCA reaffirms that the PFAS in Products Reporting and Fees rule is reasonably kept separate from the PFAS in Products CUU rule.
>
> The statute also dictated that PFAS reporting must occur on or before January 1, 2026, whereas the PFAS in product prohibitions do not go into effect until January 1, 2032.

Iizuka-2: "In the proposed "HF16276", the description "commercial or industrial" is deleted from the definition of (q) Product in Subdivision 1 Definitions of Section 1. Also, the description "a prosthetic or orthotic device or to any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration" in subdivision 8(b) of the proposal "HF1627A17". If these proposals are approved, the decisions should be applied to the reporting proposal."

> **RESPONSE:** HF1627[1] and its companion, SF 2164[2], have not been approved as of the date of this response to comments, and are therefore out of scope for this rulemaking.

[1] https://www.revisor.mn.gov/bills/bill.php?b=house&f=HF1627&ssn=0&y=2025
[2] https://www.revisor.mn.gov/bills/bill.php?view=chrono&f=SF2164&y=2025&ssn=0&b=senate#actions

Comments Specific to the Proposed Rules

The MPCA received 244 comments related to specific rule parts which are listed and responded to as follows. The remaining comments specific to the proposed rule not listed in this document will be addressed in a "Part 2" response to comments document.

Part 7026.0010 DEFINITIONS

Definition of "Authorized representative"

Prero-5: "Subp. 2. Authorized representative. "Authorized representative" means a person designated by a manufacturer to report on behalf of the manufacturer. CUC requests clarification from MPCA as to the intent of this definition. For example, MPCA could simply intend for an individual who is a representative of the manufacturer to report, or MPCA could intend for someone who has more direct or intimate knowledge of the actual product composition to be the authorized representative for reporting. If MPCA has no preference, it would be helpful if MPCA could explicitly indicate such."

> **RESPONSE:** The MPCA appreciates the request for clarification on the definition of "authorized representative" in part 7026.0020, subpart 2. The intent of this definition is to allow manufacturers flexibility in designating a person or entity to submit required information on their behalf. This may be an employee of the manufacturer or a third party such as a consultant, distributor, or industry association, depending on the manufacturer's reporting approach.
>
> The MPCA does not prescribe specific qualifications or require that the authorized representative have detailed product composition knowledge, provided the individual or entity is able to submit accurate and complete information as required under the rule. The manufacturer remains responsible for the accuracy and completeness of the information submitted, regardless of who is designated as the authorized representative.
>
> The MPCA has provided justification for defining "authorized representative" as discussed on page 24 of the SONAR.

Definition of "Brief description of the product"

Hall-1: "7026.0010, subp. 4 "character limited description of a product"

• MPCA should clarify what is meant by this proposed language.

• MPCA should clarify who decides how many characters are allowed."

Branstad-2: "Brief description of the product. We are unable to provide a meaningful comment on the proposed definition because MPCA has not provided a description of the size and nature of the character-limited description."

RESPONSE: The MPCA has provided justification for defining "brief description of the product" as discussed on page 24 of the SONAR. It is expected that this description will be brief, as the definition details, and have a limited character count according to the parameters that the MPCA sets in the reporting system. The MPCA believes that this definition is clear in that the "brief description of the product" includes, "brand name, product model, and other characteristics that distinguish the product or grouping of products from similar products made or sold by other manufacturers" whenever applicable.

The MPCA expects this to be an open text field with a set character limit, which will be specified in the reporting guidance and instructions prior to system launch.

Definition of "Chemical identifying number"

Thomas-3: "Chemical identifying number: It is also possible that one chemical identifying name may correspond to different names for the same chemical, so we would ask this definition to be updated to include: "A particular chemical may have more than one chemical identifying number, *and one chemical identifying name may correspond to different names for the same chemical.*""

Hall-2: "7026.0010, subp. 5 "A particular chemical may have more than one chemical identifying number, and one chemical identifying name may correspond to different names for the same chemical.

• Our recommended added language will help reporting entities be aware of potential variations in potentially responsive information.

• The vast and complex global supply chains from which MPCA is seeking to information for reporting already has to negotiate an immense volume of data that contains variations in names/numbers and data management systems that significantly intensifies the resources and time needed to provide the requested information. The additional complexity from the

variations in chemical names/numbers compounds this challenge and emphasizes the need for additional time."

> **RESPONSE:** The MPCA understands the complexities involved in navigating chemical data across global supply chains. However, the definition in question is intended to address "chemical identifying number," not "chemical name". While the agency agrees that one substance may be associated with multiple names or identifiers, this concept is more appropriately addressed in the guidance for reporting, rather than in the definition itself. The MPCA will consider clarifying guidance to help reporting entities reconcile naming and numbering variations during data collection and submission. At this time, the agency does not believe this suggestion provides additional clarity to the proposed rule.

McGowan-1: "Chemical Identifying Number. Submitters should be permitted to use any acceptable chemical identifying number in their reports, regardless of whether a CAS number exists for a substance."

Branstad-3: "Chemical identifying number. We support the flexibility afforded in the proposed definition; however, as discussed under 7026.0030, submitters should be permitted to use any acceptable chemical identifying number in their reports, regardless of whether a CAS number exists for a substance."

> **RESPONSE:** The MPCA agrees that manufacturers or groups of manufacturers should be able to report additional chemical identifying numbers besides CASRN's, which is why the MPCA has proposed a definition of "Chemical identifying number". The proposed definition also includes, European Community (EC) numbers, United States Environmental Protection Agency Toxic Substances Control Act accession numbers, or another unique alphanumeric or numeric identifier used in commerce, in research, and by governments to cross-reference all information available on a particular chemical. Although the agency requires that the CASRN be reported if one exists under part 7026.0030 subp. 1, item B, subitem (2), it also gives manufacturers the option to report another chemical identifying number if no CASRN exists. The MPCA has provided additional justification for defining "chemical identifying number" as discussed on page 24 of the SONAR.

Definition of "Chemical name"

Turner-2: "IUPAC chemical names cannot be easily determines. Propose widely-recognized general chemical names, as used in commerce, research, and by governments could also be used, similarly to what is allowed under subp5. In the definition of chemical identification number."

McGowan-2: "Chemical Name. Manufacturers should be allowed to provide MPCA with chemical names other than specific IUPAC names. Since, for proprietary chemicals, specific IUPAC names are often trade secret and confidential information, it is reasonable to expect that manufacturers of proprietary PFAS chemicals will in many cases be unwilling to share specific IUPAC chemical names with other manufacturers further down the supply chain (or across multiple supply chains). For this reason, submitters should be permitted to provide commercial or trade names as an alternative to specific IUPAC names. Specifically, we urge MPCA to modify the definition of "chemical name" to include the IUPAC name for the substance, the trade name for the substance, or the name associated with the substance's chemical identifying number."

Branstad-4: "Chemical name. We do not agree that a specific IUCPAC chemical name is necessary if a chemical identifying number is provided. It is also reasonable to anticipate that manufacturers of proprietary chemicals with confidential chemical identities will not risk the potential revelation of such confidential chemical identity information by manufacturers situated far down a complex global supply chain. Once such information is revealed, it affects and may nullify a manufacturer's ability to protect its proprietary information globally. Submitters should be permitted to provide commercial or trade names as an alternative to specific IUPAC names. Therefore, we urge MPCA to modify the definition of "chemical name" to include the IUPAC name for the substance, the trade name for the substance, or the name associated with the substance's chemical identifying number. We suggest adding the following sentence to the end of the currently proposed definition of "Chemical name": Where the IUPAC name is proprietary or unavailable, the trade or commercial name or the non-confidential chemical name associated with the United States Environmental Protection Agency Toxic Substance Control Act (TSCA) accession number or other chemical identifying number."

McGowan-3: "Chemical Name. Manufacturers should be allowed to provide MPCA with chemical names other than specific IUPAC names. Since, for proprietary chemicals, specific IUPAC names are often trade secret and confidential information, it is reasonable to expect that manufacturers of proprietary PFAS chemicals will in many cases be unwilling to share specific IUPAC chemical names with other manufacturers further down the supply chain (or across multiple supply chains)."

> **RESPONSE:** The MPCA understands the concern for trade secret information and recognizes that the specific identities of PFAS chemicals are often treated as confidential

business information. The agency has provided in rule under part 7026.0070 subp. 1 item A that the chemical name is eligible to be considered not public information in a trade secret data request.

The MPCA selected the IUPAC name as the preferred format for “chemical name” because it provides a consistent, internationally recognized standard that enables accurate identification of substances across jurisdictions. Using the IUPAC name minimizes ambiguity that may arise from regional trade names or abbreviations and ensures that reported data can be reliably cross-referenced with regulatory, scientific, and hazard databases. This consistency supports the MPCA’s objectives for data quality, interoperability, and transparency in product-level PFAS tracking.

The MPCA has provided justification for defining “Chemical name” as discussed on page 24 of the SONAR. 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.

Definition of “Component”

Davis-1 (pre-hearing comment and hearing testimony): “AHRI requests clarity on the term “packaging” within the definition of “component.” As written, it would appear that a packaging of a product, though not intended to be the sale product, would be included in this rule.”

Prero-6: “Subp. 7. Component. "Component" means a distinct and identifiable element or constituent of a product. Component includes packaging only when the packaging is inseparable or integral to the final product's containment, dispensing, or preservation. Complex finished products may contain a multitude of individual and potentially integrated components. For example, a passenger automobile/vehicle could have an air conditioning system that is charged with a PFAS refrigerant or refrigerant blend. The system may also have PFAS containing seals, gaskets, nuts, bolts, wires, and hoses that are all individual components, but would be difficult to identify as distinct unless the system was completely disassembled. CUC requests that MPCA clarify the meaning of a “distinct and identifiable element or constituent of a product.” Ascertaining whether every small component of a complex manufactured good may be impossible, and at a minimum would impose a significant burden on manufacturers.

The definition of “Identifiable element” makes understanding the meaning of a component even more confusing. "Identifiable element” is defined as “an element that can be recognized, distinguished, or discerned, even when not visually evident, as in the case of a mixture or formulation.” This appears to indicate that literally everything and anything is considered a

"component." It may be impossible to discern the various substances in a mixture or formulation once it is complete. To categorize an element as "identifiable" simply because at one point in time it was separate and distinct from others renders the definition meaningless. If MPCA truly means that a manufacturer must account for literally every molecule of a product, breaking down the constituent components of every single drop of adhesive, coating, lubricant, colorant, solder, regardless of how much of the substance is present in the product, MPCA is placing a mammoth compliance burden - assuming it can actually be achieved - on manufacturers. CUC requests that MPCA reconsider this definition in light of the significant burden it would impose contrasted with the limited utility of information that would likely be gleaned from requiring such an evaluation."

Fisher-1: "In evaluating the proposed regulations, we are unsure how the definition of products with intentionally added PFAS might apply to our member's products—flexible packaging—as there are a few different explanations across the regulations. We suggest some additional clarity is merited as follows:

7026.0010 Subp.7. ("Component") Per the regulation a component "means a distinct and identifiable element or constituent of a product. Component includes packaging only when the packaging is inseparable or integral to the final products containment, dispensing or preservation.

Subp16 ("Packaging) Refers to Minnesota Statute section 115A.03 which defines packaging as "a container and any appurtenant material that provides a means of transporting, marketing, protecting or handling a product. "Packaging" includes pallets and packaging such as blocking, bracing, cushioning, weatherproofing, strapping, coating, closures, inks, dyes, pigments and labels."

We are interpreting the regulation to require reporting on all packaging formats and components containing intentionally added PFAS, and that we should define them as either components or packaging under the description. Further clarity within the regulations to set the boundary of when packaging is considered a product requiring reporting or not would be helpful. If our interpretation is correct, we recommend adding a line to 7026.0020 Subpart1 "Scope" that states: "a manufacturer or group of manufacturers of a product and its packaging sold…"

Furthermore, while we believe it is implied in the statutory language that food service packaging would be exempt from this regulation due to the state's prohibition on intentionally added PFAS in food packaging products (Minnesota State 325F.05), some additional language within the regulations to clarify this would be beneficial."

Hardwick-2: "MPCA should clarify the definitions of product, component, and homogeneous materials. For example, the current definition of "component" under the proposed rules means "a distinct and identifiable element or constituent of a product." This definition does not sufficiently articulate whether dyes, colorings, and coatings are themselves "components" or whether the definition of a "component" applies only to the product element to which that dye, coloring, or coating is applied."

Schilling-1: "PCPC remains concerned about the definition of "product component" as it relates to cosmetic packaging.

Minn. Stat. § 116.943(1)(l) defines intentionally added PFAS as "PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function." Further, §116.943(1)(q) defines "product component" as "an identifiable component of the product, regardless of whether the manufacturer of the product is the manufacturer of the component." During a webinar offered by MPCA on July 25, 2024, the following statement was displayed on screen:

"Only the product packaging which is integral to contain, protect, or dispense the product is considered a product component and is included in the 2025 prohibition….Ex: a manufacturer is selling lip balm, the lip balm and the tube used to contain the lip balm are considered a cosmetic product and are subject to the 2025 prohibition. The plastic mold adhered to the cardboard used to handle and display the lip balm would not be considered a product component."

This same language was subsequently found on the MPCA website and lined in a Q&A document.

MPCA's interpretation of "product component" is vague, broad, and ambiguous. Despite concerns raised by PCPC in comments submitted in December 2024 and during a meeting with MPCA officials in January 2025, the proposed final rules fail to provide sufficient guidance on what MPCA considers a "product component" when it comes to cosmetic product packaging. PCPC requests that the Administrative Law Judge not accept and enact the proposed final PFAS rules until MPCA either (a) refines the definition of "product component" to clearly exclude packaging, or (b) provides the industry with specific, enforceable guidance on how "integral" packaging is defined and evaluated."

Branstad-5: "Component. The proposed definition of component would cover packaging "only when the packaging is inseparable or integral to the final product's containment, dispensing, or preservation." This element of the proposed definition goes far beyond MPCA's statutory

authority, which is unreasonable. The statute does not contain the world “packaging”, much less contemplate oversight and reporting of packaging as a product component in the highly generic way articulated in the proposed definition. MPCA’s statutory authority is limited to product and product components that contain intentionally added PFAS, which is not reflected in the proposed definition, and MPCA appears to acknowledge that fact in the Statement. We therefore suggest the following clarifying language: “Component” means a distinct and identifiable element or constituent of a product. Component incudes packaging only when the packaging contains intentionally added PFAS, and is inseparable or integral to the final product’s intended function or use containment, dispensing, or preservation, and when the packaging is the product. Still, even with our proposed modification, the proposed definition is difficult to square with real world examples of how products are shipped in commerce. For example, Company A produces a substance that it delivers to its customer, Company B, in sealable bins manufactured by Company C. The sealable bins are used to contain the product during transit and preserve its purity by protecting it from dust, moisture, or other sources of contamination. When Company B receives the product, it dumps the product into a hopper or other holding equipment, and Company A takes the sealable bins back for reuse. If the sealable bins contain a gasket or other component that contains intentionally added PFAS, would MPCA consider the gasket a “component” of the product that was contained in (and subsequently removed from) the sealable bin? Under what circumstances would MPCA see any of the companies having a reporting obligation? If the sealable bins were themselves sold as a product in Minnesota, we could see that Company C (or the first seller or distributor of Company C’s sealable bins in Minnesota) could have a reporting obligation, but we cannot deduce from the proposed definition how MPCA would see potential obligations for Company A or B. It is unreasonable that assignation of responsibility and, therefore, an understanding of a company’s potential compliance obligations are so unclear this close to the reporting deadline.”

Melkonian-1: "AMERIPEN is extremely concerned with this provision, as it expands the scope of the law beyond its statutory design. Under Amara’s Law, “product” is defined as “an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including but not limited to its product components, sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products.” Given that definition, a product is an item that can be packaged but is not packaging itself, and can include the subsidiary components intrinsic to that item. While the law also explicitly exempts food packaging, it does so because there is an existing law that specifically regulates PFAS in food packaging and it does not affect the interpretation of “product.” Given the clear definition of the law, AMERIPEN requests that the last sentence in paragraph (7) be stricken and replaced with the following: “Component does not include packaging.””

RESPONSE: The MPCA received a number of comments about the definition of component. They had similar themes about the inclusion of integral packaging and concerns that the definition is overly broad. The following response addresses the group of comments above.

The MPCA appreciates the detailed feedback and recognizes the strong stakeholder interest in the definitions of "component," "identifiable element," and the role of packaging under the proposed PFAS in Products rule. The agency has provided justification for the definition of "component" on pages 24–25 of the SONAR, and for "identifiable element" on page 26.

The MPCA's intent with the definition of component in part 7026.0010, subpart 7 is to include product elements that are distinguishable and reasonably separable for the purposes of PFAS reporting, consistent with statutory direction to gather information on products and their components that contain intentionally added PFAS. The inclusion of packaging in this definition is limited to instances where packaging is integral to the containment, dispensing, or preservation of the product and would remain with the product through its intended use. Packaging that is incidental to transport, display, or marketing; such as cardboard backings, shrink wrap, or shipping containers is not considered a component and is not subject to reporting.

The MPCA acknowledges that determining what constitutes a "distinct and identifiable element" may be challenging for highly integrated or complex products. The agency does not expect manufacturers to disassemble every component to the molecular level. Instead, the intent is to capture components that are reasonably known and separable in the course of business; such as major subassemblies or product parts, not microscopic constituents or trace ingredients within adhesives or coatings unless they are separately manufactured or sourced.

Regarding identifiable element, the MPCA included this language to ensure that reportable PFAS incorporated in mixtures or formulations; common in coatings, adhesives, or plastics; are not excluded simply because they are not visually distinct.

The proposed rule includes packaging only when it is an integral component of the product; for example, a lip balm tube that is necessary for the product's use. MPCA does not intend to require reporting of packaging that serves only marketing or distribution functions.

Definition of "Consumer"

Zaman-1 (pre-hearing comment and hearing testimony): "ACA recommends not finalizing the proposed definition of "consumer." The definition seeks to establish a novel definition of consumer within the context of this law. The proposed definition conflicts with common understanding, the understanding within industry and common use in other legislation. Redefining consumer for the purpose of this rule, causes confusion, instead of bringing clarity about the scope of the rule... MPCA's proposed definition is confusing and antithetical to the common and existing legal definition of consumer product. ACA recommends not finalizing this definition."

> **RESPONSE:** The MPCA has provided justification for defining "Consumer" as discussed on page 25 of the SONAR. The commenter above references an existing statutory definition of consumer only applicable to individual or personal use whereas Minn. Stat. §116.943 refers to products "sold or distributed for personal, residential, commercial, or industrial use". This infers that consumers are not only persons using a product for personal or residential use; consumers may also be other commercial or industrial entities purchasing a product that contains intentionally added PFAS or PFAS itself. As such, the MPCA believes that it is important to define "consumer" under this rule and that the definition provides clarity as to what "consumer" means in relation to this rule.

Definition of "Homogenous material"

Kallen-2 (pre-hearing comment and hearing testimony): "The term "homogenous material" is used only twice in the Proposed Rule (lines 5.14 and 7.4). Both uses reference a product or products "made up of homogenous material." Since all products are made up of many homogenous materials, the term has no regulatory meaning as used in the Proposed Rule. SEMI and SIA therefore recommend that all references to "homogenous material" – including the definition in lines 2.14 – 2.16 – be removed."

> **RESPONSE:** The MPCA respectfully disagrees with this comment. The regulatory intent of including this definition is to establish under what circumstances products may be reported in a group. A product that is not made up of homogenous material may contain additional components that can be further separated or disjointed that must then be reported, though those components may then be reported as a group. The MPCA has provided justification for defining "Homogenous material" as discussed on page 26 of the SONAR.

Definition of "Identifiable element"

Bemus-2 (pre-hearing comment and hearing testimony): "The definition of "Identifiable element" appears to indicate that literally everything and anything is considered a "component." … this definition must be modified so that identifiable elements are truly distinct and separate components that appear as such to the consumer."

> **RESPONSE:** The MPCA believes that providing this definition clarifies that not "everything" is a component, but those "elements that can be recognized, distinguished, or discerned..." are. The definition also provides that in mixtures or formulations, the identifiable element may not be visually evident but can still be discerned. The MPCA has provided additional justification for defining "Identifiable element" as discussed on page 26 of the SONAR.

Definition of "Manufacturer"

Davis-2 (pre-hearing comment and hearing testimony): "In this proposed rule, the term "Manufacturer" includes the entity that manufactures a product or whose brand name is legally affixed to the product. However, there are numerous circumstances when two different entities meet that definition: one may manufacture the product and the other may legally affix their name to the product. In such circumstances, it is not clear who the "manufacturer" is, and therefore, which entity has the obligation to fulfill MPCA's reporting requirement."

Tom-1: "We find the definitions section broadly appropriate and aligned with statutory intent. We believe the term "manufacturer" would benefit from additional clarification to explicitly include importers and brand owners who place products on the Minnesota market, particularly in global supply chain scenarios where manufacturing, branding, and sales are distributed across different parties (7026.0010)."

Frederick-1: "Additional clarity is needed around the term manufacturer. There are circumstances in which two different entities meet the current definition for the same product."

AdvaMed asks MPCA to clarify which party is responsible for reporting in cases of branded products, license agreements, or distributor-controlled sales, especially when the actual manufacturer may not know the product was sold into Minnesota.

McGowan-4: “The proposed definition of “manufacturer” creates substantial uncertainty regarding the entity or entities that bear primary responsibility for reporting on a product—which can be expected to result in widespread overreporting and/or non-compliance. We urge MPCA to specify in the regulations that primary responsibility for reporting a product containing intentionally added PFAS falls on the entity that first sells the product or offers the product for sale in the State of Minnesota. Only these entities will know with certainty which products are sold in the State, and placing responsibility squarely on these entities will help ensure that there will be no double counting of products sold or offered for sale. Accordingly, to provide added clarity, we urge MPCA to modify the proposed definition as follows: "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product, 3 whichever is first to sell, offer for sale, or distribute for sale the product in the state. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.”

Prero-7: “Subp. 14. Manufacturer "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.

There are circumstances when two different entities meet that definition: one may manufacture the product and the other may legally affix their name to the product. In such a circumstance, it is not clear who the “manufacturer” is and therefore which entity has the compliance obligation. MPCA should clarify which entity has the primary obligation to report.”

Michaud-1: “We suggest the following definition of ‘Manufacturer:’ The person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state…”

Thomas-4: “Manufacturer: Additional clarity is needed around the term manufacturer. There are circumstances in which two different entities meet the current definition for the same product. One manufacturer may manufacture the product, and another may legally affix their name to that product. In this circumstance it is unclear who the “manufacturer” is, and which entity is responsible for reporting.

Additionally, this proposed rule does not adequately account for manufacturers whose products are sold by distributors and may be unaware that their products are being offered for sale in Minnesota. In this situation, they may be unable to report under this rule and we would recommend that there be an ability for the distributor to report instead of the manufacturer in situations like this. There could also be a similar situation in which a manufacturer licenses their logo-branded product but does not sell the product. In this situation, there should also be a provision for the reporting requirement to be managed by the licensee not the licensor. A similar situation would arise in which the original manufacturer is not the entity completing the sale through an online platform and may not be able to track that transaction or have control over it."

Branstad-6: "Manufacturer. The proposed definition of "manufacturer" does not provide necessary clarity to identify the entity ("manufacturer") who has primary compliance responsibility. As noted in previous comments to MPCA, we predict significant confusion and a high likelihood of duplicative or otherwise inaccurate reporting emerging from the current definition of manufacturer, which includes companies whose brand is attached to a product in addition to an actual producer of a good. We are concerned that duplicative reporting will likely result in a meaningful overestimation of the amount of PFAS in products in Minnesota and any conclusions about human or environmental exposure based on such estimates. MPCA's lack of a risk-based approach by grouping all PFAS together with no regard to their diverse chemical, physical, and toxicological properties compounds such concerns. For example, consider a scenario in which Company A contracts Company B to manufacture a private label product carrying Company A's brand name and logo. Based on the proposed regulatory definition, both Company A (the brand owner) and Company B (the producer of the product) would be "manufacturers" with reporting obligations for the same product. Company A will likely be unable to submit the report described at 7026.0030 because, in the case of brand licensing, the licensor typically has no visibility or oversight of its licensees' supply chains. Company A is unlikely to know the components that go into Company B's product and whether Company B uses intentionally added PFAS, much less the specific type or concentration (among other things). It is unreasonable to lay the compliance burden on Company A. The sale of products by independent distributors presents a different and perhaps more difficult challenge. For example, consider a scenario in which a manufacturer (Company A) manufactures a product bearing Company A's brand name and logo and sells that product to an independent distributor located outside of Minnesota. Company A does not sell its product to purchasers in Minnesota, but, unbeknownst to Company A, the out-of-state distributor sells Company A's product to a Minnesota purchaser. In this scenario, Company A would appear to bear sole responsibility for reporting its product to the Agency, based on the proposed definition, even though Company A has no idea that its product is being sold in the State. This is not an uncommon scenario. Again,

it is unreasonable to lay the compliance burden on Company A. As these examples illustrate, the proposed definition creates confusion and uncertainty about the entity that is required to report a product and, in many instances, would place the burden of reporting on an entity that has no visibility on whether its product is being sold in Minnesota. To address this concern, the regulation must provide greater clarity concerning the entities that will be responsible for reporting. In particular, we urge the Agency to specify in the regulations that primary responsibility for reporting a product containing intentionally added PFAS falls on the entity that first sells the product or offers the product for sale in the State of Minnesota. Only these entities will know with certainty which products are sold in the State, and placing responsibility squarely on these entities will help reduce the possible double counting of products sold or offered for sale. We strongly recommend that, in an attempt to add clarity, MPCA consider the following changes to the proposed definition: "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state."

Rhoderick-1: "We suggest the following definition of "Manufacturer:" The person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. In addition, under 7026.0020, Subpart 1 and 2, can this be modified to allow a parent company to submit one report and pay one fee that covers the final products, component parts, brand names and subsidiaries? This would allow only one fee to be payable and reduce duplicate reporting."

Keane-3: "The proposed definition of "manufacturer" does not provide clarity on identity who has primary compliance responsibilities. We anticipate significant confusion and a high likelihood of duplicative reporting. For example, many manufacturers are not based in the United States and have little knowledge of a product's ultimate destination. Manufacturers rely on importers and regional distributors to supply products to a state, sometimes without their knowledge. Minnesota's regulation unfairly places the burden of reporting on an entity that may have no visibility into whether its products are entering the Minnesota market. We

encourage MPCA to further clarify and simplify reporting responsibilities for complicated relationships and supply chains—such as Tier 1, 2, and 3 suppliers, domestic manufacturers, foreign manufacturers, OEMs, private labelers, licensed products, distributors, and retailers. MPCA should clarify this to the greatest extent possible and consider providing illustrative scenarios outlining who is responsible in various situations, as DOE has done to clarify its own certification responsibilities and who qualifies as the "manufacturer." We also recommend that MPCA generate a table that outlines the reporting hierarchy for domestic and international manufacturers and allow third parties to report on behalf of manufacturers."

McGowan-5: "Manufacturer Definition. We urge MPCA to specify in the regulations that primary responsibility for reporting a product containing intentionally added PFAS falls on the entity that first sells the product or offers the product for sale in the State of Minnesota... In the case of a product that is imported into the United States... manufacturer means either the importer or domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state."

> **RESPONSE:** The MPCA has provided justification for defining "Manufacturer" as discussed on page 26 of the SONAR. 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.
>
> By including importers and first domestic distributors when the original manufacturer or brand owner lacks a U.S. presence or direct knowledge of sales in Minnesota, the rule ensures that the entity with the greatest visibility and control over product sales in Minnesota carries the primary compliance responsibility. This reduces the risk of non-compliance due to lack of awareness and minimizes duplicate reporting obligations.
>
> This definition aligns with statutory intent by covering all parties reasonably responsible for bringing products containing intentionally added PFAS into the Minnesota market. It balances the need for comprehensive reporting with the practical need to assign responsibility to parties able to provide accurate information about products sold in the state.
>
> This definition promotes clarity and enforceability, as entities first selling or distributing the product in Minnesota are best positioned to know whether products contain intentionally added PFAS, thereby supporting accurate reporting and effective regulatory oversight.
>
> Finally, regarding duplicative reporting. It doesn't matter if the same product is reported twice because MPCA is not looking for total amount of PFAS, but rather what products contain PFAS and at what concentration. If manufacturers want to reduce

duplicative reporting, they can work with the supply chain and report on behalf of each other. The current rule allows that flexibility.

Definition of "Packaging"

Thomas-5: "Packaging: Terumo BCT appreciates the MPCA addressing packaging in a previous FAQ and would ask that interpretation and clarification from MPCA is included in the final rule to help provide additional guidance."

RESPONSE: Reporting on packaging is only required if it is a component of the product that is inseparable or integral to the final products containment, dispensing, or preservation, as noted in the definition of component.

Definition of "Publicly available"

Hall-3: "7026.0010, subp. 17 "Publicly available" means lawfully available to the public from federal, state, or local government records or disclosures made to the public that are required by federal, state, or local law. <u>For purposes of this rule only, publicly available also includes non-trade secret reporting information submitted to MPCA as required by this rule.</u>

• Once MPCA has received required reporting information, that information should be made available to manufacturers subject to this reporting rule to reference and/or incorporate into their incorporating responses.

• MPCA can establish mechanisms to receive data to facilitate access to regulated reporting entities. (For example, reporting portal could intake data in specific format with ability to populate/search certain fields for MPCA data.)"

RESPONSE: This comment is addressed by part 7026.0020 subp. 2 which already allows manufacturers to report on behalf of another manufacturer or group of manufacturers in the supply chain. This allows groups of manufacturers to consolidate duplicative information. The commenter's request to be able to "search" for data already submitted to the MPCA's reporting portal is more relevant to the implementation of the proposed rule rather than the proposed rule language. If the information meets the definition of "publicly available", it can be referenced, regardless of whether it is publicly available through the MPCA's reporting portal or another state, federal, or local records. The MPCA does not believe that this commenter's suggestion is necessary to provide clarity to the proposed rule.

Definition of "Significant change"

Branstad-7: "Significant change. MPCA could provide better legal clarity by specifying "intentionally added" PFAS and offer the following text: "Significant change" means a change in the composition of a product that results in the addition of a specific intentionally added PFAS not previously reported in a product or component or a measurable change in the amount of a specific intentionally added PFAS from the initial amount reported previously that would move the product into a different concentration range listed under part 7026.0030, subpart 1, item C. We suggest not using the word "initial" as it causes confusion. See our comments below concerning Section 7026.0100."

> **RESPONSE:** The term "significant change" is only used in the proposed rule language under part 7026.0040 Reporting Updates. This section requires updates to the initial report if "a significant change was made to a product". The initial report under part 7026.0030 specifies that the report is required of manufacturers of a product that contains intentionally added PFAS, so any significant change to that product's PFAS would already imply that it is intentionally added if it was submitted in the initial report. The MPCA does not believe that this commenter's suggestion is necessary to add additional clarity to the rule.

Definition of "Substantially equivalent information"

Hall-4: "7026.0010, Subp. 19 ADD: Substantially equivalent information also includes reporting information submitted to MPCA under this rule.

• Manufacturers should be able to leverage data submitted to MPCA by their suppliers even if the suppliers do not provide a notification."

> **RESPONSE:** The MPCA has provided justification for defining "substantially equivalent information" on page 27 of the SONAR. The intent of this definition is to ensure that manufacturers have flexibility to use reliable data from other reporting obligations or sources that meet the same information standards as this rule.
>
> The MPCA strongly encourages manufacturers to retain documentation of any reporting agreements or data-sharing arrangements. If a manufacturer intends to rely on information submitted by another entity to satisfy its own reporting obligation; regardless of whether that entity submitted a separate notification; the agency expects

the manufacturer to notify the MPCA and clearly indicate the source of the information in its own submission.

Definition of "Used product"

Branstad-8: "Used product. The explanation in the Statement does not address the phrase "or that is otherwise offered for resale" in the proposed statute. It speaks only to sales by retailers. We interpret the word "otherwise" in that phrase to mean "not by a retailer" and suggest offsetting the phrase "or that is otherwise offered for resale" with commas to emphasize that difference."

RESPONSE: The MPCA has provided justification for defining "Used" as discussed on page 27 of the SONAR. The use of 'or' is considered by the agency to mean the two separate scenarios: "returned to retailer" and "that is otherwise offered for resale".

Requested Definition of "Complex product"

McArdell-2: "We support the inclusion of the term "complex product" in the rule. Marine products—such as boats—are comprised of thousands of components sourced from global supply chains. These include electronics, fuel systems, seats, coatings, and adhesives, each of which may contain PFAS compounds for specific and often essential performance reasons (e.g., water and oil repellency, chemical resistance).

We urge MPCA to ensure that definitions for "product component" and "complex product" are aligned with terminology used in other jurisdictions (such as the U.S. EPA's TSCA reporting guidance and the European Chemicals Agency's SCIP database), to promote consistency and reduce unnecessary regulatory burden."

Nagy & Tatman-1 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends adoption of a definition for "complex products.""

RESPONSE: Adding a definition for "complex products" is unnecessary because the term is not used anywhere in the proposed rule language nor in Minn. Stat. § 116.943.

The MPCA has received input from manufacturers of complex products in stakeholder meetings as well as through public comment periods. Considerations for complex products are incorporated and discussed in several sections of the SONAR including:

1. 7026.0020 Parties responsible for reporting, subpart 2 on page 27;
2. 7026.0030 Information required in report, Subpart 1, subitem 1 on page 28;
3. 7026.0080 Due diligence on pages 37-38

The MPCA is proposing to allow manufacturers to report on behalf of other manufacturers, to group products or components with similar form, and to clarify due diligence for obtaining information for reporting to ease the regulatory burden for manufacturers of complex products.

Requested Definition of "PFAS"

Erny-2 (pre-hearing comment and hearing testimony): "MPCA should prioritize reporting requirements for PFAS substances that have demonstrated potential for consumer exposure or environmental impact, based on currently available science and data. For example, the US Environmental Protection Agency (EPA) uses a narrower definition of PFAS that focuses on substances that have a known human health risk. RVIA recommends that MPCA aligns its PFAS program to be consistent with Federal requirements where feasible. Therefore, RVIA recommends that MPCA adopt the Federal definition of PFAS."

Tom-2 "Experience from other countries shows that regulations covering all PFAS substances under one definition can cause problems. Not all PFAS are the same - some small-molecule types can be harmful, while others, like long-chain fluoropolymers used in STS products (such as PTFE), are stable, non-reactive, and safely contained within industrial equipment. These materials are essential for products that must withstand high temperatures, pressure, and chemical exposure, such as steam traps and valves. STS uses them only where necessary for performance and safety... Feedback gathered in major European consultations has shown that clear distinctions between harmful and essential uses help create more workable rules. We encourage MPCA to consider a similar approach, one that allows the safe and controlled use of PFAS in industrial systems where no alternatives currently exist, while still meeting environmental goals."

Nagy & Tatman-2 (pre-hearing comment and hearing testimony): "Additionally, the CPMCoalition strongly recommends narrowing the PFAS definition and providing CAS Numbers to increase the workability of the final regulation for both MPCA and the regulated community."

Friest-5: "The proposed PFAS definition is extremely broad and could encompass millions of PFAS chemistries. The MPCA Statement of Need and Reasonableness (page 9) states, "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. 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.”

MPCA recognizes the difficulty in identifying substances according to this definition, but they fail to recognize that imposing the same task on individual manufacturers is unreasonable. They seem to rely on the assumption that manufacturers possess this information or that it can be obtained by manufacturers via persistence in making requests to suppliers. Both assumptions are false. MPCA is ignoring reality and applying a different standard of reasonableness on manufacturers than MPCA would impose on themselves.”

Friest-6: “While EPA has defined PFAS structurally to a more narrow subset of fluorinated chemical components (which must include one of three structures containing multiple saturated or F carbon atoms), Minnesota’s definition, which only requires a component to contain a chemical with one (1) fluorinated carbon atom, is significantly broader and will likely expand the reporting requirements exponentially, to include compounds that are “lightly” fluorinated. EPA explicitly excluded these from reporting requirements. MPCA’s definition goes well beyond the EPA definition without establishing a need or basis for such expansion, including their likely presence in the environment and their toxicity. In prior comments, EMA has requested that MPCA establish de minimus reporting thresholds and provide a defined list of CAS identified PFAS chemistries that are subject to the requirements. The proposed rule does not include such limits. Without reasonable limits on the scope of the requirements, manufacturers face an unworkable task of investigating thousands or more parts in a global supply chain consisting of hundreds or more suppliers. The MPCA definition requires manufacturers to identify and report on any component containing a chemical with one (1) fluorinated carbon atom, which likely includes thousands of chemicals that do not have toxic or persistent qualities of concern. As a starting point, MPCA should align their definition with the EPA definition being used for the purposes of reporting.”

> **RESPONSE:** Minn. Stat. § 116.943 subdivision 1 (p) already defines "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS". The MPCA intends to use the definition that the Legislature provided.

Requested Definition of "Practical detection limit"

Hall-5: "7026.0030, subp 1.A. 2.C.(1)(a) ADD definition for practical detection limit

• Definition is necessary to support consistency in reporting."

> **RESPONSE:** Practical detection limits vary depending on the specific chemical being tested so it the agency did not use this term in the proposed rule and therefore did not feel it necessary to define this term.

Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING

Subpart 1. Scope.

Number of reports required:

McGowan-6: "Subpart 1 of this section appears to require a report for "each" product or component that contains intentionally added PFAS. This is inconsistent with 7026.0030, which allows for product and component grouping within the same report. This language should be changed to "each product or component or group of products or components."

Hall-6: "7026.0020, subp. 1 PREFERRED OPTION: A manufacturer or group of manufacturers of a product sold, offered for sale, or distributed in the state must submit the required reporting information under this rule ~~a report~~ for each product or component that contains intentionally added PFAS. The initial submission of this reporting information is referred to in this part as the "initial report."

OTHER OPTION – ADD: "A manufacturer may file a single consolidated report for all products and components for which it is required to submit the specified reporting information."

• There is concern about protecting CBI under group reporting.

• The incredibly short amount of time creates additional challenges for the group reporting option.

• Our recommended additional language is necessary to allow a manufacturer to submit a single report with the required information on products and components in scope. Otherwise, the volume of independent reports would be overly burdensome and when tied to the fee requirement ($1000 filing fee for a report) suggests a fee is required for every product and not just the manufacturer's overall submission.

Branstad-9: "Subpart 1. This subpart states that a manufacturer (or group of manufacturers) "must submit a report for each product," which could be interpreted to mean that a separate report must be submitted for each product or product component. Elsewhere in the proposed rule and Statement, MPCA makes clear that multiple products can be included in a single report. MPCA should modify the language of Subpart 1 to clarify that multiple products and components may be included in a single report."

McGowan-7: "Subpart 1 of Section 7026.0020 appears to require a report for 'each' product or component that contains intentionally added PFAS. This is inconsistent with 7026.0030, which allows for product and component grouping within the same report. This language should be changed to 'each product or component or group of products or components.'"

> **RESPONSE:** In review of the above comments and the proposed rule language, the MPCA agrees that this language does not clearly articulate the agency's intent to allow manufacturers to submit a single initial report. The MPCA would consider changes to clarify this subpart (see the MPCA's proposal under the section of this document titled 'Changes to the Proposed Rules').

Who must report:

Cross-1: "MPCA interprets Amara's law as imposing an overlapping obligation on each manufacturer of finished products, assemblies, components, subcomponents, and raw materials to report any PFAS that may have been introduced at an earlier stage of the supply chain… ITA questions whether, under a fair reading of Amara's law, all supply-chain members (or importers of parts manufactured by a supply-chain member), as opposed to the finished-product manufacturer, have a legal obligation to report under the statute."

Cross-2: "ITA acknowledges that Amara's law can be read to impose a reporting obligation on supply-chain members other than the finished-product manufacturer, so long as those other supply-chain members sell, offer for sale, or distribute their products in the state. But this does not seem to be MPCA's interpretation, given the SNR's sweeping statement (p. 27), "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." (Emphasis added.) And group reporting only works if all supply-chain members have a reporting duty. Therefore, pending further clarification, ITA assumes that MPCA believes "all members of the supply chain," even those who did not sell, offer for sale, or distribute their products in the state, must report. If this is MPCA's interpretation, ITA cannot agree… Thus, a person who merely manufactures a subcomponent that ends up in a product sold in Minnesota, but who has not sold, offered for sale, or distributed the subcomponent in the state, would have no reporting obligation."

RESPONSE: The commenter seems to misinterpret the intent of this subpart. Subp. 1 does not require a manufacturer to notify all members of its supply chain of reporting requirements, nor does it require all members of the supply chain to submit a report, but rather establishes that a manufacturer (as defined) or group of manufacturers "of a product sold, offered for sale, or distributed in the state... that contains intentionally added PFAS" must submit a report.

The statement that the commenter quoted from the SONAR was meant to recommend that manufacturers consult their supply chain and determine reporting responsibilities as further clarified in the other subparts of this part of rule.

Frisbie-2: "As drafted the Scope creates a potentially signficant ambiguity as to when a manufacturer must report intentionally added PFAS in a product. There are likely many situations in which a manufacturer sells the product to one entity in the chain of distribution (the "first buyer"), and the first buyer then sells the product to another buyer or to an end consumer (the "second buyer"). In many situations it would be impossible for the manufacturer to track a product after it is sold to the first buyer. If the manufacturer sold the product to the first buyer located in another state, and the first buyer sold it to the second buyer that is located in Minnesota without the manufacturer's knowledge, the manufacturer could not report on this sale as the Proposed Rule is drafted.

The Proposed Rule does not address this common situation, and Wabash believes this should be resolved by adding the word "first" as follows (and also including the "distribute for sale" change from above):

A manufacturer or group of manufacturers of a product first sold, <u>first</u> offered for sale, or <u>first</u> distributed for sale in the state must submit a report for each product or component that contains intentionally added PFAS.

Wabash notes that while the Proposed Rule does not address this directly, it does cover a similar concept in the definition of "manufacturer," which ends with the statement:

…In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. Emphasis added.

The same concept should apply to manufacturers within the United States as it does for importers."

Palin-7 (pre-hearing comment and hearing testimony): “Corporate Structures and Reporting: In the draft PFAS in Products: Reporting and Fees Rule, PCA provides little guidance regarding who the reporting entity should be in situations where corporate structures are complex, for example automakers who may have one corporate headquarters entity in their home global region but may have U.S. subsidiaries or affiliates for the United States. EPA, on the other hand, did provide such guidance for TSCA 8(a)(7) PFAS reporting. Absent further guidance from PCA, Auto Innovators’ understanding is that PCA does not have a position on which entity relative to a company’s corporate structure submits the reporting.”

Bennett-2 (hearing testimony): "In many cases, many manufacturers sell products to distributors or third parties. These products would then be resold, possibly multiple times, before they ultimately reach Minnesota. For example, we might sell a product to a distributor in Illinois. That distributor might sell to a dealer in Ohio, who then resells to a contractor or customer in Minnesota. With this kind of indirect tiered sales structure, the manufacturer has no role in placing the product on the Minnesota market and no visibility as to where it ultimately ends up....If extraterritorial regulation is recognized as a valid legal concern, assigning accountability to the first entity that knowingly places the product on a Minnesota market would directly address that issue. This approach would also have the added benefit of generating more accurate and representative data about PFAS-containing products that are actually present in the state. (hearing testimony page 76-77)."

> **RESPONSE:** The MPCA acknowledges that multiple entities may be involved in manufacturing, assembling, or selling a product, and that it would be impractical to account for every scenario in rule. To address this, subpart 1 requires all manufacturers to assume reporting responsibility, while subpart 2 allows manufacturers within the same supply chain to enter into agreements assigning reporting roles. This promotes shared accountability and prevents reporting gaps without requiring the agency to determine which party was “first” to introduce a product into Minnesota commerce.
>
> The MPCA is not proposing that reporting responsibility fall solely on the manufacturer that “first sells, offers for sale, or distributes” a product in the state. In complex supply chains, upstream manufacturers often lack visibility into where and when products enter the market, and downstream entities may not know if they are the “first” to do so. Such a requirement would introduce ambiguity and complicate enforcement. The current structure ensures that at least one responsible party reports, while still allowing flexibility through supply chain agreements.
>
> As outlined in the SONAR (p. 27), a manufacturer may report on behalf of others if the requirements in rule are met. Detailed guidance will be provided once the reporting system is finalized to support practical and compliant submissions.

Thomas-6: "In MINN. R. 7026.0020, Subpart 1, Terumo BCT asks for clarification on the requirement of "each product or component", is it the finished product, each component part, or both?

Terumo BCT Recommendation(s):

• Clarify that the reporting on behalf of other manufacturers (Subpart 2) only relates to products that are components of the final product and not for every component that a manufacturer may produce.

• Provide guidance on how to report if a supplier has gone out of business during a reporting period and the manufacturer cannot access information to complete reporting."

> **RESPONSE:** The manufacturer or group of manufacturers must submit a single report that includes information for each product or component that they sell, offer for sale, or distribute in the state that contains intentionally added PFAS. The MPCA will provide additional reporting guidance in the rule implementation stage for specific scenarios that are raised by these commenters, including due diligence standards for reporting if a supplier has gone out of business, who the reporting entity should be in complex corporate structures, etc.

Subp. 2. Reporting on behalf of other manufacturers:

McGowan-8: "Subpart 2 of Section 7026.0020 assumes that multiple manufacturers in the same supply chain will agree to share reportable information and select an authorized representative to report on behalf of the group. The late issuance of MPCA's proposed rules makes the formation of supply chain agreements... highly unlikely, if not impossible."

Neal-1: "Imposing disclosure and fee requirements across the entire supply chain for all PFAS-containing products entering Minnesota creates an unmanageable burden for manufacturers of complex products.

While we appreciate MPCA's effort to provide two reporting options: (1) individual manufacturer reporting and (2) one manufacturer reporting on behalf of a group of manufacturers, we find it difficult to envision either approach being feasible for complex products.

Under Option (1), a complex product with a long, global supply chain could involve a dozen or more suppliers. Requiring each of them to submit separate reports is both impractical and overly burdensome.

Under Option (2), companies are unlikely to accept legal responsibility for the actions of other entities within the supply chain or for independent legal entities in general.

...Our ask: Can Section 7026.0020, Subparts 1 (Scope) and 2 (Reporting on Behalf of Other Manufacturers), be revised to eliminate the requirement for suppliers to report on individual components and pay associated fees?

Our proposal: Modify Section 7026.0020, Subparts 1 (Scope) and 2 (Reporting on Behalf of Other Manufacturers) to permit the manufacturer of the final product to submit a single, consolidated report at the parent company level, covering all subsidiaries, product groups, and components containing PFAS. This report would apply to products sold into or manufactured within Minnesota, thereby eliminating the need for component suppliers, global or domestic, to report separately and pay fees. Under this approach, only one fee would be payable for the entire group of covered subsidiaries."

Pierce-1: *"*Could manufacturers with comparable products report collectively through their trade association or in a bilateral fashion?"

Michaud-2: *"*We suggest that this be modified to allow a parent company to submit one report that covers the final products, component parts, brand names and subsidiaries. Payment of fees, if required, should be similarly modified to align with the reporting."

Hall-7: "7026.0020, subp. 2 "enter into an agreement"

- This language would mean that a seller of product component would be required to know all actual uses and users through the downstream supply chain."

Kallen-3 (pre-hearing comment and hearing testimony): "The existing sentence at lines 4.8 – 4.10 could be replaced with: "Each manufacturer for a given product must assume responsibility to report unless two or more manufacturers of the same product enter into an agreement to establish their respective reporting responsibilities.""

lizuka-3: "Reporting on behalf of other manufacturers, would require all manufacturers in the same supply chain to be responsible for reporting unless they enter into an agreement establishing their respective reporting responsibilities. This statement may seem to assume that there are multiple "manufacturers" along the same supply chain. However, according to the definition of manufacturer in the proposed rule (7026.0010 DEFINITIONS. Subp. 14.

Manufacturer.), for a product imported into the United States that is manufactured outside the United States, the manufacturer is either the importer of the product or the first domestic distributor, so there won't be multiple manufacturers. In order to avoid confusion for reporters, Subp. 2. Reporting on behalf of other manufacturers. in proposed rule 7026.0020 should be deleted."

Tom-3: "In terms of reporting responsibility, we appreciate the clear assignment of obligations for products with intentionally added PFAS (7026.0020, Subp. 1). However, in complex industrial supply chains, formal multi-party reporting agreements may prove administratively burdensome. We therefore suggest that brand owners be permitted to take on reporting responsibility directly, provided they retain documentation demonstrating due diligence (e.g., supplier declarations, MSDS) (7026.0020, Subp. 2)."

Cross-3: "Without an overlapping reporting obligation throughout the U.S. domestic supply chain, the allowance for group reporting pursuant to an agreement among the supply-chain participants lacks a statutory basis, is unnecessary, and cannot be a solution to the problem faced by manufacturers of complex products."

> **RESPONSE:** The MPCA has read and considered all of the above comments regarding reporting on behalf of other manufacturers. The MPCA recognizes the complexities of supply chain structures, but the agency would like to note that this subpart of proposed rule is intended to clarify reporting responsibilities and offer the opportunity for manufacturers to work together to meet the reporting requirements. Although this allowance was not specifically provided in Minn. Stat. § 116.943, the agency received feedback from manufacturers stating that this type of flexibility in submitting the report would be appreciated.
>
> In order to allow such provisions, the agency had to consider under what circumstances a manufacturer may report on behalf of another, and thus outlined that the manufacturers would need to enter into an agreement to establish their respective reporting responsibilities. This language ensures that all manufacturers assume responsibility to submit a report unless such an agreement is in place. This agreement is necessary to ensure that all manufacturers that would otherwise be required to submit a report are accounted for and party to the agreement. Additional requirements for reporting on behalf of other manufacturers are further outlined in items A through D of this rule part.
>
> The MPCA would like to clarify that the seller/supplier of a product component is not required to know all applications and uses of that component throughout the downstream supply chain. The requirement that groups of manufacturers must "enter into an agreement" only requires that the individual manufacturers within that group have agreed on their respective reporting duties; whether that means the seller/supplier is reporting on behalf of downstream manufacturers, or the

seller/supplier is providing information to downstream manufacturers so that they can consolidate their report.

Item A:

Melkonian-2: "Clause (A) of subpart 2, which governs reporting agreements between producers, specifies that the condition it contains only pertains to parties to the reporting agreement. However, no such limitation is provided in clauses (B), (C), or (D). AMERIPEN requests a minor amendment to add a phrase to each of these clauses to address this inconsistency, reading as follows: "…all manufacturers that are a party to a reporting responsibility agreement…"."

RESPONSE: Subpart 2 already requires that a manufacturer may submit a report on behalf of other manufacturers if they have entered into an agreement to establish their respective reporting responsibilities. Because this is clearly stated in the subpart, and Items A through D fall under that subpart, each reference to "all manufacturers" already implies that they are party to a reporting responsibility agreement. The MPCA does not believe that this suggestion is necessary to provide additional clarity to the rule.

Nustad-3: "We ask the MPCA to clarify whether a retailer can formally notify vendors of Minnesota's reporting obligations and delegate the responsibility for compliance—especially for own brand, importer of record, or national brand products. If so, we also ask for clarification on whether the retailer remains legally liable if a vendor fails to report. Retailers need certainty on who holds the obligation in the supply chain in order to avoid duplicative or missed reporting."

RESPONSE: The MPCA reiterates that under subp. 2, "All manufacturers must assume responsibility to report unless manufacturers in the same supply chain enter into an agreement to establish their respective reporting responsibilities." Without such an agreement, the MPCA would rely on subp. 1 of part 7026.0020 and hold the manufacturer (as defined) "of a product sold, offered for sale, or distributed in the state" that contains intentionally added PFAS responsible to fulfill the reporting requirements.

Item C:

Fisher-2: "7026.0020 Item C This section requires each manufacturer reporting via a group submission to: "verify…that data submitted on their behalf is accurate and complete."

Requiring each individual manufacturer to verify seems to contradict the intent of group reporting. We suggest the certification process could be better met by including a component within the group submission in which the reporting manufacturer certifies that it has contacted the other manufacturers included in the submission and that those manufacturers have assured the information provided in the report is accurate and complete. This would avoid the need for individual verification by each member of the group and would reduce the administrative workload of this requirement."

Branstad-10: "Subpart. 2.C. We cannot comment on the appropriateness and reasonableness of "format specified by the commissioner" as a concept.

> **RESPONSE:** The MPCA agrees that it does not desire the verification of "data submitted on their behalf is accurate and complete" to be a burdensome process for manufacturers. As a result, the MPCA included the language "in a format specified by the commissioner" so that how this verification takes place can be determined in the implementation of the proposed rule. This language is commonly used and can be found throughout other MPCA rules as well.

Item D:

Friest-7: "In the case of a reporting agreement, verification is not considered complete if all manufacturers do not submit the required fee. In the case of a manufacturer reporting on behalf of suppliers, and one of the suppliers does not pay the fee, the verification would not be considered complete and the manufacturer would be noncompliant. This effectively punishes the entity assuming the burden of reporting and compliance for the failure of a supplier over which the reporting entity has not control. This is not reasonable and will deter the use of reporting agreements, resulting in duplicative reporting, and increasing the burden of compliance on manufacturers. Duplicative reporting will result in less reliable, less representative, information about the presence of PFAS in the supply chain and in products."

Fisher-3: "7026.0020 Item D We propose an amendment to Item D so that failure to make payment by an individual manufacturer would not fail the entire group submission, but rather be tied to that specific individual manufacturer. We are concerned with multiple different manufacturers involved in a group submission, each with different payment processing requirements, unfairly penalizes those who are compliant. Furthermore, we do not believe competitors should bear the burden of making sure their fellow peers have made payments, nor be penalized for any oversights their peers may make. Peer companies do not have this type of influence over each other."

Branstad-11: "Subpart. 2.D. In our reading, the subpart does not contemplate the scenario in which a group of manufacturers covered by an agreement is represented by an authorized representative who would pay a fee on behalf of all members of the agreement. The use of "all manufacturers" suggests that MPCA anticipates separate payments from each member of an agreement and, moreover, that failure of one manufacturer to submit a fee could invalidate the report with respect to all manufacturers covered by the report. We think this outcome would be unreasonable. We strongly recommend that MPCA clarify that a group of manufacturers can elect to make a single payment through their authorized representative and, importantly, that such an arrangement will be accommodated in whatever payment mechanism is to be used."

Friest-8: "In the case of a reporting agreement, submittal of the report is not considered complete if all manufacturers do not submit the required fee. In the case of a manufacturer reporting on behalf of suppliers, and one of the suppliers does not pay the fee, the report would not be considered complete and the manufacturer would be noncompliant. This effectively punishes the entity assuming the burden of reporting and compliance for the failure of a supplier over which the reporting entity has not control. This is not reasonable and will deter the use of reporting agreements, resulting in duplicative reporting, and increasing the burden of compliance on manufacturers."

> **RESPONSE:** The comments received in relation to this section of rule seem to contemplate the implementation of the proposed rule and the compliance and enforcement of such provisions. The intent of this rule language is to ensure that all manufacturers submit the required fee along with the report and in accordance with part 7026.0100 subparts 2 or 3, whichever is applicable. This ensures that manufacturers are aware that they are still responsible to pay a fee, even if they are only verifying that the information submitted on their behalf is accurate and complete.
>
> In the enforcement of such provisions, the agency would not hold a manufacturer that has paid its required fee responsible if another manufacturer in the same reporting responsibility agreement fails to pay their required fee. The agency will consider documentation of agreements made between responsible parties to determine individual liabilities on a case-by-case basis. The MPCA has considered the scenario in which the authorized representative pays the fee on behalf of all manufacturers that are party to the reporting responsibility agreement and agrees that this would be an acceptable payment mechanism so long as the required fee for each manufacturer that is party to the reporting responsibility agreement is accounted for.

Complexities of grouped reporting:

Prero-8: "Subpart 1. Scope. A manufacturer or group of manufacturers of a product sold, offered for sale, or distributed in the state must submit a report for each product or component that contains intentionally added PFAS.

• CUC appreciates MPCA's effort to lessen the reporting requirements by allowing for groups of manufacturers to report together. This is evidenced by the allowance made in 7026.0030 for reporting groupings of similar products. However, as currently drafted, with the specific criteria needed to allow for "grouped" reporting, these allowances will have limited applicability and utility.

Different manufacturers will often have different numeric codes assigned to their products, even if they are similar. This alone creates complexity as the same code cannot be provided in a joint submission. Furthermore, even for what may seem to be identical products from different manufacturers, suppliers of component parts and the material composition can differ. This is often the case even for single products from the same manufacturer: the supplier of components may differ during the course of any given year due to supply chain and economic issues, in which case "identical" product from one manufacturer may not be exactly "identical" as there may be slight variations in material composition – whether it be in the PFAS used or the quantity of a PFAS used - even within the same product.

In order to provide a substantive easing of the compliance burden on manufacturers, MPCA should consider allowing for greater latitude in whom and what could qualify for joint reporting. For example, for "similar" products, MPCA could allow a report to contain multiple entries for PFAS used or multiple concentration ranges to cover all permutations. The report would indicate that PFAS is present in the products, providing MPCA with this basic information, and the need for multiple reports would be eliminated, easing the compliance burden on manufacturers.

Additionally, CUC believes that any "grouping" of reporting, whether of manufacturers or products, would reduce the burden on MPCA of reviewing and processing reports, as there will be fewer reports. It therefore would be product for MPCA to incentivize the use of the group reporting provisions. However, as mentioned above, it seems unlikely that manufacturers will be able to utilize group reporting. In fact, with the proposed provisions that penalize all manufacturers that report together for the failure of one of the parties, there is a significant disincentive for manufacturers to form a group to report. CUC believes that, as suggested above, greater flexibility should be added so that the efficiencies of group reporting can be realized by MPCA."

Nagy & Tatman-3 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends modifying and clarifying the concept of "group reporting." MCPA should address antitrust and proprietary information considerations, such as by requiring reporting in ranges and ensuring confidential business information (CBI) protection. MPCA should also confirm that downstream companies can reference or rely on reports submitted by their direct suppliers where appropriate."

Friest-9: "The proposed rule is not clear in identifying responsibility for reporting for complex products, service parts, and other components if there is not a reporting agreement in place. In the case of a complete motor vehicle, is the original equipment manufacturer responsible to report for 6 components in the vehicle? Is the component manufacturer, or both? Are service parts to be reported by the original equipment manufacturer if they are branded by the supplier?"

Palin-8 (pre-hearing comment and hearing testimony): "Provisions on Reporting on Behalf of Other Manufacturers Raise Additional Considerations: The draft PFAS in Products: Reporting and Fees Rule lays out provisions for reporting on behalf of other manufacturers, which raise several additional considerations for the automotive industry.

The automotive industry has over 3,500 tier 1 suppliers, and this figure does not include the further tiers 2 to roughly 10 of upstream suppliers. Auto Innovators believes that working out reporting on behalf of other manufacturers in the automotive supply chain within the next eight months before the reporting deadline at the start of 2026 will be incredibly difficult and unreasonable to establish and manage.

It also isn't clear how Minnesota will keep track of which suppliers have reported and what data they have received. Similarly, Auto Innovators has concerns about how Minnesota will keep track of the fees paid and which reports they are intended to cover. This greatly increases the possibility of PCA receiving many redundant component reports.

Finally, the automotive industry's issues regarding the reporting of spare parts, covered below, raise questions about whether manufacturers of those parts will be required to report. If spare parts are addressed as Auto Innovators proposes below, it would resolve the issue of reporting on behalf of other manufacturers with respect to those parts."

Sloan-3: "MPCA proposes allowing one manufacturer to serve as the reporting entity for the full supply chain with the condition that appropriate documentation be submitted demonstrating one manufacturer is the reporting entity. This provision appears to consider reporting in the context of complex products that could include many individual components produced by different manufacturers, where the final product manufacturer would serve as the

reporting entity. The lack of process clarity and requirements for the reporting entity and supply chain manufacturers in the proposal are likely to cause inconsistent and incomplete reporting."

> **RESPONSE:** The MPCA has read and considered all of the above comments regarding the complexities of reporting on behalf of other manufacturers. The MPCA also recognizes the complexities of supply chain structures, but the agency would like to note that this section is intended to clarify reporting responsibilities and offer the opportunity for manufacturers to work together to meet the reporting requirements.
>
> The MPCA would like to remind these commenters to refer to the definition of "manufacturer" under part 7026.0010 subp. 14, and the scope of parties responsible for reporting as outlined in subp. 1 of this section. The agency could have required that each and every manufacturer submit a report to the agency, but based on feedback received from manufacturers, decided to include this provision that allows reporting on behalf of other manufacturers.

Part 7026.0030 REPORT; REQUIRED INFORMATION

Subpart 1. Report required.

Tarter-1: "Reduce the amount of data to be reported to only report information that is statutorily required, which is:

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

- the purpose for which PFAS are used in the product, including in any product components;

- 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;

- the name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer."

> **REPSONSE:** Minn. Stat. § 116.943 subd. 2. (a)(5) also gives the commissioner statutory authority to require reporting information that includes, "any additional information requested by the commissioner as necessary to implement the requirements of this section." Items A through F of the proposed rule align directly with the statute:
>
> A. a product description that includes: (*Minn. Stat. § 116.943 subd. 2. (a)(1)*)

B. PFAS chemicals used in the product or its components as identified by: (*Minn. Stat. § 116.943 subd. 2. (a)(3)*)
C. the concentration of PFAS chemicals in a product or components of a product made up of homogenous material. A manufacturer must report the concentration of PFAS chemicals as identified in subitem (1) or (2): (*Minn. Stat. § 116.943 subd. 2. (a)(3)*)
D. the function that each PFAS chemical provides to the product or its components; (*Minn. Stat. § 116.943 subd. 2. (a)(2)*)
E. manufacturer information, including: (*Minn. Stat. § 116.943 subd. 2. (a)(4)*)
F. information for the authorized representative of the manufacturer who has the authority to execute or direct others to execute reporting to the state, including the representative's: (*Minn. Stat. § 116.943 subd. 2. (a)(4)*)
G. an alternative to the authorized representative under item F, including: *Minn. Stat. § 116.943 subd. 2. (a)(5)*)

The MPCA has only provided further clarifications to the statute in rule, including grouping similar products and components for reporting, establishing a hierarchy for reporting numeric product codes, reporting another chemical identifying number if no CASRN exists, and outlining the concentration ranges for reporting. Many of the clarifications are to simplify reporting, such as grouping similar products and PFAS concentration ranges. The only "additional information" being requested in the proposed rule is in item G; "an alternative to the authorized representative under item F". The proposed rule language provides further clarity on the statutory requirements under subd. 2, and justification for the proposed items A to G in part 7026.0030 can be found in the SONAR on pages 28-31.

Rhoderick-2: "This does not clearly define how to determine what products should be included in the reports, or what the time period is that should be included. For example, product catalogs can contain hundreds, thousands and tens of thousands of products, but those products may not be sold into the state. Additionally, quotes may be offered for products, but a sale may not be made so those products are never sold into the state. Requiring reports on all these products that never enter the state is extremely burdensome to companies, and would provide a gross overestimate of the amount of PFAS in the state of Minnesota. It would also provide so much inaccurate data that any conclusions drawn from the data would be meaningless."

RESPONSE: The expectation for reporting is that manufacturers must submit information for products that are currently sold, offered for sale, or distributed in the state of Minnesota, as well as those the manufacturer reasonably expects to be sold, offered for sale, or distributed in the state within 12 months following the initial report

due on January 1, 2026. The MPCA does not expect manufacturers to report their entire product catalog only those products with intentionally added PFAS that are within or anticipated to enter the Minnesota market. This includes products sold directly or through third parties. The initial report is not retroactive; it requires an assessment based on current and projected sales, with the understanding that information may continue to be gathered and updated as needed until all required information is known.

Item A: Reporting numeric product codes

Sobel-1: "Due to the large number of vehicle parts and anticipated reporting, MEMA urges MPCA to consider additional flexibility for the motor vehicle industry. For example, MEMA appreciates MPCA's use of Global Product Classification of Harmonized Tariff Schedule codes but cautions against the use of non-harmonized units such at stock keeping units (SKUs). It can be difficult to predict the demand for aftermarket parts to this level."

Hall-8: "7026.0030, subp. 1 "the harmonized tariff schedule code for imported products"

• The HTS option should be available for any product where it's relevant, not just for imported products."

Branstad-12: "Subpart 1.A(2)(a). Many manufacturers organize their products by HTS codes. Therefore, we recommend that the option of using HTS codes be made available for all products, not just imported products.

Iizuka-4: "7026.0030 Subpart 1.A(1)(a) We request that the information about the product code assigned to the product to be optional, not mandatory. If MPCA thinks it is absolutely necessary, we believe it is desirable that the list of codes is provided and manufactures can select the appropriate code. It is also beneficial from the viewpoint of data analysis and management after data collection. In that case, the code should harmonize with those under TSCA, not to create the original codes for reporting."

RESPONSE: The MPCA has been granted statutory authority to obtain numeric product codes for products with intentionally added PFAS per Minn. Stat. § 116.943, subd. 2, (a) (1). The SONAR provides reasons for allowing a variety of different numeric product codes already established across different economic supply chains for products with intentionally added PFAS on page 29. There is also an option to list "none" under part 7026.0030 subpart 1, item A, subitem (2), unit (d) if the codes listed in units (a) to (c) do not exist. The agency provides a preferred hierarchy of codes to be chosen from, but it is ultimately up to the manufacturer reporting to select the numerical product code that best describes the product being reported.

The agency is proposing to edit this language in regard to HTS codes; see the 'Changes to the Proposed Rule' section of this document under part 7026.0030.

Chemical list Request:

Iizuka-5: "7026.0030 Subpart 1.B As we commented in our previous comments, we would like to request that a list of CAS RN be provided for PFASs that are subject to reporting. EEE consists of many parts, and complex items can consist of tens of thousands of parts. Additionally, there are thousands of tier 1 suppliers that supply parts directly, and then there are complex, multi-tiered supply chains with tier 2, tier 3 and subsequent suppliers that supply components of those parts. PFAS is not a single substance but a large group of substances, and without identifiers such as CAS RN, it would be extremely difficult for EEE manufacturers to investigate complex, multi-layered supply chains and gather accurate answers."

Fowler-3: "We strongly encourage MPCA to provide a full list of PFAS substances covered by the new rules and their CASRNs. Without a specified list of chemical names and CASRNs, tracking a class of potentially thousands of chemicals across a complex global supply chain is incredibly difficult, especially for complex article manufacturers that are far down the supply chain. EL asks MPCA to consider developing a list of the specific CASRNs that apply to the statute and to the new rules. This approach is consistent with the United States Environmental Protection Agency's ("EPA") Toxic Release Inventory ("TRI") reporting requirements and Canada's CEPA PFAS reporting requirements.

We also strongly encourage MPCA to establish a threshold for reporting for all products. For example, limit reporting of products to those with intentionally added PFAS at or above a specified threshold based on a specific list of PFAS with CAS numbers."

RESPONSE: As stated in the SONAR on page 24, "*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.*" Not all PFAS chemicals have CASRN for a variety of reasons. Therefore, the MPCA cannot provide a comprehensive list of chemicals subject to this proposed rule based on existing CASRN alone.

See also the MPCA's response to "De minimis" under section 7026.0030 of this document.

De minimis:

Prero-9: “Furthermore, CUC recommends that MPCA adopt a reporting threshold, similar to those Environment and Climate Change Canada adopted for their 71(b) PFAS reporting requirement. 2 This would ensure that the entities that are selling products with significant quantities of PFAS are those that report and would ease the burden on manufacturers whose PFAS use is negligible.”

Kallen-4 (pre-hearing comment and hearing testimony): “SEMI and SIA urge the MPCA to enact a de minimis reporting threshold. Products containing intentionally-added PFAS at concentrations less than 0.1% should not be subject to reporting. This 0.1% threshold would align with thresholds established for many chemicals at the U.S. federal and state level as well as in the European Union. The threshold would also help ease administrative burdens on the MPCA, allowing it to focus on products that contain meaningful concentrations of PFAS.”

Tarter-2: “Implement a de minimis threshold (such as PFAS at or below 1% concentration in the product) for reporting so that trace amounts of intentionally-added PFAS are not required to be reported. Having a de minimis threshold will provide much needed clarity and improve compliance....5) Allow for grouping of similar products in the same report. This will reduce the number of reports that must be submitted and thus reduce unnecessary administrative burdens for manufacturers as well as MPCA staff reviewing the reports.”

Moyer-1: “Reporting Concentrations and de minimis: The reporting ranges in 7026.0030(C) require reporting the presence of any PFAS in a product at an unclear “practical detection limit.” MPCA should establish a clear de minimis reporting threshold for the information required under 7026.0030. The statute is focused on the notification and prohibition of intentionally added PFAS, and the Proposed Rule should avoid unnecessary reporting of byproducts and impurities in products. We respectfully ask that MPCA include in their Proposed Rule a threshold consistent with other jurisdictions’ chemical reporting and restrictions requirements. Ideally, MPCA should align with minimum threshold limits established by EU REACH and Canada PFAS regulations.”

Davis-3 (pre-hearing comment and hearing testimony): "AHRI continues to urge MPCA to exempt articles that contain only de minimis quantities of PBT or non-PBT PFAS of 0.1% by weight or less, which will allow for a practicable regulation that is reasonably implementable. Not having a de minimis exemption puts an unreasonable burden on manufacturers, and therefore, MPCA should provide permanent regulatory relief. AHRI also asks that MPCA exempt products intended for research and development from the reporting and fees requirements. EPA provides exemptions for research and development in both SNAP and TSCA. Under this proposed rule, a manufacturer would have to report and pay fees to the state for prototype systems and components that may not enter Minnesota’s stream of commerce as a commercial product."

Huxley-1: "- Reassess the scope and coverage in the proposed rule to provide the applicability parameters necessary for compliance consideration.

- Provide for a de minimis reporting threshold and include a definition that identifies 'intended function' as relating to the intention for presence in the finished product.

- Revise the proposed rule to provide achievable requirements"

Herlihy-1: We ask that MPCA add exemptions for products manufactured before the reporting requirement goes into effect, and establish de minimis reporting thresholds.

This would protect brands and retailers from burdens associated with legacy inventory and historical unknowns. A numerical safe harbor for Total Organic Fluorine (e.g., 100 ppm as proposed in California) should be established to distinguish intentional PFAS use from trace contamination. These changes would provide clarity, improve compliance, and align with other state approaches.

Cleet-3: "Issue: Minnesota's PFAS reporting rule establishes eight reporting thresholds, compared to Maine's six, starting with "practical detection limit." Minnesota should harmonize with Maine's thresholds and also add a de minimis threshold for reporting intentionally added PFAS. Alternatively, Minnesota could exempt reporting below the practical detection limit. The current draft rules require manufacturers to report all intentionally added PFAS, regardless of the concentration present in a product or component. Administering a chemical reporting scheme untethered to a concentration threshold is overly burdensome and difficult to implement, especially for PFAS present at trace levels—well below meaningful environmental or health thresholds—and can be difficult or impossible to quantify accurately through supplier declarations or commercial formulations. In many cases, supply chain partners either do not disclose exact concentrations, or are unaware of the presence of PFAS at such low levels. Testing to determine PFAS concentrations below 50 ppm —either as part of reporting due diligence or to respond to a request for information from the Commissioner— would be prohibitively expensive, wasteful, and unreliable for most manufacturers.

The lack of a de minimis threshold risks skewing reported data to focus overwhelmingly on amounts of low-concentration data that has little regulatory utility and may divert resources away from identifying higher-risk uses of PFAS. Reporting all intentionally added PFAS with no de minimis threshold also conflicts with other major chemical reporting frameworks—several of which apply clear concentration thresholds to ensure reporting is scientifically and practically meaningful.

Recommendation: The rule should establish a de minimis threshold of 50 parts per million (ppm) by weight, such that reporting is only required for intentionally added PFAS present at or above this level in a product or component. Specifically, Rule 7026.0010 should be revised to

add a definition of de minimis reporting so that manufacturers are only required to report intentionally added PFAS when the concentration is equal to or greater than 50 ppm."

Pierce-2: "WDMA members find the thresholds for incidental use of PFAS to be confusing and difficult to interpret... We respectfully request clarification on the triggers that would activate a reporting requirement."

> **RESPONSE:** The MPCA acknowledges the concerns raised about trace-level reporting and the practical challenges of identifying and confirming low-concentration PFAS in complex supply chains. However, Minn. Stat. § 116.943 defines PFAS broadly and does not provide the agency discretion to exempt intentionally added PFAS based on concentration. The information required by the Legislature (Minn. Stat. § 116.943 subdivision 2, (a)(3)) includes PFAS concentrations at low levels, and a de minimis would contradict this legislative directive. As stated in the SONAR (page 30), the agency did not include a de minimis for reporting because Minn. Stat. § 116.943 requires reporting for all products containing intentionally added PFAS. A de minimis standard would undermine the intent of the enabling statute.
>
> The proposed rule addresses practical detection challenges in several ways. First, part 7026.0030, subp. 1, item C, subitem (1), allows manufacturers to report that a concentration is unknown when testing is not feasible, or information is unavailable. Second, grouping provisions (7026.0030, subp. 2) and the allowance of supplier declarations reduce the need for unnecessary testing. While a numerical de minimis threshold is not included in the rule due to statutory constraints, the MPCA will continue to evaluate harmonization opportunities with other jurisdictions and consider whether future rule revisions, statutory changes, or programmatic guidance can address concerns about low-risk, low-concentration PFAS uses more directly.

Fluoropolymer reporting:

Tom-4 "Regarding chemical reporting, we support PFAS disclosure and request further guidance on how to report polymeric PFAS, such as PTFE. These materials are often critical to product performance and safety but may be supplied with limited compositional transparency. We encourage MPCA to permit reporting by base polymer name and CASRN, and to allow manufacturers to invoke a "Not Known or Reasonably Ascertainable" (NKRA) provision such as one that was modelled after TSCA reporting for cases where supplier data is unavailable or protected by trade secrecy (7026.0030, Subp. 1.B/C).

Neal-2: "Emerson recognizes the difficulty MPCA faces in distinguishing between fluoropolymers, the non-polymeric PFAS processing aids used within fluoropolymers, and other PFAS compounds present in companies' supply chains.

This complexity often results in overly broad regulatory decisions that unintentionally penalize the majority of companies using fluoropolymers responsibly, in an attempt to regulate a small subset who are not. The issue of concentration is a good example. The largest users of PFAS are typically downstream manufacturers who incorporate fluoropolymer components into their products. However, these users generally do not have access to the sophisticated laboratory capabilities required to detect trace amounts of PFAS processing aids in fluoropolymers.

Further complicating the matter is the fact that fluoropolymers are themselves classified as a PFAS. This makes it arguable that their PFAS concentration is always close to 100%, even though the actual concern lies with trace residuals. Additionally, performing Total Organic Fluorine (TOF) testing across the wide variety of parts potentially containing PFAS is both impractical and cost-prohibitive.

As a result, reported concentration data from downstream users is likely to be of low quality. Many may unintentionally confuse concentration with total mass, rely on estimates due to time constraints, or provide inaccurate information, creating frustration for both submitters and the MPCA.

Our Ask: Can MPCA assign a checkbox and a corresponding designated concentration for fluoropolymers in section 7026.0030, Subpart 1, Section C?

Proposed Solution: In section 7026.0030, Subpart 1, Section C, we respectfully recommend that the MPCA assign a designated concentration for fluoropolymers and an accompanying checkbox to simplify reporting of fluoropolymers. Concentration data can still be required for other, more relevant PFAS substances."

Michaud-3: "In lieu of specific PFAS concentration information for fluoropolymers and fluoroelastomers, we recommend that MCPA provide a checkbox to indicate that the product is a fluoropolymer or fluoroelastomer. MCPA could assign a common concentration level for those products if desired."

> **RESPONSE**: The MPCA acknowledges the complexity of reporting fluoropolymers, including challenges related to trade secret protections, compositional transparency, and the distinction between the polymer itself and trace residual PFAS from processing aids. However, the statute requires reporting of the amount of each and does not exclude polymeric forms.

At this time, the MPCA does not plan to adopt a checkbox system or assign default concentrations for fluoropolymers, as this would reduce the accuracy of the data and undercut the purpose of the statute, which is to understand where, how, and in what amount PFAS including fluoropolymers are used in products.

Changes to Concentration Ranges:

Palin-9 (pre-hearing comment and hearing testimony): "Combine Two Lowest Reporting Ranges for a Bottom Tier that Covers De Minimis Level: PCA proposed reporting ranges for the concentration of a PFAS in a product or component, a concept that Auto Innovators generally supports. Reporting the amount of PFAS within a range at the finished product level would simplify the information needed to fulfill the requirements of the law, as reporting at the vehicle level would give an excellent and understandable measure of each car's PFAS content. The PFAS in Products: Reporting and Fees Rule proposes that (see rule text on concentrations).

Auto Innovators recommends that PCA combine the reporting ranges currently listed as (1)(a) practical detection limit to <100 parts per million (ppm) and (b) 100 ppm to <1000 ppm (.01 percent) to a range that just covers from the practical detection limit to <1000 ppm (.1 percent).

We recommend this because in a number of other chemical regulations, there is a de minimis value of 0.1 percent, and so it makes more sense to have the range spread from the practical detection limit to that point. Notably, the automotive IMDS system utilizes a 0.1 percent de minimis threshold for most of the chemicals that it tracks, and information existing in the system may not be updated simply because a new chemical regulation comes into effect with a different threshold. Combining reporting ranges would also bring Minnesota's concentration ranges closer to the ranges that EPA plans to utilize for reporting. 11 Those are: (see image of ranges).

Thomas-7: "Concentration Disclosure Requirements: In MINN. R. 7026.0030, Subp. 1.C.1.a. (line 7.7) we are concerned that the concentration range is too detailed. We would propose the first range be 100 ppm to <1,000 ppm (0.1 percent) as levels below that could potentially be inadvertent. Additionally, some companies do not capture PFAS less than 1,000 ppm. We would also appreciate an alignment with the existing TSCA 8a7 ranges as it will ease the reporting burden on many industries in the United States that already report to the United States Environmental Protection Agency (EPA)."

Turner-3: "Propose combining of 7026.0030, Supart 1. C. (1) (a) (b) and (c) to one item "from the practical detection limit of to 1,00ppm < 10,000 (one percent)""

Frederick-2: "We would propose the first range be 100 ppm to <1,000 ppm (0.1 percent)… AdvaMed is also opposed to the inclusion of… the option to report total organic fluorine (TOF)." AdvaMed recommends raising the lower concentration threshold to 100 ppm and eliminating

TOF as a reporting method, arguing that TOF is overly broad, difficult to execute, and includes substances beyond PFAS, potentially leading to false positives.

Kallen-5 (pre-hearing comment and hearing testimony): "To simplify reporting and reduce unnecessary regulatory burdens, the MPCA should align its proposed concentration ranges with the TSCA PFAS Reporting Rule. When combined with the 0.1% de minimis threshold SEMI and SIA suggest, the appropriate concentration ranges that could be added in place of current lines 7.7 – 7.14 are:

• At least 0.1% but less than 1%;

• At least 1% but less than 30%;

• At least 30% but less than 60%;

• At least 60% but less than 90%; and

• At least 90%.

SEMI and SIA also suggest that the MPCA specify that these concentrations be calculated relative to the weight of the product. Calculating at the component level, for example, would add the unnecessary complication of defining "component," as discussed above. As part of these changes, SEMI and SIA suggest that the MPCA remove the reference to "practical detection limit" in line 7.7, since the term is undefined and ambiguous as used here. The concentrations should also be understood to be worst-case estimates of maximum content of each PFAS substance in a product group. The MPCA should also acknowledge that variability is possible due to multi-sourcing of product parts from multiple suppliers and configuration differences in the quantity and type of parts used within products under the same high-level numeric product code. Not all PFAS reported will be present in any one unit of product sold under the numeric product code."

Branstad-13: "Subpart 1.C(1)(a-h). We recommend that MCPA adopt the same concentration ranges for reporting the maximum concentration of PFAS by weight in an imported article in U.S. EPA's Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances. Those ranges are: ▪ Less than 0.1% by weight ▪ At least 0.1% but less than 1% by weight ▪ At least 1% but less than 10% by weight ▪ At least 10% but less than 30% by weight ▪ At least 30% by weight Many manufacturers are likely to have classified their products according to these ranges to the extent that the concentrations are known or reasonably ascertainable, and it is unclear that a different regulatory group of ranges is needed. We strongly encourage MPCA to retain proposed Subpart 1.C(1)(i). Finally, in the context of "significant change" and trade secret protection, we recommend that MPCA give manufacturers the option to combine the two lower ranges for product grouping purposes. The precision associated with these very low concentrations is more likely to be competitively sensitive. Also, analytical variability for testing articles could easily fluctuate above and below 1000 ppm, triggering a potential range change, which would be deemed a "significant change".

Hall-9: "7026.0030, subp. 1.C PREFERRED OPTION: WIDER RANGES ALIGNED WITH THE TSCA 8(a)(7) RANGES

• Aligning with TSCA 8(a)(7) ranges may ease the burden for many industries in the U.S. who have already collected data to meet EPA's requirement.

• For some products, the part construction can be identical but depending on the stack up, ranges can be vastly different due to the low weight of PTFE membranes and coatings vs the backers, adhesives and molded plastic components. Identical parts with different backers (different density of the backers) could result in 10 percent vs 16 percent wt difference due to the low density of the membranes."

RESPONSE: Page 30 of the SONAR presents the agency's need and reasonableness for the concentrations ranges proposed in the rule. The agency started with ranges used in the EPA's TSCA 8(a)(7) and modified those ranges only slightly to require more precise information.

Combining the lower two concentration ranges or removing the lower concentration ranges, as some commenters have proposed, would effectively provide a de minimis or a reporting threshold for intentionally added PFAS chemicals in a product. The statute states that any products with intentionally added PFAS must be reported, and the agency believes that these lower, more exact concentration ranges are necessary and reasonable to support the intent of Amara's Law.

Item C: Reporting Total Organic Fluorine (TOF)

Andes-1: "Section 7026.0030, Subp. 1.C.(2) specifies that if the party does not know the amount of each PFAS in a product, it must conduct total organic fluorine (TOF) testing and provide those results. That requirement is unjustified, and will provide misleading and irrelevant information to the agency and the public. TOF testing shows only the overall amount of total organic fluorine, which can indicate the presence of multiple substances that are classified as PFAS, plus many other substances that are not classified as PFAS. A TOF result tells one nothing about which specific PFAS might be present and in what amounts. Also, it can create an impression that there is a significant issue, simply by showing high TOF levels, when the actual levels of any specific PFAS might be quite low. Instead, MPCA should simply provide that if the amount of a PFAS is not known, the manufacturer should provide an estimate and explain the basis."

Prero-10: "The proposal provides that the concentration of PFAS chemicals in a product or components of a product made up of homogenous material must be provided within a range, or one can indicate PFAS is present but amount or concentration range is unknown, or the total organic fluorine (TOF) if the amount of PFAS is not known. It is unclear if MPCA is requiring that

TOF testing be performed if the exact amounts cannot be ascertained, or that is an alternative to simply reporting if it cannot be ascertained. CUC requests that this be clarified.

Furthermore, the requirement for TOF testing is impossible in most scenarios. As discussed, if MPCA is requiring that every single "component" be accounted for, TOF testing cannot be performed on a finished product, particularly complex manufactured goods, to ascertain if any PFAS is present in any component. CUC requests that MPCA allow the reporting of TOF values as an alternative to PFAS concentration ranges, when feasible, and that if the concentration range/amount is unknown, that fact can be reported in satisfaction of the requirements."

Thomas-8: "Terumo BCT is also opposed to the inclusion of MINN. R. 7026.0030, Subp. 1.C.2. (lines 7.16-7.18) of the option to report total organic fluorine (TOF) and would instead propose the option to report as "(i) present but the amount or concentration range is unknown" (line 7.15) and include a due diligence standard so that manufacturers can update the concentration information once they have obtained the information. For example, when Maine was updating their PFAS law, their initial bill included TOF testing, but it was removed after much opposition to it being too broad of a testing method. Instead, Maine requires reporting of the total product weight. TOF captures more than just PFAS and could potentially include inorganic fluorine. TOF is also a very lengthy and expensive process for many complex products, and it would further hinder compliance with this rule."

Hall-10: "7026.0030, subp. 1 "the total organic fluorine, determined using commercially available analytical methods"

- If suppliers will not provide information because of CBI concerns (which was an issue in Maine), is there sufficient analytical capacity and capability to measure total organic fluorine? Also, TOF will capture more than PFAS, including potentially inorganic fluorine. Maine requires reporting of total product weight if PFAS content is not otherwise known."

Herlihy-2: "OIA asks MPCA to allow reporters to develop an alternative solution for reporters to submit valid reports where some chemical specific information is unknown, including chemical name and Chemical Abstracts Service Registry Number (CASRN).

MPCA's draft regulations already provide avenues for reporters to provide partial information in other circumstances: reporters may state that the amount of a certain PFAS chemical in a product is unknown, and may also use Total Organic Fluorine content as a proxy for the concentration of a PFAS chemical in a product. These allowances reduce the compliance burden and balance continued product availability with MPCA's information goals. OIA requests a similar allowance where specific chemical information is unavailable, enabling use of Total Organic Fluorine testing to fulfill the reporting requirement. Without this, the rule functions as a de facto product ban."

Zaman-2 (pre-hearing comment and hearing testimony): "MPCA also proposes an alternative measurement of total fluorine as an indicator of PFAS. Total fluorine testing does not

distinguish the variety of PFAS chemistries from overall fluorine content, resulting in inaccurate and over-inclusive reporting. Noting limitations of total fluorine measurements, a study concludes, "Measurement of total fluorine (TF) is inexpensive, but it is not as reliable of a proxy for PFAS because it includes inorganic fluoride in addition to organic fluorine.""

Branstad-14: "Subpart 1.C(2). We do not support the use of total organic fluorine (TOF) measurements as a proxy or surrogate for the amount of PFAS in a product or product component, and TOF data should not be used to make conclusive statements about the type, source, or concentration of any specific PFAS or group of PFAS substances. TOF should only be used as a screening method, as it is prone to identifying inorganic fluorides or other organofluorine substances that do not meet Minnesota's definition of PFAS. In fact, U.S. EPA, in its most recent updated draft guidance on PFAS disposal and destruction offers the following caution:

> TOF analysis is an ongoing research area: data users must recognize the benefits of receiving general screening data for a wide array of potentially present PFAS, while also recognizing the limitations and uncertainties inherent in not knowing which PFAS or class of PFAS is present in the sample, including uncertainties associated with potential health risk. In addition, to minimize the risk of PFAS false positives, techniques within a validated method or methods must be developed that demonstrate effective separation and removal of inorganic fluorine from organic fluorine (Koch et al., 2020). TOF is not specific to PFAS, and any fluorine-containing compounds (e.g., pesticides, pharmaceuticals) that are retained during extraction would be included in the organic fluorine measurement.10

MPCA should also review TOF protocols used by manufacturers for the extraction and accounting for inorganic fluorine according to standardized, validated protocols. Also, MPCA does not define the phrase "commercially available analytical methods" To create an even playing field and to help ensure that data on which future regulatory decisions may be based are sound, MPCA must elaborate its intention regarding baseline criteria or performance standards for "commercially available analytical methods" and the laboratories generating such data. "Commercially available" describes the analytical method, not the entity running the method, and therefore MPCA should not restrict the ability to run analysis to only those labs that sell their analytical services. MPCA should also allow for an appropriately qualified in-house laboratory to provide any needed analytical support, especially given the uncertainties around commercial laboratory capability and capacity. We suggest the following language:

> <u>"Commercially available analytical method" means any test methodology used by a laboratory that performs analyses or tests for third parties to determine the concentration of intentionally added PFAS in a product, or an in-house laboratory running such method. Commercially available analytical methods must have been independently validated and must include quality control parameters and performance criteria that satisfy method objectives and assure data quality. A laboratory used by a</u>

manufacturer to determine the concentration of intentionally added PFAS in a product must be certified to the most current version of ISO/IEC 17025, the U.S. Environmental Protection Agency's Good Laboratory Practice Standards, or the Organization for Economic Cooperation and Development's Principles of Good Laboratory Practice."

ISO/IEC 17025 is an international standard that sets a minimum threshold for the competence, impartiality, and consistency of laboratories, and therefore the accuracy and reliability of their testing.11 It is recognized globally as the core requirement for laboratory competency. The U.S. EPA's Good Laboratory Practice Standards "prescribes good laboratory practices for conducting studies relating to health effects, environmental effects, and chemical fate testing." 12 The Organization for Economic Cooperation and Development's Principles of Good Laboratory Practice (GLP) "is a quality system concerned with the organisational [sic] process and the conditions under which non-clinical health and environmental safety studies are planned, performed, monitored, recorded, archived and reported." 13 Also, we highlight the very practical concern that, depending on the number of manufacturers testing for reporting, there is likely insufficient third-party laboratory capacity to handle all the testing that the program described in the proposed rule would require. Therefore, manufacturers acting in good faith should not be precluded from using documented in-house methods or penalized for otherwise being delayed in their reporting due to third-party laboratory capacity constraints. The Department must make accommodation for such circumstances. Not doing so would be unreasonable."

Palin-10 (pre-hearing comment and hearing testimony): "Total Fluorine Analysis: Beyond those reporting ranges, PCA also proposes to allow reporting of the total organic fluorine (TOF): "(2) the total organic fluorine, determined using commercially available analytical methods, if the amount of each PFAS is not known within applicable due diligence standards under part 7026.0080[.]" Auto Innovators' experience is that scientific testing to determine the amount of PFAS in a hard consumer product, especially one like a vehicle, is difficult at best.13 That being said, the automotive industry has expressed support for ASTM International Standard F3700-25, Standard Guide for Selecting and Applying Analytical Methods to Evaluate PFAS in Consumer and Related Products.14 F3700-25 "provides an overview of analytical methods, techniques, and procedures that may be used when determining the presence of PFAS in consumer and related products [, but] does not specify which analytical methods, sample preparation techniques, or procedures apply to any given product." It may be worth PCA review.

RESPONSE: The MPCA appreciates the extensive comments regarding the use of Total Organic Fluorine (TOF) reporting in part 7026.0030, subp. , item C, subitem (2). The agency acknowledges that TOF analysis is a screening method that cannot distinguish individual PFAS or quantify specific compounds. For this reason, TOF is not required, but is provided as an option only when the specific PFAS and its concentration are not known despite due diligence.

The intent is not to mandate TOF testing but to offer it as one of several pathways to satisfy the statutory requirement to report PFAS amounts when precise concentration data are unavailable. TOF may be used voluntarily, and a concentration may be reported as "unknown" if supported by documentation of due diligence; this information will then be updated in future reporting cycles as more data becomes available.

The agency also agrees that any TOF testing conducted should follow commercially available analytical methods with appropriate quality controls. MPCA will consider including reference to relevant method standards or validation criteria and clarify that in-house laboratories may conduct analysis if appropriate documentation and method validation exist. The agency is committed to transparency and utility of submitted data, while acknowledging the scientific and logistical limitations of TOF analysis for complex products.

Item E: Manufacturer information

Thomas-9: "Manufacturer information: Terumo BCT asks for clarification on MINN. R. 7026.030, Subp. 1.E. through 7026.030, Subp. 1.G (line 8.10). Does the manufacturer referenced here refer to the PFAS manufacturer or the manufacturer of the product overall?"

RESPONSE: The agency is asking for the manufacturer of the product for sale in Minnesota. The SONAR report on pages 30-31 provides justification for asking for manufacturer information in this section to better understand the industries that are using PFAS.

Subp. 3. Failure to submit.

Thomas-10: "The proposed language in MINN. R. 7026.0030, Subp. 3 is inconsistent with the existing statutory language on remedy through notice and testing only."

Hall-11: "7026.0030, subp. 3 PREFERRED OPTION: DELETE SUBPART 3 and REPLACE WITH EXISTING STATUTORY LANGUAGE ON REMEDY THROUGH NOTICE AND TESTING ONLY

OTHER OPTION – ADD: MPCA shall not impose any administrative penalty on a manufacturer that either (1) submits an initial report that does not contain all information necessary to be deemed complete for a particular product or component or contains known or reasonably ascertainable information for a particular product or component, even if such information may not fully address all reporting elements, or (2) does not file any initial report based on absence of information reviewed in due diligence that triggers reporting requirement.

• MPCA stated enforcement remedy is inconsistent with the Minnesota legislature's specified remedy in the statute."

Branstad-15: "Subpart 3. See our comments at Subpart 1 of the section regarding the impracticality of the report requirements and due diligence standard."

> **RESPONSE:** The agency has existing statutory authority to issue orders assessing monetary penalties pursuant to Minn. Stat. § 116.072 for compliance violations, as well as to require corrective actions for such violations, including but not limited to requesting product testing and certificate of compliance as part of their enforcement options.

The use of "intentionally added":

Kallen-6 (pre-hearing comment and hearing testimony): "Consistently use the term "intentionally-added" to avoid the incorrect implication that unintentionally-present PFAS is regulated by the statute (see, e.g., lines 5.23 and 14.14, which merely reference "PFAS-containing" products but do not mention intentional presence)."

Branstad-16: "Subpart 1.A(1)(a)(i-iii) and 1.A(b)(i-iii). We offer the following suggestions to enhance consistency with the statute and legal clarity: i. the intentionally added PFAS chemical composition in the products are the same; ii. the intentionally added PFAS chemicals in the products fall into the same reporting concentration ranges; iii. the intentionally added PFAS chemicals in the products provide the same function in each product; and" "

Branstad-17: "Subpart 1.B. For clarity, add the phrase "Intentionally added" before "PFAS chemicals".

> **RESPONSE:** The MPCA respectfully disagrees with the commenters' suggestions. The term "intentionally added" is used in subpart 1 of part 7026.0030 Report; Required Information. This section requires that, "A manufacturer or group of manufacturers of a product that is sold, offered for sale, or distributed in the state and that contains intentionally added PFAS must submit a report to the commissioner on or before January 1, 2026." Any items or subitems that fall under this subpart, as identified by the commenters, would already imply that the PFAS is intentionally added to the product. The MPCA does not believe that these suggestions are necessary to add additional clarity to the rule.

Part 7026.0040 REPORTING UPDATES

Annual updates:

Keane-4: MPCA should clarify what changes to a product trigger an annual update. Aesthetic-only changes should not require resubmission. MPCA should provide a procedure for manufacturers to withdraw products once PFAS have been removed and ensure such products are removed from the reporting database. Corrections made in good faith should not be penalized.

Palin-11 (pre-hearing comment and hearing testimony): "The Requirements Regarding Updated Filings are Unrealistic: …For the automotive industry, the combination of these two provisions (significant change and new product) is likely to mean that auto manufacturers would be resubmitting vehicle PFAS information every year, which would essentially be the same information. Auto manufacturers release new model years of several vehicles every year, but more times than not those new models involve only minor changes, possibly the substitution or adjustment of a few parts, and no major redesigns. However, when a "significant change" can include the addition of a specific PFAS not previously reported in a component or a measurable change in the amount that would move the product into a different concentration range, that threshold is likely to be triggered and would result in reporting all vehicle data every year. In addition, the terms "new product information" and "new product" are not defined—would new product information include a company name change or new address? Auto Innovators recommends that PCA consider a less strict and more straightforward threshold for updated reporting.

> **RESPONSE:** The proposed rule provides what triggers an update to the initial report under subp. 1, item A, subitems (1) through (3) including a significant change that was made to the product, new product information was provided to a manufacturer, or a new product was sold, offered for sale, or distributed in or into the state. The specific reasonableness for each of these scenarios is provided for on pages 31 and 32 of the SONAR. Aesthetic-only changes would not be included unless the change involves changes to the PFAS chemicals.
>
> In the implementation of the proposed rule, the MPCA intends to make the process to provide an annual update as efficient as possible for the manufacturer. For example, if the PFAS chemicals or concentration in only one component changed in a product, a manufacturer would only need to provide an update for that one component and not the product as a whole. The reporting system will allow a manufacturer to import last year's data to make adjustments as needed.

The MPCA believes that the terms “new product information” and “new product” are already clear in the context in which they are used and do not require a definition. As stated in subitem (2), if new product information was provided to the manufacturer that differs from the initial report submitted under part 7026.0030, the manufacturer must submit an update to that report. New product information would not include a change to company name or address, as that information is covered under subp. 3 voluntary updates. While the manufacturer is still asked to voluntarily provide that update at any time, voluntary updates are not subject to a fee. The MPCA also believes that the term “new product” is straightforward in its use under subitem (3) which states, “a new product was sold, offered for sale, or distributed in or into the state”.

Instructions on how to remove products from the data base, when applicable during annual updates or voluntary updates, will be provided in the guidance for the reporting system.

Recertification:

McGowan-9: “Requiring manufacturers to provide annual recertification whether or not there is any updated product information is unnecessarily burdensome and in direct contrast with the Law, which requires only updates and revisions “whenever there is significant change in the information.” AGCCA suggests these updates be limited accordingly to be consistent with the Law.”

RendallJackson-1: “The proposed rule requires annual updates to the reported information in cases of significant changes and mandates annual recertification even when no updates are necessary.

Considering the role of the proposed rule in collecting information on PFAS-containing products and balancing the burden on both manufacturers and state authorities, it would be more appropriate to adopt a principle of one-time reporting. Annual updates should not be required, and updates should only be mandated in cases where there are significant changes to the previously submitted information.

Furthermore, the requirement for annual recertification even when there are no changes to the reported information is clearly an excessive obligation. This imposes a significant burden on manufacturers and should therefore be eliminated.”

Sepesi-1 (pre-hearing comment and hearing testimony): "The proposed rule creates an annual recertification requirement for previously submitted reports. This requirement is outside the scope of the statute. It is burdensome overreach, with no technical or economic value.

The proposed rule creates an annual recertification requirement for previously submitted reports. This requirement is outside the scope of statute. Other than the initial reporting due January 1, 2026, the statute authorizes reporting in three circumstances: (1) when a new product is sold, offered for sale, or distributed in the state; (2) when there is significant change in the information; or (3) when requested to do so by the commissioner. Minn. Stat. 116.943, subd. 2(c). The statute is silent regarding recertification.

Requiring recertification is burdensome overreach, with no technical or economic value. MPCA provides little justification, merely saying that it is "reasonable to require the manufacturer to verify that the information submitted in the initial report … is still correct to ensure that the MPCA has the most accurate data available for those products." SONAR p. 32. MPCA mistakenly believe the statute authorized it to create a dynamic statewide PFAS product inventory, which is poor use of limited agency resources. MPCA claims this requirement "reduces the reporting burden for manufacturers that made changes by requiring them to only reverify that the information previously provided has not changed." SONAR p. 32. It does the opposite. It increases the reporting burden on manufacturers and collectively increases their financial burden as well.

To the extent MPCA would claim recertification is allowable under the provision that requires to report "whenever requested to do so by the commissioner" such a claim would be misplaced. First, the plain language of the statute indicates that this applies to case by case requests and not a blanket recertification requirement for all reporting manufacturers. Further, MPCA failed to raise such an argument in the SONAR.

Comment Summary: MPCA should withdraw the recertification requirement."

Prero-11: "The Proposal requires that by February 1 of each year, manufacturers must either update reports to reflect changes to information previously submitted or recertify the previously submitted report.

While CUC understands a need to update information when what MPCA has on record changes, the requirement to recertify is unnecessary and only serves to add a compliance burden, creating another opportunity to find a violation - and an opportunity to collect a fee – on those attempting to do business in Minnesota. Once there is an affirmative obligation to ensure that the information MPCA has been provided is (and remains) accurate, annual recertifications are not necessary. CUC requests that this requirement be eliminated and that updates be required only when a material change in a product's PFAS composition has occurred."

Bemus-3 (pre-hearing comment and hearing testimony): SPAN believes that the requirement in the Proposed Rule for an annual recertification is not needed and only serves to further burden manufacturers… SPAN requests that the requirement for updates to be made when changes do occur be retained, while the annual recertification requirement and accompanying annual fee be removed.

Thomas-11: "In MINN. R. 7026.0040, Subp. 2., we are concerned that the annual recertification, if an update is not required, is an administrative burden with no added value. Without access to even a beta portal to review, there is no way of knowing if the information submitted is carried over year-to-year or if it would have to be re-entered every year. If it is the latter, that would be a large annual undertaking for companies that are reporting tens of thousands of products or components subject to reporting. We believe that the relevant information would be captured in the updates required in Subp.1."

Nagy & Tatman-4 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends removing the "annual recertification" section. A requirement for recertification every five years would be a more manageable cadence for both the agency and the regulated community, especially for complex products, their essential chemical components such as lowrisk refrigerants, fluoropolymers, and insulating gases, and their replacement parts, as well as any de minimis amounts."

Friest-10: "The proposed rule requires annual updates or recertification if an update is not required. Updates should only be required if new information subject to reporting requirements related to PFAS content has been obtained, or if the manufacturer has new products falling within the scope of the rule, containing intentionally added PFAS. The language is vague and does not reasonably restrict the requirement for updates. The proposed rule also requires annual recertification in the absence of new information. This is onerous and provides no additional benefit while imposing significant reporting burden on manufacturers, along with an added fee to simply recertify previously reported information for which a fee has already been paid. The requirement for recertification is unreasonable."

Kallen-7 (pre-hearing comment and hearing testimony): "The Proposed Rule envisions in lines 15.1 – 15.5 that even if no relevant changes were made to a manufacturer's product lines year-by-year, the manufacturer would still be required to submit an annual update and pay an annual fee. SEMI and SIA believe that it is unduly burdensome to require manufacturers to submit annual reports and pay annual fees even if there are no relevant changes to their product lines. SEMI and SIA request that the MPCA remove all references to annual recertifications, including in lines 9.10 – 9.12, 9.19, 9.22, and 15.1 – 15.2."

Tarter-3: "Eliminate the annual re-certification requirement (and associated fee), as it is unnecessary and will only add to compliance burdens for manufacturers. Manufacturers are already obligated by statute to report to MPCA if a significant change was made to the product."

Fleming-1: "FST is consistently updating its product portfolio to reflect the needs of its customers and this type of annual reporting requirement would require a significant amount of operational resources, especially for the annual recertification since in this situation there would be no changes to the previously reported information warranting an update. We therefore recommend that the requirement to submit an annual recertification be removed from the proposed reporting rule, or at the very least the requirement to pay a fee for this annual recertification should be removed."

Melkonian-3: "Recertification - AMERIPEN objects to this provision for several reasons. First, it is entirely unnecessary, as manufacturers are already required to report significant changes to MPCA on annually basis when a relevant update occurs. Second, it creates additional costs and personnel demands for the manufacturers and the state alike. Finally, annual recertification is not contemplated or called for in the underlying statute. AMERIPEN requests removal of this subpart and any other provisions related to annual recertification."

McGowan-10: "Annual recertification is unnecessarily burdensome and in direct contrast with the Law, which requires only updates and revisions 'whenever there is significant change in the information.' AGCCA suggests these updates be limited accordingly to be consistent with the Law."

> **RESPONSE:** Minn. Stat. § 116.943 subd. 2 (c) requires that a manufacturer must "revise the information... when requested to do so by the commissioner". It is under this statutory authority that the MPCA is proposing to require annual updates and recertifications to the initial report.
>
> The MPCA respectfully disagrees with the comments asserting that recertifications are unnecessary and burdensome. Requiring manufacturers or groups of manufacturers to review their reports on an annual basis and recertify that the information they submitted is still correct is necessary to ensure that the information remains correct from year to year. Without such recertifications, a manufacturer may not otherwise review the report that they initially submitted.
>
> This process also ensures that a manufacturer that did not submit an annual update still reviewed their initial report. Without this recertification, the MPCA would have no way of knowing whether a manufacturer simply forgot to submit their annual update, or if they truly had no significant changes, no new product information, and no new products sold, offered for sale, or distributed in the state.
>
> The MPCA does not believe that the process to recertify the report will be overly burdensome on manufacturers or groups of manufacturers. If nothing has changed, the manufacturer only needs to certify as much.

Timing of annual updates and recertification:

Barnes-1: Recertification should occur every 3–5 years, rather than annually. This reduces the burden on both manufacturers and MPCA while still ensuring accurate and timely data.

> **RESPONSE:** The agency provides reasoning to require annual updates on page 31-32 in the SONAR.

Sepesi-2 (pre-hearing comment and hearing testimony): "The proposed rule requires that "By February 1 each year, a manufacturer or group of manufacturers must submit an update to the report submitted under part 7026.0030 if during the previous 12 months: (1) a significant change was made to a product; (2) new product information was provided to a manufacturer; or (3) a new product was sold, offered for sale, or distributed in or into the state."

As drafted, the timing provision is unclear. MPCA uses the phrase previous 12 months when it appears that the intent is to cover the previous calendar year. Further, MPCA should clearly indicate that the first reporting updates will be required starting February 1, 2027 for calendar year 2026.

Comment Summary: MPCA should revise Subpart 1.A as follows: "By February 1, 2027 and each year thereafter, a manufacturer or group of manufacturers must submit an update to the report submitted under part 7026.0030 if during the previous 12 months calendar year. …""

> **RESPONSE:** The agency is considering adjusting the language in 7026.0040 subpart 1 from "previous 12 months" to "previous calendar year" (see the MPCA's proposal under the section of this document titled 'Changes to the Proposed Rules').

Reporting the removal of PFAS from a product or component:

Sepesi-3 (pre-hearing comment and hearing testimony): "The proposed rule requires reporting when there is a significant change in information. The proposed rule defines a "significant change" to mean "when there has been a change in the composition of a product that results in the addition of a specific PFAS not previously reported in a product or component or a measurable change in the amount of a specific PFAS from the initial amount reported that would move the product into a different concentration range." Proposed rule 7026.0010, Subpart 18.

MPCA needs to clarify whether significant change reporting is required when a PFAS is entirely removed from a previously reported product. If so, MPCA should allow manufacturers to merely provide a simple notice when a PFAS is entirely removed from a previously reported product and exempt such reporting from fee requirements.

Comment Summary: MPCA should allow manufacturers to provide a simple notice when a PFAS is entirely removed from a previously reported product and exempt such reporting from fee requirements"

> **RESPONSE:** The proposed rule language under 7026.0040 Reporting Updates, subpart 1, item A, subitem (1) includes the removal of PFAS from a product or component. Additionally, if a manufacturer wishes to voluntarily update the removal of PFAS from a product at any time during the year they are able to do so under 7026.0040, subpart 3.
>
> Instructions on how to remove products from a report in either scenario will be provided in the guidance for the reporting system.

New information:

Sepesi-4 (pre-hearing comment and hearing testimony): "It appears MPCA is requiring reporters to amend a previously submitted report when there is "new product information." An update based on "new product information" is not specifically authorized by the statute. In the SONAR, MPCA failed to identify what specific new information would trigger reporting. The proposed rule is vague and not well explained. It is unclear how this reporting differs from updates that would be provided under the significant change reporting requirement.

Comment Summary: MPCA should delete the reporting requirement for new product information."

> **RESPONSE:** Minn. Stat. § 116.943 subd. 2. (c) provides the MPCA authority to have manufacturers submit information under this statute whenever a new product that contains intentionally added PFAS is sold, offered for sale or distributed in the state and revise the information whenever there is a significant change in the information or when requested to do so by the commissioner. The MPCA intends to use that authority and believes that rule text under 7026.0040 Reporting Updates provides additional clarity for manufacturers.

Duration of reporting:

Mwanza-3 “Could the review team clarify whether the reporting requirement is intended to be temporary or ongoing, and how it aligns with the broader regulatory objectives? Addressing these questions would help ensure that the reporting framework is both purposeful and proportionate for our industry.”

Fisher-4: “7026.0040 Subpart 1 Updates Required. As it currently reads, this section implies reporting is indefinite. We recommend this be amended to indicate that the last date to report is February 1, 2032, as stipulated in Minn Stat. § 116.943, subd 5(c), that all products that have not received a currently unavoidable use designation are prohibited for sale within Minnesota by January 1, 2032.”

> **RESPONSE:** Minn. Stat. § 116.943 subd. 5. (c) requires the MPCA commissioner beginning January 1, 2032 to specify products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use. A reporting system must be maintained beyond January 1, 2032 for those products still containing intentionally added PFAS to meet this statutory requirement. When the use of PFAS is removed to comply with the 2032 prohibition or for other reasons, a manufacturer can remove the product from their report under voluntary updates without any associated fee.
>
> Reporting is ongoing; the proposed rule requires annual updates, and manufacturers must submit reports for new products that contain intentionally added PFAS sold, offered for sale, or distributed in Minnesota after January 1, 2026. A database of this information will be continuously maintained. This approach is consistent with the legislative directive in Amara's Law under Minn. Stat. 116.943, subd. 2 (c), which requires a manufacturer to submit info "whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state and revise the information whenever there is a significant change in the information or when requested to do so by the commissioner".

Implementation:

Branstad-18: “We request that MPCA clarify whether a manufacturer will be able to use the reporting system to submit the types of updates described in this section and whether other means will also be available. Also, it is our interpretation that, if a manufacturer removes all intentionally added PFAS from a notified product, that manufacturer would no longer have any reporting obligations, including required updates or annual recertification, since the manufacturer would no longer be a “manufacturer” as defined in the statute. In addition, we

ask MPCA to clarify whether the product will be removed from the IC2 database once all intentionally added PFAS has been removed from the product."

> **RESPONSE:** Any updates to reports whether annual updates or voluntary updates will be done through the reporting system. Your interpretation is correct that if a manufacturer removes all intentionally added PFAS from a reported product, there is no longer a reporting requirement for that specific product. Instructions on how to remove a product no long containing PFAS from a report will be provided in guidance for the reporting system.

Comments specific to the rule language:

Hall-12: "7026.0040, subp. 2 "Annual recertification."

• The regulation speaks to "recertification," but "certification" is neither used nor defined in the regulation or the statute. MPCA needs to clean up the language or clarify what they mean by "recertification." E.g., "Annual resubmittal" or "Annual confirmation"."

Branstad-19: "Subpart 2. The proposed regulation uses the word "recertification", but "certification" is used in neither the statute nor elsewhere in the proposed rule. We offer the following language for clarity:

Annual recertification. If an update is not required under subpart 1, a manufacturer or group of manufacturers must ~~re~~certify the existing report submitted under part 7026.0030 by February 1 each year.

The change from "recertify" to "certify" should carry over to the discussion of fees."

> **RESPONSE:** The MPCA proposes rule language that then must be approved by the Office of Revisor of Statutes. The terms "certify" and "recertify" have similar meanings, and the MPCA does not intend to change the rule language as proposed.

Branstad-20: "Subpart 1. In our reading, the proposed language here is overly broad. The phrase "new product information" at (2) should be clarified as information other than a significant change directly relevant to the reporting requirements at 7026.0030, and (3) should be clear that it applies to new products containing intentionally added PFAS. We suggest the following changes:

> (1) a significant change was made to a product;
>
> (2) new product information that is not information about a significant change but is otherwise directly relevant to the information required under part 7026.0030 was

provided to a manufacturer or group of manufacturers in a supply chain agreement as described in section 7026.0020; or

(3) a new product containing intentionally added PFAS was sold, offered for sale, or distributed in or into the state if the new product is not already represented by a previously reported product group as provided at 7026.0030 Subpart 1.A(1)(a).

Melkonian-4

: "Updates - AMERIPEN requests a minor clarification to this clause to read as follows: "new product information pertaining to a product's categorization or PFAS content was provided to a manufacturer." Similarly, subparagraph (3) should be constrained to apply only to new products that contain intentionally added PFAS, to read as follows: "a new product that contains intentionally added PFAS was sold, offered for sale, or distributed in or into the state."

RESPONSE: Item A already references the initial report under part 7026.0030, and these subitems fall below item A, so it is unnecessary to reference part 7026.0030 again. Subitem (1) already references a significant change made to a product, so the MPCA believes that reiterating this in subitem (2) is unnecessary. Subitem (2) is clear that new product information (other than that already covered under subitem (1)) would trigger an update to the initial report.

Within part 7026.0030 (referenced under item A), subpart 1 specifies PFAS that is intentionally added to a product. Because this section of rule is referenced, "a new product" is implied to contain intentionally added PFAS. The MPCA disagrees that this update should only pertain if the product is not already represented by a previously reported product group. The previously reported product group may need to be updated as a result of a new product being sold, offered for sale, or distributed in the state.

Part 7026.0050 WAIVERS

Misinterpretations of waivers versus exemptions:

Andes-2: "In addition to the circumstances provided in the Proposed Rules where waivers of the reporting requirement are allowed, MPCA should consider allowing waivers where a specific use of a PFAS is required by applicable product certification standards. It is often the case that a product cannot be marketed for a particular use – for example, fire protection or other safety uses – unless it has certification from National Fire Protection Association, Underwriters Laboratories, or another applicable certification agency. If the applicable certification standard requires the use of PFAS, or if the standard cannot currently be met without the use of PFAS, then the manufacturer has no choice but to include PFAS in the

product. In these circumstances, the manufacturer should be eligible for a waiver of the MPCA reporting requirements."

Nagy & Tatman-5 (pre-hearing comment and hearing testimony): "The CPM Coalition asserts that by Minn. Stat. § 116.943, the MPCA has the authority under the law to grant additional waivers, including an information requirement waiver. We further assert that MPCA should use this authority to proactively grant information requirement waivers for complex products, including but not limited to industrial, commercial, and consumer products such as appliances, batteries, communication devices, electrical and power transmission and distribution equipment, electronics, HVACR-WH systems, lighting, outdoor power equipment, vehicles, vessels, and others, as well as their components and replacement parts. Exemptions should also be applied to complex products' essential chemical components such as low-risk refrigerants, fluoropolymers, and insulating gases, and their replacement parts, as well as any de minimis amounts, in its final regulations."

Barnes-2: Under Minn. Stat. § 116.943, the MPCA is provided authority to grant information requirement waivers (§ 116.943, Subdivision 3(a)), and we request that waivers be provided for our powersports vehicles, replacement parts, and fluids/refrigerants.

> **RESPONSE:** The commenters seem to misinterpret the intent of waivers to PFAS reporting requirements. A manufacturer of group of manufacturers may apply for a waiver to the reporting requirements under the proposed rule if substantially equivalent information is already publicly available. This does not mean that a waiver exempts a manufacturer or group of manufacturers from reporting requirements; it means the information is already publicly available to the agency and to the public. Waivers are an opportunity for manufacturers to avoid duplicative reporting if the required information is already available to the public outside of the agency's reporting system.

Waiver eligibility:

Iizuka-6: Waiver eligibility. In order to avoid duplicate reporting, we would like to request that products that have already been reported under other programs, such as the PFAS reporting under US TSCA section 8(a)7, be recognized as having already been reported and that they do not need to be submitted again under this rule.

Prero-12: "The Proposal allows for the commissioner to waive all, or part of the information required if substantially equivalent information is publicly available. As MPCA is aware, EPA will be moving forward with its own PFAS reporting under Section 8(a)(7) of the Toxic Substances Control Act. To ease the reporting burden and reduce duplication of effort, CUC recommends that MPCA issue a blanket waiver for all manufacturers that will be reporting information to EPA to comply with that reporting requirement."

Bemus-4 (pre-hearing comment and hearing testimony): SPAN suggests that MPCA issue a general waiver for manufacturers that are also submitting data under the EPA's TSCA Section 8(a)(7) PFAS reporting rule.

Kallen-8 (pre-hearing comment and hearing testimony): "SEMI and SIA request that the MPCA grant a waiver from all parts of reporting via subdivision 3(a) in Section 116.943 for semiconductor products, semiconductor product components, materials used in semiconductor manufacturing, semiconductor manufacturing and related equipment, supporting fab infrastructure, and other microfabricated products that utilize semiconductor-like manufacturing processes (e.g., micro-electromechanical systems (MEMS).

Subdivision 3(a) provides that the MPCA may grant a reporting waiver if "substantially equivalent information is already publicly available." The MPCA addressed this in lines 10.1 – 11.9 of the Proposed Rule. While section 7026.0050 of the proposed rule specifies a process for requesting a waiver, the MPCA should also consider granting waivers by rule, including for the semiconductor industry. Information substantially equivalent to the reportable information required under subdivision 2 as it relates to PFAS in semiconductors and semiconductor manufacturing can be found in technical papers authored by the Semiconductor PFAS Consortium ("the Consortium") that are freely and publicly available on its website at semiconductors.org/PFAS. While the technical papers of the PFAS Consortium do not provide information about specific company products (e.g., PFAS compositions, concentrations, quantities, etc.), the Consortium papers do provide the substantially equivalent information regarding where, how, and for what purpose PFAS is used in semiconductor manufacturing (NAICS Code 334413) and present in semiconductor products (HTS Codes 8541 and 8542)."

> **RESPONSE:** As stated on page 33 of the SONAR, 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.
>
> On page 44 of the SONAR, the MPCA conducted a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. The MPCA compared the proposed rule to EPA's TSCA Section 8(a)(7), but found that, "*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*."
>
> The MPCA's proposed rule is for products containing intentionally added PFAS that are currently sold, offered for sale, or distributed in the state, and only requires manufacturers to obtain current information from their supply chain rather than

attempting to report historical data dating back to 2011. The TSCA Section 8(a)(7) rule is also a one-time report, whereas the MPCA's proposed rule requires an initial report and ongoing annual updates and recertifications.

The rule does allow for publicly available equivalent information does not need to be reported and is anticipating that other states will develop equivalent reporting systems in the future. This allowance is to reduce undue burdens on manufacturers.

Waiver submission:

Branstad-21: "Subpart 4.A. MPCA proposes that manufactures must submit their waiver request "at least 30 days before the applicable reporting due date." It is our interpretation that manufacturers can submit a waiver request well before the reporting due date to give MPCA sufficient time to consider the request."

RESPONSE: Yes, 30 days is the minimum. A manufacturer can submit a waiver request well in advance of the reporting due date based on the language in the draft rule.

Waiver denial:

Turner-4: if the waiver extension is denied, the reporter must submit within 30 days. Valmet considers this time frame insufficient and proposes it to be extended to 45 days.

Michaud-4: "Reports should be required to be submitted no sooner than 90 days after a denial of a waiver request."

Nustad-4: "Retailers appreciate the ability to request a waiver or extension, however, the rules do not provide adequate timeframes or contingency allowances in the event a request is denied. If a waiver is rejected close to a compliance deadline, the retailer may not have enough time to gather the necessary information or complete a report. We urge the MPCA to build in a reasonable buffer period or an automatic temporary extension in these scenarios."

Friest-11: "The timelines in the waiver request provisions do not provide sufficient time for manufacturers to report if a waiver request is denied close to the deadline."

Rhoderick-3: "Recommendation: Require reports to be submitted no sooner than 90 days after a denial of a waiver request."

RESPONSE: On page 34 of the SONAR, it states that 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, where they must demonstrate "*substantial equivalent information is already publicly available*,"

already has the required information available elsewhere outside of the reporting system.

Substantially equivalent information:

Thomas-12: "Terumo BCT would appreciate clarity regarding publicly available information that is used as substantially equivalent information. It is possible that verified, publicly available information may be dated and could be used to support this request. Would that be allowed? Terumo BCT Recommendation:

• Include language that allows MPCA to grant or a manufacturer to request a waiver for all reporting requirements or deadlines for certain groups (either products or manufacturers) subject to reporting."

Frederick-3: "We would also appreciate the inclusion of language that allows MPCA to grant or a manufacturer to request a waiver for all reporting requirements…"
AdvaMed requests that MPCA clarify how publicly available information can be used to obtain waivers and that the agency allow waivers for entire product categories when sufficient alternative data exists.

> **RESPONSE:** Requests for all reporting requirements to be waived is covered in 7026.0050 Subpart 1. Waiver eligibility. "Upon request of a manufacturer or group of manufacturers, the commissioner must waive all or part of the information required under part 7026.0030 if the commissioner determines that substantially equivalent information is publicly available."
>
> The agency would like to reiterate than a waiver does not constitute an exemption from part or all of the reporting requirements. Information eligible for waivers must be maintained and up to date annually per the requirements of 7026.0050 subpart 2.

Comments specific to the rule language:

Hall-13: "7026.0050, subp. 1 REVISE: "~~Upon request of a manufacturer or group of manufacturer, t~~The commissioner must ~~waiver all or part of the information~~ grant agency-initiated waivers and/or manufacturer-initiated waivers from all reporting requirements under part 7026.0030 or from the deadline for initial report for certain reporting groups (specific products/manufacturer categories) if the commissioner determines that substantially equivalent information is publicly available.

• Waivers are appropriate and effective mechanisms to allow appropriate flexibility on some/all substantive or timing requirements for category of products or manufacturers or based on case-specific considerations."

Hall-14: "7026.0050, subp. 2 ADD: <u>specific basis for manufacturer-initiated waiver of deadline for all reporting or for period of time (e.g., one year waiver for filing initial report)</u>

• Waivers are appropriate and effective mechanisms to allow appropriate flexibility on some/all substantive or timing requirements for category of products or manufacturers or based on case-specific considerations

> **RESPONSE:** Waivers do not change the required deadline of submittal for information required to be reported. Extensions change the required deadline for submission and are covered in a different section. Under the proposed rule, extensions and waivers serve different purposes. Waivers do not change the required submission deadline; instead, they reduce the scope of reporting obligations for specific products or data elements when substantially equivalent information is already available to the MPCA. Extensions, by contrast, modify the deadline for submitting the required information, as outlined in part 7026.0060. Also, the agency maintains the right to only waive part of the reporting requirements, rather than all reporting requirement, depending on the substantially equivalent information presented.

Hall-15: "7026.0050 REVISE EXISTING LANGUAGE: "a link to or copy of all publicly available and substantially equivalent information described by the manufacturer <u>unless the substantially equivalent information was received by MPCA pursuant to the reporting requirements of this rule, in which case the manufacturer need only direct MPCA to that information.</u>

• See comments above regarding need for manufacturers to have access to reporting information submitted to MPCA under this rule"

> **RESPONSE:** Adding this proposed language is unnecessary because part 7026.0020 subpart 2 already allows for manufacturers to report on behalf of another manufacturer or group of manufacturers in the supply chain. This allows groups of manufacturers to consolidate duplicative information.

Branstad-22: "Subpart 4. This section does not address the question of whether a manufacturer is out of compliance if the commissioner fails to decide on a waiver request after the established reporting due date. In our reading of the language at B, MPCA has contemplated that scenario. It is unreasonable to leave such a critical compliance question unanswered. It is also unreasonable to deem a manufacturer that acted in good faith and is awaiting a decision

from the commissioner out of compliance. We suggest the addition of the following in Subpart 4:

> C. A manufacturer or group of manufacturers that has submitted a waiver request in compliance with this section but has not received a decision from the commissioner prior to the established reporting due date will not be considered out of compliance.

RESPONSE: The comment received in relation to this section of rule seems to contemplate the implementation of the proposed rule and the compliance and enforcement of such provisions. The intent of the proposed rule language is to ensure that manufacturers submit their waiver requests far enough in advance (at least 30 days before the reporting deadline) that this scenario would not occur.

If this scenario did occur, and in the enforcement of such provisions, the agency would not commence enforcement action on a manufacturer that submitted their waiver request by the deadline if the commissioner had not approved or denied the waiver request. It is recommended to maintain relevant documentation as MPCA compliance and enforcement staff will take all information into consideration if noncompliance is found. The MPCA does not believe that the inclusion of the suggested rule language is necessary to provide clarity to the rule.

7026.0090 EXEMPTIONS

Requested exemption for fluoropolymers:

Choiniere-3: Request that MPCA exclude fluoropolymers from the scope of the regulation, citing low hazard profiles, OECD classification as polymers of low concern, and critical importance to energy, defense, and semiconductor industries.

Zaman-3 (pre-hearing comment and hearing testimony): "ACA recommends MPCA add fluoropolymers to the list of reporting exemptions in 7026.0090. Fluoropolymers are unique in that they are not water-soluble and have a high molecular weight. Fluoropolymers are critical for many applications and without viable alternatives health, safety, and economic stability could be severely impacted."

Kallen-9 (pre-hearing comment and hearing testimony): "SEMI and SIA recommend that the MPCA add fluoropolymers to the list of Reporting Exemptions in 7026.0090. Fluoropolymers are unique in that they are not water-soluble and have a high molecular weight. Fluoropolymers

are critical for many applications and without viable alternatives health, safety, and economic stability could be severely impacted."

Fleming-2: ""Fluoropolymers should be exempt from the MPCA's reporting rule and at the very least from the upcoming 2032 ban as a currently unavoidable use of PFAS since there are no equivalent performing materials and such long chain, large molecules do not pose meaningful environmental and health risks. Excluding only certain applications of fluoropolymers would not reflect reality as all applications which require fluoropolymers in gaskets and seals are using these substances due to an inability to substitute with another material of similar or equivalent performance."

Wagner-1: "Fluoropolymers - As the MPCA is aware, PFAS encompass a broad class of over 10,000 substances with widely varying chemical, physical, and toxicological properties. Within this group, fluoropolymers—commonly used in medical devices—are chemically stable, non-mobile, non-bioavailable, and have not been shown to present the same environmental or human health risks as lower molecular weight PFAS."

RendallJackson-2: "Looking at the legislative landscape in the United States, New Mexico's state law HB212 has already excluded fluoropolymer-containing products from the regulation, and California is also advancing discussions on SB730, a bill that similarly excludes fluoropolymer-containing products from regulation. Differences in regulatory approaches among states could lead to confusion in the U.S. industrial sector and negatively impact the development of related industries. Considering these developments in other states, Minnesota should also exclude fluoropolymer-containing products from the scope of regulation."

Erny-3 (pre-hearing comment and hearing testimony): "MPCA should exclude substances with low-risk profiles, including fluoropolymers These types of chemicals have high-molecular weight, low levels of residual monomer, and do not degrade easily under normal conditions of use. In 2023, the EPA's Risk Evaluation framework excluded certain high-molecular weight polymers from extensive evaluation due to their low bioavailability. This exclusion was based on the understanding that the physical characteristics of these polymers, specifically their insolubility and high molecular weight, would limit their ability to be absorbed into the body and therefore pose a lower risk. MPCA should also consider exemptions for refrigerants and for components containing PFAS at de minimis levels, where the presence of PFAS is incidental."

Bemus-5 (pre-hearing comment and hearing testimony): SPAN requests that MPCA consider additional exemptions, such as for semiconductors… Additionally, we recommend MPCA add fluoropolymers to the list of Reporting Exemptions in 7026.0090…

RESPONSE: The Minnesota Legislature provided a definition for "PFAS" in Minn. Stat. § 116.943. There is existing controversy and new research being released on the risk of different classes of PFAS. PFAS that are presumed to pose low risk to the consumer during the use of the product still result in PFAS pollution during the production and end of life/disposal of such products. This exposure directly affects workers during the manufacturing of a product or persons neighboring manufacturing facilities where PFAS are released and may inadvertently affect persons who live in and around landfills or waste to energy facilities where such products are disposed of. This life cycle of PFAS is further explained in pages 8 and 9 of the SONAR. Regardless, the MPCA is interested in the use of all intentionally added PFAS in products, not just those that are "of high concern".

Reporting all products that contain intentionally added PFAS, including fluoropolymers or "polymers of low concern", helps the MPCA understand the depth and scope of their use within manufactured products.

The MPCA would also like to remind these commenters that although a state cannot be less restrictive that the federal rules, the state has the right to establish more restrictive requirements than the federal rules and/or other states. It is not uncommon for state laws to differ in how products are regulated within their borders. The state maintains the authority to adopt rules that are protective of its residents' health and the environment.

Requested exemption for FDA-regulated products (medical devices, drugs, etc.):

Frederick-4: "We respectfully reiterate our request that the exemption in Minn. Stat. § 116.943 Section. 2, Subd.8.b… apply not only to subdivision 4 and 5 but to the reporting requirements in Minn. Stat. § 116.943 Subd. 2 as well."
AdvaMed urges MPCA to fully exempt FDA-regulated medical devices and products used in medical settings—not just from bans, but also from PFAS reporting requirements—due to their critical use, federal oversight, and the potentially life-saving nature of the products.

Thomas-13: "We believe that the current language under proposed exemptions (MINN. R. 7026.0090-A) is confusing and leaves room for interpretation. It is for that reason that we respectfully request a full exemption for medical devices and drugs which are critical for lifesaving care for patients."

Hardwick-3: "Three medical propellants used in MDIs - HFC-134a, HFC-227ea, and HFO-1234ze - are considered PFAS under Minnesota's definition. Rapid removal of these propellants from the supply chain and the market – especially with no alternatives immediately ready to take their place – is not technically or economically feasible and would risk the health of patients in

Minnesota and around the world. For example, prematurely banning these products could lead to drug shortages of essential, life-saving medicines. The Minnesota legislature recognized the risk of prohibiting PFAS in life-saving applications and exempted drugs and medical devices from the PFAS testing requirements and PFAS prohibition under the enacting statute. Minn. Stat. 116.943 Subdiv. 8.

Given these legislative exemptions, it is unclear why manufacturers of these FDA-regulated products should be included in the scope of required reporting under the proposed permanent rules. Since Minnesota is not testing or prohibiting intentionally added PFAS in these products, MPCA should specify that drugs and medical devices approved by the U.S. Food and Drug Administration (FDA) are exempt under proposed rule section 7026.0090(A). The contents of a drug or medical device are well-known to FDA, and the agency will not approve one of these products if the product does not pass the Agency's benefit-risk assessment related to human health, including evaluation of toxicity.

In short, the Minnesota legislature already exempted FDA-regulated products from the primary requirements of the statute and MPCA should follow this example by clearly articulating that FDA-regulated products are exempt from reporting requirements. At minimum, MPCA should articulate why manufacturers of drugs and medical devices are required to report intentionally added PFAS in FDA-approved products and explain how MPCA plans to use such PFAS data given the clear exemptions in the enacting legislation."

Gutierrez-1: "CHPA respectfully opposes the current language of part 7026.0090 as it fails to include a clear, necessary exemption for Food and Drug Administration (FDA) regulated consumer healthcare products. Specifically, over-the-counter medications and medical devices were explicitly exempted from the original PFAS ban in Minnesota law, yet they appear to be subject to these new reporting requirements. While exemptions 1 and 5 in part 7026.0090 may potentially apply to these products, the current language creates significant uncertainty that should be addressed through a specific amendment to the proposed rule.

The proposed rule already exempts "products where federal law governs PFAS presence in a manner that preempts state authority" (exemption category 1) and "information regarding PFAS-containing products provided to federal government agencies that is classified information" (exemption category 5). FDA-regulated consumer healthcare products logically fall within the spirit of these exemptions, as they are comprehensively regulated by federal law and manufacturers often share detailed compositional information with federal agencies. However, the current language creates unnecessary ambiguity about whether these products qualify for these exemptions.

To address these concerns and to maintain consistency with the legislature's intent to exempt FDA-regulated healthcare products from PFAS restrictions, I respectfully request that part 7026.0090 be amended to add the following exemption:

"F. a product regulated as a drug, medical device, or dietary supplement by the U.S. Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21 U.S. Code of Federal Regulations""

Fowler-4: "Ophthalmic devices, including spectacle frames, lenses, sunglasses, and other diagnostic and therapeutic instruments are medical devices governed under the Federal Food and Drug Administration ("FDA") and are preempted from state authority. Therefore, medical devices should fall under the exemptions in the Minnesota Statute Section 116.943, Subdivision 8(a)(1) which exempts "a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority."

EL requests that MPCA include an express exemption in the rule from all subsections for medical devices regulated by the FDA in the regulations to implement this Section. Manufacturers of medical devices should not be required to comply with section 7026.0030 of the statute because it is preempted by federal law and such a requirement places a substantial burden on manufacturers of medical devices without furthering the purpose of Minnesota Statute Section 116.943. Further, similar exemptions have been incorporated into similar laws and regulations that have been enacted or proposed in other states, including HF1627, which was introduced in Minnesota earlier this year."

Hall-16: "7026.0090 DELETE "and" in line 14.13

DELETE period in line 14.16; REPLACE with "<u>; and</u>"

AND ADD NEW EXEMPTION AS "F": <u>Medical devices or drugs that are otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration.</u>

- See comments above on basis for exemption and comment bubble on additional arguments in event MPCA refuses to use exemption as mechanism to reduce burden or allow flexibility/additional time."

Hall-17: "7026.0090 ADD: "<u>Exemptions include medical devices or drugs that are otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration</u>"

• Publicly available records demonstrate the use of certain fluoropolymers in the function of some medical devices or their components.

• The substantial regulatory burden imposed by this proposed regulation on an accelerated timeline on both medical device manufacturers and their vast network of suppliers is concerning and has prompted some market reactions.

• Accordingly, consistent with the important public interest in maintaining a safe and stable supply of the materials necessary for the manufacture and distribution of life-saving medical devices to patients worldwide, MPCA needs to provide an exemption to medical devices for reporting. This exemption could help alleviate some pressure within the supply chain at a time when feasible alternatives may not yet be available or approved by regulatory bodies.

Wagner-2: "Exemption - "Any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration.""

Denny-2 "Secondly, as explained in PPWG's 2024 comments, in the event that the MPCA does not make a statement that FDA-regulated products are out of scope, the MPCA should specify that the material restriction in Section 116.943, subdivision 2(d) does not apply to FDA-regulated products. The law states that a person must receive notification under subdivision 4 for this restriction to take effect, and subdivision 8 makes clear that subdivisions 4 and 5 of the statute do not apply to FDA regulated products. The MPCA must therefore follow the Minnesota Legislature's direction and find that FDA-regulated products cannot be restricted under subdivision 2(d). This finding is crucial to provide certainty to patients, medical professionals, and others that life-enhancing and lifesaving FDA-regulated products will remain on the market in Minnesota in the event that such products are in scope of the Reporting Rule."

Mwanza-4 "We would appreciate further clarification regarding the rationale for requiring PFAS reporting for pharmaceutical and biopharmaceutical products that are otherwise exempt from the proposed bans. If these products are recognized as essential and granted exemptions due to their critical role in patient care and public health, what is the intended purpose of maintaining a reporting obligation? How will the reported data be used, and what benefits are anticipated from collecting this information from exempted sectors?"

Thomas-14: "We appreciate that MPCA has recognized the unique nature of PFAS in medical devices and exempting these products from the ban. However, we respectfully reiterate our request that "human blood collection and storage bags, apheresis and cell therapy blood kits and bags, including integral tubing, or to any product that is a medical device or drug or that is

otherwise used in a medical setting or in medical applications regulated by the FDA" be exempted from not only subdivision 4 and 5 but reporting as well... Rulemaking that does not exempt the aforementioned blood collection and storage materials would severely interfere with Minnesota patients' ability to access lifesaving medical services statewide."

> **RESPONSE:** Minn. Stat. § 116.943 subd. 8 was specific to exempt "a prosthetic or orthotic device or to any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration" only from subdivisions 4 (testing required and certificate of compliance) and subdivision 5 (prohibitions). The Legislature provided no such exemption for the reporting requirements. The MPCA intends to follow the statute to require the reporting of PFAS in FDA-regulated products.
>
> The purpose of PFAS reporting is to allow the public to know where PFAS is being use in their products, including medical applications, to help understand where and why it is being used just like every other product industry required to report. This information is also essential to the MPCA to understand the lifecycle of PFAS in products. The MPCA asserts that having data on where and why PFAS is used in FDA-regulated products is essential to human health.

Requested exemption for complex products:

Nagy & Tatman-6 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends that MPCA use its authority under the law to promulgate additional exemptions for complex products, including but not limited to industrial, commercial, and consumer products such as appliances, batteries, communication devices, electrical and power transmission and distribution equipment, electronics, HVACR-WH systems, lighting, outdoor power equipment, vehicles, vessels, and others, as well as their components and replacement parts. Exemptions should also be applied to complex products' essential chemical components such as low-risk refrigerants, fluoropolymers, and insulating gases, and their replacement parts, as well as any de minimis amounts, in its final regulations. MPCA should also include all exemptions stated in Minn. Stat. § 116.943. MPCA should prioritize chemicals management using a risk-based approach that considers both hazard and exposure."

Erny-4 (pre-hearing comment and hearing testimony): "Within RV manufacturing, many components that may contain PFAS are fully integrated into vehicle systems and are not typically accessible during routine use or handling. This includes electronic modules, internal wiring, sealed gaskets, refrigeration units, insulation foams, lithium-ion batteries, and chemical- or temperature-resistant hoses and seals. These components are engineered for durability and

function and are not designed for consumer interaction. Accordingly, these parts may present limited consumer exposure potential and should be considered for categorical exclusion from reporting obligations.

RVIA recommends that MPCA use a risk-based approach to reporting by excluding certain low-risk substances and components, as discussed above. This would allow the agency to focus its resources on meaningful exposure pathways while avoiding undue reporting burdens on manufacturers of complex durable goods. As more data becomes available, MPCA can expand the program over time... due to the complex and unique nature of RV manufacturing and the RV supply chain, RV manufacturers are not the best positioned to provide the required information. As manufacturers of "complex durable goods:" RVIA recommends that MPCA strongly consider excluding RV manufacturers from reporting under the proposed Minnesota reporting rule if they themselves have not intentionally added PFAS as part of the final product."

> **RESPONSE:** The MPCA has provided its response to comments requesting a risk-based approach to PFAS reporting in this document under the heading, "General Comments" and the subheading, "Risk-Based Approach".

Requested exemption for PFAS substitutes listed under EPA's SNAP Program:

Sloan-4: "MPCA provides a limited number of product categories that are exempt from the rule requirements, but that do not align with other state and federal regulations that are already being implemented and informed by on-the-ground realities. This is despite MPCA's evaluation of these programs in support of the proposed reporting and fees rule in the SONAR. CPI strongly recommends that MPCA expand the exemptions list to include products and chemistries that have been exempted by similar programs, in particular those recognizing acceptable substitutes listed under U.S. EPA's Significant New Alternatives Policy (SNAP) Program."

Sloan-5: "In implementing the nation's first PFAS in Products law, the Maine Board of Environmental Protection (BEP) recently approved a rulemaking by the Department of Environmental Protection (DEP), Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances. The final rule exempted products using chemistries "listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits by the EPA pursuant to the Significant New Alternatives Policy Program at 42 U.S.C. 82(G), as long as the refrigerant, foam, or aerosol propellant is sold, offered for sale or distributed for sale for the use for which it is listed pursuant to that program." This language appropriately

scopes Maine's regulation to accommodate U.S. EPA's HFO blowing agents determination under SNAP. Similarly, the State of New Mexico adopted exemptions for SNAP-approved substitutes in legislation passed this year to establish prohibitions on PFAS in consumer products.

The exemption language and categories in the proposal should be updated to recognize differing characteristics within the broad class of fluorinated chemicals, bringing them into better alignment with similar PFAS in products programs."

Davis-4 (pre-hearing comment and hearing testimony): "...The U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) criteria for evaluating alternatives for acceptable use conditions includes assessments of the potential exposure risks, toxicity and environmental impact of the refrigerant. The EPA SNAP approval process has determined that the chemical makeup of A2L refrigerants presents minimal risk to humans and the environment. Moreover, HVACR and water heating products are hermetically sealed and tend to have a useful life over 15 years, which means Minnesotan consumers will rarely – if ever – come into contact with refrigerants or fluoropolymers present in HVACR and water heating equipment. Additionally, certain polymers that meet Minnesota's definition of PFAS (i.e., fluoropolymers such as polytetrafluoroethylene (PTFE)) are used in a wide variety of consumer products with unlikely potential for human or environmental release or exposure during use of the product and are predominantly not water soluble, therefore, presenting minimal risk associated with the actual product itself."

Davis-5 (pre-hearing comment and hearing testimony): ""To avoid duplicative reporting burdens and potential inconsistencies, AHRI respectfully requests that the MPCA clarify how the state's PFAS reporting requirements will interact with the federal oversight provided by the SNAP program. Specifically, AHRI asks MPCA to consider whether refrigerants approved under the EPA SNAP program will be subject to the full reporting requirements of this rule."

Sloan-6: MPCA provides a limited number of product categories that are exempt from the rule requirements, but that do not align with other state and federal regulations that are already being implemented and informed by on-the-ground realities. CPI strongly recommends that MPCA expand the exemptions list to include products and chemistries that have been exempted by similar programs, in particular those recognizing acceptable substitutes listed under U.S. EPA's Significant New Alternatives Policy (SNAP) Program.

Titus-1: "HVACR refrigerants are not a danger to human health and should be exempt from PFAS reporting requirements. Minnesota is justified in seeking to reduce and, if possible, eliminate the use of harmful PFAS, and HARDI understands that reporting is a step in that process. However, it is important to note that not all PFAS should be considered a danger to

human health that needs reporting. According to a systematic review of chemicals by NIH, the three factors that create a danger are "[p]ersistent, bioaccumulative, and toxic substances … that can subsist for decades in human tissues and the environment." This letter outlines the available science to show why hydrofluorocarbons (HFCs) approved for use in HVACR by the EPA, through the SNAP program, do not meet the three requirements to classify them as dangerous PFAS and urge the addition of exemptions when a separate state or federal regulation or code prohibits PFAS alternatives, such as the EPA's SNAP program."

Titus-2: "HVACR refrigerants should be exempt from reporting requirements because they are currently heavily regulated, and federal regulations already require reporting all refrigerants sold in the United States. The EPA regulates the life cycle of HFC refrigerants through the Clean Air Act and the American Innovation and Manufacturing Act. Knowingly releasing HFC refrigerant gases into the atmosphere is a crime. Refrigerants within systems do not wear out like oil in a car engine; with proper tools, refrigerants can be purified back to their original quality, an action required by the EPA. Federal and Minnesota regulations require HVACR technicians to recover refrigerants from equipment at the end of life; this refrigerant is then sent to an EPA-certified reclaimer to purify or destroy the refrigerant. Using reclaimed refrigerant reduces the environmental impact of HFCs by ensuring they are not released into the atmosphere. This process is vital as HFC production and imports are reduced over the next 11 years, and the industry reduces consumption by 85 percent from the baseline. To further reduce the impact of HFCs, the HVACR industry is moving to other refrigerants with lower global warming potential listed under the SNAP program.

Additionally, refrigerants produced in and imported into the United States are currently monitored by the federal government through reporting requirements. This federal reporting provides the same information that would be gained from the Minnesota PFAS reporting requirements being considered. Which essentially means the proposed Minnesota PFAS reporting requirement is only an unnecessary administrative and financial burden on businesses and the MPCA, that provides no real substantive benefit.

In the U.S., 30 out of the 31 states that have adopted PFAS policies have purposely chosen not to include or exempt the HVACR industry. The states of Alaska, Arizona, Minnesota, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin chose not to include or exempt the HVACR industry from their prohibitions. New Hampshire, New Mexico, and Maine legislatures adopted explicit exemptions for the HVACR industry from their PFAS prohibition policies. The Connecticut and New Jersey legislatures have their own PFAS prohibition currently under consideration, which adopts an HVACR exemption."

RESPONSE: The MPCA has provided its response to comments requesting a risk-based approach to PFAS reporting in this document under the heading, "General Comments" and the subheading, "Risk-Based Approach". The MPCA would like to reiterate that this rule does not restrict the use of products containing intentionally added PFAS that are reported. EPA's SNAP program identifies safer alternatives that can be used to transition away from ozone-depleting substances and hydrofluorocarbons (HFCs) under the American Innovation and Manufacturing (AIM) Act. Unlike Minnesota's proposed PFAS reporting rule, this act enables the EPA to phase down the production of HFC's. As a result, this proposed rule is not comparable to the EPA's SNAP program.

The MPCA would also like to note that SNAP is not a static list of alternatives, but an ever-changing list as the EPA is informed by new research and understanding of the environmental and human health impacts of available substitutes. The proposed rule does not have the flexibility to be updated in accordance with the EPA's SNAP list of alternatives, so there would be a delay between the two and the need to constantly amend the state rule. EPA's SNAP also does not provide the required equivalent information that the MPCA's proposed rule requires.

Lastly, the MPCA would like to reiterate that the agency is interested in the use of all intentionally added PFAS in products, not just those PFAS that are "of high concern". Reporting all products that contain intentionally added PFAS, even if the PFAS are currently listed on EPA's SNAP list as a safer alternative to ozone-depleting chemicals and HFCs, helps the MPCA understand the depth and scope of their use within manufactured products. This information may also be used in future research to study how PFAS move and bioaccumulate in the environment and living organisms.

Requested exemption for electrical and electronic equipment:

Iizuka-7: "We would like to explain that the amount of exposure to EEE is extremely small to begin with. During the use of manufactured items like EEE, it is presumed that an exposure amount of PFAS is generally negligibly low compared with the exposure of the PFAS as chemicals own… In light of the above, since the risk of adverse effects on humans and the environment is extremely small, we request that complex articles such as EEE be exempt from reporting, or that the reporting requirements be at least simplified compared to those required by the proposed rule."

RESPONSE: Even if PFAS are presumed to pose low risk to the consumer during the use of the product, the production and end of life/disposal of such products result in PFAS pollution. This exposure directly affects workers during the manufacturing of a product and may inadvertently affect persons who live in and around landfills and waste to energy facilities where such products are disposed of. This lifecycle of PFAS is further

explained in pages 8 and 9 of the SONAR. Regardless, the MPCA is interested in the use of all intentionally added PFAS in products.

Reporting all products that contain intentionally added PFAS helps the MPCA understand the depth and scope of their use within manufactured products. This information may also be used in future research to study how PFAS move and bioaccumulate in the environment and living organisms.

Request for alignment with other jurisdictions:

RendallJackson-3: "Maine's PFAS regulations (38 MRS § 1614) include provisions in Section 4 that exempt certain applications from the scope of regulation, such as automobiles, semiconductors, and semiconductor manufacturing equipment and materials. These applications are essential and rely heavily on the use of fluoropolymers. Differences in regulatory approaches among states could lead to confusion in the U.S. industrial sector and negatively impact the development of related industries. Considering these developments in other states, Minnesota should also establish exemptions for certain critical applications, such as automobiles and semiconductor-related uses, separate from the CUU (currently unavoidable use) provisions, 2 and exclude them from the scope of regulation."

Cleet-4: "As in Maine, the reporting requirements should only apply to consumer products."

Sloan-7: The exemption language and categories in the proposal should be updated to recognize differing characteristics within the broad class of fluorinated chemicals, bringing them into better alignment with similar PFAS in products programs, such as Maine's DEP Chapter 90 and New Mexico's House Bill 212.

RESPONSE: Although a state cannot be less restrictive that the federal rules, the state has the right to establish more restrictive requirements than federal and other states' rules. It is not uncommon for state laws to differ in how products are regulated within their borders. The state maintains the authority to adopt rules that are protective of its citizens' health and the environment.

The MPCA has provided an additional response to comments requesting alignment with other jurisdictions in this document under the heading, "General Comments" and the subheading, "Regulations under other jurisdictions".

Products used in classified applications:

Branstad-23: "We support the exemptions listed in this section. With respect to classified information, our understanding of the proposed rule is that a product or product component is exempt from reporting requirements if information regarding that product or product component constitutes classified information under federal law. However, if the same product or product component is used in non-classified applications, it would be subject to reporting requirements only in those non-classified applications. If that interpretation is correct, it should be made explicit in the final rule. Another critical compliance question is whether a product or product component used in a classified application would be subject to the currently unavoidable use test and potentially banned in 2032. Without a comprehensive picture of the full PFAS in products program, a more complete understanding of compliance obligations is impossible."

> **RESPONSE:** Your interpretation is correct, the same product or product component used in non-classified application would still be subject to reporting, as noted in the SONAR on page 39: "*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.*"
>
> The MPCA cannot comment on the CUU rule at this time as that is out of scope for this proposed rule. This comment period was only for the PFAS reporting and fees rule.

Products for which federal law governs the presence of PFAS:

Prero-13: "The Proposal exempts a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority from the reporting requirements. CUC recommends that MPCA elaborate on this exemption and expand it by providing that the exemption would apply to products that are required to meet federal standards or requirements of the United States Department of Transportation, Federal Aviation Administration, the National Aeronautics and Space Administration, the United States Department of Defense or the United States Department of Homeland Security or are products that have been authorized or are subject to approvals issued by federal agencies such as the FDA (e.g., drugs and devices) and EPA."

> **RESPONSE:** As stated on page 38 of the SONAR, "*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.*"

If a product is only required by federal law to meet a certain standard (i.e. flame retardancy), and the manufacturer has chosen to use a PFAS to meet that standard, the product would not be exempted from the reporting requirements. This exemption only applies if federal law specifically requires the use of PFAS in a product in a manner that preempts state authority.

Products where intentionally added PFAS is inaccessible to the consumer:

Nustad-5: "We request the MPCA consider an exemption or alternate pathway for products where PFAS is intentionally added but inaccessible to the consumer and serves a functional, technical purpose. For example, PFAS used as wire insulation inside a sealed home appliance does not present the same consumer exposure risk as other applications. Including such components in the same reporting framework adds significant burden without clear environmental or health benefit."

RESPONSE: The purpose of PFAS reporting is not to quantify direct PFAS exposure to the consumer, but one purpose is to understand the life cycle of intentionally-added PFAS in products. As stated in the SONAR on page 10, "*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*."

Starck-1: "Many manufacturers are requesting that internal components be given an exemption or extension via the rule making process. This argument was presented to the legislature during the deliberations around Amara's Law and was rejected for several reasons. First, internal components that contain PFAS threaten the workers that manufacture and fix these components. Professions such as appliance repair technicians, furniture repair technicians, and vehicle mechanics are exposed to the chemicals that internal components contain. Second, the legislature was clear that the threat from PFAS was not merely from everyday use but also from manufacture and disposal of the products. 98 out of Minnesota's 101 landfills are leaching PFAS into the ground water. When items with PFAS are disposed of in

landfills, those chemicals eventually make their way to our taps. No special exemption or extension should be given for internal or electronic components in the rule making process."

> **RESPONSE:** Thank you for your comment. The MPCA agrees that internal components of products still contribute to PFAS pollution and should be accounted for in PFAS reporting.

Requested exemption for packaging:

Palin-12 (pre-hearing comment and hearing testimony): "Exempt Packaging Reporting – We Do Not Collect This Information: Auto Innovators argues that packaging reporting should not be required as part of this program, because companies do not collect this information and have it readily available in our IMDS tracking system."

Denney-1: "First, as discussed in PPWG's 2023 comments, the MPCA should state expressly as part of this rulemaking, and in line with the principles of federal preemption, that U.S. Food and Drug Administration (FDA)-regulated products and their packaging are out of scope of the Reporting Rule."

> **RESPONSE:** Reporting on packaging is only required if it is a component of the product that is inseparable or integral to the final products containment, dispensing, or preservation, as noted in the definition of component.

Part 7026.0100 FEES

General comments:

Barnes-3: The payment process must be flexible and allow purchase orders, invoices, electronic funds transfer, credit cards, checks, and other methods so that large and small businesses can track administrative costs without being overly burdened by limited payment options.

> **RESPONSE:** The agency will be utilizing various electronic payment options that are allowed by the reporting system and the state's banking entity. Due to the anticipated volume of entities reporting, mail in payment option will not be available. More information on payment options will be available in reporting system guidance and instruction documents.

Friest-12: "Fees are also imposed for waiver requests, extension requests and are imposed annually for recertification. In addition, an automatic inflation adjustment is included. The fees are excessive, and duplicative where manufacturers are reporting as a group and fees are collected from individual manufactures in that group, despite there being a single report to process. The fees approach is unreasonable."

Palin-13 (pre-hearing comment and hearing testimony): "Fees Appear Disproportional to Amount of Funding Needed for PFAS Program: Auto Innovators questions whether the fees charged for reporting, when the scope of reporting is considered, are well-tailored to the amount of funding needed by PCA to administer the PFAS program. Although the fees per report appear generally reasonable for manufacturers, Auto Innovators notes that suppliers throughout the supply chain are also obligated to ensure they are covered by reporting, since business-to-business transactions are in scope, which really multiplies the number of fees collected. There are potentially hundreds of suppliers that sell to one OEM, multiplied by all of the different OEMs selling vehicles into Minnesota, and the supplier obligations with respect to fees could be substantial—which OEMs cannot be responsible for. PCA should consider this when it comes to fee payment obligations, and ensure that their fee collection structure is tailored toward meeting the financial needs of the reporting program."

> **RESPONSE**: Pages 39-41 of the SONAR provides need and reasonableness for each fee proposed for this rule. The agency provided the best estimate for anticipated amount of reports that would be submitted and calculated a flat fee to cover the administrative cost for running the ongoing use of the reporting system year and after year.

Company size/tiered fee structure:

Herlihy-3: We request that MPCA create a tiered fee structure that accounts for the size of the reporter and the number of PFAS-containing products sold into Minnesota.

The current $1,000 fee per initial report and $500 per update or recertification, regardless of company size or product count, is unduly burdensome for small businesses. A tiered structure based on company size or Minnesota-specific sales volume would more equitably fund program implementation.

Duerr-1: "The lack of clarity surrounding the reporting of individual products or components and group submissions will no doubt lead to significant administrative expense on the part of manufacturers. On top of that, the initial reporting fees and subsequent annual updates will add real costs to products sold in Minnesota. We are keenly aware that these costs will be passed along to retailers, and ultimately our customers. We are further concerned that some

manufacturers may opt out of Minnesota entirely, given our relatively small market, due to the costs and regulatory complexities. This further hurts the Minnesota consumer."

Bretecher-3: "Regarding reporting fees, NFA feels the amount should not be based on the size of a business, nor on a per-PFAS or PFAS amount basis. In addition, a fee should not have to be paid for updating information, which could be construed as penalization for improving the accuracy of a company's PFAS reporting. It could also potentially de-motivate some from providing timely updates."

McArdell-3: "We recommend that MPCA establish a fee structure that reflects the scale of reporting and the capacity of businesses. NMMA supports:

- A tiered fee structure based on company size and number of product lines reported.
- Fee waivers or reductions for small businesses and manufacturers with limited market presence in Minnesota.

Overly burdensome fees will discourage compliance and may reduce product availability for Minnesota consumers."

Andes-3: "Section 7026.0100 imposes fees that must be included with reports when submitted. These fees, $1,000 for initial reports, $500 for updates, and $300 for extension requests, are unreasonable. A separate report needs to be submitted for each product, and for a company that has to submit multiple reports, the costs could be substantial. In an age of electronic submittals, these fees bear no relation to the actual costs of processing the reports. Further, they impose a burden that small businesses may find difficult to bear. The lack of justification for these fees is made clearer by the fact that if a group of manufacturers reports together, each member of the group has to pay the relevant fee on its own. Obviously, it costs less for the agency to process a multiple-entry submittal, than it would if the parties each submitted their own report, but this fee system ignores that fact. The fee system also fails to promote parties making group submittals, which is a goal that MPCA should promote. The fees should be lowered, at least for small businesses, and the fees for group submittals should be discounted, to encourage group submittals"

Titus-3: "The reporting fee and additional administrative workload will increase the cost of all HVACR products for Minnesota businesses and consumers. An HVACR industry business operates as a lean company, with dedicated staff fulfilling specific roles to create the most affordable products possible for consumers. However, to comply with the proposed reporting requirements, every HVACR business will need to hire additional staff to manage the administrative burdens of MPCA PFAS reporting. Like how companies have had to expand their workforce to handle the administrative tasks associated with properly filing for rebates and incentives. This forced hiring will lead to an increase in operational costs. As a result, each

company will have to raise product prices, passing these increased costs on to consumers and consequently making products more expensive.

Additionally, the reporting fee of $1,000, along with any adjustments for inflation, will also be transferred through the supply chain to the consumer, further contributing to price increases. These cost hikes are unnecessary and will not provide any significant benefits for Minnesota's efforts to eliminate PFAS from the environment."

Rondeau-1: "First, we recommend that the fee structure be capped in section 7026.0100. Animal and human health diagnostics often use identical platforms having different diagnostic targets (different form and function). For example, many diagnostic companies offer tests on their proprietary platform or device. These devices only vary in that different biological molecules (or antigens) may be included to provide specific test results for the targeted analyte, or disease marker. Since biological molecules do not contain PFAS, requiring separate applications for each product when the platform or device is identical will lead to a lack of availability for life saving tests in Minnesota and a substantial increase in workload for the Department without any reduction of PFAS compounds entering Minnesota."

Bretecher-4: "Regarding reporting fees, NFA feels the amount should not be based on the size of a business, nor on a per-PFAS or PFAS amount basis. In addition, a fee should not have to be paid for updating information, which could be construed as penalization for improving the accuracy of a company's PFAS reporting. It could also potentially de-motivate some from providing timely updates."

> **RESPONSE:** The agency considered many different fee structures during the first request for comments including tiered fees for different business sizes, per product fees, per manufacturer fees, fees based on amount of PFAS used, and fees on updates. After reviewing comments received from various sized companies on the matter the agency decided to go with a flat fee on a per manufacturer basis. To avoid excessive fees on smaller companies or for reporters to be incentivized to improperly group or report products to reduce the amount of fees required, we did not go with a per product fee. Pages 40 and 45 of the SONAR also include more information on fees.

Annual update and recertification fee:

Sloan-8: CPI requests that MPCA remove the annual recertification fee of $500, which is inconsistent with the "excessive cost justification," as the fee would be required even if there are no changes to what was submitted the prior year.

Kooy-2: BIFMA supports a one-time reasonable fee, however the annual fee of 50% the initial fee becomes an annual tax deemed excessive. Reporting fees proposed in many other states should be considered as well given the reporting and the financial burden is growing quickly. BIFMA recommends zero fees for annual updates.

Emery-1 "Yukon Medical appreciates the importance of PFAS reporting and the need to provide ongoing confirmation in the form of recertification to confirm that the reported information is still accurate, However, the $500 per report annual recertification fee (7026.0100 Fees, Subp. 3) will be especially prohibitive to small businesses such as ours that operate with tight margins. We recommend lowering the annual recertification fee amount to $100 or less so that small businesses can continue to sell into Minnesota instead of foregoing the market or having to pass the costs on to customers."

Bemus-6 (pre-hearing comment and hearing testimony): SPAN believes that annual recertification is unnecessary and should not require a fee when no changes have occurred… a fee for a simple statement that nothing has changed is not warranted.

Nagy & Tatman-7 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends that MPCA revise the fee structure and schedule to correspond with our recommendations to eliminate annual recertification requirements and related requests... the CPMCoalition does not support the "group reporting" concept as it is currently written and recommends altering the fee language that pertains to this concept accordingly... we find the annual reporting to be unreasonable, and therefore we also recommend adjusting the fee schedule to lessen the burden of processing on both the Agency and the regulated community to a more manageable cadence of requiring recertification every five years."

Sloan-9: "Additionally, CPI requests that MPCA remove the annual recertification fee of $500, which is inconsistent with the "excessive cost justification" as the fee would be required even if there are no changes to what was submitted the prior year. The program would still collect a $500 fee as part of a reporting update that would be required if PFAS concentrations in a specific product change."

Hall-18: "7026.0100, subp. 3 ADD at end of existing language: "<u>If annual certification does not contain any new or different information, no filing fee is required for a complete submission of the annual certification. If the commissioner determines under part 7026.0080 that reasonable due diligence was exercised to include known or reasonably ascertainable information in a manufacturer's initial report that lead to incomplete information, the inclusion of more information in subsequent annual certifications shall not require filing fee."</u>

• There is limited regulatory burden on MPCA from receiving a simple confirmation of completeness in reporting, and no fee is therefore appropriate.

• In addition, by eliminating the fee requirement for annual certifications once complete information is reported, manufacturers are incentivized to submit complete information as early as possible.

• The inclusion of the due diligence component corresponds to abovementioned recommendations to modify the due diligence standard to incorporate "known or reasonably ascertainable information." If reasonable due diligence lead to an incomplete report in year 1, but more information is received in year 2, this should not be considered "new or different information" nor a "revision" but a continuation of year 1's due diligence process."

RESPONSE: The agency is requiring an annual flat fee of $500 per manufacturer after they submit their initial year of reporting to support the ongoing costs of maintaining the reporting platform. The agency proposed a lesser fee for these reports to reduce cost to manufacturers and due to anticipated lower costs of maintaining the reporting system after the initial year of reporting. The agency anticipates more administrative cost to support users during their first-time use of this new reporting platform. Removal of the subsequent annual update and recertification fees would require a large increase in fees for each manufacturers' initial report submitted in order to provide funding for subsequent years of program maintenance.

Statutory authority:

Davis-6 (pre-hearing comment and hearing testimony): ""...However, it is unclear from the statute whether the agency has authority to assess fees to manufacturers for submission of filings that do not appear to include the data listed under subdivision 2. As noted above, the statute refers to the commissioner having the ability to establish rules for fees for the submission of the information required under subdivision 2. The provisions under subdivision 3 of the statute dictate the waiver and extension requests. However, subdivision 3 does not appear to require the submission of the data that is listed in subdivision 2. Additionally, it appears that all of the listed information is not required in the proposed rule for...AHRI respectfully requests the agency reconsider the fees noted in the proposed rule, particularly for waiver and extension requests."

RESPONSE: Minn. Stat. 116.943, subd. 6 grants the commissioner the authority to establish by rule a fee "upon submission of the information required under subdivision 2 to cover the agency's reasonable costs to implement this section." Subd. 3 authorizes

the commissioner to waive all or part of the information requirement under subdivision 2 upon determination that substantially equivalent information is available, as one example. It reasonably follows that subd. 3 provides additional/alternative methods to implement subd. 2, whereby fees could be collected to cover the agency's reasonable costs to implement subd. 2.

Adjustments for inflation:

Nagy & Tatman-8 (pre-hearing comment and hearing testimony): "We find the "inflation" allowance to be vague and unreasonable. We recommend removing this section and instead provide certainty to how these fees might change in the future."

> **RESPONSE:** The MPCA provided the reasonableness to make inflation adjustments to the fees in the SONAR on page 41 stating, "*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*." Without this provision, the MPCA would have to undergo additional rulemaking to adjust the fees in the future which would cost the agency money and staff time.

Requested clarity on fees:

Hall-19: "7026.0100, subp. 2 Regardless of the number of products or components for which a manufacturer must submit reporting information in a particular reporting year, a manufacturer must pay a single $1,000 fee for that reporting year to submit the initial report under part 7026.0030, subpart 1.

Existing language on requirement to submit an initial report on each product or component within scope combined with a per-report fee of $1000 imposes indefensible administrative and financial burdens on companies who may have thousands of products or components in scope due to the presence of even one material containing intentionally-added PFAS."

Tom-5 "About initial reporting fees, we understand the need for cost recovery but are mindful of the impact on manufacturers with a diverse product portfolio. We suggest allowing manufacturers to submit a bundled report covering multiple product families under a single $1,000 fee, as opposed to fees being levied per product line (7026.0030, Subp. 2)."

Sloan-10: Under the proposal, manufacturers are required to pay a $1,000 fee to submit an initial report on a product, with all individual manufacturers in a group or under a single

reporting entity subject to the $1,000 fee. CPI recommends that MPCA update the language in the final regulation to better reflect the SONAR justification that the fee is not a per-product fee but a per-manufacturer flat fee.

Gascon-1 "As a manufacturer of a wide range of products containing PFAS, many of which do not fit neatly into broader product categories, we find the Agency's description of "initial report" to be open to interpretation. This ambiguity creates uncertainty around how the associated reporting fee should be applied... We respectfully request clarification within the legal text to confirm whether each individual manufacturer is required to pay a single flat fee of $1,000 for the initial report, regardless of the number of products or product categories included in the submission."

Mwanza-5 "We seek clear definitions on whether the fees are assessed per individual product, per SKU, or by product family. Additionally, we ask for transparency on the structure and frequency of annual update fees, including whether there is a maximum cap to prevent disproportionate financial burden.

It would also be beneficial to understand how company size factors into the fee calculation, particularly for small and medium enterprises that may face greater challenges in absorbing these costs. Greater clarity in these areas will support more accurate planning and compliance across the biopharmaceutical sector."

Prero-14: "The Proposal states that "A manufacturer must pay a $1,000 fee to submit the initial report under part 7026.0030, subpart 1." As discussed above, 7026.0020 states that a manufacturer must submit a report for each product or component that contains intentionally added PFAS. The Proposal states further that "A manufacturer must pay a $500 flat fee for the annual update according to part 7026.0040, subpart 1, or annual certification update according to part 7026.0040, subpart 3."

Based on the plain read of the text, it is not clear if MPCA is requiring $1,000 per report or $1,000 per manufacturer, regardless of how many reports that manufacturer submits. The term "flat fee" is only used in connection with the annual update/recertification. That would imply that there is no flat fee for the initial report. Furthermore, the "initial report" is simply the first report submitted as opposed to the annual reporting. A manufacturer may need to submit numerous initial reports, as a report is needed for each product or component, and it appears that a $1,000 fee is required for each initial report.

The language in the SONAR addressing the requirement does not provide clarity. It states that "Subpart 2 establishes a $1000 flat fee per manufacturer for the initial report." The term "flat fee" is not used in the regulatory text. Furthermore, this language implies that MPCA is

expecting a single initial report from a manufacturer, which is highly unlikely for many product manufacturers. If MPCA indeed is only requiring a single $1,000 fee for each manufacturer that reports, regardless of how many reports are submitted, MPCA must state that clearly and unequivocally.

CUC also requests clarification as to whether a manufacturer who has previously reported for a specific product needs to pay a fee if at some later point in time, a new product is introduced into commerce in Minnesota by that manufacturer. If indeed fees are imposed per manufacturer, fees would not need to accompany reports for new products introduced at later times."

Nustad-6: "The rule currently lacks clarity around the initial $1,000 product reporting fee. Unlike the $500 annual recertification fee, the reporting fee is not clearly defined as a flat fee, and the rule is inconsistent about how it is applied. In some instances, the rule suggests it applies per manufacturer, in others by product group, and in other sections it references similar component parts. This ambiguity creates significant uncertainty about potential compliance costs. We urge MPCA to clarify how the fee is calculated and applied, and if multiple interpretations are possible, to adopt the least burdensome, lowest-cost structure."

Bemus-7 (pre-hearing comment and hearing testimony): SPAN believes that any fee levied should be a one-time fee per manufacturer – not per report… SPAN requests that MPCA state in clear and unambiguous terms that the fee to report the first time is a one-time obligation of $1,000 for each manufacturer.

Barnes-4: Fee amounts must be minimized and should be reasonable. Manufacturers should not be required to pay fees for supplier parts and components that are already part of finished product vehicles.

Sloan-11: "Under the proposal, manufacturers are required to pay a $1,000 fee to submit an initial report on a product, with all individual manufacturers in a group or under a single reporting entity subject to the $1,000 fee. The regulatory language is not clear that this is not a per-product fee... CPI recommends that MPCA update the language in the final regulation to better reflect the SONAR justification."

Cleet-5: "Issue: The rule states that "A manufacturer must pay a $1,000 fee to submit the initial report under part 7026.0030, subpart 1." However it is not clear if this $1000 fee is defined per manufacturer or per report. The regulation allows to group products per report which means each manufacturer may be submitting several reports.

Recommendation: We request that the flat fee be applied per manufacturer, and not per report. We would like to discourage the use of fees on a per product/product category basis without sufficient transparency as to how and what the fees will be used for."

Zaman-4 (pre-hearing comment and hearing testimony): "MPCA's language related to fees indicates a one-time reporting fee per manufacturer. ACA recommends clarifying language at Section 7026.0100 so that companies filing more than one report are not subject to multiple fees. A registration fee of $1,000 per initial product registration can be excessive for manufacturers registering multiple products. Moreover, the fee does not appear to be reflective of administrative costs on the agency. Agency expenses would relate to establishing and maintaining an online reporting system and review of submissions. ACA would recommend further evaluation of actual costs for administration or making any previously conducted analysis available to justify the fee.

ACA recommends modifying language to clearly note that fees are capped to a one-time charge per manufacturer for each registration period, to recognize potentially excessive fees from companies registering multiple products. This can be accomplished with the following change to Section 7026.0100, Subpart 2 (FEES):

Subp. 2. Initial report. A manufacturer must pay a $1,000 fee to submit the initial report under part 7026.0030, subpart 1. If a group of manufacturers is reporting or a manufacturer is reporting on behalf of multiple manufacturers as allowed under part 7026.0020, subpart 2, each individual manufacturer must pay a $1,000 fee. <u>A manufacturer submitting reports for multiple products, whether through a group or individually, is only required to submit the initial fee for one report per reporting period</u>."

Frederick-5: "AdvaMed supports the per-manufacturer fees rather than per-product fees… but would still appreciate more explicit language…"
AdvaMed supports a single $1,000 fee per manufacturer regardless of the number of products reported, but asks for clearer language confirming this in both rule text and SONAR to avoid future misinterpretation.

Pierce-3:*"Will the $1,000 or $500 fee be assessed per report, per product, or per manufacturer?... Is it permissible to submit a single report covering multiple products or product families?"*

Kallen-10 (pre-hearing comment and hearing testimony): "In its previous comments, SEMI advocated for the MPCA to assess flat reporting fees on a per-company basis (i.e., not on a per-product or per-component basis). SEMI and SIA request that the MPCA confirm that is what has been proposed. A per-product fee, for example, would be overly burdensome for industry and

would likely violate the MPCA's statutory directive to only impose fees "to cover the agency's reasonable costs to implement" the statute."

Branstad-24: "Subpart 2. MPCA makes it clear in the Statement that MPCA is proposing a permanufacturer approach and not a per-product report.16 Although unclear in either the proposed rule or the Statement, it is our interpretation that MPCA is also not proposing a per-report fee. For example, Company A may choose to submit a report with other manufacturers for some, but not all, of its products. Company A also chooses to report alone, not as part of a group, for the remainder of its products (a possible reason could be to protect information claimed as a trade secret). In such a case, Company A would only have to pay the proposed, per-manufacturer $1,000 fee to MPCA to cover all of its products. A single manufacturer fee would cover both reports. We therefore offer the following clarifying language:

> ~~Initial r~~Report. A manufacturer must pay a $1,000 fee to submit ~~the initial report~~ under part 7026.0030, subpart 1. If a group of manufacturers is reporting or a manufacturer is reporting on behalf of multiple manufacturers as allowed under part 7026.0020, subpart 2, each individual manufacturer must pay a $1,000 fee. In no case will an individual manufacturer be required to submit more than $1,000, regardless of whether for some products or product components it chooses to submit alone or as a group of manufacturers.

Generally, speaking we believe the adjective "initial" could be eliminated to avoid confusion. We therefore recommend that "initial" be deleted at 7026.0030 Subpart 3. Voluntary updates.

> **RESPONSE:** The MPCA confirms that the fee structure is based on a per-manufacturer basis, not per product or per report. Each manufacturer is required to pay a single $1,000 fee to submit its initial report, regardless of whether it reports alone, as part of a group, or through multiple reporting entities.

Rondeau-2: "By requiring fees to be paid by every unique product, the cost to sell products in Minnesota will impact veterinarians seeking to ensure that pets are healthy, farmers seeking to ensure food safety, and municipalities seeking to provide safe drinking water, by making the cost of reporting far outweigh the cost to manufacture. Notably, the cost to file either extensions or notifications for more than 1000 unique products could be as high as $1 Million, and $500,000 per year, each year after. Alternatively, we suggest 7026.0030 Subp. 1, A (1) (a) (iv) could be removed. It is sufficient to bundle similar products that contain the same PFAS chemicals, with the same function, within the same reporting range. If the products themselves

have slightly different formulations of non-PFAS materials, this should have no bearing on PFAS data collection."

Moyer-2: "We respectfully ask that the Proposed Rule establish more clarity around the reporting fees. The Proposed Rule outlines that manufacturers or groups of manufacturers may submit reports, and a report must be submitted for each product or component that contains intentionally added PFAS. This could result in a number of report combinations or arrangements, and the Agency should create clear guidance with examples on how fees would be assessed."

Wagner-3: "The rule requires manufacturers to pay a $1,000 fee per "report" submitted under the reporting requirements. However, the term "report" is not clearly defined. It remains unclear whether this fee applies per manufacturer, per product line, per individual product, or per submission. This ambiguity has created significant concern among manufacturers—particularly those with extensive product portfolios—who may interpret the rule to require thousands of separate reports and corresponding fees. Such a reading would result in an excessive administrative and financial burden with no proportional environmental or public health benefit."

Keane-5: "MPCA should confirm that reporting fees are flat and not charged per product or per report. All reporting manufacturers should pay the same flat fee regardless of submission volume."

Huxley-2: "-MPCA itself, in the SONAR, acknowledged that excessive fees "would deter manufacturers from reporting" and we respectfully request that the fee structure be reevaluated given the information provided above. (clarify one fee and report)

-Reporting fees should be reduced to bare minimal levels, on a per product basis, not a function of how many companies in the manufacturing stream may be associated with that product.

-Provide for a volume discount structure for businesses reporting multiple products."

> **RESPONSE:** The agency's intent was only to charge a flat fee of $1000 per manufacturer on the first report submitted and a flat fee of $500 for each subsequent year of report updates or recertifications. A single report covers all products or components reported by a manufacturer. The fee is not per product and/or component provided in the report. The agency is working on clarifying language in the rule text to resolve the ambiguous wording.