MINNESOTA POLLUTION CONTROL AGENCY

PFAS in Products: Reporting and Fees

Part Two Pre-Hearing and Hearing Response to Comments

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

June 23, 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 Two" of the MPCA's response to comments. The MPCA posted "Part One" of the response to comments on June 16, 2025. 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 rules. 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.

7026.0060 EXTENSIONS

> B. If the commissioner determines that the requestor has demonstrated that an extension is justified, based on the materials submitted under subpart 2, the commissioner must grant ~~a~~ one 90-day extension of the established reporting due date.
>
> **Reasoning:** The MPCA received many comments regarding extensions; some of which seemed to misunderstand how many extensions may be issued, and one that requested the MPCA clarify that extensions are only issued once to the initial report deadline of January 1, 2026. The MPCA is proposing to change "a 90-day extension" to "one 90-day extension" to make this distinction clearer. See the MPCA's responses to comments under part 7026.0060 in this document for more comments on reporting extensions.

General Comments

The MPCA received 2 general comments not specific to any rule part, and that were not included in "Part 1" of the responses to comments, which are listed and responded to as follows

Palin-14 (pre-hearing comment and hearing testimony): "Limiting Innovation: The draft PFAS in Products: Reporting and Fees Rule's requirements are so complex they will stop or delay implementation of new vehicle technologies. Extensive reporting for emerging technologies (e.g., safety, fuel efficiency, batteries, or hydrogen fuel cells) will stifle entry to market and application of those technologies at a time when the industry is working to further reduce emissions. The reporting system must be available and easy to use if technology developers will be required to make notification prior to selling new products and related components in the state."

> **RESPONSE:** See the MPCA's response to the comments "**Prero-1**" and "**Sloan-1**" regarding comments on undue burden in "Part One Pre-Hearing and Hearing Response to Comments" (pages 8 and 9).
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> The MPCA appreciates the concerns regarding innovation, economic competitiveness, and regulatory consistency. However, identifying the use of intentionally added PFAS is a critical step toward reducing health and environmental risks and ensuring transparency in the marketplace. An intentional effort to identify PFAS and seek safer alternatives can foster innovation rather than hinder it; driving the development of cleaner technologies and materials that meet both performance and regulatory expectations.
>
> The agency is committed to supporting technological advancement while fulfilling its statutory obligations under Minn. Stat. § 116.943. To reduce the burden on manufacturers and developers of emerging technologies, the rule includes flexible options such as product grouping, reporting by concentration range, use of total organic fluorine (TOF) testing when specific PFAS are unknown, and a 90-day deadline extension process. The MPCA is also developing a user-friendly reporting system and detailed guidance to ensure the process is accessible and practical for manufacturers introducing new products to the Minnesota market.

RendallJackson-4: "Lastly, we recognize that Minnesota is one of the states in the U.S. that is about to adopt the most stringent regulations regarding PFAS. Regulations that are significantly stricter than those of other states could result in the loss of essential PFAS applications (especially those related to fluoropolymers) and lead to an exodus of industries to other states.

For the further development of your state, we believe it is necessary to align with the efforts of other states and the U.S. federal government and introduce an appropriate form of regulation that is not excessive."

RESPONSE: See the MPCA's response to the comment "**Kooy-1**" regarding comments on regulations under other jurisdictions in "Part One Pre-Hearing and Hearing Response to Comments" (page 20).

The MPCA acknowledges concerns about regulatory consistency across states and with federal efforts. However, Minnesota's Legislature directed the agency to implement a comprehensive PFAS in products reporting program under Minn. Stat. § 116.943. This statutory mandate reflects the state's commitment to understanding and ultimately reducing the use of intentionally added PFAS in products sold, offered for sale, or distributed in Minnesota.

While MPCA recognizes the importance of national harmonization, it also believes that Minnesota's leadership in PFAS transparency will help drive safer product design and informed policy at broader levels.

Comments Specific to the Proposed Rules

The MPCA received 283 comments related to specific rule parts which are summarized and responded to as follows.

Part 7026.0010 DEFINITIONS

Definition of "Distribute for sale"

Turner-5: "The term "offer for sale" be removed from the list of requirement, as it is excessively broad and not well-suited to the nature of the project-based industrial operations. "offered or sale" be stricken from the parallel provision in 7026.0010 Definition, subp 9.,7026.0030 Report; Required Information, subpart1 and, 7026.0040 Reporting updates, Subpart1.A3"

> **RESPONSE:** The phrase "offer for sale" was provided and used by the 2023 Minnesota Legislature throughout Minn. Stat. § 116.943. Because the rule must remain consistent with statutory language, the MPCA cannot remove or alter the phrase without conflicting with legislative intent. The agency will, however, provide additional guidance if needed to help manufacturers interpret and apply this phrase.

Michaud-5: "We suggest that the definition of 'Distribute for sale' in 7026.0020, Subpart 9, be modified to 'means to ship or otherwise transport a product with the intent or understanding that the product will be sold or offered for sale in the state of Minnesota by a receiving party after the product is delivered.'"

Thomas-15: "Distribute for sale: MPCA should clarify that "distribute for sale" refers to distribute for sale in Minnesota. As the definition currently reads, if a product was shipped to Minnesota but then transferred out of the state for sale without being sold in Minnesota, it would be subject to this rule. We believe products that are shipped through the state but not sold there should not be subject to this rule."

Hall-20: "7026.0010, subp. 9 "distribute for sale <u>in the state</u>"

• If a product is shipped to Minnesota, placed on a truck, and then transported to Wisconsin, it would be out of scope."

> **RESPONSE:** The MPCA would like to clarify that pursuant to Minn. Stat. § 116.943 subd. 2, PFAS in product reporting applies to any product containing intentionally added PFAS that is sold, offered for sale, or distributed in the state; not just those that are distributed for sale in the state. The phrase "distribute for sale" is used under subd. 5 (c)

as it relates to product prohibitions and currently unavoidable uses. The agency is proposing to define the term "distribute for sale" in this rule to provide clarity in the definition of "Manufacturer". The phrase "sold, offered for sale, or distributed in the state" was drafted by the Minnesota Legislature in statute, and the MPCA is including this phrasing in the proposed rule to maintain consistency with the enabling statute to mandate that PFAS reporting apply to all products distributed in the state. The product in this scenario would be in scope for reporting.

Branstad-25: "Subpart 1. We suggest the following clarification to the first sentence:

A manufacturer or group of manufacturers of a product that is sold, offered for sale, or distributed for sale in the state and that contains intentionally added PFAS must submit a report to the commissioner on or before January 1, 2026.

We realize that the sentence in the proposed rule is verbatim that in the statute; however, we also note that the legislature appropriately clarifies the extent of "distributed" in Subdivision 5(b) of the statute, which says: The commissioner may by rule identify additional products by category or use that may not be sold, offered for sale, or **distributed for sale in this state** if they contain intentionally added PFAS and designate effective dates. (Emphasis added.)

Similarly, in Subdivision 2(d) the legislature specified that:

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

We strongly recommend that the purpose of distribution (for sale in the state) as clarified in Subdivisions 2 and 5 be operationalized throughout the rule to prevent misinterpretation that movement through the state, but not for the purpose of sale in the state, could be an action that triggers a compliance obligation."

RESPONSE: The MPCA respectfully disagrees with the commenter's suggestion. The agency would like to clarify that pursuant to Minn. Stat. § 116.943 subd. 2 (a) and (c), PFAS in product reporting applies to any product containing intentionally added PFAS that is "sold, offered for sale, or distributed in the state"; not just those that are distributed for sale in the state. The phrase "distribute for sale" is used under subd. 2 (d) to prohibit product distribution for sale if the reporting required under subd . 2 has not occurred, and under subd. 5 (c) as it relates to product prohibitions and currently unavoidable uses which is out of scope for this rule. The phrase "sold, offered for sale, or distributed in the state" was drafted by the Minnesota Legislature in statute, and the MPCA is including this phrasing in the proposed rule to maintain consistency with the

enabling statute to mandate that PFAS reporting apply to all products distributed in the state.

Branstad-26: "Distribute for sale. We suggest the following modification to more clearly and accurately reflect the scope of the law: "Distribute for sale" means to ship or otherwise transport a product with the intent or understanding that the product will be sold or offered for sale in Minnesota by a receiving party after the product is delivered."

RESPONSE: The MPCA does not believe that these requested changes to the definition of "Distribute for sale" are necessary. The term "Distribute for sale" is only used in the rule language under the definition of "Manufacturer". Under that definition, when determining who the "manufacturer" is in the case of imported products, , "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". This is the only place in the proposed rule where this phrase is used, and the meaning is clear within the context given. The MPCA has provided additional justification for defining "Distribute for sale" as discussed on page 25 of the Statement of Need and Reasonableness (SONAR).

Michaud-6: Reporting Scope – Clarify 'Sold, Offered for Sale, or Distributed' Definition
"For the first report currently due on January 1, 2026, only products projected to be sold into the state of Minnesota or manufactured in the state from January 1, 2026 – January 1, 2027 should be included."

RESPONSE: Yes, this is the intent of the proposed rule. The initial report due January 1, 2026, should include products a manufacturer reasonably expects to sell, offer for sale, or distribute in Minnesota between January 1, 2026, and January 1, 2027. If a product not included in that initial filing is later brought into the state because it is newly developed, reintroduced, or otherwise not previously reported, the manufacturer must submit an update consistent with part 7026.0040. This ensures the reporting system remains current and reflects the actual products entering Minnesota commerce.

Definition of "Function"

Branstad-27: "Function. The proposed definition appears to deviate significantly from the statutory definition of "intentionally added". The statutory definition is clear: "Intentionally added" means 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. The proposed definition of "function" seems to go well beyond the legislative intent by requesting information on "PFAS when intentionally incorporated in any stage in the process of preparing a product or its constituent components . . ." The language could be interpreted to cover any PFAS used in any aspect of the manufacturing process (e.g., in a lubricant that helps keep machinery running reliably), which goes far beyond the statute. We offer the following language to better align the definition of "function" with the statute: "Function" means the explicit purpose or role served by of intentionally added PFAS when intentionally incorporated at any stage in the process of preparing a product or its constituent product components for sale, offer for sale, or distribution for sale. We support the proposed use of the TSCA functions list with which some, but certainly not all, manufacturers will be familiar. We understand MPCA's desire to reduce free-text entries to the extent possible. However, without a view into the reporting system, we cannot comment on the adequacy of the approach described in the Statement (p. 25)."

> **RESPONSE:** As discussed in the SONAR, existing functional use category codes will be used in this reporting program like the EPA's TSCA reporting programs to provide a consistent process that regulated parties are familiar with along with additional functions from the Organization for Economic Co-operation and Development's (OECD's) PFAS function lists, and others found during the agency's review of industry and academic literature.
>
> The definition of function in this proposed rule is not intended to replace 'intentionally added' as defined in Minn. Stat. § 116.943. When assessing the applicability of a product for reporting, a manufacturer must first consider if PFAS was intentionally added to the product in which its continued presence was desired in the final product or one of its components to perform a specific function. The definition of function was added to then clarify the specific purpose of the PFAS that was intentionally added that needs to be reported.

Definition of "Numeric product code"

Thomas-16: "Numeric Product Code: MINN. R. 7026.0010, Subp. 15. (lines 3.3-3.7) references HTS codes. There are three different levels of HTS codes (6 digit, 8 digit, and 10 digit), with the higher digit codes having more specificity. We would request that the use of the 6 digit HTS code is acceptable. Further, we ask that the HTS option be available for any product where it is relevant and not just for imported products."

Hall-21: "7026.0010, subp. 15 "harmonized tariff schedule (HTS) code"

• There are different levels of HTS codes (6 digit level, 8 digit, 10 digit) with the higher number being more specific. Ensuring the 6 digit level is acceptable would reduce the reporting burden."

Kallen-11 (pre-hearing comment and hearing testimony): "There are different levels of harmonized tariff schedule (HTS) codes (six-digit, eight-digit, and 10- digit) with the higher number being more specific. The MPCA should ensure that the six-digit option is acceptable as requiring the 10-digit HTS code would lead to significantly more reporting."

Branstad-28: "Numeric product code. We appreciate MPCA's acknowledgement that "[n]ot all products have the same code system assigned to them." However, without access to the reporting system, we cannot adequately comment on how MPCA plans to implement what it proposes, which is an unreasonable situation given the narrow window until the reporting deadline. That said, we strongly recommend that MPCA provides flexibility in the use of codes to be able to group products under one product code when doing so makes sense. For example, MPCA should be clear that it will allow flexible use of the multi-layered Harmonized Tariff Schedule (HTS) codes (e.g., 6-, 8-, or 10-digit codes) for categorizing groups of products. More specifically, a manufacturer should be permitted to use the broadest applicable product code to describe a group of products for which all of the criteria in 7026.0030, subpart 1(A)(1)(a) can be satisfied."

> **RESPONSE:** The agency will allow for the use of HTS codes at any level; it will be up to the reporter to assign the most appropriate code for the product being reported.

Requested Definition of "Intentionally added PFAS"

Thomas-17: "Intentionally Added PFAS: MPCA should include a definition in the final rule for "intentionally added PFAS" to reiterate the definition found in Minn. Stat. § 116.943.

Additionally, we request clarification as to what intentionally added captures. For example, if a PFAS used as a polymer processing aid was deliberately added to the polymerization pot to perform a specific function (emulsification), but has no function once the fluoropolymer (a different PFAS) has been made and is not desired in the finished fluoropolymer, and the finished fluoropolymer is used to make an article (such as a medical device), it is our understanding that the fluoropolymer would be intentionally added to the medical device, but any trace residual of the polymer processing aid potentially incorporated into the medical device because it remained in the finished fluoropolymer would not be an intentionally added PFAS. We would ask the MPCA to please confirm our understanding."

Hall-22: "7026.0010, subp. 11 "intentionally incorporated at any stage"

• It is unclear how this will modify the statutory definition of “intentionally added,” which includes the requirement of "the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function." If a polymer processing aid was deliberately added to the polymerization pot to perform a specific function (e.g., emulsification), but has no function once the polymer has been made and is not desired in the final polymer, it would not be “intentionally added” per the statute.”

Keane-6: “AHAM requests a more precise definition of “intentionally added PFAS.” The definition should consider and determine the number of stages downstream in the supply chain a manufacturer must investigate to decide as to whether or not any PFAS is intentionally added. The proposed definition appears to deviate significantly from the statutory definition of “intentionally added” by requesting information on “PFAS when intentionally incorporated in any stage in the process of preparing a product or its constituent components.” This language could be interpreted to cover any aspect of the manufacturing process and would make reporting even more challenging.”

> **RESPONSE:** The statute defines "Intentionally added" 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. A PFAS processing aid would not be considered intentionally added if the continued presence of that PFAS is not desired in the final product or component to perform a specific function. However, if the PFAS is desired in the final product or component to perform a function it would meet the definition of intentionally added, regardless of which stage in the manufacturing process or in the supply chain that the PFAS were added. The definition of function was added in this proposed rule to then clarify the specific purpose of the PFAS that was intentionally added that needs to be reported for that product and/or product component.

Davis-7 (pre-hearing comment and hearing testimony): “AHRI notes that the MPCA has not defined what constitutes “intentionally added” and requests that the rule be amended to clarify the definition of this phrase.”

Wagner-4: “Use Statutory Definition of “Intentionally Added” The term “intentionally added” is used in the statute and rule but remains ambiguous in practice. Manufacturers need guidance on how this applies to:

- PFAS present as background impurities or processing residuals,
- PFAS that were not knowingly added by the manufacturer,

• Trace PFAS levels below detection thresholds.

Without clarification, there is risk of overreporting or inconsistent application.

Recommendation: We request that MPCA provide clear guidance on what constitutes "intentionally added" PFAS, including thresholds, trace amounts, and how intent is assessed when PFAS is introduced by a third party in the supply chain."

> **RESPONSE:** Minn. Stat. § 116.943 subdivision 1 (l) already defines "intentionally added". The MPCA intends to use the definition that the Legislature provided. Background impurities or residuals would not be considered intentionally added, as the chemicals were not deliberately added to provide a specific function in the final product. It is a manufacturer's responsibility to determine if PFAS are deliberately added to their products. A manufacturer should know if the PFAS are desired in the final product or component to serve a function. The Legislature did not provide a de minimis level for reporting, they intended for manufacturers to report all PFAS that are intentionally added. If PFAS presence is unknown, a manufacturer has the option to test the product for Total Organic Fluorine and report those results. If a PFAS is deliberately added to any component to serve a function in that component, it would be considered intentionally added, regardless of whether it was introduced by the manufacturer or a third party in the supply chain.

Callahan-2: "Proponents of fluorination often challenge state PFAS bans by asserting that fluorination is not an intentional use of PFAS. Yet, it is indisputable that most forms of fluorination create PFAS. And, it can be argued that this resultant PFAS is what makes fluorination so successful as a barrier method.

Hence, the importance of crafting PFAS legislation with definitions of "intentionally added" that are inclusive of fluorination and the chemical processes that generate PFAS. BPP urges the Minnesota Pollution Control Agency ("MPCA") to adopt an expansive definition of "intentionally added" that includes fluorination and similar processes that create PFAS as part of the formation of a barrier."

> **RESPONSE:** The MPCA appreciates the comment regarding fluorination and its relationship to intentionally added PFAS. As stated in the proposed rule and SONAR, the definition of "intentionally added" includes any PFAS that serves a technical function in the product or is added to provide a desired characteristic, whether introduced directly or formed as part of a known manufacturing process. If a fluorination process is used

intentionally to achieve a functional barrier and results in the formation of PFAS, it is subject to reporting under this rule.

Requested Definition of "Sold, offered for sale, or distributed"

Kallen-12 (pre-hearing comment and hearing testimony): "The statute specifies that if a product that contains intentionally-added PFAS is "offered for sale" in Minnesota, the reporting requirement is triggered. The term "offered for sale" is not defined either in the statute or the Proposed Rule. SEMI and SIA believe the term "offered for sale" is best applied to certain equipment, particularly relatively low-cost equipment available for household use, available in physical stores in the state or that can be easily ordered over the internet by a Minnesota customer. The MPCA may regard availability for one-click ordering into Minnesota as an "offer for sale" in Minnesota. By contrast, complex electronics appropriate only for enterprise use are not available in physical Minnesota stores or through such one-click ordering and therefore should not be regarded by the MPCA as "offered for sale" in Minnesota simply by virtue of being advertised over the internet. SEMI and SIA urge the MPCA to consider guidance clarifying this or defining the term "offered for sale" in the rule."

RESPONSE: The MPCA would like to clarify that pursuant to Minn. Stat. § 116.943 subd. 2 (a) and (c), PFAS in product reporting requirements apply to any product containing intentionally added PFAS that is "sold, offered for sale, or distributed in the state". The phrase "sold, offered for sale, or distributed in the state" was drafted by the Minnesota Legislature in statute, and the MPCA is including this phrasing in the proposed rule to maintain consistency with the enabling statute to mandate that PFAS reporting also applies to all products distributed in the state.,

The MPCA acknowledges that the term "offer for sale" may create uncertainty, particularly regarding internet-based sales. The agency interprets "offered for sale" to include products made available for purchase in Minnesota, including via online platforms.

Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING

Distribute for sale:

Frisbie-3: "Wabash recommends that Part 7026.0020, Subp. 1 (Scope) be revised to clarify which manufacturers and which products are subject to the Proposed Rule. As drafted the "Scope" provision states:

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.

Wabash suggests two clarifications to the Scope. First, the Proposed Rule includes a definition of the phrase "Distribute for sale" in Part 7026.0010, Subp. 9, but this phrase is not consistently used in the remainder of the Proposed Rule including in the "Scope," which only mentions products…. "distributed in the state." Wabash believes the provision should use the defined term as follows: "distributed for sale…in the state.""

> **RESPONSE:** The MPCA would like to clarify that pursuant to Minn. Stat. § 116.943 subd. 2 (a) and (c), PFAS in product reporting requirements apply to any product containing intentionally added PFAS that is distributed in the state; not just those that are distributed for sale in the state. The phrase "sold, offered for sale, or distributed in the state" was drafted by the Minnesota Legislature in statute, and the MPCA is including this phrasing in the proposed rule to maintain consistency with the enabling statute to apply to all products distributed in the state.

Part 7026.0030 REPORT; REQUIRED INFORMATION

Reporting deadline:

Wagner-5: "Adopt at minimum a one-year reporting delay to provide manufacturers adequate time to gather complex supply chain data, especially where suppliers are reluctant or unable to disclose PFAS content."

Rhoderick-4: "Recommendation: Can the initial reporting deadline should be set for 6 (six) months after the reporting system is finalized and open?"

Keane-7: "We would encourage MPCA to provide additional compliance time for smaller manufacturers who do not have the resources to comply even with the extended timeline AHAM suggests."

Huxley-3: “"The level of investigation and preparation required for companies to be able to prepare for upcoming compliance with the proposed rule presents a significant, overly onerous administrative burden on affected companies, across the toy industry, other industries, and complex supply chains, even without considering the aspects that are as-yet undefined, ambiguous or unclear. Without an extended and realistic period for manufacturer preparation, beginning after the implementation date of the rule, it will not be possible for companies with even the simplest product ranges or supply chains to complete the necessary investigations in time, effectively causing unavoidable non-compliance."

Sloan-12: “In terms of the required information per report per product, MPCA has set forth a structure that is simply unworkable considering the complexities of manufacturing supply chains. MPCA’s SONAR recognizes the challenges that other federal and state programs have had in collecting data, including the U.S. Environmental Protection Agency’s (EPA) rule under Section 8(a)(7) of the Toxic Substances Control Act (TSCA) that requires comprehensive reporting of manufactured and imported PFAS. MPCA indicates that the current proposal aligns with TSCA regulations but addresses known limitations and “challenges by establishing a robust and efficient reporting system that actively monitors PFAS in products sold within the state.” As noted above, the reporting system does not yet exist at the time of reviewing this proposed rule, and MPCA’s proposed reporting framework does not adequately address the supply chain complexities that have become evident during the implementation of other PFAS reporting programs that do not require the amount of information that MPCA is seeking with this regulation. As a parallel, U.S. EPA extended the TSCA PFAS reporting period to “allow EPA to further develop and test the software being used to collect the data from manufacturers, thereby providing critical feedback to EPA.” Adoption of a similar extension in the final rule would be prudent for MPCA.

Fleming-3: “As the MPCA has not designated the format, required information, and a final methodology for submission, it is unreasonable to expect manufacturers to report by the current January 1, 2026 reporting deadline. FST therefore recommends that the MPCA delay the reporting deadline by at least a year from when the reporting rule is finalized.”

Tarter-4: “Extend the January 1, 2026 compliance deadline to provide manufacturers adequate time to review the final reporting rule and gather information to comply with the reporting requirements. We recommend an extension of two years.”

Michaud-7: “The initial reporting deadline should be set for 6 (six) months after the reporting system is finalized and open.”

Kallen-13 (pre-hearing comment and hearing testimony): “SEMI and SIA urge the MPCA to exercise its statutory authority to extend the reporting deadline for all product manufacturers. This is necessary and appropriate to help ensure that both the MPCA and industry are prepared for the deadline. The statute was enacted in Spring 2023 with a reporting deadline of January 1,

2026. Unfortunately, however, a proposed rule to implement the reporting requirement was not published until April 2025, and the Agency has stated it expects to finalize the rule and open the reporting portal in "late 2025."

The statute empowers the MPCA to "extend the deadline [for reporting] if the commissioner determines that more time is needed by the manufacturer to comply with the submission requirement." Such is the case now for all manufacturers, or at least manufacturers of complex articles. SEMI and SIA urge the MPCA to exercise this statutory authority to extend the deadline. The scope of the extension should at least include all manufacturers of semiconductor manufacturing equipment."

Frederick-6: "AdvaMed urges the MPCA to adopt at minimum a one-year reporting delay rather than the options for 90-day delays at the discretion of the Commissioner."
AdvaMed states that a fixed one-year delay is necessary to give stakeholders time to understand the final rule, test the reporting system, and comply—especially given the complexity of medical supply chains and the uncertainty surrounding the reporting platform.

Zaman-5 (pre-hearing comment and hearing testimony): "ACA requests that the agency extend the reporting date from January 1, 2026 to January 1, 2027, to accommodate detailed reporting requirements in the final rule and additional data elements. The final rule will include specifications for reporting of PFAS volumes, collective reporting, reporting of product identity, etc., that were not included in the act. Since these rules are currently in the proposal phase, entities would have a very short time frame to comply with the January 1, 2026 deadline."

Rydkin-2 (pre-hearing comment and hearing testimony): "Given the significant burden for proposed information gathering requirements, DAA is also concerned that the proposed January 1, 2026 deadline for implementation presents significant challenges... DAA acknowledges that the draft regulation provides the Commissioner with the authority to delay the reporting requirements. Therefore, DAA requests the MCPA Administrator to exercise this authority and extend the reporting requirement timeframe to at least 6-12 months post the time that the reporting system is tested and ready to receive reports from manufacturers."

Sobel-2: "extends reporting deadline to allow for the finalization of its proposed rules and development of its reporting."

Hall-23: "We ask MPCA to extend the reporting deadlines for one year for the medical device manufacturing sector. With additional time, manufacturers can gather more accurate and complete information for MPCA's use. A sector-wide extension is less administratively burdensome to MPCA than if many medical device companies filed for individual company extensions under the proposed rule's provisions.

Granting an additional year for reporting will not hamper MPCA's administration of other parts of the statute or reduce the incentive to limit PFAS use. The principal requirement in Minnesota PFAS law is a ban on selling non-exempted products containing intentionally added PFAS;

medical devices regulated by FDA are exempt from this ban. Medical devices, their chemical composition and characteristics, their packaging, and their handling are regulated by FDA. Manufacturers cannot change a device's use of fluoropolymers without FDA review. Further, while the reporting burden of the proposed rule may create an incentive to seek alternatives to PFAS, maintaining FDA's approval is much more important and vital to protect patient safety. Patient safety governs our industry's choices for materials."

Sloan-13: "The proposed rule stipulates an initial reporting date of January 1, 2026. Considering the timing of this proposal, an incomplete reporting system, and the unprecedented request for PFAS data, MPCA has created an unreasonable timeline for manufacturers. While the proposed rule provides the opportunity for a limited extension, 90 additional days will not be sufficient, and the requirements for requesting an extension are onerous and, ultimately, may not result in more time. CPI previously recommended that the extension period be one year and we continue to believe that granting up to 12 additional months for reporting will improve compliance plans for submitting data under this program as well as MPCA's ability to collect and interpret manufacturers' reports. Additionally, MPCA should develop a phased reporting schedule or staggered compliance dates, allowing for database piloting and high-level submissions while manufacturers build capacity for full reporting."

Fowler-5: "Section 7026.0030, Subpart 1 Report Required This section of the Minnesota statute currently requires manufacturers to submit information to the Commissioner on or before January 1, 2026, regardless of when the rule is finalized. That is less than eight months away and the rule is not yet final. This deadline does not consider the number of products the company manufactures or the size and resources of the company. Since many products are manufactured through a complex global supply chain, companies require sufficient lead time to implement any reporting requirement, especially when the obligation for reporting is very broad in scope and requires detailed information that may not be in the company's possession. Many items are sourced from multiple suppliers, requiring manufacturers to facilitate information requests, create databases to generate necessary reports, educate suppliers to understand the information requests (especially those outside of North America), validate and clarify any information received, and then link all received information to products sold."

Morrow-1: "Our client respectfully requests a one-year extension of the current January 1, 2026 reporting deadline. The current timeline presents significant challenges for manufacturers as the reporting deadline is less than seven months away. Manufacturers often produce a wide range of products, with some companies selling thousands of SKUs. Requesting and gathering data on potential PFAS contained in products and their components requires significant time and resources, including coordination with numerous suppliers who may not have the information readily available. Additionally, manufacturers require sufficient lead time to establish internal protocols to collect, verify, and report PFAS data based on final rules. Given that Minnesota's regulations will not be finalized until late 2025, it is reasonable to extend the reporting deadline. Our client recommends at minimum an extension until January 1, 2027,

which would align with the recently enacted New Mexico House Bill 212. Consistency in compliance deadlines would help to reduce the compliance burden. Our client believes an extension of the reporting deadline to January 1, 2027 would provide manufacturers with the necessary time to comply fully and accurately, ensuring the integrity of data submitted to the Minnesota Pollution Control Agency ("MPCA")."

Hardwick-4: "The lack of clarity regarding the logistics of reporting makes the January 2026 deadline highly burdensome to manufacturers. It is atypical for environmental reporting to be mandated without clear indication of what and how information should be conveyed to an agency. Instead, agencies typically open reporting platforms many months in advance of a reporting deadline to give companies sufficient time to become familiar with the specifics and technicalities of the submission process. For example, the U.S. Environmental Protection Agency anticipates opening its CDX platform for required reporting under the Toxic Substances Control Act Section 8(a)(7) in April 2026 in preparation for an October 2026 reporting deadline under the federal PFAS Reporting Rule. Conversely, in Minnesota, companies may only have a matter of weeks to understand the platform before reports are due in January 2026. Simply, this is not enough time. The state of Minnesota needs to clearly articulate how information must be submitted to MPCA under these proposed permanent rules and should understand that its failure to articulate any such information to date is exacerbating the administrative and regulatory burdens of these proposed rules. Additionally, it is unclear how confidential submissions may be executed via the platform and what steps IC2 and MPCA will take to ensure the protection of confidential information through the platform.

Accordingly, MPCA should extend the deadline for reporting by at least one year."

Branstad-29: "The late issuance of MPCA's proposed permanent rules likely makes the formation of supply chain agreements contemplated in the section impossible within the few months remaining before the current deadline for product reporting. There is insufficient time to identify all the relevant manufacturers in the supply chain, negotiate responsibilities, put legal agreements and protections in place, collect and aggregate data, and other actions that a reporting agreement would necessitate. We strongly recommend that the commissioner use the discretion provided in the statute to grant an extension to manufacturers who wish to explore and potentially report as a group."

Nagy & Tatman-9 (pre-hearing comment and hearing testimony): "The CPMCoalition recommends that MPCA use its existing authority under the law to extend its reporting deadline. The CPMCoalition suggests that to avoid issuing multiple postponements, MPCA should extend the deadline to by at least two years, especially for complex products, their essential chemical components such as low-risk refrigerants, fluoropolymers, and insulating gases, and their replacement parts, as well as any de minimis amounts."

Frisbie-4: "Deadline (Part 7026.0030, subp. 1): The January 1, 2026 initial report deadline is not reasonable or practically implementable given the current status of the rulemaking process and should be revised to 18 months following the effective date of the final rule.

Wabash understands that Amara's law, passed in 2023, set the initial reporting deadline as January 1, 2026. However, with the Proposed Rule public comment period ending on May 21, 2025 and a final rule unlikely to be in effect until later in 2025, the timeframe for manufacturers to take all necessary actions to comply with the initial reporting deadline is not feasible.

...Wabash recommends that MPCA work with the Minnesota legislature (as needed) to extend the initial reporting deadline until 18 months following the effective date of the final rule. Without extending the time period for the initial report, MPCA may (or is likely to) experience a great number of extension requests that MPCA will have to individually process. This would not be an efficient use of time and resources for MPCA or thousands of manufacturers."

Bemus-8 (pre-hearing comment and hearing testimony): "Minnesota currently has the most expansive PFAS in products law in the country… SPAN strongly encourages MPCA to delay the impending reporting deadline so that reporting program is implemented effectively; providing sufficient time for all affected entities to fully understand and be able to fulfill their reporting obligations."

Erny-5 (pre-hearing comment and hearing testimony): "RVIA is highly concerned there will not be a reasonable amount of time for RV manufacturers to collect, validate, and report information about their products that have intentionally added PFAS. As stated earlier, RVs are complex products that contain thousands of individual parts, components and assemblies that are sourced throughout a highly complex supply chain that is international in scope. Given the volume of chemical composition information being requested by MPCA, it will be nearly impossible for RV manufacturers to meet the current reporting deadline of January 2026. This is further exacerbated by the extreme due diligence standard that requires all information requested in total. Given the delays in this rulemaking, it is unclear when a final rule may be issued. We hope that the MPCA will do its due diligence and conduct a complete and thorough review of all stakeholder comments and testimony.

Additionally, it is essential that manufacturers have clear, practical steps for submission of data into the reporting system. This cannot happen until the reporting system's functional capabilities are fully tested and established. This is especially true for a manufacturer who is reporting on behalf of multiple manufacturers. Manufacturers will need detailed guidance on how reporting entities can submit on behalf of multiple manufacturers and to put in place formal relationships to do such.

We understand that detailed guidance will be included in the reporting system instructions or in a supplemental guidance document. However, this information will not become available until the reporting system's functional capabilities are fully established. This is critical for

ensuring that entities have clear, practical steps for submission of data on behalf of multiple manufacturers.

RVIA recommends that MPCA delay the current reporting deadline from January 1, 2026, to January 1, 2027. RVIA believes this is quite reasonable, given the complexity of the reporting process and the numerous steps and related systems that need to be in place, tested, and validated prior to actual reporting.

Will MPCA consider a phased-in compliance timeline for complex goods to accommodate necessary supplier outreach and data collection?"

OBrien-1: "The proposed reporting rules would require the initial PFAS reporting be submitted on or before January 1 of next year. We are extremely concerned that such a deadline does not give covered producers sufficient time to adequately perform the required due diligence to comply with the proposed reporting rules. This condensed timeline for reporting into a system that does not yet exist is both unreasonable and near impossible to comply with. We recommend, therefore, the use of enforcement discretion for the first year of reporting as our brands continue to prioritize chemical management in the products they sell."

Keane-8: AHAM requests a minimum ninety-day delay in enforcement once the reporting platform becomes publicly available. MPCA should consider a longer extension, which may be both necessary and appropriate. This will allow for increased accuracy of data submissions and increased utility of the data provided to MPCA.

Tangren-1: "The deadline of January 1, 2026 for the reporting requirements in this rule in Section 7026.0030 Subpart 1 should be maintained. Although Minnesota is one of the first states to begin implementing reporting requirements for PFAS, this action should not come as a surprise to industry. The state of Maine passed a similar law governing PFAS reporting and restrictions in 2021, and Minnesota's "Amara's Law" which directed the creation of this rule, was passed in 2023. Manufacturers have previously been required by other states to report the PFAS contents of their products, and will need to eliminate those PFAS by 2032 in order to comply with Amara's Law; extending the deadline for reporting beyond January 1, 2026 is unnecessary due to existing requirements in other jurisdictions and may leave manufacturers unprepared for future regulations."

Bretecher-5: "Given the challenge associated with reporting, and more importantly, the less urgent risk of PFAS exposure to the general public from heavy vehicles, NFA respectfully requests that heavy vehicle manufacturers be granted a 2-year extension beyond January 1st, 2026, to comply with the reporting requirements."

Barnes-5: "The requirement to report all PFAS by January 1, 2026, is exceedingly difficult if not impossible for most manufacturers to meet. We request a 36-month extension (rather than the proposed 90-day extension period) to ensure adequate time for testing, supply chain certification, and reporting."

Kooy-3: "Given the extensive investigation required, the complexity of data organization, and the uncertainty surrounding the requested information, manufacturers face significant challenges in meeting the proposed January 1, 2026, deadline. Furthermore, manufacturers are navigating an increasingly complex landscape of state and federal compliance and reporting deadlines related to PFAS and other environmental regulations. To ensure a more practical and coordinated approach, BIFMA recommends that MCPA align its reporting timeline with the EPA's TSCA Section 8(a)(7) deadline of October 13, 2026."

Neal-3: "The PFAS reporting and fee rule deadline is unreasonable for manufacturers of complex products. As written, the rule will likely necessitate an immediate extension request.

Emerson's large portfolio of complex products, consisting of over 100,000 products and >15,000 suppliers, makes compliance with this reporting rule challenging. Additional time is needed due to:

• Limited Awareness on PFAS Across the Value Chain. PFAS knowledge varies significantly across the value chain, requiring fundamental training for some suppliers, which has proven to be time-consuming.

• Data Collection Complexities. The process of collecting comprehensive data on PFAS containing products and components, along with standardizing data collection and reporting processes across Emerson and its suppliers is also very time-consuming.

Our Ask: Is the MPCA able to delay enforcement for six months or grant a longer extension under Rule 7026.0060, Subpart 3B?

Proposed Solutions: Emerson respectfully requests that MPCA Provide a six-month delay in enforcement of the reporting rule or extend the allowable period in Rule 7026.0060, Subpart 3B from 90 days to 180 days."

Cortina-2: "HARC would respectfully request that the deadline for PFAS reporting be pushed back to January 1, 2027. There are only six months until the reporting is due, and the rules have not been finalized and the reporting system has not been developed. There are questions about who along the supply chain must report and how the required information would be shared among different parties in the supply chain. HARC believes it would be onerous to finalize the reporting system in October or November and expect manufacturers to report by the end of the year. Rather than have numerous manufacturers requesting an extension, MPCA should push back the deadline."

RendallJackson-5: "The proposed rule sets the reporting deadline as January 1, 2026. However, as of now, with only about six months remaining until this deadline, the rule has not yet been finalized and is still in the public consultation phase. Considering the time required for the rulemaking process, there will be less than six months between the finalization of the rule and the reporting deadline. Imposing such a tight schedule on manufacturers would place a significant burden on them and could lead to incomplete or inaccurate submissions due to insufficient preparation time. Therefore, we propose extending the reporting deadline by at least one year to allow manufacturers sufficient time to gather the necessary information."

McArdell-4: "The current deadline for initial reporting, January 1, 2026, is not feasible for manufacturers of complex products like boats. NMMA urges the agency to extend the implementation timeline and consider a phased or tiered reporting approach, like frameworks adopted in other states. For example, Maine recognized the unique challenges posed by watercraft and fully exempted them from reporting requirements in 2024.

Marine manufacturers often do not have direct knowledge of all the materials or substances used in each component of their products, especially when those components are proprietary or imported. Requiring full disclosure of intentionally added PFAS by this deadline would place an unreasonable burden on manufacturers and their suppliers."

Denney-2: "Extend the January 1, 2026 reporting deadline by at least one year, given that the Reporting Rule is expected to be finalized (and the reporting portal is expected to be made available) just shortly before this current deadline. The Reporting Rule must be finalized and the reporting portal must be operational well in advance of the reporting deadline in order for companies to structure due diligence in a manner that will generate PFAS data that is of practical use to the agency. This extension should be granted now as part of this rulemaking, rather than waiting for potentially thousands of individual extension requests to be received by the agency once the Reporting Rule is finalized.

Subdivision 3(d) of Section 116.943 grants the MPCA the authority to extend the reporting deadline if the agency determines that "more time is needed" for manufacturers to comply. PPWG believes that to be the case for all manufacturers in the current situation. The original January 1, 2026 reporting deadline is less than 8 months away, and the rulemaking schedule posted by the MPCA states that the Reporting Rule will be finalized "by Jan. 1, 2026." The MPCA also noted on slide 48 of a webinar presentation that the reporting system will not go live until "Late 2025," which is alarming given the large volume of data the reporting system will need to support almost immediately after the system becomes operational in anticipation of the January 1, 2026 reporting deadline.

As explained in PPWG's 2024 comments, companies cannot finalize and implement effective due diligence programs in preparation for reporting until the information to be submitted is specified in a finalized Reporting Rule and in an operational reporting program. Regulatory agencies have acknowledged these sorts of logistical considerations, including most recently by EPA under the TSCA PFAS reporting rule. Earlier this month, EPA delayed the reporting window under this rule by an additional 8 months in part because "the current reporting timeline is no longer tenable, and maintaining that timeline would require entities to submit data before EPA has sufficiently verified that the technological capacity is in place to accept that data." The MPCA should employ a similar reasoning to extend the reporting deadline for the Reporting Rule.

While PPWG appreciates the process provided in the proposed Reporting Rule for manufacturers to request extensions to the reporting deadline, the current situation warrants a blanket extension of at least one year in addition to the process provided for manufacturers to request additional extensions. Before Maine's PFAS in products law was amended to in part delay that law's reporting deadline, the Maine Department of Environmental Protection granted reporting deadline extensions to thousands of manufacturers. The MPCA should expect a similar number of requests, and it would be inefficient and costly for the MPCA to evaluate this large number of individualized requests when the Reporting Rule is finalized – particularly given that rule finalization is expected to occur right around when reports are due. The MPCA should avoid a bottleneck scenario and grant a blanket extension as part of this rulemaking.

At the very least, the MPCA should grant a reporting deadline extension of at least one year for manufacturers of certain categories of products, including FDA-regulated products. The materials for these products are sourced globally with numerous tiers of suppliers, manufacturing facilities, and distribution channels. Adding to this complexity, supply chains in this industry involve not just manufacturing and distribution, but also oversight by regulatory bodies that control these activities and ensure products can be brought to market around the globe. Accordingly, it is simply not practicable to develop a full understanding of the chemical composition of all FDA-regulated products in a manner sufficient to report intentionally added PFAS by the January 1, 2026 deadline. This reality is emphasized by the fact that the Reporting Rule requires reporting on intentionally added PFAS, where "PFAS" is defined using a broad structural definition encompassing tens of thousands of substances. In contrast, and for example, Environment and Climate Change Canada's (ECCC's) PFAS reporting notice only requires reporting on 312 specific PFAS all of which are listed in the notice. A reporting requirement, such as that in the Reporting Rule, applying to the entire universe of PFAS in all products is unprecedented, meaning that manufacturers need a significant amount of time to comply.

Reporting preparation involves performing internal due diligence for each product sold into Minnesota to assess whether these products may contain intentionally added PFAS. Moreover, this preparation may involve external outreach with suppliers, which takes a considerable amount of effort and time given that products in this industry are produced through a global web of many suppliers. Then, all acquired information will need to be analyzed against the information responsive to the Reporting Rule and uploaded in the reporting portal, neither of which have been finalized as of yet and are not expected to be finalized until late 2025 at the earliest. A reporting deadline extension of at least one year for FDA-regulated products will help address these concerns."

McGowan-11: "We reiterate our request that MPCA extend the reporting deadline to at least 6 months after MPCA has finalized these regulations and the reporting tool."

Sepesi-5 (pre-hearing comment and hearing testimony): "The PFAS reporting and fee rule deadline is unrealistic and unreasonable, especially for manufacturers of complex products and those with complicated supply chains. By the time the rules and reporting system are finalized, companies will have insufficient time to prepare information to submit PFAS product reports. The reporting deadline should be extended well beyond the current deadline of January 1, 2026.

Among many reasons, more time is needed because of the time and the effort needed: (1) for suppliers and customers to determine their respective reporting responsibilities and develop legally binding reporting agreements between them, if group reporting is elected; (2) to obtain complete and accurate PFAS information from component suppliers; (3) to collect and standardize data collection and reporting processes across supply chains to report information consistent with new rule requirements and definitions; and (4) to achieve alignment of suppliers where PFAS knowledge varies across the value chain.

MPCA needs to learn from Maine's experience when it tried to implement the product reporting provisions of its 2021 PFAS law (PL 2021, Chapter 477). The Minnesota legislature essentially copied and pasted the product notification requirements of the Maine law into Amara's law. Maine DEP initially received over 2800 reporting extension requests from manufactures. This led to the Maine legislature first extending the reporting period in 2023, and in 2024, functionally eliminating the PFAS product reporting requirement, except for very narrow future situations where PFAS use in a product was deemed unavoidable.

It is requested that the reporting deadline be delayed to at least 12 months after the final rules and reporting system are approved and released. To the extent MPCA believes that the January 1, 2026 deadline cannot be changed without legislative action, MPCA should announce that it will exercise enforcement discretion and not enforce the reporting requirement for 12 months

following promulgation of the final rule. MPCA should also amend the Chapter 7026.0060 rules to automatically provide a six month extension to any manufacturer as a maker of right without having to comply with the more extensive proposed requirements for extension contained therein."

Iizuka-5: "We would like to state that it is not possible for the importers or the manufacturers of the complex manufactured items to satisfy requirements on identifying and reporting every PFAS as well as their volume… The longer and more complex the supply chain and the larger the number of substances surveyed, the longer the time will be needed to obtain response (months to years or longer)."

Prero-15: "The Proposal requires that a report be submitted on or before January 1, 2026. This date for reporting is not practical given that the reporting rules and information technology processes are not yet finalized. The initial reporting timeline should be delayed sufficiently to provide for at least 12 months after the Minnesota reporting rule and reporting process and platform have all been finalized."

Sloan-14: "The proposed rule stipulates an initial reporting date of January 1, 2026. Considering the timing of this proposal, an incomplete reporting system, and the unprecedented request for PFAS data, MPCA has created an unreasonable timeline for manufacturers. While the proposed rule provides the opportunity for a limited extension, 90 additional days will not be sufficient, and the requirements for requesting an extension are onerous and, ultimately, may not result in more time. CPI continues to believe that granting up to 12 additional months for reporting will improve compliance plans for submitting data under this program as well as MPCA's ability to collect and interpret manufacturers' reports."

Sloan-15: "MPCA should develop a phased reporting schedule or staggered compliance dates, allowing for database piloting and high-level submissions while manufacturers build capacity for full reporting."

Brandstad-33: "As an initial matter, the fact that the reporting and fee rules are just now being proposed, with barely seven months remaining before reports are due, and the fact that the planned reporting platform has not been released for evaluation and testing puts all stakeholders, particularly industry stakeholders who may have a reporting obligation, at a significant disadvantage with respect to providing comments informed by having a view of the full context of MPCA's planned implementation of Minnesota Statutes §116.943. Significantly more time and clarity are needed to apply for and await decisions on trade secret data protection requests and to allow the supply chain to consider, codify, and execute supply chain reporting agreements. It is unreasonable to expect that manufacturers (or any member of the public) can provide adequate and thorough comments on the current proposed rule with no understanding of the reporting platform and whether, from the perspective of manufacturers

with reporting obligations, it is being designed in a way that does not frustrate compliance. The regulated community needs regulatory certainty to appropriately provide the required information to MPCA."

Branstad-30: "The legislature has given the Commissioner authority to grant extensions to manufacturers, and we strongly recommend that the Commissioner do so until the reporting system is tested and ready to receive reports from manufacturers."

Cleet-6: "The timeline for reporting is unworkable, particularly for complex products such as electronics, which pose unique reporting challenges, including needing additional time to comply with reporting requirements... Recommendation: Revise Part 7036.0030 to align with EPA's TSCA PFAS reporting (now due October 2026)2 or require reporting at least 12 months after the reporting rule, reporting processes, and online platform (if MN plans to develop one) is finalized. Further, MPCA should issue a blanket extension for manufacturers of complex electronic products (including their components) and products with electronic components. Given the complexity of the issue and the extensive reporting requirements outlined in the law, we respectfully ask that the Agency grant an extension to the electronics sector for at least 24-48 months after the final adoption of their rulemaking."

Olinger-1: *"We support the reporting date requirement of January 1, 2026. Since Amara's Law passed in 2023, manufacturers should have been aware of the reporting requirement and started collecting the required information."*
The Sierra Club supports keeping the 2026 reporting deadline, noting that manufacturers have had sufficient notice since Amara's Law passed and should already be collecting the necessary data, especially in light of parallel federal TSCA reporting obligations.

Pierce-4: *"WDMA urges the MPCA to delay the reporting requirements for one year from the enforcement date. The delay would allow both MPCA and manufacturers sufficient time to ensure manufacturers can fully comply with their obligations under the law."*

Bretecher-6: "We ask that MPCA consider providing heavy vehicle OEMs a 2-year extension for complying with the proposed PFAS reporting and fees regulation due to the significant challenges involved in meeting the reporting requirement. Specifically, we request consideration of the difficulty a bus OEM would face in successfully satisfying the reporting requirements within the timeframe between adoption of the regulation and the reporting deadline of January, 2026…

…Given the challenge associated with reporting, and more importantly, the less urgent risk of PFAS exposure to the general public from heavy vehicles, NFA respectfully requests that heavy vehicle manufacturers be granted a 2-year extension beyond January 1st , 2026, to comply with the reporting requirements."

Palin-15 (pre-hearing comment and hearing testimony): "The Timelines for Finalization of a Rule, A Reporting System, and Submission: Auto Innovators is concerned that the timeline that PCA is anticipating, with a final rule issued a few months from now and a reporting system available late in 2025, does not allow obligated entities to sufficiently prepare to make all reports as required by January 1, 2026. At a minimum, the reporting deadline should be delayed until PCA has successfully beta tested the reporting system.

Auto Innovators estimates that it will take our industry at least 6 months to a year to collect available data on PFAS in production vehicles and spare parts. We also estimate that it will take an additional 6 or more months to get PFAS data on OEM-branded items that are not manufactured by the OEM, such as jackets, travel mugs, or other merchandise products."

Palin-16 (pre-hearing comment and hearing testimony): "Extensions of the Reporting Deadline: We note that both under the law and under the draft PFAS in Products: Reporting and Fees Rule, PCA has the authority to extend the deadline for the submission of information if the commissioner determines that more time is needed for compliance. Auto Innovators recommends that PCA begin work on an extension of the deadline, given the timelines discussed above. The sooner that an extension can be confirmed for reporting entities, the more time it gives for planning and inventory management. There is precedent for extensions in other states; Maine, for example, granted waivers of the reporting requirements as it continued to work through implementation issues in its program. Auto Innovators notes that manufacturers can also request extensions, but those provisions operate with application and approval timelines and appear to only effectively last for 90 days. Action on the initiative of PCA itself instead is highly preferable. Auto Innovators recommends that PCA delay the reporting deadline until at least 6 months after the completion of beta testing of the data collection system."

McGowan-12: "MPCA Should Extend the Reporting Deadline. We urge MPCA to exercise its authority under the Law (Minnesota Statutes §116.943, subdivision 3) to grant a blanket extension of the reporting deadline for all manufacturers, since it is unreasonable to expect that manufacturers will be able to provide compliant notifications by the current deadline of January 1, 2026. Until the final rule is issued, and the concerns and uncertainties are resolved, manufacturers will not understand precisely what information needs to be obtained, including from whom and by what mechanism, to comply with the reporting requirement."

> **RESPONSE:** The MPCA acknowledges the substantial feedback from commenters requesting an extension to the January 1, 2026, initial reporting deadline. Many commenters emphasized the scale and complexity of the data collection effort required, the lack of a finalized rule and reporting platform, the challenges of global and multi-tiered supply chains, and the need for time to conduct supplier outreach, build internal systems, and ensure accurate reporting. Others noted the regulatory precedent set by EPA and the state of Maine in extending deadlines under similar PFAS programs and urged MPCA to follow suit to ensure program effectiveness and reasonable compliance.

At the same time, some commenters supported maintaining the current deadline, citing the advance notice provided by Amara's Law and alignment with broader PFAS regulatory trends. The MPCA appreciates these perspectives and continues to weigh the need for timely action against the importance of practical implementation.

Under Minnesota Stat. § 116.943, subd. 3(d), the Commissioner has clear authority to extend the deadline if more time is needed for manufacturers to comply. The agency has decided outside of the rulemaking process to issue an extension to the initial due date to ensure program success. The MPCA will be providing more information on the extension of the January 1, 2026 reporting deadline in the near future.

Existing products:

Iizuka-6: "We request that the scope of the initial report by January 1, 2026 be limited to products that manufacturers may sell on or after January 1, 2026. It is possible that products that have already been discontinued and are no longer sold by manufacturers may remain in stock at retail stores after January 1, 2026, in which case the manufacturer cannot know whether those stocks are sold in Minnesota after January 1, 2026."

Prero-16: "The Proposal provides that the report must be submitted before the product can be sold, offered for sale or distributed in commerce. It is likely that there will be products containing PFAS that were distributed to retailers or other entities operating in the state for months if not years prior to the effective date of the reporting requirement. The manufacture and placing of these products in the Minnesota market may have ceased. Such manufacturers may not even know that these products are still in stores. CUC requests clarification that in this scenario, manufacturers do not have any obligation to report despite the fact that the product may be sold, offered for sale or distributed to an end user after January 1, 2026."

Prero-17: "For many products, there may be a lengthy manufacturing period once an order is placed by the customer. A customer may place the order, may tender a deposit, and manufacturing commences. During the time of manufacture, the composition of components varies due to available parts and suppliers. CUC requests that MPCA provide guidance on when the "sale" of such an item occurs and at what time the obligation to report is triggered. If the obligation to report is triggered when the order is placed, as that commences the "sale," it is possible that PFAS presence in a component may not be contemplated. CUC therefore recommends that MPCA only require reporting in such a scenario at the time of final delivery to the customer in Minnesota."

Zaman-6 (pre-hearing comment and hearing testimony): "Due to challenges in controlling distribution of existing products, ACA requests that MPCA include a date of manufacture that triggers the reporting requirement. That is, manufacturers must report all products manufactured after January 1, 2026 containing intentionally added PFAS placed on the market

in Minnesota. These manufacturing dates are readily discernable from standard product labels and/or SKU numbers.

Manufacturers typically relinquish control of distribution when they sell their product to a distributor or retailer. This distributor or retailer then uses stock to fulfill orders and/or direct sales, shipping a product to various locations. A manufacturer typically is not involved with this level of sales or distribution. Manufacturers can provide instructions to their downstream distributors and retailers to no longer sell specific products into Minnesota, but the manufacturer cannot control distribution. Some larger retailers may have the ability to quickly track distribution. SMEs (Small and Medium Enterprises) do not have this capacity.

Placing the compliance burden on manufacturers could result in disparities in enforcement. Manufacturers could be fined for distribution and sales over which they have no control. They could also be fined for products that have been discontinued, due to sales in Minnesota of warehoused products by a distributor.

Online sales compound the challenge of tracing distribution. Distributors may provide products to a third-party online sales distribution platform. Here, the distribution is even further removed from the point of manufacture then distribution directly to a business or retailer."

> **RESPONSE:** The MPCA appreciates comments asking for further clarification on existing products that would be required to be reported on January 1, 2026. These are intended to be annual reports, and the first report will contain products intended to be sold, offered for sale, or distributed in the state that contain intentionally added PFAS starting January 1, 2026.
>
> Existing stock of products with intentionally added PFAS would be required to be reported in order to be sold. The statute did not provide a cutoff date or a "manufactured by" date, only that a manufacturer was required to report if they have products sold, offered for sale, or distributed in the state with intentionally added PFAS. If a manufacturer believes the existing products or spare parts they are selling in the state -contain PFAS, they would be required to either report or discontinue the sale of those products. A manufacturer should maintain documentation of any communications with downstream distributors or retailers regarding compliance with this rule. MPCA staff will take this into consideration if noncompliance is found.

New products:

Palin-17 (pre-hearing comment and hearing testimony): "Automotive Model Years and Vehicles for Sale: Autos as a product have several peculiarities that create some confusion for PFAS reporting. For the majority of calendar year 2025, the United States will be in model years

(MY) 2025 and 2026 and will at various times in the year be selling vehicles from both MYs as new to consumers. If vehicles are placed in Minnesota prior to January 1, 2026, such as being sent to a dealer, but could be sold to a customer after that date, are they subject to reporting? If so, how far back in time would OEMs have to report on vehicles previously placed in the state but sold after the January 1, 2026 reporting deadline? Additionally, as discussed above, it is unclear whether new model years of a product constitute a new product for reporting purposes.

Auto Innovators suggests that for the automotive industry, we instead report annually by model year the vehicles for sale in Minnesota. This would greatly simplify and clarify obligations for our industry."

Sepesi-6 (pre-hearing comment and hearing testimony): "The second sentence of proposed Chapter 7026.0030 states, "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." This presale reporting requirement for new products exceeds the reach of the statute and conflicts with proposed Minn. R. 7026.0040, Subpart 1, which requires reporting by February 1"if during the previous 12 months … a new product was sold, offered for sale, or distributed in or into the state."

The statute mandates that, "A manufacturer must submit the information required under this subdivision whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state." By using the past tense, the statute is clearly only authorizing post-sale reporting of new products, and not pre-sale reporting. MPCA's pre-sale notification requirement in Chapter 7026.0030 is in conflict with the plain intent of the statute. It is also burdensome, unreasonable and not necessary.

The proposed Minn. R. 7026.0040, Subpart 1 will provide MPCA with timely information regarding the sale of new products with intentionally added PFAS in the state. The proposed rolling reporting requirement for new products provides no benefit, requires duplicative reporting of new products, both before and after introduction and increases the already substantial burden on manufacturers. Moreover, the SONAR is completely silent regarding why this pre-sale reporting is reasonable or necessary.

Comment Summary: MPCA should strike pre-sale reporting from the proposed rule"

Iizuka-7: "Any new products marketed after the initial reporting period will require reporting prior to the product's first distribution in Minnesota. On the other hand, reporting is required again before every February to update the previous year's report. If a new product is released in December, the first report will need to be submitted in December, followed immediately by another update report in February next year. In order to avoid such duplicate reporting, it is

reasonable to report new products after January 1, 2026 together at the time of annual renewal in the next year."

Prero-18: "The Proposal is unclear on when the reporting obligation is triggered when a new product will be sold into Minnesota beginning after January 1, 2026. If a product will be sold into Minnesota starting June 2027, would a report be required at that time, or would the manufacturer wait to file until the beginning of 2028? Assuming they must notify in June 2027, would they still need to submit a certification in 2028, which is only a few months later? CUC requests that MPCA clarify the application of the reporting obligation."

Prero-19: "The Proposal provides that the report must be submitted before the product can be sold, offered for sale, or distributed in the state. CUC requests that MPCA clarify whether approval of the report is required prior to sale, offering for sale or distribution in the state, or simply that the report and accompanying fee be submitted and then sale can commence."

Thomas-18: "New products: In Subp. 1., we are concerned that a new product with intentionally added PFAS must submit a report before the product can be sold, offered for sale, or distributed in the state. We do not believe that this is a reasonable amount of time to complete the full reporting and would ask that new products be reported within 12 months of being sold, offered for sale, or distributed into the state. This could directly impact federal procurement for medical devices, such as medical imaging equipment for Veterans Administration (VA) facilities. It is not unusual for a VA contract to stipulate that the manufacturer must provide the latest model when it comes time for delivery and installation. It could also impact patient access to novel or specialized medical devices and drugs when timely access is critical."

Cleet-7: "Issue: Lines 5.4 – 5.7 require manufacturers of new products to be introduced to the Minnesota market after the January 1, 2026 reporting deadline to submit a report "before the product can be sold, offered for sale or distributed in the state." However, the statute does not require submission of a report before introduction into the Minnesota market; instead, the statutory requirement is only that a report be submitted "whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state." The statute uses the past tense to refer to sale, offer for sale, and distribution, meaning that requiring submission of a report beforehand is inconsistent with the law's text. Furthermore, submitting a report before a product launch would likely breach confidentiality requirements and put companies at a competitive disadvantage. To add to these concerns, lines 5.4 – 5.7 are in tension with line 9.8 which would require manufacturers to report new products as part of the annual update by February 1 of each year.

Recommendation: We suggest these be combined into one annual report to remove unnecessary administrative burden. If reports are at the product level, this implies multiple reports would be submitted annually. This piecemeal solution is cumbersome, drives unnecessary administrative work and may stop the timely flow of products into MN. The rule

should be amended to clarify that a single report per manufacturer should be required annually that includes information for all products shipped into MN within the prior twelve-month period. In addition, provision should be made for scenarios where groups of manufacturers offer the same or similar products in the state. Finally, the requirement for reporting new products in lines 5.4 – 5.7 should be deleted so that the requirement in line 9.8 governs this issue."

Zaman-7 (pre-hearing comment and hearing testimony): "MPCA proposes that manufacturers introducing a new product to the market after the reporting deadline, currently set for January 1, 2026, file a report prior to product introduction (See Section 7026.0030, proposed rules). MPCA then proposes filing another report under Section 7026.0040, during the annual reporting period. This section requires reporting of any new products introduced to the market in the prior 12 months by Feb. 1 of each year. This dual reporting requirement is redundant and unnecessary. ACA recommends maintaining the annual reporting requirement (in Section 7026.0040) for new products introduced in the prior 12 months, while eliminating the report prior to product introduction in Section 7026.0030. This approach provides consistency in scheduling reports for both manufacturers and the agency for processing, review and publication."

Kallen-14 (pre-hearing comment and hearing testimony): "The Proposed Rule states at line 9.8 that if a company begins selling a new reportable product into Minnesota, the report for that product will be due February 1. SEMI and SIA read this to mean that for reportable products introduced to the market after January 1, 2026, companies must submit an update by February 1 in the calendar year following introduction to market. SEMI requests that the MPCA confirm this interpretation in guidance. SEMI and SIA request that the MPCA remove language from the Proposed Rule that is inconsistent with line 9.8, e.g., the following sentence at lines 5.4 – 5.7: "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." It is not required or envisioned by the statute that manufacturers submit a report to the MPCA before even putting a product on the market in Minnesota."

Moyer-3: "7026.0030(1) states that "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." However, later in the Proposed Rule 7026.0040(1)(A)(3) outlines how reporting updates must be made for when a "new product was sold, offered for sale, or distributed into the state" by February 1 of each year. These two seemingly contradict. The statute requires that a report be submitted whenever a new product is sold in the state. The statute does not require submission of a report before the product can be sold (as it says in 7026.0030(1)). A requirement to report before the sale of a product might breach a company's confidentiality requirements or put companies at a disadvantage. We recommend that the sentence on lines 5.5-5.7 be removed

and instead refer to the requirement in 7026.0040 where new products must be reported by February 1 of each year."

> **RESPONSE:** The agency intended 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. In review of the above comments and the proposed rule language, the MPCA agrees that this language does not align with part 7026.0040 of the proposed rule. The MPCA will consider modifying the rule language in part 7026.0030 to be clear there is no need for separate pre-sale reporting and will ensure that new product disclosures occur during the annual update cycle. Further clarification will be included in reporting guidance to ensure manufacturers understand their obligations and avoid duplicative submissions.

Replacement parts:

Prero-20: "CUC recommends that reporting not be required for spare/replacement parts for existing products, and materials needed to maintain and repair existing products. These parts often are not newly manufactured. Rather, when a new product is manufactured, spare and replacement parts are manufactured and maintained in accordance with either contractual or regulatory requirements so that the product can be continuously used and need not be replaced solely because a replacement part is not available. If these parts are not newly manufactured, it may be difficult for the entity selling the parts to ascertain PFAS content due to the lapse of time since manufacture. A parts supplier, if required to report, may simply decide not to provide these parts to customers in Minnesota, due to the compliance burden. The availability of spare/replacement parts allows for the continued use and maintenance of existing products, thereby preventing the accumulation of unnecessary waste including e-waste."

Palin-18 (pre-hearing comment and hearing testimony): "How to Address Spare and Replacement Parts: As discussed above, the automotive industry sells substantial volumes of spare parts in order to keep vehicles safely functioning, often parts that were manufactured at the same time as the vehicle and have been held in storage until they are needed in the market. It is also noteworthy that those parts have little purpose unless they are installed in the vehicles they are intended to service. Whether and how to consider those parts with respect to reporting is a critical question for the automotive industry, and Auto Innovators makes the following recommendations.

As mentioned above, Auto Innovators expects that there could be as many as 8 million service and replacements parts available in the market for vehicles that may contain PFAS. Therefore, Auto Innovators suggests interpretations below that seek to limit the reporting burden for the automotive industry regarding these spare and replacement parts while ensuring that needed

information on PFAS in vehicles is available. Finally, if spare and replacement parts are required to be separately reported as products, Auto Innovators will need guidance on what numeric product codes would be required."

Palin-19 (pre-hearing comment and hearing testimony): "Spare and Replacement Parts for Reported New Production Vehicles: One class of spare and replacement parts that PCA should consider are those for new production vehicles that will be reported as products under this program. Because PCA is requiring reporting at the component level, Auto Innovators recommends that spare and replacement parts for vehicles be considered reported through the vehicle report. This is sensible because that PFAS content is factored into the whole vehicle and component reporting, and because those spare and replacement parts will be intended to take the place of a part that has already been factored into reporting.

In fact, PCA appears to have already agreed to this approach. In the Questions and Answers document PCA released in conjunction with its July 18, 2024 webinar on rulemaking toward the implementation of Amara's Law,24 PCA included the following question: "Do service parts need to be reported separately if they contain intentionally added PFAS and are already reported as a component of a finished product SKU?" PCA answered that "If service parts contain intentionally added PFAS and are already reported as part of a finished product SKU, separate reporting for the service parts is generally not required. The key point is that the PFAS content in the service parts is included in the overall reporting of the finished product." Auto Innovators hopes PCA retains this finding.

Auto Innovators makes one final note that OEMs may deliver cars for sale to dealers in Minnesota, and those dealers may install additional parts to make the vehicles attractive for sale or because they were requested by the customer. OEMs should not be responsible for reporting those components because they were not installed by the OEM."

> **RESPONSE:** The agency appreciates receiving comments concerning replacement parts for the reporting program. Our intentions are consistent with a response provided during the public workshop on July 18, 2024, that manufacturers can report replacement parts sold moving forward as a component in a given product being reported with intentionally added PFAS.
>
> However, if a third-party manufacturer independently produces and sells an aftermarket or replacement part that contains intentionally added PFAS and is sold, offered for sale, or distributed in Minnesota, that third-party manufacturer is responsible for reporting the part.

Discontinued/Legacy parts:

Moyer-4: "Discontinued Products and Repair/Replacement Parts: The Proposed Rule outlines reporting which is required for products that are currently being sold in the state as well as future products to be sold. However, manufacturers may have products that are now discontinued but may still be in stock in some retailer's location. Product manufacturers do not have control over when their products are on all retailers' shelves and may not know when all discontinued products are fully sold. The Proposed Rule should clarify how manufacturers should address discontinued products, if at all. Additionally, to allow for ease of repair, we ask that repair and replacement parts be exempt from the reporting requirement"

Palin-20 (pre-hearing comment and hearing testimony): "Spare and Replacement Parts for Legacy Vehicles: A second class of spare and replacement parts that PCA should consider are those for legacy vehicles—vehicles that have already been sold into the state and are not currently being sold as new complete vehicles. Those complete vehicles that are already in-use should be considered "used products" consistent with the law and draft regulation. Auto Innovators recommends that spare and replacement parts for legacy vehicles be considered component parts of "used products," and thus considered not subject to reporting requirements. It would be prohibitive for the automotive industry to determine the PFAS content of these parts, which may have been developed and manufactured years ago, to meet newly introduced regulatory requirements. If the automotive industry was required to report these parts, the estimate of 337,500 lines of data from OEMs would exponentially increase."

> **RESPONSE:** Minn. Stat. § 116.943 did not provide a cutoff date or a "manufactured by" date; it only stated that a manufacturer was required to report if they have products sold, offered for sale, or distributed in the state with intentionally added PFAS. If a manufacturer believes the legacy parts or discontinued parts within their inventory contain PFAS, they would be required to report or discontinue the sale of those products as directed by statute. A manufacturer should maintain documentation of any communications with downstream distributors or retailers regarding compliance with this rule. MPCA staff will take this into consideration if noncompliance is found.

Item A: Reporting of components versus products

Cross-4: "The statute places the reporting obligation on manufacturers of 'products,' which are items sold 'to consumers… for use in making other products.' This definition describes completed end products… not components that merely form constituents of end products."

Denney-3: "Allow companies to report at the product level, rather than requiring reporting at the product component level. The proposed Reporting Rule would require companies to report at the product component level; this requirement fosters ambiguity and would be overly

burdensome for companies reporting complex products that contain hundreds or thousands of components. Allowing reporting at the product level will help ensure manufacturers can provide accurate data in the compressed timeline provided for reporting.

If a product has multiple PFAS-containing components, lines 5.23 – 6.10 of the proposed Reporting Rule would require manufactures to report each component. Reporting at the component level is not required or envisioned by the statute. Reporting at the component level would be overly burdensome for manufactures of medical, pharmaceutical, and animal health products, since many of these products have hundreds or thousands of components.

In addition, determining what qualifies as a "component" – particularly under the MPCA's proposed definition for this term – is a subjective inquiry and there is likely to be significant variation between manufacturers on how this determination is made. Similar concerns exist if a PFAS-containing component is a sub-component to a larger component of a product – if reporting is required at the component level, there could be double counting, or at the very least the reporting system may not be able to handle nuanced, nested component structures that often exist in this industry's products. Likewise, variation in how manufacturers distinguish components would result in reported data that lacks uniformity, thereby limiting accurate comparisons by the MPCA. The development of uniform standards for breaking down complex products into their components is a challenging, technical endeavor that is the main focus of a 100+ page EU guidance document. Adopting such standards here may eclipse the time and effort the MPCA puts into developing the Reporting Rule itself, and the MPCA should avoid this scenario.

PPWG therefore recommends that lines 5.23 – 6.10 in the proposed Reporting Rule be replaced with the following provision:

> If the product consists of multiple PFAS-containing components, the manufacturer must indicate whether the PFAS is present in an internal component, external component, or both.

An obligation to note whether the PFAS is present in an internal or external component is reasonable as a means to track potential PFAS exposure risks to consumers, as opposed to more detailed component-level data that is unlikely to be relevant to this risk.

Manufacturers should also be allowed to report PFAS concentration at the homogenous material level, component level, or product level depending on whether PFAS concentration at the more granular level is KRA to the manufacturer, consistent with the KRA standard as discussed above. Other regulators have permitted PFAS concentrations to be calculated this

way, including under ECCC's PFAS reporting notice.14 To that end, the following provision should be added to the Reporting Rule:

To report the concentration of PFAS chemicals in a product containing multiple components, the manufacturer must calculate the concentration using the following hierarchy of the most preferred to least preferred option. The most preferred option that is known to or reasonably ascertainable by the manufacturer must be used, and the option selected must be indicated in the report:

> (a) Calculate the concentration at the homogenous material level in the component that contains the PFAS;
> (b) Calculate the concentration at the component level; or
> (c) Calculate the concentration at the product level."

Cleet-8: "Issue: If a product consists of multiple PFAS-containing components, lines 5.23 – 6.10 of the proposed rule require manufacturers to report each component. The statute does not impose this requirement, and for good reason. First, determining what is a "component" is subjective. Also, MPCA's definition of "component" is likely to lead to variations in how reporting is done among manufacturers. Reporting at the component level would be overly burdensome for manufacturers of complex products that often contain hundreds or thousands of components. Uniform standards for breaking down complex products into components is a challenging topic that is the main focus of a 100+ page EU guidance document. MPCA should avoid this issue to the extent feasible. Finally, variations among a manufacturer's suppliers will likely mean that there are variations in PFAS levels among components. For example, a laptop may have batteries manufactured by several different battery suppliers. There will be some variations in the amount of PFAS in each of those batteries.

Recommendation: Lines 5.23 – 6.10 of the proposed rule should be deleted. Manufacturers should be permitted to report PFAS concentration at the product level but may report at a more granular level depending on whether these PFAS concentrations are known. Other regulators have permitted reporting PFAS concentrations this way, including under Canada's PFAS reporting notice (see page 8 of Canada's Guidance Manual where it is explained that concentration should be calculated at the component level, but if this information is not reasonably accessible the concentration can be calculated for the entire manufactured item)."

Kallen-15 (pre-hearing comment and hearing testimony): "As mentioned above, some semiconductor manufacturing products contain thousands, or potentially hundreds of thousands, of components, which are often contained under multiple levels of assemblies within the overall top-level product. This is also true for many end products where semiconductor devices are used. Lines 5.23 – 6.10 of the Proposed Rule would require that for products with multiple components that contain intentionally-added PFAS, reporting must be

done at the component level. This is simply infeasible for manufacturers of products as complex as semiconductor manufacturing equipment or many of the end products where semiconductor devices are used. It also does not account for the expected variability in PFAS content between individual units of a product sold under the same numeric product code due to multi-sourcing of interchangeable components. Similarly, the Proposed Rule does not recognize that varying configurations can lead to differences in the quantity or types of PFAS-containing components or sub-assemblies that might be used to meet specific customer requirements.

It is unclear from the Proposed Rule how manufacturers would break products down into reportable components. The three-line "component" definition the MPCA proposes in lines 2.1 – 2.3 is inadequate to this challenging task. For example, many products sold in Minnesota contain printed circuit boards, which contain transistors, which in turn contain multiple identifiable materials. It is unclear from the definition at what level a material within such a transistor would need to be reported. It is highly likely that different companies would take different approaches to this question and the thousands of similar questions that would be involved for complex electronic equipment. This would severely limit the utility of information reported to the MPCA. Reporting at the component level is an inherently complex exercise. Expecting uniform application by industry would require complex and lengthy guidance that the MPCA may not have time or resources to develop.

Additionally, the component-level reporting envisioned by the Proposed Rule goes beyond what the statute requires and authorizes. The only reference to components in Subdivision 2 of the statute states that manufacturers must report "the purpose for which PFAS are used in the product, including any product component." The statute does not require or envision reporting at the component level. Nor has the MPCA given a reason that component-level reporting is necessary or helpful for implementing the law.

SEMI and SIA suggest that the MPCA draft the rule so that companies are reporting at the product level. SEMI and SIA suggest doing so by removing lines 5.23 – 6.10 from the Proposed Rule and removing certain other references to components (e.g., from line 4.6)."

> **RESPONSE:** It is reasonable to require component-level reporting of products because similar products may have different types and amounts of intentionally added PFAS due to specific variations in their components. The term "component" is also used within Minn. Stat. § 116.943 within the definition of "product", and the term "product component" is defined. Under subd. 2 (a)(2), the information required in the report includes, "the purpose for which PFAS are used in the product, including in any product components". This statutory language gives the agency clear authority to require reporting at the product component level.
>
> The MPCA also allows for manufacturers to group products and components when reporting if they have similar homogenous characteristics and only differ in a superficial

sense such as size, color or other qualities that do not impact the composition of the intentionally added PFAS. This allows manufacturers to still report on the product component level, while relieving some of the burden of reporting.

Item A: Grouped product or component reporting

Kooy-4: "BIFMA supports the reporting option of a category or grouping of similar products versus SKU or product-specific identifiers. Due to variations in color, options, dimensions, etc., a furniture product (e.g. task seat) may have millions of variations and SKUs."

RESPONSE: Thank you for your comment. The MPCA agrees that allowing category or grouping of similar products can reduce unnecessary reporting burden, particularly for products with extensive aesthetic variations. The agency intends to support product grouping where appropriate.

Barnes-6: "Manufacturers must be able to group sufficiently comparable products together in reporting, which we believe is allowed under the law."

RESPONSE: Manufacturers may group sufficiently comparable products or components together for reporting purposes, provided the grouping meets the standards outlined in part 7026.0030 subp. 1, item A, subitem (1), units (a) or (b).

Denney-4: "Allow reporting through product groups by using appropriate assumptions when there are PFAS variations in product versions. Products should still be able to be reported in a group even if some of those products contain a smaller number of specific PFAS and/or if the PFAS concentrations vary among product versions. Manufacturers should therefore be allowed to organize product groups using appropriate assumptions about PFAS content – i.e., the group should be able to be based on the specific products in the group with the highest number and concentration of PFAS.

PPWG generally supports the options in the proposed Reporting Rule for manufacturers in the same supply chain to report on behalf of others and for manufacturers to report product groups. This flexibility in reporting is necessary given the complex webs of supply chains and different versions of products that exist in this and other industries. However, PPWG believes some adjustments are appropriate. Lines 5.13 – 5.22 in the proposed Reporting Rule would allow manufacturers to report by product group if the PFAS composition in the products is the

same, the PFAS fall into the same reporting concentration ranges, the PFAS provide the same function in each product, and the products have the same basic form and function with only minimal differences that do not impact PFAS composition. This product grouping requirement is too limited to be of practical use where there may be some PFAS variations in different product versions.

Sloan-16: "MPCA should allow manufacturers to group similar models and parts under a single reporting entry, similar to the way U.S. Department of Energy permits certification of "basic model numbers" to streamline reporting under the Energy Policy and Conservation Act."

Sepesi-7 (pre-hearing comment and hearing testimony): "The proposed reporting rule explicitly allows "grouping of similar products comprised of homogenous materials." Grouping is allowed where, for a given group of products, the PFAS chemicals, their concentration range and function are the same and the products have the same basic form and function. Minn. R. 7026.0030, Subpart 1.A(1)(a).

The proposed rule also makes product components a distinct reporting element requiring that the manufacturer "must report each component under the product name provided in the brief description of the product." Where a product consists of multiple PFAS- containing components, the manufacturer is required to report each component under the product name, but the proposed rule allows grouping of similar components if they meet the same criteria used for grouping products. Minn. R. 7026.0030, Subpart 1.A(1)(b). The statute defines product component" to mean "an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component." The proposed rule defines component itself to mean "a distinct and identifiable element or constituent of a product." Minn. R. 7026.0010, Subpart 7. Grouping is allowed for similar components, where the PFAS chemicals, their concentration range and function are the same, and the products have the same basic form and function.

MPCA is to be commended for allowing the grouping of products and product components. It will somewhat lighten the reporting burden for manufacturers. Nonetheless, MPCA must make several changes to the product and component grouping requirements to reflect product realities.

MPCA needs to clarify the level of complexity within which products can be grouped, that is, what is meant by the "same." For example, the TSCA PFAS Reporting Rule allows grouping of complex products (e.g., automobiles and computers) and reporting of PFAS concentrations for the complex product. MPCA needs to confirm that it will allow grouping for complex products.

In addition, manufacturers often obtain components from multiple suppliers. The reporting system needs to accommodate the reality of variability of PFAS content in products within the

same high-level product group. Grouping products for reporting should accommodate the range of PFAS that might be used within a product group. The reporting system needs to allow for variability in PFAS content between units product units under the same higher-level numerical product code due multi-sourcing of supplier components that may contain different types and concentrations of PFAS chemicals and differences in product configurations that may result in differences in the quantity and types of components or assemblies.

The reporting system needs to allow for the potential PFAS content of a product within a product group under a high-level numeric product code with the understanding a unit of product sold may or may not have all the PFAS listed in the report. The report would be a conservative estimate of the PFAS content that may be present, recognizing that not every listed PFAS would be necessarily present in any given unit of product sold under the same high level numeric product code. The reportable concentration ranges need to allow for the understanding that the concentration is a conservative estimate that could be lower or even zero (not intentionally added) if certain supplier parts with unique PFAS chemicals are not used in individual units of product sold when there is an alternate supplier parts without that PFAS chemical was used in assembling the product.

In sum, MPCA should consider allowing grouping of products and components with functionally similar PFAS and not limit grouping to the same PFAS. While these components are interchangeable, functionally equivalent and identical to a customer, the specific PFAS chemical and concentration may vary from component to component. The manufacturer may often lack specific PFAS information for any particular components, although they may know that any given components would have one of a discreet subset of PFAS. Accordingly, MPCA should allow grouping and reporting of these products and components even though the specific PFAS and concentration will vary.

Comment Summary: MPCA should allow grouping of similar products and components with functionally similar PFAS, not limit grouping to the same PFAS and allow reporting of potential PFAS under one product report instead of multiple reports."

Iizuka-8: "We believe the reporting requirements with the same granularity is feasible in Minnesota State as well. Alternatively, PFAS reporting under US TSCA requires that reporting entities select a reporting type from Table 2 in § 705.15(c)(1), a Code for Reporting Industrial Sectors from Table 3 in § 705.15(c)(2), and a Code for Reporting Function Categories from Table 4 in § 705.15(c)(3) that best describes the use of PFAS in the product. Products with matching these codes should be reported as "similar products." Under the current proposed rules in Minnesota State, EEE using IC are all subject to reporting. Both the Authorities in Minnesota State as well as industries will be exhausted by using cost and resources to handle huge amounts of date unless accepting grouping reporting."

Iizuka-9: "The conditions stipulated in 3. Notification C. of Maine "Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances" should be more relaxed. Especially, for grouping of products, we would like to request that the one of the conditions (iii) the PFAS chemicals in the products provide the same function in each product be deleted. PFAS are substances to show various functions at the same time and there are many variations which function is utilized. Hence, it is not feasible to recognize as the same group only in case of perfectly matching the functions. For example, under 3. Notification C. of Maine "Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances", products covered by the same CUU will be able to include the same notification as follows.

C. A manufacturer may submit a single notification to the Department for multiple products if all of the products are covered by the same currently unavoidable use determination found in section 9(B)."

OBrien-2: "The proposed Rule requires that manufacturers report on each product, or group of similar products, containing intentionally added PFAS, including separate product components, by product code(s), specific PFAS chemicals by name and CAS number, concentration by PFAS chemical, the function of each PFAS chemical, and various manufacturer information. Such a requirement fails to acknowledge that products and product components for the apparel and footwear industry, as well as for many other industries, are often purchased without knowledge of which of the nearly 15,000 different PFAS chemicals are added to the product, nor the intended function at the individual PFAS chemical level. Moreover, the requirement to report on such a granular level about PFAS additions is complicated by the volume of product components inherent in the apparel and footwear industry across various iterations of similar product types (e.g. across outsoles, midsoles, linings, laces, eyelets, etc.). Such reporting is difficult, if not impossible, to accomplish and will be unwieldy for MPCA to review, with limited public benefit.

As acknowledged within the section on proposed concentration reporting, manufacturers must be able to report PFAS concentration via total organic fluorine (TOF) testing. Testing for each PFAS chemical is neither possible nor desirable and it has become industry standard to use TOF tests to determine overall PFAS concentrations. We recommend, therefore, that MPCA, in acknowledgement of the impracticability of reporting across almost 15,000 different PFAS chemicals, allow for the reporting of PFAS in products via TOF concentration. We additionally ask that MPCA allow for the reporting of product components used across multiple product applications (e.g. zips, laces, eyelets) through consolidated reporting not tied to individual products."

Erny-6 (pre-hearing comment and hearing testimony): "If MPCA requires RV manufacturers to report, we strongly urge the agency to permit aggregate reporting at the total product level (i.e., the vehicle itself). RVs are highly customizable, low-volume products—each unit can differ significantly based on the buyer's selected floor plan, finishes, furnishings, and optional features. As a result, components used in each vehicle can vary substantially even within the

same model line. This level of customization creates a moving target for reporting, making it exceedingly difficult to track PFAS content at the individual component level.

Compounding this challenge is the structure of our industry: many RV manufacturers are small, family-run businesses that do not have in-house legal teams, chemical experts, dedicated compliance staff, or the infrastructure to conduct chemical testing or collect detailed supplier data on thousands of SKUs. These manufacturers operate at tight margins and build relatively small production runs, which means that uniform reporting obligations—without flexibility or scalability—could impose disproportionate compliance costs and jeopardize the economic viability of businesses that form the backbone of this industry.

RVIA recommends that MPCA permit aggregate reporting at the total product (vehicle) level. It would enable manufacturers to disclose PFAS content in a meaningful way while reducing burden and preserving the integrity of small businesses. MPCA would still receive valuable data on the presence of PFAS in consumer goods without requiring a level of granularity that is unreasonable, not necessary and is neither technically feasible nor economically sustainable for much of our sector.

Will MPCA consider issuing industry-specific guidance or templates for aggregate product-level reporting?"

Bemus-9 (pre-hearing comment and hearing testimony): "SPAN suggests that MPCA should provide greater flexibility in the joint reporting process. MPCA could permit a report to contain multiple entries for "PFAS used" or multiple concentration ranges to cover all similar products within one product category…"

Frisbie-5: "Wabash supports the concept of Part 7026.0030, subp. 1.A.(1)(a), allowing manufacturers to group together similar products. But Wabash believes these requirements as drafted are too narrow and could lead to excessive reporting obligations for Wabash and many other manufacturers.

As an example, one of the "products" Wabash manufacturers is semi-trailers, which are often highly customized based on customers' unique needs and orders. This results in significant variations in trailers even within a single trailer classification. To illustrate, the following is a nonexhaustive list of variables for Wabash trailers based on possible customer order preferences: chassis, overhead doors, lighting harnesses, refrigeration units, brakes, liftgates, door locking mechanisms, interior logistical tracks and cargo tie-down systems, tires, and aerodynamic devices such as trailer skirts. With a nearly limitless series of possible end product permutations with these and many other variables, there could be an excessive number of individual "products" if not logically grouped by product class:

As the Proposed Rule is currently drafted, it may be very difficult or impossible to meet the narrow and strict "homogenous materials" requirements. Instead, Wabash believes a more reasonable way of grouping similar products is to permit the manufacturer to group

substantially similar products together (for example for Wabash this would be dry van semi-trailers, refrigerated van semi-trailers, tanks, platforms, dry truck bodies, and refrigerated truck bodies), and then allow the manufacturer to include a list of standard and optional components that may be included in variations of the primary product. This would allow MPCA to gather the information Amara's Law and the Proposed Rule seek to obtain without overly burdening manufacturers and MPCA."

Friest-13: "While the draft rule allows grouping products, and components within products, together if they meet certain criteria (e.g. identical PFAS chemical composition, same concentration ranges, PFAS provides the same functional properties, and the products have the same basic form and function), that criteria is so narrow that it will require manufacturers to report each individual part separately. It is unclear if a manufacturer can submit a single report for multiple brands or if multiple vehicle models may be grouped for the purposes of reporting. The proposed criteria for grouping is so restrictive and detailed, that efforts to streamline reporting will be very limited. This will result in duplicative reporting burden for almost identical products and components with little resulting added benefit or meaningful information."

Friest-14: "As proposed, the general reporting requirement will overburden manufacturers (and likely MPCA) with a virtually unlimited data collection task on millions of parts. Since many manufacturers do not conduct or possess chemical analyses on their products or product components, and an industry database containing this information does not exist, it would be reasonable to allow manufacturers to make determinations based on harmonized tariff codes or other reasonably available public information on whether certain products are likely to contain PFAS, and conduct due diligence and report only on those products reasonably likely to contain PFAS. Less restrictive criteria for grouped reporting should allow for reporting for general product categories where PFAS is intentionally added to provide the same basic property function (for example, flame retardant, durability, etc.), allowing manufacturers to identify products and the PFAS range, within that category."

Cleet-9: "Issue: Lines 5.13 – 5.22 and 5.23 - 6.10 permit manufacturers to report by product group, (e.g., a laptop PC), if the PFAS composition in the products are the same, the PFAS fall into the same reporting concentration ranges, the PFAS provide the same function in each product, and the products have the same basic form and function with only minimal differences that do not impact PFAS composition. However, this product grouping requirement is too exacting to be of practical use to manufacturers of complex products, such as electronics, due to variations of PFAS concentrations in multi-sourced. Multiple interchangeable supplier parts, such as batteries, may have different PFAS content due to differences in PFAS content among suppliers and differences in configuration (e.g., if a laptop has one or two battery packs in it). Allowing this type of grouping will allow companies to efficiently report different product versions and variability in PFAS content and will ultimately allow the MPCA to focus its analysis of reported data on significant variations and trends rather than on minute PFAS variations

across product versions. Furthermore, use of the recommended conservative assumptions will help ensure PFAS data is not underestimated.

Recommendation: An additional romanette (v) should be added after line 5.22 stating the following: Notwithstanding the foregoing, manufacturers may group different versions of the same product that have variations in the type, number and concentration of PFAS used, provided that (i) all specific PFAS that could be present in any one unit of product sold across all product versions within the product group are identified, and (ii) the highest potential concentration of each identified PFAS within the grouped product is reported. It is understood that not all units of products sold under a product group will contain all PFAS disclosed in the report, however, the report contains the worst-case of PFAS that may be present in any one unit of product sold.

Line 7.3 of the proposed rules needs to be modified to account for the uncertainty in PFAS content between units of product sold under the same higher level product group, where not all PFAS reported will be present in each unit of product due to multi-sourcing and differences in product configuration versions within a product group. A disclaimer is needed to state the concentration ranges are worst-case potential PFAS content based on known variation in the type of PFAS used due to differences in supplier component PFAS content due to multi-sourcing, and configuration differences between product versions within a higher-level product group."

Moyer-5: "Grouping reporting info - Reporting by broader product grouping is essential for complex articles. For example, electronic products can be modular with many component parts. This can lead to thousands of possible permutations for a single "product" and therefore could lead to thousands of notifications per manufacturer. Various PFAS substances may be present in products within the same product category and at different concentrations. The Proposed Rule should allow manufacturers to group different versions of the same product that have variations in the number and concentration of PFAS...We recommend allowing an option similar to the Canadian PFAS reporting guidance which says that "If information is not reasonably accessible for components, calculate the concentration for the entire manufactured item."

Palin-21 (pre-hearing comment and hearing testimony): "A. Proposed Criteria for Aggregating Products for Reporting Are Too Strict: Auto Innovators recommends that PCA provide looser criteria for the grouping of products. Automakers produce vehicle lines with many vehicle variants, an issue that has been discussed in previous PCA workshops and stakeholder meetings. The requirements for the PFAS chemical composition to be exactly the same and within the same narrow concentration ranges will quite possibly restrict OEMs' abilities to group product variants together. PCA should instead consider setting a threshold for "substantially similar" products that would allow for greater grouping of products for reporting."

Palin-22 (pre-hearing comment and hearing testimony): "Component-Level Reporting as Proposed Will Be Burdensome for the Automotive Industry, and Will Result in Data of Minimal Utility for Minnesotans 1. Issues with Draft Regulatory Text and Component-Level Reporting The draft PFAS in Products: Reporting and Fees Rule proposes that PFAS must be reported at the component level for products. If the product consists of multiple PFAS-containing components, the manufacturer must report each component under the product name provided in the brief description of the product. It additionally proposes that components and products can be aggregated together for reporting, but only if they meet very specific conditions. The manufacturer may group similar components listed within a product if the components meet the following criteria: ….(see rule text)

Auto Innovators is concerned about how this will impact the automotive industry's reporting. As discussed above, each vehicle is estimated to have 1,500 or more components containing PFAS that could need to be individually reported and detailed as "components" of the products reported. Additionally, because of the strict criteria for aggregation, Auto Innovators expects that very few vehicle components will contain the exact same PFAS, in the exact same concentration ranges, providing the same function. Therefore, industry will not gain substantially from the ability to group components, and would be expected to report a lot of these components individually.

As proposed, information gathering and reporting will be very burdensome for the automotive industry, and will inundate PCA's database, and Minnesotan consumers, with massive volumes of reports containing minimally useful data. Companies will have to dedicate a substantial amount of time to inputting data for all of those lines of information for each of those component parts. That volume of data and information input also has to be multiplied by each of the individual vehicle classes reported as a "product" by an OEM, multiplied by all of the different OEMs selling vehicles in Minnesota. As discussed above in our section on PFAS in vehicles, this could mean as many as 337,500 lines of data just from the OEMs, if not more.

This is also likely to lead to confusion for any Minnesotan trying to review the data. First, there is the risk of duplication of reporting—what if a very small component, like a gasket, is individually reported but then also potentially reported as part of its sub-assembly unit, like an engine? What if a supplier has already submitted information on that part? Additionally, OEMs will quite possibly report their components with some differences in labeling, naming, and parts/assembly division, based on the way they view and report those elements internally. That is likely to make it difficult for Minnesota consumers to accurately comprehend the amount of PFAS in their own vehicle and/or compare data on vehicles and does not align with the PCA's goals of consumer awareness and education.

Auto Innovators recommends that MPCA revise its proposed requirements for component reporting and expand its criteria for the grouping of products and product components, in order to better facilitate reporting by entities and provide more useful information to Minnesotans. In

this vein, below Auto Innovators details its proposal for vehicle reporting that would rely on such revisions to the proposed reporting requirements."

Malcore-2 (hearing testimony): "One the things that we've noticed within the rule is the grouping of products. So I noticed that that was discussed before on similar products being grouped together. AEM would appreciate a little bit more clarity on that to make sure that we can group together similar end products and limit the number of internal componentry which is part of the larger product. When you have hundreds of thousands of products and they all need to be grouped together, that would end up resulting in hundreds of thousands of different reports, which wouldn't serve either our members or MPCA in terms of gathering quality data (hearing testimony page 71)."

RESPONSE: The agency appreciates the many different recommendations on grouping parameters for product and/or their components provided in the purposed rule. Many suggestions have the potential to work well within the specific industry sectors the comments came from, however, the agency does not find that these suggestions would work across all industries required to report.

The agency has provided justification for various provisions in the proposed rule intended to reduce reporting burdens. The main areas of the SONAR that support grouped product or component reporting include:

- Page 25 in the SONAR on the reasonableness of our homogenous material definition because the MPCA is allowing manufacturers to group similar products comprised of these materials for the purposes of reporting. In order to allow that grouping, the MPCA needs to identify what constitutes "homogenous material" so that manufacturers are reporting their products containing intentionally added PFAS to the correct level of detail.
- Page 28 in the SONAR discusses the reasonableness for providing a brief description of their product to allow for the MPCA to differentiate between the types of products that contain intentionally added PFAS. It is also reasonable to allow for grouping of reporting for products and/or components to reduce the reporting burden on the manufacturer and to allow manufacturers to group similar products and components as it fulfills the reporting requirements. Grouping products or components by similar form, function, PFAS chemical concentrations, and chemical compositions allows for very complex products with a large number of components to be more easily reported and reduces the potential for collection of redundant information.
- Page 30 in the SONAR discusses the reasonableness of allowing for concentration ranges for further grouping of products and or product

components and to allow for some variation in similar products and or components that have the same PFAS chemicals.

Item B: Reporting PFAS chemical(s)

Unknown chemical name:

Sepesi-8 (pre-hearing comment and hearing testimony): "The proposed rule requires reporting on PFAS chemicals used in the product or its components as identified by the chemical name and the Chemical Abstracts Service Registry number (CASRN) or, if no CASRN exists, another chemical identifying number. It is possible that, despite their diligent efforts, manufacturers may be unable to obtain the required chemical identity information from suppliers because of supplier trade secret claims or nonresponsiveness. To address such situations, MPCA should allow the reporting manufacturer to provide a generic name, description or class of the PFAS, as allowed under EPA's TSCA PFAS Reporting Rule.

Comment Summary: MPCA should allow reporting a generic name, description or class of the PFAS when one cannot otherwise be reasonably determined."

Iizuka-10: "7026.0030 Subpart 1.B Suppliers may not be able to provide detailed information about the PFAS chemicals used in a product or its components, and they may only be able to report that "PFAS" is contained. We would like to request that manufacturers are allowed to report the chemical names as "PFAS". For example, TSCA PFAS Reporting section 705.18(2) accepts following information. It is feasible to accept the same level of reporting in case of PFAS contained in articles.

(ii) If the specific chemical identity of the PFAS imported in an article is not known to or reasonably ascertainable to the submitter (e.g., if the chemical identity is claimed as confidential business information by the submitter's supplier, or if the submitter knows they have a PFAS but is unable to ascertain its specific chemical identity), the submitter may provide a generic name or description of the PFAS."

Branstad-31: "Subpart 1.B(1). As discussed earlier, submitters should be permitted to provide an alternative to the specific IUPAC name for a substance, since upstream suppliers can be expected to withhold specific IUPAC names for proprietary chemicals. Therefore, we reiterate our request that MPCA modify the definition of "chemical name" in 7026.0010 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, or an otherwise structurally descriptive generic name."

RESPONSE: The MPCA understands concerns that manufacturers may, despite due diligence, be unable to obtain specific PFAS chemical identities from suppliers due to trade secret claims or non-responsiveness. The rule offers multiple paths to meet compliance obligations in such situations:

- **Total Organic Fluorine (TOF) testing** may be used to confirm the presence of fluorinated substances when chemical identities are unknown. While TOF does not identify individual PFAS compounds, it may support documentation that PFAS are present and trigger further supplier inquiry or justify reporting fields as "unknown" under the due diligence provision (Minn. R. 7026.0080).
- **Suppliers may report directly to the MPCA on behalf of a manufacturer** to protect confidential business information while fulfilling reporting requirements. This mechanism supports both data transparency and proprietary interests.

Regarding the use of trade names or generic descriptors such as "PFAS," the MPCA considered these options but decided not to allow them. As explained in the SONAR (page 24), the rule defines "chemical name" specifically as the IUPAC name to distinguish it from trade names, abbreviations, or class-level terms. This precision is necessary to meet the statutory directive in Minn. Stat. § 116.943 to collect meaningful, substance-level information about intentionally added PFAS in products.

Branstad-32: "Subpart 1.B(2). Chemicals may have proprietary identities, and it is unreasonable to expect that a manufacturer of a proprietary chemical would share its Chemical Abstracts Service Registry number (CASRN) with entities several layers down the supply chain. Should those entities not adequately protect the proprietary information, that information would lose its protection globally. Therefore, we strongly recommend allowing the use of any of the types of chemical identifying numbers listed at 7206.0010 Subpart 5."

RESPONSE: The MPCA recognizes the sensitivity of proprietary chemical identities and the concern that upstream suppliers may be unwilling to disclose a CASRN to downstream entities. To address this, the rule includes options that support both supply chain confidentiality and regulatory compliance.

Under Minn. R. part 7026.0020, subp. 2, a manufacturer may submit a PFAS report on behalf of another manufacturer in the same supply chain, provided they enter into an agreement that clearly outlines their respective reporting responsibilities. This provision reduces duplicative reporting and supports confidentiality, particularly when upstream entities hold the relevant PFAS data.

Additionally, Minn. R. part 7026.0010, subp. 5 allows the use of alternative chemical identifying numbers when CASRNs are unavailable or withheld due to proprietary concerns. Acceptable alternatives include European Community (EC) numbers, TSCA

accession numbers, or other unique identifiers used in commerce or by regulatory bodies. This flexibility ensures manufacturers can meet their reporting obligations even when specific CASRNs cannot be disclosed.

PFAS Mass Reporting

Tangren-2: "The information required to be reported in Section 7026.0030 Subpart 1. C. requires that the concentration of PFAS in a product or component be reported. This requirement is inadequate and fails to meet the requirement of Minnesota Statute 116.943 Subdivision 2 Item (3), which states that "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" (emphasis added.) The Leech Lake Band of Ojibwe does not object to reporting the concentration of PFAS, but we request that Section 7026.0030 Subpart 1. C. be amended to include the mass of individual PFAS components and the total mass of all PFAS compounds present in a product.

Andes-4: "Section 7026.0030, Subp. 1.C requires the report to specify "the concentration of PFAS chemicals in a product or components of a product made up of homogenous material," and requires that concentration to be provided within certain ranges. The Proposed Rules do not explain how that obligation applies when there are multiple PFAS in a product. Is the company required to report separately for each PFAS? Or does the report have to add all of the PFAS together to come up with a concentration range? Adding them together would provide a meaningless and misleading concentration number. MPCA should clarify the requirement."

Additionally, Section 7026.0030 Subpart 1. C. (i) allows manufacturers to report that PFAS is "present but the amount or concentration range is unknown." We believe this creates a loophole for inadequate reporting which undermines the rule and enacting legislation. This would be remedied by amending Section 7026.0040 to require that any manufacture who has previously reported PFAS concentrations as unknown be required to submit an updated report including the mass of individual PFAS components and the total mass of all PFAS compounds, as well as the concentration of PFAS per Section 7026.0030 Subpart 1. C. (a-h). This would allow manufacturers to provide an initial report of PFAS compounds in compliance with the rule while providing additional time to determine the amount of PFAS in their products."

Kallen-16 (pre-hearing comment and hearing testimony): "In line 7.4, confirm that MPCA expects manufacturers to report the sum total concentration of all PFAS (as opposed to the total of each individual reportable PFAS intentionally present)."

RESPONSE: The MPCA appreciates the comments regarding PFAS mass reporting and acknowledges the statutory requirement under Minn. Stat. § 116.943, subd. 2(a)(3), that the "amount of each PFAS" be reported. The proposed rule implements this by requiring

manufacturers to report PFAS concentrations using predefined ranges approved by the commissioner, consistent with the statute's allowance for either exact quantities determined using commercially available analytical methods or approved ranges. Several different types of PFAS can be submitted in a single report, and the concentration ranges should be provided for each PFAS versus aggregating the total concentration across different types of PFAS. The SONAR on page 29 describes how it is reasonable to require reporting for each PFAS chemical present in a product because there are different levels of toxicity and persistence, and the MPCA needs to know the types of PFAS in a given product to meet the statutory requirements of this rule.

With respect to part 7026.0030, subp. 1. item C, subitem (1), unit (i), the MPCA allows the use of the "unknown concentration" option only when the PFAS is known to be present, but concentration data are not available despite a manufacturer's documented due diligence. The MPCA anticipates that such entries will trigger further data collection and expects manufacturers to update this information in future annual reports as required under part 7026.0040, subp. 1. This balance of required information ensures timely compliance while allowing continued refinement of submitted data.

Item C: Reporting PFAS concentrations

Iizuka-11: "7026.0030 Subpart 1.C. the concentration of PFAS chemicals in a product or components of a product made up of homogenous material. EEE consists of numerous parts, and complex items can contain tens of thousands of parts. For such complex articles, even if detailed data at the component level is submitted, we believe it is unlikely that the data will be effective in preventing PFAS contamination, which is the purpose of the law. Furthermore, as mentioned above, the amount of PFAS contained in EEE is extremely tiny, and the risk of adverse effects to humans and the environment is extremely low. Information on PFAS-containing parts at the homogeneous material level is a huge amount of data, and there are concerns that it will be an excessive burden for both manufacturers and authorities to handle such huge amount of data. If the purpose of this proposed rule is to know the amount of PFAS used in products, MPCAs should allow reporting of the consolidated PFAS content (by weight) at the finished product level, at least for complex articles such as EEE."

Bemus-10 (pre-hearing comment and hearing testimony): "SPAN further suggests that MPCA add flexibility in reporting some of the specific data points requested… manufacturers to report, for example, that PFAS are present as opposed to the particular PFAS used and specific concentration range."

Hardwick-5: "The enacting statute, Minn. Stat. 116.943 Subdiv. 2(2), prescribes that manufacturers of products containing intentionally added PFAS must submit information that includes "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 proposed rules are based on the final clause of this statutory provision and require manufacturers to report concentrations of PFAS within prescribed ranges, or by Total Organic Fluorine, if the amount of PFAS is not known within applicable due diligence standards. This approach is flawed.

Identifying the concentration of a specific PFAS chemical in a given product does not identify that product's potential risk to human health or the environment. Traditionally, reporting of environmentally sensitive substances requires companies to tell an environmental agency the volume of the chemical manufactured, imported, or used in the jurisdiction. Doing so allows the agency to evaluate the potential environmental impact from the amount of the substance in the jurisdiction and account for volume potentially released to the environment. Additionally, volume-based reporting is consistent with both existing Canadian PFAS reporting obligations and forthcoming federal PFAS reporting obligations. Conversely, Minnesota's proposed concentration-based reporting is untethered to traditional scientific principles of chemical reporting and risk assessment. For example, the concentration of a specific PFAS in a specific product does not indicate whether that PFAS or product poses a risk to human health or the environment. Additionally, the proposed rules do not clearly set forth what method(s) a manufacturer may use to calculate the reported concentration in the product. Lastly, as discussed above, the amount of PFAS used in a particular application may provide a benefit relative to the risk of the disease or condition treated by a medical product containing PFAS.

... Finally, the concentration of Total Organic Fluorine does not identify the concentration of PFAS. MPCA should remove Total Organic Fluorine as a reporting standard for a rule intended to evaluate intentionally added PFAS content."

> **RESPONSE:** The MPCA appreciates hearing concerns regarding the requirement to provide concentration ranges for products with intentionally added PFAS. Page 30 of the SONAR discusses the reasonableness of PFAS concentrations and the provided ranges to report for products. Reporting by these PFAS concentrations helps manufacturers group similar products or components and to conceal sensitive trade secret or confidential business information related to chemical formulations used in the products reported. It is also reasonable to ask for concentration ranges instead of exact amounts to account for variation that may occur in product testing results, especially at lower concentration levels.
>
> The agency is also allowing manufacturers to submit "present but the amount or concentration range is unknown" or to do a total organic fluorine test if manufacturers cannot provide more specific concentration values for their products with intentionally added PFAS. This regulatory flexibility is especially important for manufacturers of complex products or products with larger supply chains involving many 3rd parties.

For more responses to comments on risk-based reporting please see the agency's response on page 12 of the "Part One Pre-Hearing and Hearing Responses to Comments" document.

Product Testing

Fleming-4: "Subdivision 4 of Minn. St. § 116.943 gives the MPCA the authority to require manufacturers to provide test results to the agency within 30 days if the MPCA has reason to believe a product in the state contains intentionally added PFAS. The equipment and instrumentation required to test for PFAS content is very sophisticated, expensive, and is often outside the capability of most analytical laboratories. PFAS is also ubiquitous and often detected at very low levels as a background contaminant. For these reasons, FST recommends that in the event of suspected intentionally added PFAS, that the company in question be allowed to demonstrate compliance with the testing provision of subdivision 4 of the statute with evidence such as statements from suppliers and/or compositional information from safety data sheets (SDS)."

> **RESPONSE:** The section of statute that this commenter is referencing includes provisions for the MPCA's enforcement of Amara's Law. While the MPCA has been afforded this specific statutory authority under Minn. Stat. § 116.943, the MPCA also has existing broad statutory authority under Minn. Stat. § 116.072. In the enforcement of this law, the agency's compliance and enforcement staff may consider any statements from suppliers or other evidence, however, the MPCA maintains the right to require testing if the agency has reason to believe that the product or component in question contains intentionally added PFAS that must be reported.

Thomas-19: "European Chemical Agencies PFAS restriction proposal, Annex XV Report of the Registry of Restriction Intention states that chemical standards for only 40 PFAS exist for quantitative analysis. Additionally, analytical techniques can only assess what can be extracted out of a device, it becomes near impossible to identify what is present rather than what can leach out. Furthermore, the very nature of fluorine means it is naturally monoisotopic and, therefore, extremely difficult to identify de novo in extracts as part of an unknown. Commercially available software algorithms have an inherent bias to deduce a chemical formula containing fluorine through the use of high-resolution mass spectrometry. This inherent bias leads to a high number of false positives.

While there are upwards of 12,000 PFAS currently known, this is an evolving and growing number. Less than 1% of these PFAS have a commercially available analytical reference standard (CAARS) and since a CAARS is needed to perform a quantitative analysis of a given

material to determine the amount of all PFAS potentially in the sample, this simply is not practically achievable, unless and until, an analytical reference standard is available commercially for each of the 10,000+ PFAS. Even then, the burden of trying to test a given sample for 12,000+ different PFAS to potentially certify that no PFAS are present, will be a massive burden on obligated parties as well as the test labs performing the work, given that potentially thousands of manufacturers will simultaneously need this testing."

Wagner-6: "Testing - According to the European Chemicals Agency, chemical standards exist for approximately 40 PFAS compounds—out of the more than 10,000 PFAS that may exist. Currently, less than 1% of PFAS have commercially available analytical reference standards (CAARS).Without a CAARS, it is not feasible to quantify the presence of a given PFAS, making comprehensive testing impossible in practice. Recognize that testing is not a feasible alternative to supplier disclosure in many cases and avoid defaulting to test-based enforcement where no commercial method exists."

> **RESPONSE:** The MPCA agrees that there are limits to testing for specific PFAS. This is the reason that the agency is allowing TOF testing as an option for manufacturers required to report.

Bretecher-7: "If cooperation is achieved, the suppliers may have to locate and hire external test labs to determine the amounts of PFAS, possibly for various versions of a component. It is anticipated that a large number of companies will be vying for limited testing slots. If suppliers do not provide support, then the vehicle OEM's would have to contract out to do the testing for possibly thousands of parts. With this regulation going into effect, it is anticipated that there will be excessive demand and availability for lab services, presenting challenge to reporting in time."

Bretecher-8: "Vehicle OEM's would then have to gather the test data from all the components and assemble into a format for reporting. The significant time required to complete testing, along with added logistics, administrative time, and associated costs, could severely impact business operations."

> **RESPONSE:** The MPCA has provided in rule, under part 7026.0060, the option for manufacturers to apply for an extension to the reporting deadline. Lab testing constraints are a potential justification for an extension to the reporting deadline.

Kallen-17 (pre-hearing comment and hearing testimony): "The MPCA Should Confirm that Companies Are Not Required to Perform Testing Requiring companies to perform product testing to comply with reporting requirements would be infeasible and inconsistent with the statute. SEMI and SIA do not read the Proposed Rule to envision such a testing obligation and strongly supports this position. SEMI and SIA request that MPCA confirm this position in the final rule or through guidance.

Line 7.15 – 7.18 appear to envision that if a company believes a product contains intentionally-added PFAS but does not know the concentration band, the company would have a choice of: 1) indicating to the MPCA that PFAS is "present but the amount of concentration range is unknown;" or 2) performing total organic fluorine testing on the product and reporting the result. SEMI and SIA support such a structure. SEMI and SIA request that the MPCA confirm that testing will not be required to comply with reporting obligations."

Moyer-6: "Clarify No Testing Required: We also ask that MPCA clarify that no testing is required as part of the reporting requirements. We would like to emphasize that there are currently no standardized testing methods to detect PFAS in complex articles. Under 7026.0030(C), the Proposed Rule allows reporting PFAS via given ranges, as "present but the amount or concentration range is unknown," or via total organic fluorine. As we write below, we recommend incorporating a "known or reasonably ascertainable" standard for reporting. With a "known or reasonably ascertainable" standard, 7026.0030 suggests that testing is not required."

Rhoderick-5: "...These are solid, molded products with negligible potential for worker or consumer exposure or other safety concerns while handling the product. There is not a cost-effective, reliable, common way to test these products to understand the specific PFAS concentration, and if there were it would be very burdensome.

Because of the different (chemical and toxicological) properties of fluoropolymers and fluoroelastomers compared to other types of PFAS, trying to determine an appropriate concentration of this subset of PFAS in such products provides information with little value to the state of Minnesota, while creating frustration and expense to companies."

Denney-5: "Confirm that manufacturers are not required to conduct PFAS testing in preparation for reporting. PPWG reads the proposed Reporting Rule as not requiring companies to conduct PFAS testing. PPWG asks the MPCA to confirm this interpretation, because any broadly applicable testing requirement would be overly burdensome, unrealistic, and contrary to the statute. Instead, and consistent with the KRA standard PPWG is requesting that the MPCA adopt, companies should only need to report information they already have (or can

reasonably determine) on PFAS in their products. Testing products for PFAS is often cost prohibitive and inaccurate, particularly given the lack of available test methods.

The MPCA noted several times in the SONR that testing products for PFAS is difficult, costly, and often inaccurate given the lack of available PFAS testing methods. For instance, the MPCA states on page 45 of the SONR:

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

This statement was made in the context of an option considered, as an alternative to the proposed Reporting Rule, where the MPCA would test products in Minnesota commerce for PFAS. The same concerns would exist if manufacturers were required to test their products for PFAS in preparation for reporting.

PPWG reads the proposed Reporting Rule as not imposing a testing requirement and PPWG asks MPCA to confirm this interpretation. For example, if manufacturers are unable to determine the PFAS concentration in a product, lines 7.15 – 7.18 would give the manufacturers the option to either report the concentration as "unknown" or to test for total organic fluorine. For these reasons, in conjunction with incorporating the KRA standard into the Reporting Rule as discussed above, the MPCA should add the following statement to the rule or at least in a guidance document:

> This part does not impose a requirement to conduct PFAS testing of products. Instead, manufacturers must report information they already have, or can reasonably ascertain, on PFAS in their products.

This statement is similar to a statement EPA made in the preamble for the TSCA PFAS reporting rule. Relatedly, PPWG appreciates the inclusion of PFAS concentration ranges in the proposed Reporting Rule, though a de minimis level of 0.1% by weight of PFAS should be added to the rule as discussed in PPWG's 2024 comments. Predefined concentration ranges known well in advance of the reporting deadline are critical for manufacturers to structure their due diligence around."

Cleet-10: "MPCA indicated several times in the SONR that testing products for PFAS is difficult, costly, and often inaccurate given the lack of PFAS testing methods (e.g., page 45 where the MPCA explained how such testing is an "intrusive and costly endeavor"). However, the proposed rule – particularly under the current "known" reporting standard used – envisions that companies may conduct PFAS testing if necessary to generate reportable data. If companies are aware that PFAS is in a product but are not aware of the concentration range, we read the proposed rule as allowing companies to either indicate that PFAS is present, but the amount or concentration range is unknown (line 7.15) or test the product for total organic fluorine (line 7.16-7.18). In other words, companies are not required to test. MPCA should confirm this.

Recommendation: In conjunction with incorporating the KRA standard as discussed above, the MPCA should add the following statement to the rule or at the very least in a guidance document. This statement is similar to a statement EPA made for the TSCA PFAS reporting rule on page 70535 of the preamble to that rule.

This rule does not impose a requirement to conduct PFAS testing of products. Instead, manufacturers must report information they already have, or can reasonably ascertain, on PFAS in their products."

> **RESPONSE:** Testing is not required for reporting unless a manufacturer cannot determine the concentration of PFAS in their product or component by inquiring with and soliciting information from their supply chain. The MPCA believes that the proposed rule language is clear as currently written but will reiterate this point outside of the rule. The agency does not intend to adopt the EPA's Known or Reasonably Ascertainable standard; for a full response on this, please see responses to comments in "PART 7026.0080 DUE DILIGENCE".

Item D: Reporting PFAS function

Sepesi-9 (pre-hearing comment and hearing testimony): "The proposed rule requires reporting on "the function that each PFAS chemical provides to the product or its components." MPCA needs to be aware that an individual PFAS chemical may provide multiple functions in a product. For example, PTFE may be present in multiple materials in the product and used as insulation in one material and a lubricant in another material. Accordingly, the reporting system needs to allow the reporting of multiple functions for each PFAS chemical used in a product.

Comment Summary: MPCA should construct the reporting system to accommodate situations where an individual PFAS may provide multiple functions in a product."

RESPONSE: The MPCA is aware that a given PFAS chemical may provide multiple functions to a product or component. The reporting system will allow for reporting of multiple functions.

Davis-8 (pre-hearing comment and hearing testimony): "AHRI questions if there is sufficient laboratory capacity to handle the testing requirements proposed by MPCA to allow manufacturers to comply by January 1, 2026. AHRI also requests that the function of the PFAS is removed from the reporting requirements to be consistent with other federal and state requirements. The function of the PFAS is potentially proprietary and requesting this information could lead to additional hurdles acquiring the information. In addition, if samples are tested and PFAS chemicals are identified, it may not be possible to know the function of the PFAS."

RESPONSE: The MPCA recognizes the concern regarding limited laboratory capacity and acknowledges that not all manufacturers will be able to test every product component for PFAS. However, the proposed rule does not mandate laboratory testing unless a manufacturer is unable to obtain the required information through supply chain communication or known information. Multiple reporting pathways are available, including direct supplier disclosure and third-party reporting, which can help manufacturers meet their obligations without testing.

The MPCA understands that some functions may be considered sensitive by manufacturers, but the function of PFAS in a product does not fall under the definition of a trade secret under Minn. Stat.§ 13.37. Moreover, the purpose (function) for which PFAS are used in the product is a statutorily required reporting element under Minn. Stat. § 116.943, subd. 2(a)(2) and is critical to understanding the necessity of PFAS use and identifying opportunities for substitution.

Palin-23 (pre-hearing comment and hearing testimony): “Reporting the Function of the PFAS by Component Will Be Highly Burdensome: PCA proposes that in component-level reporting, OEMs will have to report “the function that each PFAS chemical provides to the product or its components[.]” Auto Innovators strongly prefers to report the function of PFAS with respect to the overall product, as reporting the purpose at the component level for as many as 30,000 individual parts will be highly burdensome. Information on the purpose of each PFAS is not provided in IMDS. For this reason, it is preferable to report on PFAS at the vehicle level. This would be further supported under our proposal for reporting, described below.”

Sloan-17: “The reporting system should also include standardized dropdowns for PFAS functions and product/component categories to facilitate accurate and consistent submissions.”

Keane-9: "To avoid free-text options, MPCA should limit the choices for designating the function of PFAS in products by using standardized dropdowns or menus. PFAS function and product/component categories should be given in selectable list formats. We also request clarity on grouping similar models and parts to minimize burden—similar to how manufacturers group sales models as "basic model numbers" under federal energy testing regulations."

Iizuka-12: "7026.0030 Subpart 1.D We would like to request that the reporting requirement on the function that each PFAS chemical provides to a product or its components be optional. Normally, manufacturers of complex articles like EEE specify their suppliers specifications of parts they purchase, rather than identifying the substances contained in the parts. Even if any of PFAS issued the parts, the article manufacturers do not have information which PFAS contributes to which function. If the supply chain were to be investigated including the functions of each PFAS, a further investigation period would be required. Furthermore, even if a thorough investigation is conducted over a long period of time, it is likely that complete information will not be obtained. If MPCA thinks it is necessary to mandatory require the information on functionality, we think it is feasible to select one CODES FOR REPORTING FUNCTION CATEGORIES which describes the use of PFAS the best from Table 4ofTSCAPFAS Reporting§705.15(c)(3)."

Hall-24: "7026.0030, subp. 1.D REVISE: "function, <u>if known at time of reporting</u>, that each PFAS chemical provides to the product or its components"

- Function, like concentration, is not always known to manufacturer in any given reporting year when PFAS is added by third-party supplier."

Branstad-33: "Subpart 1.D. It is reasonable to expect that product assemblers may not know the function of an intentionally added PFAS in a product or product component. For example, a company that assembles an electronic product from many components may know, but only if informed by a supplier, that PFAS are intentionally added to the coating on a circuit board but not know the function. MPCA needs to make accommodation for this very real scenario."

> **REPSONSE:** Minn. Stat. § 116.943 requires that the report include: "the purpose for which PFAS are used in the product, including in any product components;" this element of the report cannot be optional or removed from reporting requirements.
>
> There will be a provided list in the reporting system, with the options for reporters to request additional ones be added. The initial list was formulated based on TSCA PFAS reporting function list, OECD PFAS function lists, and other functions we found during review of PFAS chemical uses or provided in industry literature. The agency wanted to start with the TSCA PFAS reporting list for reporting familiarity and then build out the list in anticipation that other function may be needed to be reported.

Comments specific to rule language:

Kallen-18 (pre-hearing comment and hearing testimony): "The term "PFAS chemical composition" in line 5.15 could be changed to "the identities of the PFAS chemicals."

> **RESPONSE:** In chemistry, the term "chemical composition" means the ratio, type, and arrangement of atoms in a molecule. Because PFAS are man-made chemicals, the MPCA believes it makes sense to require that similar products or components can only be grouped if "the PFAS chemical composition in the products are the same" to ensure that the PFAS being reported within a group of products or components are truly the same down to the atomic level. The phrase "identities of the PFAS chemicals" is vague in that some PFAS may have the same "identity" but have differences in the ratio, type, and arrangements of atoms in the molecules that make up that PFAS. Using the phrase "identities of the PFAS chemicals" would likely require the MPCA to define it in rule, whereas the term "chemical composition" has an existing meaning that is already well-understood.

Frederick-7: "We propose the striking of Subp. 1.A.1.a.ii. (lines 5.16–5.17) and Subp. 1.A.1.b.ii. (lines 6.4–6.5)… This flexibility would help streamline reporting for manufacturers…"
AdvaMed proposes allowing grouping of similar products even if they contain varying PFAS concentrations, as long as the highest concentration is reported, to reduce reporting volume and cost for companies managing large product lines.

Thomas-20: "Product grouping: Terumo BCT requests broader flexibility on the grouping of products to account for products that have commonalities but not necessarily the same concentrations. We propose the striking of Subpart 1.A.1.a.ii (lines 5.16-5.17) and Subpart 1.A.1.b.ii (lines 6.4-6.5) and adding "v. if the PFAS chemicals in the products fall into different concentration ranges, the highest concentration range must be reported so it is understood that all products in this reporting group contain that concentration range or less." This flexibility would help streamline reporting for manufacturers that have tens of thousands of products or components subject to reporting."

> **RESPONSE:** The MPCA respectfully disagrees with this recommendation. If manufacturers only reported the highest possible concentration range of PFAS in a group of similar products or components, this would result in overreporting PFAS concentration and would not be representative of the actual concentration of PFAS used in those products. The purpose of this rule is to provide accurate data on the sources of intentionally added PFAS in products, so overreporting PFAS concentrations to ease the burden of reporting defeats that purpose.
>
> In addition, to these commenters' suggestions, the manufacturer would still have to determine the PFAS concentration in each product or component in the group to

determine what the highest concentration is, so it would not ease the burden of acquiring that information from the supply chain. If that information is already available to the manufacturer, they must report it and only group products or components if the PFAS chemicals fall into the same reporting concentration ranges.

Melkonian-5: "SECTION 7026.0030 – REPORT; REQUIRED INFORMATION.- AMERIPEN appreciates the provisions in subparagraphs (A)(1)(a) and (A)(1)(b) of subpart 1 that allow manufacturers to group together similar products comprised of homogenous materials, as it will help reduce reporting burdens. However, there is not a clear rationale for why grouped products have to have PFAS chemicals that provide the same function, as required in each subunit (iii). AMERIPEN suggests striking this unnecessary condition or else providing justification for it. It is further unclear why the manufacturer reporting of PFAS concentrations in components is qualified as being for components "made up of homogenous material" in subparagraph (C) of subpart 1. AMERIPEN seeks the rationale for this approach as well."

RESPONSE: The MPCA was not required by Minn Stat. § 116.943 to allow for reporting of grouped products or components, however, the agency heard feedback from manufacturers that such allowances would ease the burden of reporting. The MPCA was then tasked with determining under what circumstances manufacturers should be allowed to group products or components for reporting, and identified that such groupings could occur when the chemical compositions of the PFAS used in the products/components are the same, they fall into the same PFAS concentration ranges, the PFAS serves the same function in all, and they only differ in appearance (i.e. size, color, or other superficial qualities that do not impact the composition of the intentionally added PFAS). The reasonableness for this is provided in the SONAR on page 28 which states, "*It is reasonable to reduce the reporting burden on the manufacturer and to allow manufacturers to group similar products and components as it fulfills the reporting requirements. Grouping products or components by similar form, function, PFAS chemical concentrations, and chemical compositions allows for very complex products with a large number of components to be more easily reported and reduces the potential for collection of redundant information*."

Denney-6: "As discussed in PPWG's 2024 comments, medical, pharmaceutical, and animal health products are often designed, formulated, and dosed for the specific setting these products will be used in, with each variation in presentation being a separate product. Further, presentations may change over time as the FDA approves alterations to a product, and some presentations may be discontinued. To account for these variations, PPWG recommend the following provision be added as romanette (v) after line 5.22 in the proposed Reporting Rule:

Notwithstanding the foregoing, manufacturers may group different versions of the same product that have variations in the number and concentration of PFAS, provided that (i) all specific PFAS present across the grouped product versions are identified, and (ii) the highest concentration of each identified PFAS within the grouped product versions is reported.

Allowing this type of grouping reflects the practical realities of how companies formulate different versions of their products, and this grouping will also permit the MPCA to focus its assessment of reported data on significant trends and avoid being skewed by minute PFAS variations across product versions. Moreover, use of PPWG's recommended appropriate assumptions on reporting all specific PFAS present and the highest concentration of each of these PFAS will help ensure PFAS data is not underestimated."

RESPONSE: The MPCA would like to clarify that manufacturers will submit a single report for all products or components that contain intentionally added PFAS. Each product or component that cannot be grouped would be reported as a separate "entry" in the report. The agency does not believe that the commenter's suggestion would alleviate the burden of reporting if they would still have to differentiate the products or components included in the grouping that have different variations in the number and concentration of PFAS.

The agency has addressed the request to report only the highest PFAS concentration range in response to comments "**Frederick-7**" and "**Thomas-20**".

Zaman-8 (pre-hearing comment and hearing testimony): "Paint and coatings manufacturers may be able to estimate PFAS quantity in an end-use product based on percent in concentration of a raw material, depending on supplier notifications and information. While noting that downstream users of chemical raw materials face many challenges in obtaining information from suppliers, ACA requests that the agency update language at Section 7026.0030, Subpart 1(C) to note that a reported range can be based on a reasonable estimate, if the coatings manufacturer can obtain data to inform estimates from its supplier. The following change would add clarity:

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 <u>or provide a reasonable estimate</u> as identified in subitem (1) or (2):"

RESPONSE: The MPCA respectfully disagrees with this suggestion, as a manufacturer can report the PFAS concentration under subitem (i) as "present but the amount or concentration range is unknown".

Part 7026.0040 REPORTING UPDATES

New products:

Denney-7: "Remove language suggesting that, for new products introduced after January 1, 2026, reports must be submitted before these new products are placed on the market. The proposed rule contains contradictory statements about when reports will be required for products newly placed on the market after January 1, 2026. MPCA should retain language stating that reports will be due for those products on February 1 in the calendar year following the first sale in Minnesota. MPCA should delete language stating that reports must be submitted prior to the first sale in Minnesota. Requiring the latter would be overly burdensome and inconsistent with the statute.

Lines 5.4 – 5.7 of the proposed Reporting Rule could be read to require new products that will be introduced to the Minnesota market after the January 1, 2026 reporting deadline to be reported "before the product can be sold, offered for sale or distributed in the state." The statute does not require such new products to be reported before they are introduced to the Minnesota market. Instead, the legislature specified that a report must be submitted "whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state." Requiring submission of a report before a product is introduced to the Minnesota market is inconsistent with how the statute uses the past tense to refer to sale, offer for sale, and distribution for this scenario.

Furthermore, imposing a requirement to report before a product launch would present serious confidentiality and practical challenges. For instance, regulatory bodies such as the FDA and U.S. Department of Agriculture, along with numerous other regulatory bodies around the world, control the approval processes for medical, pharmaceutical, and animal health products. The exact date of this approval is not something manufacturers in this industry necessarily know, meaning that at the very least a requirement to report these products before product launch could result in an unwarranted delay in the availability of this industry's lifesaving and life-enhancing products.

Lines 5.4 – 5.7 are also in tension with line 9.8 which would require manufacturers to report new products as part of the annual update by February 1 of the calendar year after the new product is put on the market. Requiring new products rolled out in the previous year to be reported as part of this annual update is much more reasonable, and more consistent with the statute, than requiring new products to be reported before product launch. PPWG therefore

requests that the requirement to report new products in lines 5.4 – 5.7 be deleted so that the requirement in line 9.8 governs this scenario."

Ilizuka-13: "we have requested that it is accepted to report all new products sold after the initial report at an annual renewal. If this is not permitted, we believe that we will need to report each time a new product is sold for the first time. We would like to ask for more clarification of the details of the fee required each time, concretely, we would like to ask that no new fees will be required at the reporting the new product."

> **RESPONSE:** The agency intended 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. In review of the above comments and the proposed rule language, the MPCA agrees that this language does not align with part 7026.0040 of the proposed rule. The MPCA will consider modifying the rule language in part 7026.0030 to be clear there is no need for separate pre-sale reporting and will ensure that new product disclosures occur during the annual update cycle. Further clarification will be included in reporting guidance to ensure manufacturers understand their obligations and avoid duplicative submissions.

Part 7026.0060 EXTENSIONS

Process to review extension requests:

Starck-2: "Currently, the proposed rule allows for extensions and requires justification for the extension, but it does not offer guidance on how they will determine if a justification is valid/acceptable. This is an arbitrary process that should be clarified to prevent confusion."

> **RESPONSE:** The MPCA respectfully disagrees with this comment. The proposed rule requires that a manufacturer or group of manufacturers must submit, under part 7026.0060 subp. 2, a reason for the extension request, supporting documentation, and a plan for completion. If the extension request includes these requirements, and the extension request is justified, the commissioner must extend the deadline for submitting the initial report under part 7026.0030.
>
> The agency believes that this is a reasonable process for approval of an extension request given that extensions are a one-time approval and a 90-day duration. An extension approval does not waive the reporting requirements for a manufacturer, it only extends the deadline for submittal, so the MPCA believes that the process to approve such extension requests requires no additional clarification in rule.

Branstad-34: "Subpart 3.A. MPCA is proposing that manufactures must submit their extension request "at least 30 days before the reporting due date established in part 7026.0030." It is our interpretation that manufacturers could submit an extension request well before the reporting due date to give MPCA sufficient time to consider the request."

> **RESPONSE:** Correct; the intent of this rule language is to set a deadline by which manufacturers must submit an extension request, but manufacturers may submit an extension request as soon as the proposed rule is promulgated, and the commissioner develops a format in which to submit such requests.

Number of extensions:

Starck-3: "the proposed rule does not clarify that extension requests are only available once and cannot be renewed. The regulations should be clear that extensions shall not be renewed."

Friest-15: "It is not clear that there is authority to grant multiple extensions. Additionally, the extension language only references the 7026.0030 report criteria and the reporting due date detailed in 7026.0030. Extensions should also be available for "Reporting Updates" in 7026.0040 (updates and recertification) but there is no reference to extensions in those provisions (7026.0040) or under this section, 7026.0060 "Extensions"."

> **RESPONSE:** In review of the above comments and the proposed rule language, the MPCA agrees that this language lacks clarity, and the intent was to allow manufacturers to submit a one-time extension request for the initial report under part 7026.0030. The MPCA would propose the following amendment to clarify this subpart:
>
> > B. If the commissioner determines that the requestor has demonstrated that an extension is justified, based on the materials submitted under subpart 2, the commissioner must grant ~~a~~ one 90-day extension of the established reporting due date.
>
> The MPCA would like to clarify that it does not intend to allow for manufacturers to apply for extensions to reporting updates and recertifications under part 7026.0040.

Duration of extension:

Hall-25: "7026.0030, subp. 1 "If the product consists of multiple PFAS-containing components…"

• the communication up and down the supply chain needed for the manufacturer of a complex product to put together this report on a component basis before Jan 1 will require extensions."

Hall-26: "7026.0060, subp. 3 ADD specific one-year extension, with opportunity for additional time, when needed for initial report submission

• 90-day extension is insufficient based on complexity of undertaking, particularly when proposed rule greatly expands the obligation shortly before the reporting deadline."

Michaud-8: "Reports should be required to be submitted no sooner than 90 days after an extension notification is granted."

Friest-16: "The timelines in the extension request provisions do not provide sufficient time for manufacturers to report if an extension request is denied close to the deadline. Restricting extensions to 90 days is also unreasonable if manufacturers provide information that supports the need for a longer extension."

Thomas-21: "While the MPCA has been working towards the January 1, 2026, goal, we believe that there are many areas of this rule that still need to be refined. Terumo BCT urges the MPCA to adopt at minimum a one-year reporting delay rather than the options for 90-day delays at the discretion of the Commissioner. By adopting a fixed length delay, it will help focus all stakeholders on a new date rather than moving in 90-day increments. Manufacturers need to have sufficient time to understand and implement these requirements. We are concerned that the report framework is still not clarified to a level so that manufacturers can understand the process.

A one-year extension would further allow MPCA to develop and receive comments on the proposed reporting platform, beta testing of that platform, and the proposed guidance to ensure certainty for medical device innovators. Without this information for stakeholders to review, stakeholders will be providing incomplete feedback and will be inadequately prepared to comply with this rule. Further, guidance and FAQs will be needed for those reporting to understand how to use the portal when it is time for submissions.

In the case of medical devices, they can be complex products, potentially with supply chains that are sometimes eight to ten layers deep that will need to be reviewed and notified. It is unreasonable for those subject to reporting to be in a position to meet the January 1, 2026, implementation if the rule is not finalized yet."

Thomas-22: "Adopt at minimum a 180-day extension request rather than the 90-days proposal to consider the complexity of the products. In MINN. R. 7026.0060, Subp. 3. Extension request

deadline; approval or denial., (starting line 12.1) there is no timeframe in which the commissioner must decide whether to approve an extension request for the petitioning manufacturer or group of manufacturers. Additionally, it does not specify whether the manufacturer will be out of compliance if the reporting due date passes while waiting for the extension to be approved or denied. This is an unreasonable amount of leeway to grant MPCA.

We are also concerned that a 90-day extension is insufficient given the complexity of some products and multilayered supply chains. Medical devices can be exceptionally complex, and there could be tens of thousands, if not more, component pieces. Ninety days is unlikely to be enough time to continue to work through a supply chain that is eight or ten layers deep."

Keane-10: "We would also request extending the 90-day extension to at least 180 days to allow the manufacturer to perform their obligated due diligence across their supply chain."

Nagy & Tatman-10 (pre-hearing comment and hearing testimony): "The CPMCoalition requests that MPCA use its authority under the law to provide manufacturers with much-needed additional time and recommends granting an additional six months especially for complex products, their essential chemical components such as low-risk refrigerants, fluoropolymers, and insulating gases, and their replacement parts, as well as any de minimis amounts."

Fowler-6: "To ensure sufficient time to establish a process and gather and analyze the information for accuracy, MPCA should promulgate rules that would allow an additional 24 months after the final rule is published, which is consistent with other federal laws (OSHA & EPA standards). Although section 7026.0060 provides a process to request an extension, the extension request requires a fee, and the maximum extension granted is only for 90 days. The MPCA can also decline the extension request, in which case, the information must be submitted within 30 days with no other recourse to request further extension.

Additionally, section 7026.0060 requires the submission of supporting documentation, including any relevant documents that substantiate the need for an extension, such as communication records with other manufacturers, evidence of technical challenges or third-party testing delays. Companies need more specific information from MPCA regarding the types of evidence required to adequately satisfy this documentation requirement. EL has over 2000 vendors to map in our supply chain. Many of which supply us with multiple raw materials or components. EL would prefer to pay a fee knowing that the extension is guaranteed, other manufacturers subject to the registration requirements would likely agree. Additional time is particularly important due to the need for further clarification of several of the requirements under the statute, and further guidance on the information required for submittal, which have

the potential to greatly increase the reporting burden for manufacturers. See additional comments on such items below."

Windrum-1: "*Our specific concern pertains to Chapter 7026.0060 Subpart 3 (B.) regarding the 90-day period allowed for extensions when manufacturers seek additional time to comply with reporting requirements.*
Given the complexity of domestic and global supply chains and the challenges manufacturers face in documenting the presence of intentionally added PFAS across numerous product components, PMI respectfully requests that MPCA consider increasing the allowable extension period from 90 days to 180 days. The additional time is necessary to allow manufacturers adequate opportunity to:

- Engage effectively with complex, domestic and international supply chains, often involving numerous suppliers who require extended periods to provide accurate and verifiable PFAS data.
- Conduct thorough chemical analyses and obtain third-party laboratory results, as current analytical laboratories frequently experience significant backlogs and delays in testing due to increasing PFAS regulatory demands nationwide.
- Ensure the accuracy and completeness of data submissions, thereby enhancing manufacturer compliance and reducing administrative burdens for the MPCA."

Zaman-9 (pre-hearing comment and hearing testimony): "ACA requests modification of the proposal to allow 180 days as the standard extension period, from the current proposal 90 days under Subpart 3 of Section 7026.0060. This is needed to gather the complex set of information required for reporting, as described in the section directly above. Further, the extension requests anticipate testing or other protocol to gather information, requiring companies to submit a plan for completion as part of an extension request. The proposed 90-day period is simply too short to gather information and/or complete any required tests."

Branstad-35: "Subpart 3.B. We anticipate that, in many cases, a 90-day extension may not be sufficient to seek, receive, and synthesize information described in section 7026.0030. Therefore, we recommend that MPCA give the option for a 180-day extension and, importantly, include language clarifying that manufacturers can seek additional extensions if the manufacturer, acting in good faith, is unable to acquire the information as described in the plan for completion (Subpart 2D). It should also be made clear in the final rule that a manufacturer acting in good faith who is unable to provide all the information described in section 7026.0030 should not be considered delinquent in reporting. MPCA should also clarify that a manufacturer granted an extension request or awaiting a determination on an extension request can still sell, offer for sale, or distribute for sale the product(s) subject to the extension request."

Moyer-7: "Electronic devices are manufactured through a complex global supply chain, and companies require sufficient lead time to implement any notification requirements. A single electronic product can have thousands of components which are sourced from multiple suppliers from which manufacturers will need to facilitate information requests, create databases to generate necessary reports, validate and clarify any information received, and then link all received information to products sold. Given these factors, it is likely that electronics manufacturers will submit extension requests. However, a 90-day extension is not sufficient for this process. We believe that the commissioner should be able to grant 180-day or 1-year extension requests. The commissioner's extensions should also be renewable if the commissioner deems renewal justified."

Melkonian-6: "Extension times - Amara's Law does not specify a default extension time, so AMERIPEN suggests that manufacturers be authorized to request up to 180 days instead. As the law is implemented and manufacturer experience matures, it is likely that this timeframe can be reduced in future rulemakings."

> **RESPONSE:** The MPCA maintains that a 90-day extension is reasonable as further detailed in the SONAR on page 35. This duration was selected based on known information for how long it may take to receive testing information from a lab or to gather additional information from a supply chain and compile that data to meet the reporting requirements. The agency does not intend to prevent manufacturers from submitting their report information early; they may submit their initial report at any point during the 90-day extension duration.
>
> The MPCA would like to note that Minn. Stat. § 116.943 came out of the 2023 legislative session, so manufacturers have known about this reporting requirement for nearly three years prior to the deadline to report. Regardless of this extensive lead time, the agency has received numerous requests to extend the reporting deadline. The MPCA has elected to extend the deadline to submit the initial report under the commissioner's authority outside of this proposed rulemaking to ensure program success. The MPCA will be providing more information on the extension of the January 1, 2026 reporting deadline in the near future. This further supports the reasonableness to limit the extension to the reporting deadline to 90 days if a manufacturer chooses to apply for this additional extension allowed in the proposed rule.
>
> The agency maintains that it is reasonable to require a manufacturer to submit the report information within 30 days of the denial of an extension request. If the extension request is denied by the commissioner, it is because the manufacturer has not submitted the required information under subp. 2 items A through D to provide a thorough justification for the request. The agency believes that 30 days from the notice

of denial or the established reporting due date, whichever is later, is a reasonable deadline as further explained in the SONAR on page 36.

The MPCA has read and considered all comments regarding concerns for the proposed due diligence standard under part 7026.0080. The MPCA has provided a response to the due diligence comments and questions under that part of this response to comments document.

Tangren-3: "The reporting deadline of January 1, 2026 per Section 7026.0030 and extensions per Section 7026.0060 should remain limited to 90 days from the deadline."

RESPONSE: Thank you for your comment. The MPCA agrees that extensions should remain limited to 90 days.

Implementation:

Keane-11: "We do appreciate the opportunity to request extensions by December 1, 2025, but the proposed rule does not address if a manufacturer would be out of compliance if the commissioner fails to decide an extension request by the compliance date of January 1. We believe it is unreasonable for a manufacturer who acted in good faith and submitted all the necessary extension requests to be potentially out of compliance."

Keane-12: "MPCA should consider issuing temporary enforcement discretion for manufacturers that file an extension request to allow MPCA the needed time to review and to ensure that there is necessary time for the requestor to comply after a denial or acceptance."

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 the proposed rule language is to ensure that manufacturers submit their extensions 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 extension request by the deadline if the commissioner had not approved or denied the extension request. It is recommended to maintain relevant documentation as MPCA compliance and enforcement staff will take all information into consideration if noncompliance is found.

Comments specific to the rule language:

Hall-27: "7026.0060, subp. 1 DELETE ENTIRE PART and REPLACE WITH STATUTORY LANGUAGE
• Statute provides more expansion ability to obtain extension and MPCA should not seek to unreasonably limit the availability or duration of extensions inconsistent with statutory language."

RESPONSE: This commenter is correct that Minn. Stat. § 116.943 subd. 3 (d) includes language regarding extensions, however, the language is statute is nonspecific. The MPCA is proposing to expand upon this language in rule to provide clarity on the process of applying for and the approval of an extension to the reporting deadline. This provides clear expectations on when the report must be submitted; both for the manufacturer or group of manufacturers applying for the extension, and for persons who may be interested in the information that is reported to the agency.

Branstad-36: "Subpart 3. As with section 7026.005, the proposed rule does not address the question of whether a manufacturer is out of compliance if the commissioner fails to decide on an extension request by the established reporting due date. 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:

D. A manufacturer or group of manufacturers that has submitted an extension 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 extension 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 extension request by the deadline if the commissioner had not approved or denied the extension request. It is recommended to maintain relevant documentation as MPCA compliance and enforcement staff will take all information into consideration when determining compliance. The MPCA does not believe that the inclusion of the suggested rule language is necessary to provide clarity to the rule.

Part 7026.0070 TRADE SECRET DATA REQUEST

General concerns:

Sloan-18: Manufacturers may purchase products or product components without knowledge of which (or if) PFAS are contained or the intended function of the added PFAS, making it exceptionally difficult to meet the required notification contemplated in the proposal. Finally, manufacturers generally do not disclose suppliers in an effort to maintain confidential business information, such as private label arrangements. As written, the proposed rule would result in the release of sensitive information into the public domain with the potential to create unintended consequences throughout the supply chain.

OBrien-3: "The proposed informational elements eligible for confidential treatment are too narrow and risk the dissemination of commercially sensitive information to the public… Additionally, the Rule does not specify the relevant timeline for reviewing trade secret data requests, nor what will happen if MPCA ultimately determines that submitted information does not constitute trade secret data."

Bemus-11 (pre-hearing comment and hearing testimony): "SPAN has serious concerns about how the trade secret data submitted in reports will be protected… SPAN requests that MPCA provide further details concerning how MCPA will indeed ensure that trade secret data will be protected and not made public."

Pierce-5: *"We urge MPCA to ensure that the process for requesting such protection is streamlined and consistent with federal standards..."*

Callahan-3: "In addition, manufacturers have hidden their PFAS production behind reporting exemptions and trade secret protections. Nowhere is this more present in a recent federal case whereby it is alleged that the EPA has failed to disclose information about a popular fluorination company's PFAS generation via Freedom of Information Act ("FOIA") requests due to the company claiming confidential business information ("CBI") protection. Notably, the information sought by the FOIA request is not typical of a confidential business information claim and which the Toxic Substances Control Act mandates ("TSCA") to be publicly disclosed.6 Therefore, although trade secret and confidential business information protection is critical, the MPCA should be aware of how companies attempt to utilize these exemptions to obfuscate their PFAS generation."

Keane-13: MPCA should expand trade secret protections so suppliers feel comfortable disclosing information to downstream manufacturers. This includes protections for the function or use of PFAS in a product, which may be considered proprietary.

Palin-24 (pre-hearing comment and hearing testimony): "In addition, in creating a public database, PCA must be mindful of protecting confidential business information (CBI). Reporters may have contractual agreements with their suppliers to keep certain information confidential. PCA needs to provide additional information on how to submit CBI claims for data, and information on how the database manager will also dedicate themselves to maintaining the CBI status of that data."

> **RESPONSE:** The MPCA appreciates the comments received regarding the protection of trade secret and confidential business information (CBI) under part 7026.0070. The agency understands that manufacturers and suppliers may be concerned about disclosing sensitive information and aims to balance transparency with the need to protect legitimate trade secrets.
>
> As explained in the SONAR on pages 36–37, MPCA's rule provides a process aligned with Minnesota Government Data Practices Act, specifically with Minn. Stat. § 13.37 for requesting trade secret protection. Part 7026.0070 of the proposed rule outlines specific data elements that are eligible for such claims, including chemical names, concentrations, and supplier identities.
>
> Regarding the timeline and process for review, MPCA will provide detailed guidance on how manufacturers may submit trade secret claims at the time of reporting. If the agency determines that submitted information does not qualify for trade secret protection, the manufacturer will be notified and given an opportunity to respond before disclosure.
>
> To address concerns about supply chain confidentiality, MPCA is also exploring practical measures in system design to prevent inadvertent disclosure, such as role-based access and database flags for CBI fields. Additionally, MPCA is not expanding or restricting trade secret eligibility beyond what is authorized under Minnesota law, but it encourages suppliers and manufacturers to utilize the trade secret process to protect critical proprietary information when warranted.
>
> While MPCA acknowledges concerns that trade secret protections may be used to withhold information, the agency also recognizes the importance of maintaining trust and participation from regulated entities. MPCA will monitor implementation to ensure trade secret claims are appropriately handled and will refine guidance as needed to maintain compliance with both state data practices and the legislative intent of Minn. Stat. § 116.943.

Specific trade secret information requests:

Michaud-9: *"We suggest adding 'function' for trade secret protection as well."*

Denney-8: "Clarify that manufacturers may request that any reported information be considered trade secret. The proposed Reporting Rule specifies that chemical name, chemical identifying number, and certain supply chain information can be claimed as trade secret. There may be scenarios where other reporting elements warrant protection as trade secret data under existing Minnesota law, and the MPCA must account for this possibility in the Reporting Rule.

PPWG appreciates that the MPCA included procedures for protecting trade secret information in the proposed Reporting Rule. As explained in PPWG's 2024 comments, there is a significant need to protect this sort of information in the medical, pharmaceutical, and animal health product industry. The industry depends on innovation to enable breakthroughs that save lives and improve health outcomes, and this innovation in turn requires protections for trade secret information.

Nonetheless, a clarification is needed in the trade secret data section of the proposed Reporting Rule. Lines 12.17 – 12.23 list chemical name, chemical identifying number, and certain supply chain information as data elements that can be claimed as trade secret. However, there will likely be situations where reported information outside of these three categories is trade secret under existing Minnesota law. For example, the fact that PFAS is present in the product (as would be indicated through the reported "brief description of the product") may be trade secret if this fact is confidential and divulging this information to the public would cause competitive harm.

"Trade secret information" is defined in Minn. St. § 13.37 as "government data, including a formula, pattern, compilation, program, device, method, technique or process" that was supplied by a private party, is maintained as confidential by that private party, and which has economic value derived from that confidentiality. The MPCA acknowledged on page 36 of the SONR that this definition demonstrates the "broader intent of Minn. St. § 13.37 to safeguard proprietary business interests." Limiting trade secret data protection to the three reporting elements mentioned above would not align with this broad legislative intent.

The MPCA should therefore confirm that manufacturers may request that any reported information be treated as trade secret, as long as this information falls under the applicable definition of "trade secret information." To this end, PPWG suggests that the MPCA add the phrase "but is not limited to" at the end of line 12.20 to indicate that the three reporting elements that can be trade secret comprise a non-exhaustive, representative list."

Nustad-7: "We are concerned that the current list of data elements eligible for trade secret protection is too limited. Retailers and suppliers may be required to disclose proprietary product identifiers, functional descriptions, or vendor relationships that are commercially

sensitive. We urge the MPCA to broaden the scope of allowable trade secret claims and offer clear guidance on how protected information will be handled to avoid unnecessary public disclosure of confidential business data."

Thomas-23: "In addition to the data outlined in MINN. R. 7026.0070, Subp. 1.A-C. (lines 12.21-12.23), MPCA should add the PFAS concentration range and the function of the PFAS to the data that can be requested that the Commissioner maintain as trade secret data. Both possess economic value, which are not generally known, and manufacturers, as well as their suppliers, have taken reasonable steps to protect this information."

Friest-17: "The information elements eligible for trade secret protection are far too narrow and could put commercially sensitive information in the public domain. Suppliers will be reluctant to fully disclose chemical information if they are concerned about a lack of robust CBI protection."

Frederick-8: "AdvaMed requests the addition of PFAS concentration range and the function of the PFAS be part of the data… maintained as trade secret data.
AdvaMed urges MPCA to expand the scope of what can be claimed as trade secret—specifically including PFAS concentration and functional use—because these are economically sensitive and competitively significant details."

Branstad-37: "Subpart 1. The procedure for trade secret protection described in part 7000.1300 requires the Commissioner's review and approval of a trade secret request. Manufacturers must initiate the request process prior to reporting to determine whether the Commissioner will grant the request and how to proceed based on the response (remove trade secret protection or cease sale, offer for sale, or distribution for sale in Minnesota). The Commissioner is not held to a specific response time to respond to trade secret data requests, which could result in noncompliance if for any reason the Commissioner fails to respond in a timely manner.

In the absence of a final rule that clearly and unambiguously describes reporting requirements and any insight into the reporting platform, the time frame for manufacturers acting in good faith to also have to await a trade secret determination to plan their compliance approach is unreasonable. MPCA should include an exception to the reporting obligation at 7026.0030 that allows a manufacturer to exclude or withdraw data it has identified in good faith as trade secret and where the determination is pending or MPCA has denied the trade secret request until clarification and resolution with MPCA of a reasonable alternative for reporting that does not disclose trade secrets.

We appreciate that the proposed rule contemplates chemical name, chemical identifying number, and specific supply chain information identified in part 7026.0080, subpart 2, as eligible for trade secret protection. However, concentration and function information can also

be commercially sensitive, and we think it is reasonable to include those information elements as eligible for trade secret protection as well."

Rhoderick-6: "Recommendation: Add "function" for trade secret protection."

> **RESPONSE:** The MPCA appreciates the detailed comments and recommendations regarding the scope of data eligible for trade secret protection under part 7026.0070. The agency recognizes that certain data elements—such as PFAS concentration and functional use—may hold commercial value and, in specific contexts, may meet the definition of trade secret under Minnesota Statutes § 13.37.
>
> As currently written, the rule at part 7026.0070, subp. 1, allows manufacturers to request trade secret protection for chemical name, chemical identifying number, and certain supplier identities. These elements were selected based on prior feedback identifying them as the most sensitive and frequently protected data types.
>
> The MPCA appreciates the suggestions to include "function" as a standalone data element eligible for trade secret protection. However, under Minn. Stat. § 13.37, subd. 1(b), trade secret information must meet specific statutory criteria; namely, it must be a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value from being secret and is subject to reasonable efforts to maintain its secrecy. As written, the "function" of a PFAS in a product (e.g., stain resistance, durability) does not typically meet the statutory definition of a trade secret on its own.
>
> Manufacturers are also able to provide chemical concentration ranges to conceal sensitive trade secret or confidential business information related to chemical formulations used in the products reported as discussed on page 30 of the SONAR. This same section of the SONAR also discussed how there were smaller concentration ranges initially proposed, but they were combined after receiving feedback from stakeholders to allow for trade secrecy or confidential business information claims.
>
> The MPCA is committed to protecting confidential business information while fulfilling its statutory obligation to collect and share accurate information on PFAS in products. The agency will continue to improve its implementation to ensure manufacturers have a clear, secure, and practical path to compliance.

Chemical subclass requirement:

Cleet-11: "Lines 13.2 – 13.5 of the proposed rule explain that, if the chemical identity is claimed as trade secret, manufacturers "must submit a chemical subclass to designate as public data."

There is no guidance in the proposed rule or SONR on how manufacturers must select this chemical subclass. The MPCA should indicate in the rule that a generic chemical name created in accordance with this is sufficient for designating a chemical subclass under the rule. Linking to this guidance will help ensure regulatory certainty and will avoid the MPCA needing to develop its own guidance in time for companies to report by the upcoming reporting deadline. Specifically, the MPCA should provide clarifying guidance, or add the following sentence after the existing sentence in line 13.5:

A generic chemical name created in accordance with the U.S. Environmental Protection Agency's Guidance for Creating Generic Names for Confidential Chemical Substance Identity Reporting under the Toxic Substances Control Act (as announced in 83 Fed. Reg. 30173, June 27, 2018) shall be sufficient for designating a chemical subclass under this subpart.

For reporting or compliance reasons it is much more practical for the regulators to provide a list of chemical CAS numbers that can be used by industry participants to evaluate whether these chemicals are present in products. Conducting evaluations by chemical structure is difficult and error-prone because product chemical databases are not set up to identify chemicals in this way and because chemicals may have many synonymous names. Listing them by name will also be error prone."

Zaman-10 (pre-hearing comment and hearing testimony): "ACA appreciates the agency's inclusion of a process for protection of trade secrets. The proposed process allows for trade secret claims of chemical name, chemical identification number and defined supply chain information. The trade secret section (Section 7026.0700) introduces an ambiguous phrase, chemical subclass, in subpart 2 of the section... ACA requests further explanation or a definition of the phrase chemical subclass."

Moyer-8: "7026.0070 Trade Secret Data Request Subpart 2 of 7026.0070 explains that if a chemical identity is claimed as a trade secret, manufacturers must submit a chemical subclass to designate as public data. However, the Proposed Rule or the SONAR do not offer any guidance on how manufacturers must select this chemical subclass. MPCA should indicate in the Proposed Rule that this process be conducted in line with EPA guidance on creating generic chemical names under TSCA.5 Alignment with EPA allows for regulatory certainty, ease of compliance for industry, and does not require MPCA to develop its own guidance."

> **RESPONSE:** In the reporting system, the MPCA will provide a list that the manufacturer or group of manufacturers submitting the report must select a PFAS chemical subclass from. This chemical subclass will be public information if the specific PFAS used in the product meets the definition of trade secret information.

Implementation:

lizuka-14: Due to confidentiality, upstream suppliers are reluctant to or may not be able to provide information about PFAS to their down stream supply chains. We would like to request that the MPCA will introduce a joint submission system similar to that is introduced in the U.S. TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, allowing suppliers having PFAS information can contact the MPCA directly.

McArdell-5: "The recreational marine industry frequently sources components that are proprietary, including electronics, coatings, sealants, and specialized composites. Suppliers may justifiably refuse to disclose full chemical formulations due to intellectual property concerns. Without robust trade secret protections, these suppliers may choose to exit the Minnesota market entirely, which would harm both consumers and manufacturers.

We urge MPCA to ensure the final rule:

- Provides clear, accessible mechanisms for asserting trade secret protections in compliance with the Minnesota Government Data Practices Act.
- Allows submitters to withhold or mask specific chemical identities where disclosure would cause competitive harm, provided that sufficient justification is submitted.
- Enables upstream suppliers to submit secret trade information confidentially and directly
to the agency, without routing through downstream manufacturers.
- Protects both chemical identities and concentration data when appropriate.

Additionally, MPCA should clarify how it will secure and manage confidential business information (CBI) to prevent unintended disclosures, particularly for manufacturers relying on supplier declarations."

Prero-21: "The Proposal provides for procedures to maintain confidential business information, or "trade secret data," as "not public." However, the SONAR states that MPCA anticipates utilizing the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System, an application that allows manufacturers to submit data on chemicals in products, and for participating states and the public to access that reported data from the required reporting. As this database is shared by multiple states, CUC requests that MPCA explain how information trade secret data submitted will indeed be protected when other jurisdictions will have access to this very information.

The procedures by which MPCA will process trade secret claims must be clearly stated and known to all manufacturers who will need to report. Substantiation standards and submission requirements must be articulated, and the review process must be transparent and predictable. Trade secret data is of vital importance to manufacturers, and CUC believes that MPCA must recognize this and make the efforts needed to ensure that the data protection system is robust."

Choiniere-4: "Emphasize the importance of trade secret protection for competitiveness, national security, and IP integrity. Recommend MPCA adopt TSCA-like procedures for asserting and managing CBI claims."

Choiniere-5: "Request that MPCA not share trade secret data with other states or third parties unless confidentiality protections are in place and the data subject is notified. Recommend that data-sharing agreements be subject to public comment."

Choiniere-6: "Recommend MPCA establish a system for notifying data submitters if their confidential data is disclosed, consistent with Minnesota Statutes § 115.A.06."

Choiniere-7: "Propose a "joint reporting" system modeled on EPA's TSCA 8(a)(7) rule, allowing primary manufacturers to submit known information and enabling suppliers to file confidential data directly as secondary submitters."

> **RESPONSE:** The MPCA acknowledges the concerns regarding trade secret protections and supplier reluctance to share PFAS information due to confidentiality and intellectual property concerns. The agency intends to implement a system that accommodates confidential business information (CBI) claims in compliance with the Minnesota Government Data Practices Act, Minn. Stat. § 13.37. Submitters will be able to designate specific data as trade secret, with appropriate substantiation, and MPCA will maintain such data as nonpublic.
>
> To facilitate reporting while protecting sensitive information, MPCA plans to allow for direct, confidential submissions from upstream suppliers that will permit secondary submitters to provide confidential data directly to the agency.
>
> MPCA is building out the reporting system to ensure that any shared data complies with applicable CBI protections. No trade secret information will be disclosed to other jurisdictions or the public without appropriate confidentiality agreements and safeguards.

Opposition to trade secret data requests:

Tangren-4: "Section 7026.0070 discusses trade secret data requests and would allow a) chemical name b) chemical identifying number and c) supply chain information to be maintained as not public information. Minnesota Statutes, section 13.37 subdivision 1 (b) (2) defines "trade secret information" as, in part, "government data, including a formula, pattern, compilation, program, device, method, technique or process…that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy." In drafting and passing Amara's Law, the legislature has determined that PFAS pose a grave risk to human health and the environment and that disclosure and prohibition are required to remedy this threat. Recognizing the language of Minnesota Statutes section 13.37 defining "trade secret information" and the legislation behind this rule, it would be unreasonable to maintain the secrecy of any PFAS. As a result of this conflict between the legislative intent behind Amara's Law and Section 7026.0070 of the proposed rule, this section should be removed in its entirety."

Starck-4: "Currently the trade secrets provisions allow for the presence of PFAS to be considered a trade secret. The need to protect public health and give public information about the presence of PFAS should override any trade secret concerns. We recommend that if the presence of PFAS is claimed as a trade secret, that the entity demonstrate to the agency the steps it takes internally to keep this information secret. Additionally, while the presence of a specific PFAS may be a trade secret, we recommend adding a provision that requires the disclosure of the use of PFAS generally in a product."

> **RESPONSE:** The MPCA acknowledges the concerns raised regarding the potential conflict between public interest in PFAS transparency and the protection of confidential business information.
>
> The agency is committed to maintaining legal protections for trade secrets under Minnesota Statutes § 13.37 and Minn. R. part 7000.1300. The MPCA will still provide meaningful information to the public, consistent with Amara's Law, which is focused on empowering Minnesotans to make informed decisions about the products they bring into their homes. Information not subject to trade secret protection—such as general product categories or the presence of PFAS—will be shared in a public-facing format to support that goal.

Comments specific to rule language:

Hall-28: "7026.0070, subp. 1 REVISE: "A manufacturer or group of manufacturers may request that the commissioner maintain trade secret data as not public information according to part 7000.1300. Trade secret data that is eligible ~~to be considered not public information~~ for protection is defined in Minnesota Statute 13.37, and includes but is not limited to:"

ADD: data categories eligible to be considered: concentration of PFAS (particularly but not necessarily exclusively for the concentration ranges at the low end, 7026.0030 Subp 1.C(1)(a), (b) and (c)); function of PFAS

• The incredibly short amount of time for responding to a denial of protection of trade secrets.

• 7026.0070 will have to be modified to address information that will be required to be submitted as part of a CUU determination, unless amended as suggested in first bullet.

• Re: chemical identifying number: both concentration and function of the PFAS should be considered as criteria that could be a trade secret."

RESPONSE: The MPCA respectfully disagrees with this commentor's proposed rule changes. Not public information is defined in part 7000.1300, so the use of that term in the second sentence is deliberate. The proposed rule is identifying the information in items A through C that is considered trade secret data. For this reason, including the phrase "including but is not limited to" is not necessary.

This proposed rule is specific to PFAS in product reporting and fees. Any amendments to the rule language, if needed, to account for the CUU rule will be proposed at that time. This comment is out of scope for the PFAS in product reporting and fees rule.

The MPCA appreciates the suggestions to include "function" as a standalone data element eligible for trade secret protection. However, under Minn. Stat. § 13.37, subd. 1(b), trade secret information must meet specific statutory criteria; namely, it must be a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value from being secret and is subject to reasonable efforts to maintain its secrecy. As written, the "function" of a PFAS in a product (e.g., stain resistance, durability) does not typically meet the statutory definition of a trade secret on its own.

Part 7026.0080 DUE DILIGENCE

General concerns:

Pierce-6: *"We urge MPCA, as a leader in the movement to eliminate PFAS from supply chains, to work with other states and harmonize reporting requirements as the rule is completed and going forward."*

Keane-14: "We recommend that MPCA seek harmonization with other states implementing similar PFAS reporting programs, including New Mexico, which will require PFAS reporting in 2027. Seeking this harmonization will strengthen MPCA's reporting program and complement the overall effort and goals of the program. Ideally, this system would be set up to harmonize existing benchmarks both nationally and internationally to ensure better compliance and accuracy."

Nustad-8: "The proposed rule includes a due diligence obligation that appears to continue until all required information is known. This creates an indefinite and impractical standard for retailers, who may engage in extensive outreach and certification efforts without being able to guarantee full disclosure from upstream suppliers. We recommend aligning due diligence standards with other state-level product compliance frameworks that recognize good faith efforts and allow for certification reliance, rather than an unattainable threshold of absolute certainty."

McGowan-13: "Reporting Requirements are Burdensome, Unworkable and Fail to Recognize Complex Multi-Layered Supply Chains. Tracing those supply chains, and extracting detailed information about the basic chemicals used throughout such a supply chain, can be nearly impossible... It is unreasonable for MPCA to expect otherwise."

McGowan-14: "The Proposed Rules also fail to address what will happen when a manufacturer, despite best efforts, is unable to provide all of the information elements that they 'must include' in their report. creating unreasonable uncertainty about when a manufacturer will be in or out of compliance. We strongly urge MPCA to reconsider this section—and section 7026.0080 (Due Diligence)—such that a manufacturer's inability to provide some of the required information because, as an example, entities in its supply chain are unresponsive or affirmatively refuse to provide requested information, is not considered out of compliance if the manufacturer can provide documentation of its good faith information collection efforts."

McGowan-15: "The requirement to investigate 'until all required information is known' is unreasonable and ignores the realities of supply chains… We offer the following language to make the expectation here more reasonable: A manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain and take reasonable steps to obtain responses."

Cross-5: “Manufacturers should not face the impossible task of seeking ‘detailed disclosure of information… until all required information is known,’ as proposed in 7026.0080.”

Bemus-12 (pre-hearing comment and hearing testimony): “The Proposed Rule currently states that manufacturers must keep asking suppliers for data “until all required information is known”. This standard is unrealistic… SPAN believes that if MPCA maintains the due diligence standard in the Proposed Rule, MPCA will be forcing the expenditure of valuable time and resources that will still ultimately result in non-compliance.”

Branstad-38: “As currently written, the due diligence standard is unreasonable and virtually ensures broad non-compliance. We disagree with the statement “This thorough approach . . . helps mitigate the risk of non-compliance, ensuring that no stage of the production process is overlooked and that the ultimate responsibility for accurate reporting is fulfilled.” That sentence appears to be premised on the assumption that all entities in the supply chain of a manufacturer or group of manufacturers with a reporting obligation will supply information “until all required information is known.” There will be gaps, and it would be unreasonable for MPCA to deem noncompliant manufacturers or a group of manufacturers acting in good faith should their requests for information go unanswered.”

Tarter-5: “The proposed rule would also impose a strict reporting standard unlike any other state or even federal PFAS reporting law: “A manufacturer or group of manufacturers must request detailed disclosure of information…from their supply chain until all required information is known.” This standard is unreasonable. It is infeasible to guarantee that a manufacturer will receive all of the detailed data required under the rule from all suppliers of every product component. Suppliers may not know the composition of a product component and would be forced to inquire with their own upstream suppliers. For complex products, the inquiries could go up a dozen tiers and the data still may not be available, particularly for trace amounts of PFAS. Suppliers also may have limited information or may not be able to share information due to concerns about protecting confidential business information. The requirement to survey suppliers “until all information is known” would effectively force companies to have to test products for PFAS content just to ensure the information becomes “known,” which is inconsistent with the statute.”

Huxley-4: "As a real-world function of the supply chain, in many cases products contain components that are sourced from open-market providers and designed or manufactured for other markets. In these cases, downstream manufacturers have neither the visibility nor the ability to determine the data points required in the proposed rule. A common example of open-market components are (internal) electronic components that are purchased for inclusion in consumer products; the manufacturer of the final product does not have the supply chain reach to design and manufacture these components, and instead purchases the necessary

components from existing (multiple) sources. The due diligence requirements listed in § 7026.0080 impose an unachievable requirement by stating that “A manufacturer or group of manufacturers must request detailed disclosure of information […] from their supply chain until all required information is known.” (emphasis added). Even taking into consideration the reality that such requests take time to identify, contact and compile (beyond the timeframe currently being considered) and the associated administrative and financial burdens, as is demonstrated in this document, due to many factors it will not be possible for manufacturers to attain all of the required information."

McArdell-6: “NMMA supports a due diligence standard for PFAS reporting that is reasonable and attainable. Given the global and multi-tiered nature of the marine industry’s supply chain, manufacturers must rely on upstream suppliers for accurate material content information.

To this end, the rule should explicitly recognize that due diligence includes the following activities:

- Conducting supplier surveys using standardized industry tools such as the IPC-1752A or IMDS systems.
- Reviewing safety data sheets (SDS), technical data sheets, and other supplier-provided documentation.
- Requesting declarations or certifications of compliance from suppliers.
- Using risk-based approaches to prioritize inquiry based on product type, use, or historical presence of PFAS.
- Engaging third-party compliance service providers or consultants to conduct assessments.

If, after making good-faith efforts through these means, a manufacturer is unable to obtain complete information, this should be considered compliant under the due diligence standard. The rule should clarify that self-reporting based on available information, accompanied by a clear statement of data limitations, fulfills the requirement. Recognizing the limitations of information gathering is particularly important when PFAS are used in trace amounts or as impurities, or when suppliers invoke trade secret protections.”

Branstad-39: “Also, although the legislation does not specify a practicable reporting standard (e.g., known to or reasonably ascertainable), it is impractical and unreasonable not to include such a reporting standard in the implementing regulations. The final rule must contain a reporting standard that acknowledges the realities of information flow up and down complex, multilayered, global supply chains for the massive number of products and components subject to reporting.” The State of Maine made the same error in its initial PFAS in product law and subsequently adopted the known or reasonably ascertainable standard in amendments to the initial law. In reality, many manufacturers will be unable to provide all of the information

elements that they “must include” in the report detailed in this section. They will also be unable to get the information necessary to evaluate whether products meet the criteria for grouping at A(1)(a)(iiv). This highlights the unanswered question of whether information gaps in a report, despite reasonable efforts to fill those gaps, will be considered non-compliance by MPCA. The proposed rule is not at all clear on this point, which creates unreasonable uncertainty about when a manufacturer will be in or out of compliance. We strongly recommend that MPCA reconsider this section and section 7026.0080 (Due Diligence) such that a manufacturer’s inability to provide some of the required information because, as an example, entities in its supply chain are unresponsive or affirmatively refuse to provide requested information, is not considered out of compliance if the manufacturer can provide documentation of its good faith information collection efforts.

Hall-29: “7026.0080, subp. 1 A manufacturer must assume responsibility for reporting known or reasonably ascertainable information for products containing intentionally added PFAS unless (1) MPCA has already received the necessary information, which must be made available to manufacturers subject to reporting requirements at least 3 months in advance of the initial reporting deadline and annual recertification deadlines; (2) notification from another manufacturer is received or otherwise available for agency review according to part 7026.0020,subpart 2, confirming that the reporting requirements under part 7026.0030 have been fulfilled; or (3) manufacturer can provide other written documentation confirming MPCA has received the required information from report submissions.

• Preferred alternative is to modify the due diligence standard to incorporate “known or reasonably ascertainable information” in all reporting elements.

• Requiring annual recertification of expansive data without leveraging the volume of public data previously provided to MPCA is an unreasonable and overly burdensome regulatory requirement.

• MPCA should make available reporting data it collects to facilitate, and reduce the regulatory burden of, reporting for manufacturers who are incurring substantial costs to obtain this information and submit detailed reports/fees.

• When manufacturers can offer evidence showing submission of the required data, it would be arbitrary and capricious of MPCA to disregard such evidence and enforce unnecessary, cumulative, and burdensome requirements.

• A structured reporting system that ingests specific and uniform data fields could facilitate this capability, create consistency in reporting, and help manufacturers implement with template.

McGowan-16: "7026.0080 requires a manufacturer or group of manufacturers to request detailed disclosure information from their supply chain 'until all required information is known.' The requirement... is unreasonable and ignores the realities of supply chains."

Friest-18: MPCA is grossly underestimating the complexity and vastness of the data collection and reporting process and imposing unreasonable timelines and expectations on entities who do not control the information sought by MPCA. Consequently, MPCA has also significantly underestimated the costs of compliance for manufacturers and those costs have implications for product availability in Minnesota. We do not support the proposed rule language."

> **RESPONSE**: The MPCA appreciates the extensive feedback regarding the due diligence standard proposed in Minn. R. part 7026.0080. MPCA recognizes these challenges, however, the agency maintains that a more proactive, ongoing standard is necessary to fulfill the legislative purpose of Minnesota's PFAS product reporting law. Because PFAS may be introduced at any point in the supply chain and may not be identified through internal records or SDSs (safety data sheets) alone, the rule requires manufacturers to make continued, targeted efforts to obtain information from suppliers. This is essential to close data gaps and prevent circumvention of the reporting requirements through passive or minimal engagement.
>
> The agency does not intend to adopt the EPA's Known or Reasonably Ascertainable standard, for full response on this please see responses to comments in "PART 7026.0080 DUE DILIGENCE".
>
> Please see the agency's response for requests to harmonize with other jurisdictions in "Part One Pre-Hearing and Hearing Response to Comments" on page 20.

General supply chain request comments:

Tom-6 "About due diligence, we support MPCA's requirements and request confirmation that standardised declarations and reasonable supplier engagement are sufficient to meet expectations, especially in cases where suppliers cannot provide detailed chemical data (7026.0080, Subp. 2)."

Cross-6: "ITA recommends that due diligence for supply-chain inquiries by manufacturers of finished products… be limited to their first-tier suppliers and to other known participants in the supply chain where there is a reason to believe that they can provide reportable information."

Starck-5: "It is the responsibility of manufacturers to understand their supply chain to keep their customers informed and safe. Amara's Law requires information disclosure on "intentionally added PFAS" which means that PFAS was intentionally added to serve a function. It's added for a specific purpose related to the functioning of the product. It's our perspective

that if a manufacturer is adding PFAS for a specific purpose, they should know about it. Multiple states require information disclosure. If they can report in other states, they can comply in Minnesota."

> **RESPONSE:** As written in the proposed rules, "A manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain until all required information is known". The agency did not limit this request to only first-tier suppliers because there may be scenarios in which suppliers farther up the supply chain may have the required information and setting that minimum expectation in rule would allow manufacturers to avoid additional supply chain requests even if the information is known and available.
>
> In the enforcement of such provisions, the agency would consider whether a manufacturer consulted their supply chain or made attempts to test products to fill in any gaps in the reported data. It is recommended to maintain relevant documentation as MPCA compliance and enforcement staff will take all information into consideration if noncompliance is found. The agency will consider documentation of such conversations to determine individual compliance on a case-by-case basis.

Difficulty of complex supply chain information gathering:

McGowan-17: "The Proposed Rules fail to adequately take into account the realities of information flow through complex, multi-layered, global supply chains… Tracing those supply chains, and extracting detailed information about the basic chemicals used throughout such a supply chain, can be nearly impossible. Similarly, organizing the various manufacturers in a supply chain to support "group" reporting can also be impossible, especially within the Proposed Rule's reporting deadline. Thus, the reality is that many manufacturers will be unable to provide all of the information elements that they "must include" in the report detailed in this section. It is unreasonable for MPCA to expect otherwise."

Thomas-24: "Terumo BCT appreciates that the MPCA created an opportunity for manufacturers to report as a group, however we believe that this will not enable streamlined reporting as intended. There are no provisions related to reasonably ascertainable information, and because of that the due diligence requirement would be impossible to meet in many circumstances. For medical devices and other products with deep, global supply chains, this could be particularly challenging. As we shared earlier in this comment letter, it is not unusual for a component material supplier to view their component design as their intellectual property, including the specific material used. In those instances, the FDA has a regulatory approach for those suppliers

to divulge information to the FDA but not to the manufacturer. As a result, medical device manufacturers will never be able to achieve 100% disclosure to MPCA."

Prero-22: "The Proposal lists a number of specific pieces of information that must be reported, such as the specific PFAS used, its function and its concentration range. In many situations, it will be challenging for a manufacturer to provide the exact PFAS (by name and CAS), its function, and the concentration range. Complex supply chains make this type of information challenging to obtain. For example, while PFAS are not typically on an SDS for formulations, identifying PFAS becomes even more challenging for manufacturers of complex goods. Furthermore, in complex supply chains, thousands of global suppliers provide hundreds of thousands of parts, and it may take many years to track down this information, if possible. CUC recommends that the MPCA allow for reporting of general information, such as simply that PFAS is present, as that will provide MPCA with the information that there is indeed PFAS in a specific product."

Bretecher-9: "Determination of which components on a bus contain PFAS: Identifying which components on a bus that contain PFAS will be a significant undertaking. Buses are highly customized vehicles, with thousands of components tailored to meet specific customer requirements (over 15,000 parts that vary based on customer configuration). Determining which components contain intentionally added PFAS will require a thorough analysis. Given that most parts and components are sourced from suppliers rather than manufactured by NFA, this effort will necessitate contacting all suppliers and sub-suppliers."

Bretecher-10: "Once a list of components with PFAS is assembled, educate the respective bus component suppliers about the Minnesota reporting requirement, and secure their cooperation in gathering or generating the necessary data. The difficulty of this task will be even greater with subsuppliers, which have little direct relationship or connection to NFA, and could be located outside of the U.S. There would be little consequence to them if they do not provide the information, or delay in providing it (as this is not an outright prohibition of components with intentionally added PFAS—and so no potential loss of their sales revenue). As such, there is minimal leverage in requesting them to assist."

Kooy-5: "BIFMA members have repeatedly asked suppliers for specific chemical names with little to no success for several reasons: 1) Suppliers consider this confidential business information. Chemical Abstract Service (CAS) registry numbers are also difficult to obtain without a nondisclosure agreement (NDA) signed by the manufacturer with the supplier. An executed NDA will not allow the information to be disclosed, especially in a publicly accessible database. 2) Specific PFAS and/or other chemistry may change based on cost, changes in suppliers in tier 2, 3, 4, etc. and/or quality issues. Tariffs, lead times, compliance requirements in other countries, provinces or states lead to further variations. 3) Analytical methods are

costly, often provide false positives in the form of organic or inorganic fluorine and provide a snapshot in time. If a PFAS compound is intentionally added, it remains difficult and extremely costly to determine the specific chemical and exact concentration. BIFMA recommends a class-based approach to identify PFAS as intentionally added or not. A class-based approach supports Minnesota's 2032 ban while avoiding the likelihood of bad data and/or legal issues due to confidentiality."

Erny-7 (pre-hearing comment and hearing testimony): "The average RV consists of thousands of parts—ranging from flooring and upholstery to electronics, mechanical systems, adhesives, and sealants—many of which are sourced from domestic and international suppliers across diverse industries. RV manufacturers do not typically manufacture these components themselves, which creates an exceptionally complex supply chain with over a million unique parts or stock-keeping units (SKUs) managed across the sector. This highly decentralized structure poses significant challenges when attempting to trace or verify the presence of intentionally added PFAS at the component level, especially when upstream suppliers may be foreign sources with no PFAS disclosure or testing requirements. As such, any regulatory reporting framework must accommodate the realities of complex durable goods manufacturing and recognize the limitations faced by downstream product manufacturers in accessing upstream chemical composition data."

Nustad-9: "Retailers are typically not manufacturers of the products they sell and often have limited visibility into the specific chemicals used in those products, including own brand or national brand items manufactured by third-party vendors. PFAS can be used in complex supply chains and in microscopic quantities that are not apparent or disclosed to the retailer.

As proposed, the rule would require retailers to report intentionally added PFAS in products, but this is often information we do not have, cannot verify, and cannot legally compel from vendors. Without a clear mechanism for relying on supplier certifications or upstream declarations, this requirement will be extremely difficult, if not impossible, to meet accurately."

Friest-19: "It is unreasonable to require manufacturers to report the extremely detailed information required by the rule, including chemical composition information, for thousands of parts, when the information is held by suppliers under no regulatory obligation to provide such information, and to do so in less than 8 months. Furthermore, reporting of the total organic fluorine, determined using commercially available analytical methods, is required, if the amount of PFAS is not known within applicable due diligence standards. (7026.0030 Subpart 1, C.(2), lines 7.16-7.18). Testing is incredibly burdensome and costly for manufacturers of complex products. Not all manufacturers possess the ability to conduct testing in-house. External testing resources are finite, and it is uncertain that they could meet the increased demand.

Friest-20: "Extensive effort will be required to investigate and identify the presence of PFAS in the complex products produced by EMA's members. Hundreds of suppliers in global supply chains, some of whom are 8 to 10 layers deep in the supply chain, hold chemical composition information for parts and components. Chemical composition information is often considered proprietary, and disclosure is not easily obtained. Manufacturers will need to investigate thousands of components, and that process is ongoing and incomplete. Although the compliance obligations in the proposed rule are directed at the manufacturers of products, PFAS use is fundamentally controlled at the supplier level. Material tracking systems are not fully developed on an industry-wide basis and disclosure of PFAS use is fundamentally controlled at the supplier level.

EMA members and their supply chain are actively engaged in gathering information on the uses of PFAS within their products, but not all have been identified. In part this is due to the challenges in their identification as many PFAS used in mixtures have not been classified as hazardous per the Globally Harmonised System for classification and labelling. In addition, many PFAS are not shown on material data sheets even though the substance is present. Moreover, when PFAS are used in articles or articles in complex objects, the parts suppliers are currently under no regulatory obligation to highlight the presence of PFAS."

Thomas-25: "Terumo BCT is concerned that the reporting mechanisms are not clarified to the level that the full process can be understood and feasible. In a supply chain that is highly complex and eight to ten or more layers deep, often, a component material supplier views their component design as their intellectual property (IP), including the specific material used. In those instances, the FDA has a regulatory approach for those suppliers to divulge information to the FDA but not to the manufacturer. As a result, medical device manufacturers will struggle to achieve full disclosure to MPCA in a timely manner. While this information is provided to the FDA and the materials in the products are highly regulated, the information provided to manufacturers is not always consistent or standardized regarding the materials in the product."

Rydkin-3 (pre-hearing comment and hearing testimony): "DAA already has considerable experience in this type of data gathering and reporting in order to comply with Canadian reporting requirements. To date, DAA has been in monthly communication with our main 225 suppliers (of more than 1,000) focusing on our top ~55,000 most purchased parts. Beginning this work in August 2024, we have observed a limited response rate of only 39.7% through April 1, 2025. In addition, the reported data was not as robust as the full scope of information in the MCPA rule, such as CAS numbers, function of the material, etc. Inclusion of these additional requirements, which entails petitioning our more than 1,000 suppliers, would require considerably more reporting time. Rushed results are likely to be laden with errors and omissions and would require a re-survey of those already reporting.

Due to the complex nature of HVAC unit construction, with a typical unit containing over 80,000 subcomponents, such as PCBs and complicated mechanical parts like compressor motors, DAA cannot adequately validate beyond the supplier provided certification the chemical makeup of every individual component included in the final product. Reporting meaningful and robust information from all suppliers would be unworkable if required by January 1, 2026."

Hall-30: "The proposed rule poses a unique challenge to medical device manufacturers since Minnesota is the first jurisdiction to require reporting on PFAS content of the device and in the manufacturing process of medical devices. Other U.S. states with PFAS reporting requirements have exempted medical devices from any reporting requirement. The U.S. Environmental Protection Agency's (EPA) PFAS reporting programs also do not require the scale of reporting of MPCA's proposed rule. Medical devices and some medical device manufacturing is exempt from PFAS reporting under Section 8(a)(7) of the Toxic Substances and Control Act. Required reports of PFAS use, treatment, and disposal under EPA's Toxic Release Inventory program cover only a small part of the required information in MPCA's proposed rule.

As a result, unlike many other manufacturing sectors, medical device manufacturers would have to gather the extensive and detailed information in MPCA's proposed rule for the first time. We do share with other manufacturing sectors a complex supply chain: components and materials sourced from all over the globe, a diverse array of vendors, and the corresponding challenge of identifying the thousands of PFAS compounds covered by the proposed rule. For example, a pacemaker or hearing aid can have hundreds of components that are manufactured in multiple locations and then shipped to another location for final assembly in Minnesota."

Cross-7: "As ITA commented in December… 'manufacturers of offroad vehicles do not have the visibility through their multi-tiered supply chains to enable them to determine whether a given component that resides at the beginning of the supply chain… may have been formulated with one or more PFAS substances.'"

Cross-8: "It is the unrealistic assumption that manufacturers of complex products can determine or verify the chemical composition of generic parts by reaching back to the beginning of the supply chain that makes compliance impossible…"

Frederick-9: "In the case of medical devices, they can be complex products potentially with supply chains that are sometimes eight to ten layers deep that will need to be reviewed and notified." AdvaMed emphasizes the extensive and layered nature of global medical device supply chains and the difficulty in identifying PFAS content throughout, especially where proprietary formulations are protected as intellectual property."

OBrien-4: "We are also concerned by the requirement to conduct due diligence "until all required information is known". As outlined above, apparel and footwear products are composed of multiple different product components that are sourced from hundreds of suppliers. Such an open-ended requirement to obtain information from supply chain partners is concerning and beyond the scope of what MPCA is seeking to regulate. Such concerns would be

obviated by limiting the reporting requirement to TOF testing, which would not require such complicated supply chain due diligence."

Cross-9: "Even if Amara's law does impose a reporting obligation on all U.S. manufacturers throughout the supply chain… determining who may have the relevant information and inducing those parties to provide it remains the problem for complex products."

Gutierrez-2: "The due diligence requirements in part 7026.0080 would create substantial operational challenges for healthcare product manufacturers, who typically have complex global supply chains. These manufacturers would need to implement extensive new processes to track, document, and report PFAS presence throughout their supply chains. Given that these products are already exempt from the actual PFAS restrictions, requiring this level of supply chain investigation seems disproportionate and could potentially threaten the availability of 4 important healthcare products for Minnesota consumers if manufacturers decide the compliance burden is too great."

Bretecher-11: ""Specifically, we request consideration of the difficulty a bus OEM would face in successfully satisfying the reporting requirements within the timeframe between adoption of the regulation and the reporting deadline of January, 2026. The required steps in reporting would include:

> 1) Determination of which components on a bus contain PFAS: Identifying which components on a bus that contain PFAS will be a significant undertaking. Buses are highly customized vehicles, with thousands of components tailored to meet specific customer requirements (over 15,000 parts that vary based on customer configuration). Determining which components contain intentionally added PFAS will require a thorough analysis. Given that most parts and components are sourced from suppliers rather than manufactured by NFA, this effort will necessitate contacting all suppliers and sub-suppliers.

2) Once a list of components with PFAS is assembled, educate the respective bus component suppliers about the Minnesota reporting requirement, and secure their cooperation in gathering or generating the necessary data. The difficulty of this task will be even greater with subsuppliers, which have little direct relationship or connection to NFA, and could be located outside of the U.S. There would be little consequence to them if they do not provide the information, or delay in providing it (as this is not an outright prohibition of components with intentionally added PFAS—and so no potential loss of their sales revenue). As such, there is minimal leverage in requesting them to assist."

RESPONSE: The MPCA recognizes that manufacturers rely on complex supply chains, making it difficult to identify PFAS at various stages of production and retrieve the information required from those suppliers.

The agency has attempted to combat these challenges by allowing manufacturers to group similar products and components in their reports, and by allowing for grouped submissions of reports. The rule also allows manufacturers to apply for an extension to the reporting deadline.

Many commenters have expressed concern over trade secrets and confidential business information or stated that their suppliers may not be able or willing to share information regarding the intentionally added PFAS in a product. Under part 7026.0030 subp. 1, item C, subitem (1), unit (i), manufacturers can report PFAS as "present but the amount or concentration range is unknown". The MPCA believes that this is a reasonable accommodation to address commenters' concerns about obtaining the information from their supply chain on the concentration of PFAS chemicals in a product or component.

While the initial report may require significant staff time to investigate and make inquiries to a manufacturer's supply chain, updates and recertifications to the initial report should be less time-consuming for manufacturers to either affirm that no changes have occurred to the previous report or provide updates to those existing products previously reported or to report a new product.

Request for Known or Reasonably Ascertainable Standard

Kallen-19 (pre-hearing comment and hearing testimony): "The MPCA should harmonize its due diligence standard with other jurisdictions that have promulgated PFAS reporting requirements. The U.S. Environmental Protection Agency's (EPA's) due diligence standard under its Toxic Substances Control Act (TSCA) PFAS Reporting Rule is that companies must report in-scope information to the extent that information is "known to or reasonably ascertainable by" them (hereinafter "KRA standard"). Maine's PFAS reporting obligation was modified in April 2024 to also adopt the KRA standard. Canada's PFAS reporting obligation has a "reasonably accessible information" reporting standard, which is defined as "information [a] company possesses or to which [the company] may reasonably be expected to have access." This Canadian due diligence standard is functionally equivalent to EPA's and Maine's KRA standard. MPCA should adopt the same approach.

SEMI and SIA believe that the due diligence standard in the Proposed Rule is inconsistent with these MPCA goals. The Proposed Rule states on lines 13.13 – 13.15 that companies must

request information from supply chain partners "until all required information is known." Requiring companies to continuously survey suppliers until all data elements are known, without regard to the level of effort, is unrealistic and infeasible. This is particularly the case for semiconductor manufacturing equipment, which includes some of the most complex and sensitive products in the world. Certain products manufactured by our members contain thousands or hundreds of thousands of components. Obtaining full information from all suppliers – particularly in the time allotted – would be infeasible. The MPCA should adopt the KRA standard, which recognizes these limitations."

Sobel-3: adopt "known or reasonably ascertainable" standard

Davis-9: "AHRI asks that the MPCA change this proposed rule to allow manufacturers to submit PFAS information for their products that is known or reasonably ascertainable."

Michaud-10: "MPCA should adopt the KRA due diligence standard as defined in the U.S. EPA TSCA PFAS reporting program."

Rhoderick-7: "In particular, VMA members and reporters in other industry sectors currently are collecting data to provide reports (due in 2026) under the U.S. EPA's extensive TSCA PFAS reporting program TSCA Section 8(a)(7). Given the effort expended over the last number of months to collect data under that reporting rule, MPCA's due diligence standard should mirror that of U.S. EPA. Under the U.S. EPA program, submitters are required to report information to the extent that it is "known to or reasonably ascertainable by" the company. The term "known to or reasonably ascertainable by" ("KRA") is defined in 40 C.F.R. §705.3 to mean "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know."

Fleming-5: "The MPCA should employ the KRA due diligence standard used by the U.S. Environmental Protection Agency (EPA) for the Toxic Substances Control Act Section 8(a)(7) PFAS reporting rule. Use of the KRA standard in the MPCA's rule will help "ensure that due diligence efforts are reasonable and feasible for manufacturers," as the MPCA mentioned in a Q&A on this rulemaking from last year. Moreover, use of the KRA standard will help harmonize the MPCA's rule with not just EPA's rule, but also with PFAS reporting programs in other jurisdictions that employ a similar reporting standard, including Environment and Climate Change Canada's PFAS reporting requirements and Maine's PFAS in products law."

Erny-8 (pre-hearing comment and hearing testimony): "The proposed requirement for a manufacturer to request detailed disclosure of information required from their supply chain "until all required information is known" is not reasonable and does not reflect the real-world limitations that manufacturers of complex durable goods face in obtaining chemical data from a vast array of upstream suppliers.

One of our member suppliers, for example, has been proactively collecting PFAS data since 2016 with the goal of eliminating these substances from their supply chain. Under the federal definition of PFAS, they have made it a priority to eliminate any known PFAS. However, in preparing to comply with broader state-level mandates like Minnesota's, they expanded their outreach efforts to collect data aligned with the state's definition of PFAS. After several years of effort and repeated requests, they have received complete PFAS data from only 30–40% of their suppliers. The remaining suppliers either lack the information, are unable to share proprietary data, or are located in jurisdictions with no PFAS regulations.

This example demonstrates that even well-resourced, proactive companies face major challenges in accessing the data needed for compliance under the proposed Minnesota PFAS Reporting and Fees Rule.

RVIA recommends that MPCA adopt the Federal definition of "due diligence" as defined under the EPA TSCA 8(a)(7) PFAS reporting rule which say: "due diligence" reporting means companies must gather all information that is "known or reasonably ascertainable" regarding intentionally added PFAS in their products or those they import. Further, MPCA should clarify that "reasonably ascertainable" means information available through standard business documentation and supplier declarations—not information that requires testing, audits, or disclosure beyond what suppliers are willing or able to provide.

What is MPCA's plan for manufacturers that are unable to procure information from suppliers on the use of PFAS in products? (With tens of thousands of SKUs in RV manufacturer's products, it seems unlikely that some manufacturers would be able to obtain a complete inventory within the timeframe provided.)

Will MPCA clarify what constitutes compliance when manufacturers have exercised due diligence but still lack complete supplier data?

Will the agency adopt a cooperative or collaborative approach to achieve compliance, especially where supply chain data gaps exist?"

McGowan-18: "The Proposed Rules also fail to address what will happen when a manufacturer, despite best efforts, is unable to provide all of the information elements that they 'must include' in their report... A manufacturer's inability to provide some of the required information because, for example, entities in its supply chain are unresponsive or affirmatively refuse to provide requested information, should not be considered out of compliance." Request for a known or reasonably ascertainable standard:

McGowan-19: "MPCA must clarify that a manufacturer will not be deemed non-compliant if the manufacturer can document diligence in its requests for information from supply chain vendors

and good faith reliance on the information received (or not received) from those vendors. Alternatively, MPCA should adopt the due diligence standard used by EPA for the TSCA 8(a)(7) PFAS reporting rule."

Sepesi-10 (pre-hearing comment and hearing testimony) "The statute does not mandate a specific reporting standard. MPCA proposed an onerous "due diligence" standard which is both unclear and unreasonable. Minn. R. 7026.0080. It requires manufacturers to carry out a mandatory and apparently exhaustive request that their supply chain provide "detailed disclosure of information required in part 7026.0030" that must continue "until all required information is known." Minn. R. 7026.0080, Subpart 2

This requirement is both vague and goes beyond what might be required under typical due diligence (generally, a reasonable person standard). MPCA is requiring manufacturers "to actively engage with their supply chain" and requires a mandatory and apparently exhaustive request to the supply chain that must continue "until all required information is known." SONAR p. 37. The Agency asserts that this effort is required in the name of promoting accountability and transparency across the entire supply chain. Id. That is not the goal of the statute. MPCA overstates the usefulness of information it seeks and moreover, its ability to use and translate this information into policy and future regulations.

MPCA's proposed due diligence requirement is naïve and burdensome and ignores supply chain realities. By definition, the rule cannot impose requirements for the "entire supply chain" because the reach of the statute is limited to sales only in Minnesota.

Without any discussion in the SONAR, MPCA has apparently rejected using the "known to or reasonably ascertainable" reporting standard used by EPA under TSCA. EPA and companies have considerable experience with the known to or reasonably ascertainable reporting standard starting with the Chemical Data Reporting (CDR) rule. See 40 CFR Part 711. EPA has experience and issued guidance regarding known to or reasonably ascertainable reporting standard under the CDR. EPA has adopted this as the reporting standard for the TSCA 8(a)(7) PFAS Reporting Rule. 40 CFR Part 705. Further, EPA has issued guidance regarding known to or reasonably ascertainable reporting standard under the PFAS Reporting Rule. Moreover, many of the same companies subject to the Minnesota PFAS reporting requirements have already conducted their product due diligence of TSCA reporting following the known to or reasonably ascertainable reporting standard.

In contrast to the objective known to or reasonably ascertainable reporting standard under TSCA, the contours of MPCA's proposed due diligence requirements are unclear and subjective. Under the proposed rule, there are no explicit off ramps for situations where suppliers or others are non-responsive. Compare this to EPA's recognition that "if manufacturers do not

know nor can reasonably make estimates for certain data elements, except for production volumes, they may indicate such information is Not Known or Reasonably Ascertainable (NKRA) to them. 88 FR 70516, 70521 (October 11, 2023). 'Comment Summary: MPCA should adopt a repor9ng standard that is realis9c and consistent with EPA's Known to or Reasonably Ascertainable repor9ng standard."

Zaman-11 (pre-hearing comment and hearing testimony): "The purpose of a due diligence standard is to notify entities of actions necessary to fulfill their compliance obligations, even in situations where the information is not ascertainable. The proposed standard of due diligence is vague and does not provide entities with the needed compliance framework. It simply states that reporting manufacturers must request reportable information from their supply chain until all required information is known. The agency should be aware that downstream users of chemicals will face situations where despite best efforts to request reportable information from suppliers, the downstream manufacturer will not obtain all reportable information from their suppliers. The proposed due diligence standard does not directly address this issue.

U.S. EPA typically requires that companies must report information known to or reasonably ascertainable by the reporting entity. This requires a thorough review of all documentation held within a company, including any information that a similarly situated company can be expected to have or have access to. This would include safety data sheets and any information provided by suppliers. Targeted external inquiries would be appropriate where the information is not held internally and documentation identifies an external source. In practice, downstream chemical users request information from their suppliers as needed.

Adopting this standard of due diligence would assure that companies conduct a thorough search for reportable information, while providing companies assurance against inconsistent enforcement or an inadvertent violation after a good faith effort to comply."

Neal-4 "Meeting the mandatory supplier disclosure standard under the PFAS Reporting Rule by January 1, 2026, poses a significant burden for companies operating within complex, global supply chains. In our experience, the probability of achieving a high rate of success is very low.

Our peers in the industrial automation industry have invested heavily in efforts to obtain full material disclosures from suppliers and other sources with limited success. This is primarily due to supplier reluctance to share sensitive information and limited resources on their part.

We recommend modifying the reporting standard, at least for the first two to three years, from mandatory supplier disclosure to a standard based on known or reasonably ascertainable information. This approach is more aligned with regulatory precedent and operational realities. Further justification includes:

• Due Diligence Approach is Mis-Aligned with Precedent: Mandatory supplier disclosure deviates from established PFAS reporting due diligence standards. Agencies such as the U.S. EPA under TSCA, Environment and Climate Change Canada (ECCC), and several state-level programs recognize reasonably ascertainable information as a valid and sufficient due diligence standard.

• Disproportionate Administrative & Cost Burden: Imposing a uniform, mandatory disclosure requirement across all products and suppliers creates a disproportionate administrative & cost burden on companies with complex supply chains and multi-tiered sourcing structures.

• Compliance Flexibility is Needed: The reasonably ascertainable standard is not a shortcut. It allows companies the flexibility to collect relevant information through a combination of supplier outreach, document review, and internal processes, while still demonstrating a robust and defensible compliance effort.

Our Ask: Can MPCA change the due diligence reporting standard from 'Mandatory Reporting Disclosure' to 'Reasonably Ascertainable'.

Proposed Solution: Consider adopting the due diligence standard of "reasonably ascertainable," consistent with the precedent set by EPA TSCA, Canada's ECCC, and the State of Maine."

Sloan-19: "Further clarification is needed for the Due Diligence provisions (7026.0080) of the proposed rule. As written, these provisions place the responsibility on reporting manufacturers to provide an amount of information that is impractical for complex product and supply chains. MPCA should establish a "known or reasonably ascertainable" threshold that is able to be met by reporting entities."

Cleet-12: "Add to Section 7026.0010 of the rule (Definitions) the following:

Known to or reasonably ascertainable by. All information in a person's or manufacturer's possession or control, plus all information that a reasonable person or manufacturer similarly situated might be expected to possess, control, or know."

lizuka-15: "We believe that when the required information is beyond the knowledge or ability of a manufacturer to reasonably ascertain it, a required reporting option similar to TSCA § 705.18(a) should be provided."

Denney-9: "Incorporate the federal "known to or reasonably ascertainable by" (KRA) reporting standard. The due diligence section in the proposed Reporting Rule states that manufacturers must request detailed disclosure of reportable information from their supply chain "until all required information is known." This requirement is overly burdensome, unrealistic, and at odds with PFAS reporting requirements in other jurisdictions. Instead, the MPCA should employ

the KRA standard as developed by the U.S. Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA).

PPWG's 2024 comments recommended that the Reporting Rule incorporate the KRA standard for several reasons. For one, as the MPCA noted in a Q&A last year,a reporting standard "acknowledges the challenges posed by unknowns in best testing practices, the unavailability of data from all supplier levels, and the varying costs of information gathering across organizations with different resources." The MPCA also stated in the Q&A that a due diligence standard will "ensure that due diligence efforts are reasonable and feasible for manufacturers."

Second, use of the KRA standard specifically would harmonize the Reporting Rule with PFAS reporting obligations in other jurisdictions. For instance, EPA has applied the KRA standard in its TSCA chemical data reporting rule for many years and recently extended its application to the TSCA PFAS reporting rule. Maine also incorporated the KRA standard into its PFAS in products law through the amendment passed last year. Similarly, ECCC's PFAS reporting requirements limit reporting to information that a company "possesses or . . . may reasonable be expected to have access to."

The proposed Reporting Rule states in the due diligence section that "manufacturers must request detailed disclosure of [reportable information] from their supply chain until all required information is known." This requirement is not a due diligence standard that is "reasonable and feasible for manufacturers" as the MPCA indicated in its Q&A from last year; instead, this requirement is more akin to a strict liability obligation where manufacturers will be expected to exhaust all internal and external resources in preparation for reporting. Furthermore, MPCA's Statement of Need and Reasonableness (SONR) for the proposed Reporting Rule includes no discussion of why the KRA standard was not used, despite several clear requests from stakeholders – including from PPWG – that this standard be incorporated into the rule. Instead, the due diligence section in the SONR states that "The MPCA recognizes that manufacturers rely on complex global supply chains, making it difficult to identify PFAS at various stages of production." The MPCA then contradicts this statement by requiring manufacturers "to continue to request information from their supply chain until the reporting requirements can be fulfilled."

PPWG therefore reiterates its previous recommendation that the KRA standard be used in the Reporting Rule by incorporating the following provision and definition: A manufacturer or group of manufacturers is only required to report information under this part to the extent such information is known to or reasonably ascertainable by the manufacturer or group of manufacturers. "Known to or reasonably ascertainable by" means all information in the

manufacturer's possession or control as well as all information that a similarly situated company might be expected to possess, control, or know."

Prero-23: "The Proposal states that "(a) manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain until all required information is known." The SONAR explains that "(i)t is reasonable to require manufacturers or a group of manufacturers to continue to request information from their supply chain until the reporting requirements can be fulfilled because PFAS can be present at various stages of product manufacturing and may be introduced at different points within the supply chain. By ensuring that manufacturers trace PFAS usage through multiple tiers of manufacturers in the supply chain, the MPCA can gather comprehensive and accurate data on PFAS in products, thereby preventing gaps in reporting that could undermine the rule's effectiveness."

CUC believes that such an approach fails to acknowledge the complexity of global supply chains, particularly for complex manufactured goods. As previously discussed, for complex manufactured goods, the number of components, and specifically using the definition for "components" in the Proposal, can be in the thousands. The number of companies involved in the manufacture of any constituent part can be numerous, difficult if not impossible to track, and even if they could be identified, many suppliers globally may simply refuse to cooperate. It is simply naïve to believe that repeated requests for information – assuming the parties can be identified - will actually result in the provision of information so that all required information is known.

In US EPA's Initial Regulatory Flexibility Analysis (IRFA) and Updated Economic Analysis for the TSCA 8(a)(7) PFAS Reporting Rule, EPA noted that there are "various challenges companies expect from contacting suppliers (e.g., foreign suppliers not responding or refusing to give information, suppliers going out of business, etc.)." Furthermore, it was EPA's understanding that "many PFAS are used in such a way that their use is a trade secret or there is no requirement that their use be stated in a specific application." EPA also recognized that article supply chains are complex, and for certain instances testing would be needed to determine the presence of PFAS. Because of these and other factors, EPA significantly revised the cost of compliance with the TSCA 8(a)(7) rule from $10.8 million to $876 million. This estimate was for compliance with a rule that required reporting data that was "known or reasonably ascertainable," not utilizing the unrealistic due diligence standard in the Proposal. It is evident that attempting to secure PFAS related information from suppliers is a costly and time intensive endeavor with no guarantee of success.

It behooves MPCA to use a familiar and accepted due diligence standard that has been used for decades by EPA for reporting – that information be "known to or reasonably ascertainable." "Known to or reasonably ascertainable by" is generally defined to mean "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know." This is a realistic standard with which industry is familiar and has been successfully used by EPA. Keeping the current due diligence standard will result in codification of an unachievable mandate and set manufacturers up for failure and non-compliance, even after valuable time and resources have been expended in efforts to comply.

To address the situation where PFAS content information cannot be obtained from a supplier due to trade secret or non-responsiveness concerns, CUC suggests that MPCA authorize and implement a joint submission system. Such a system would allow manufacturers to submit their suppliers' contact information when such suppliers were reluctant to provide chemical substance information to the customers due to confidentiality concerns. The system would directly contact the upstream suppliers so that those suppliers could submit the needed information directly to the state. The duty to report would then lie with the suppliers, and the reporting manufacturers would have fulfilled their reporting obligation by providing the supplier contact information."

Frederick-10: "We request that 'until all required information is known'… is updated to 'and take reasonable steps to obtain responses.'"
AdvaMed supports aligning MPCA's due diligence expectations with the federal TSCA PFAS reporting rule, which recognizes practical limitations and allows good faith efforts rather than absolute knowledge requirements.

Andes-5: "Section 7026.0080, Subp. 2 requires manufacturers to request detailed disclosure of information from their supply chain "until all required information is known." This standard is unreasonable; it seems to impose an absolute obligation to obtain information, even if suppliers refuse to disclose it or do not have it available, despite their own good faith efforts to obtain the information from other parties in the supply chain. The lack of any reasonable limitation on this obligation risks imposing a heavy ongoing burden on regulated parties for little benefit. Instead, MPCA should use the "known or reasonably ascertainable" standard that is applied by USEPA under the Toxic Substances Control Act in similar situations. USEPA defines this test to cover "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know." 40 CFR 704.3. The emphasis in this USEPA test on reasonable efforts avoids the impractical, infeasible and never-ending obligations that are imposed in the Proposed Rules. MPCA should use the USEPA test."

Frisbie-6: "Due Diligence (Part 7026.0080, subp. 2): The due diligence requirement is overly burdensome and should be revised to provide a reasonable end point to the level of diligence a manufacturer must perform.

Unlike the "known or reasonably ascertainable" standard in the EPA TSCA PFAS Reporting Rule, the Proposed Rule requires manufactures to "request detailed disclosure of information required in Part 7026.0030 from their supply chain until all required information is known.

Wabash appreciates MPCA's goals with the Proposed Rule, as stated in the SONAR to "gather comprehensive and accurate data on PFAS in products," and that "this thorough approach ensures that all relevant PFAS data is captured…" But the reality is that a manufacturer may never be able to meet this standard given the complexities of supply chains, the number of components that may be involved in products, and the potential for slow responses or no responses from suppliers.

Wabash understands that the Proposed Rule's extension process is in part intended to address this challenge, but the "until all information is known" standard may in practice be impossible to achieve. Wabash therefore supports a slightly more flexible standard, such as the "known or reasonably ascertainable" standard of the EPA TSCA Reporting Rule. If the Proposed Rule is not modified, MPCA is likely to receive a great number of extension requests, possibly repeatedly, which would not further MPCA's goals of gathering relevant data on intentionally added PFAS in products sold, offered for sale, or distributed for sale in the state."

Nagy & Tatman-11 (pre-hearing comment and hearing testimony): "The CPMCoalition believes the requirement for manufacturers to enquiry the supply chain "until all required information is known" is unrealistic and not achievable. CPMCoalition recommends using the EPA standard found in the TSCA 8(a)(7) PFAS Reporting Rule, "known or reasonably ascertainable," for complex products."

Turner-6: Use TSCA "Known or reasonable ascertainable by"

Morrow-2: "Our client urges MCPA to adopt a "known to or reasonably ascertainable by" reporting standard into the final rule. The term "known to or reasonably ascertainable by" is defined in 40 C.F.R. § 705.3, to mean all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. This approach would be consistent with the Environmental Protection Agency's TSCA Section 8(a)(7) PFAS Reporting Rule (40 C.F.R. Part 705) due diligence standard, as well as Maine's recently amended PFAS in Products law (38 MRSA §1614). Alignment of reporting standards across jurisdictions reduces confusion and complexity for manufacturers and promotes compliance. Furthermore, the KRA standard is a well-understood threshold for

manufacturers to determine what information must be reported. Manufacturers with complex, global supply chains may be unable to obtain complete PFAS data from upstream suppliers, therefore Minnesota's currently proposed due diligence requirement may not be feasible. The KRA standard would allow companies to conduct reasonable due diligence without being held liable for data they could not access despite best efforts."

Sloan-20: "Further clarification is needed for the Due Diligence provisions (7026.0080) of the proposed rule. As written, these provisions place the responsibility on reporting manufacturers to provide an amount of information that is impractical for complex product and supply chains. MPCA should establish a "known or reasonably ascertainable" threshold that is able to be met by reporting entities."

Friest-21: "The proposed rule requires manufacturers to request detailed disclosure of information from their supply chain until all required information is known. This sets up a requirement for never-ending inquiries to supply chains, even when it is evident that additional information will not be forthcoming. Information may be unattainable for many reasons including uncooperative suppliers, or simply a lack of available detail to disclose. If suppliers are unresponsive or do not have information to disclose, the manufacturer does not have the ability to compel a response. Similar reporting requirements have utilized a more reasonable standard of due diligence, described as "what is known or reasonably ascertainable." The standard of due diligence in the proposed rule is extreme, unnecessary, and completely unreasonable. It serves no purpose other than to impose additional burdens on manufacturers attempting to make good faith efforts to comply with reporting requirements. This is a completely unattainable standard of due diligence that essentially ensures non-compliance and may impact product availability in the state."

Fowler-7: "Furthermore, MPCA should further clarify the due diligence standard for reporting under Section 7026.0080. Currently this section states that supply chain information requests are acceptable but that manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain until all required information is known. This standard is more burdensome than other PFAS reporting standards, including EPA's PFAS reporting requirements under TSCA, which requires reporting of "known to or reasonably ascertainable" information. We request MPCA provide further definition or guidance on this topic as the follow-up with suppliers can go on endlessly with no further information provided by the suppliers. This adds additional, burdensome requirements on the manufacturers required to report PFAS information for products. We are not in control of how our suppliers respond to these requests. Many suppliers are in countries that have no experience with PFAS or legal obligation to disclose PFAS to their customers. We request MPCA utilize the due diligence standard allowing the manufacturer to rely on information or certifications provided

by suppliers and other information to the extent it is known or reasonably ascertainable to the manufacturer. This aligns with the TSCA PFAS reporting due diligence requirement."

Rydkin-4 (pre-hearing comment and hearing testimony): "The strict requirement in MPCA's proposal—for reporters to continue hounding suppliers "until all information is known" —for every individual component purchased from suppliers is an untenable standard to meet. Canada's ECCC, and the US EPA have adopted and use the "information known to or reasonably ascertainable by the manufacturer" language. Therefore, DAA requests that the MCPA proposed rule be modified to replace the requirement of "until all information is known," with "information known to or reasonably ascertainable by the manufacturer," allowing manufacturers to submit information for their products that is known or reasonably ascertainable in harmonization with reporting requirements for the US EPA and Canada's ECCC."

Keane-15: We request that a manufacturer is only required to report information to the extent such information is "known to or reasonably ascertainable" by that manufacturer. The "known or reasonably ascertainable" standard is used by the EPA in its PFAS TSCA reporting. Application of TSCA's "known to or reasonably ascertainable by" standard would allow notifying entities to rely on supplier declaration and to limit to manageable levels the scope of due diligence that manufacturers would be expected to undertake with upstream suppliers.

Herlihy-4: "We ask that MPCA align its due diligence requirements with EPA's standard in its PFAS Reporting Rule promulgated under the Toxic Substances Control Act (TSCA).

MPCA's current requirement that manufacturers "continuously contact suppliers until all required information is known" is unrealistic. The EPA standard under TSCA 8(a)(7) allows reporting of information that is "known or reasonably ascertainable," and allows use of estimates or "Not Known or Reasonably Ascertainable" (NKRA) responses when appropriate. MPCA should mirror this practical and achievable standard."

Thomas-26: "MPCA should align the due diligence requirements in this proposed rule with other jurisdictions and reporting bodies. The requirements set forth in this section make it unreasonable and impossible for those subject to the rule to reach compliance.

In considering due diligence requirements, the TSCA reporting rule requires for reporters to provide information that "Such information would be reported for each year since 2011 in which a covered PFAS was manufactured, to the extent such information were known to or reasonably ascertainable by the reporter." In the case of supply chain requests (MINN. R. 7026.0080, Subp. 2) we are concerned that suppliers will not provide their trade secret information to a customer inquiry unless they have confidence that it will continue to be protected as a trade secret. There are also circumstances that the supplier's trade secret may

not be their customer's (an upstream manufacturer) trade secret. Therefore, we request that "until all required information is known" (line 13.15) is updated to "and take reasonable steps to obtain responses."

RESPONSE: The MPCA does not believe EPA's "known or reasonably ascertainable" standard is sufficient. Without a more stringent standard, MPCA will not be able to meet the intent of the statute of what type of PFAS, concentration, and function is in a product. Nor understand the full scope of PFAS use in products. The standard set by the statute is not to report only what a manufacturer might know. A "known or reasonably ascertainable" standard would not require manufacturers to continue to pursue required information.

EPA's reporting under TSCA is a one-time, retrospective report on the use of PFAS in products. A "known or reasonably ascertainable" standard may make more sense in that framework of focusing on past use, than Minnesota's framework. Minnesota's reporting is ongoing and data must be updated annually. It is reasonable then for a manufacturer to continue to be required to collect information on PFAS use in their products as the reporting is not one-time.

Reasonably ascertainable is not an enforceable standard, as what is reasonable to one individual may not be to others. A manufacturer might reach out to suppliers once or not at all and declare that the information was not 'reasonably ascertainable.' The purpose of Minnesota's PFAS reporting system is to collect information about all PFAS uses in products sold in Minnesota, which will aid the agency's mission to protect and improve the environment and human health.

Reported information will also be used in the future to help inform the currently unavoidable use (CUU) process. A manufacturer will need to know the PFAS content of their products when applying for a CUU designation. Additionally, this standard is the same as the standard for manufacturers impacted by the 2025 PFAS prohibitions. Under the 2025 prohibitions, a manufacturer cannot sell a product if it is in one of the 11 categories and contains intentionally added PFAS. There are no exemptions under the 2025 nor 2032 prohibition because that information was not reasonably ascertainable. A manufacturer must know if PFAS are intentionally added and stop selling those products in Minnesota.

It is reasonable to ask manufacturers to continue to pursue all information regarding PFAS use in their products. The MPCA has provided several options to manufacturers if a supplier is unresponsive or claiming the information is confidential. They are able to test the product for total organic fluorine (TOF) and report those results in place of specific

chemical identities. They are also able to make arrangements for the supplier to report on their behalf. In addition, provisions have been made in the proposed rule such as providing ranges of PFAS concentration or mark it unknown, to ease the reporting process for manufacturers.

Minnesota is not alone in having a high standard for due diligence. There are other product regulations in the U.S. that require manufacturers to know all required information about specific chemical content in their products. One example is the Oregon Toxic-Free Kids Act, that requires a manufacturer that sells children's products in Oregon to report information about all high priority chemicals of concern for children's health that are present in their products. The law expects a manufacturer to find unknown information through their supply chain or test the product for the chemicals. There is no exemption because the information was not reasonably ascertainable. However, OR does not have this standard defined in rule.

The MPCA added this language for clarity to help manufacturers understand what is expected of them for this rule. The agency could have not included a due diligence standard and just relied on what is stated in the statute.

In the enforcement of such provisions, the agency would consider the multiple steps a manufacturer took to consult their supply chain to fill in any gaps in the reported data. It is recommended to maintain relevant documentation as MPCA staff will take all information into consideration to determine whether a manufacturer has met the due diligence standard.

Safety data sheets:

Badri-1 "I'm reaching out for clarification regarding the proposed PFAS reporting rule. Our company distributes hundreds of chemical products in Minnesota, primarily serving the aerospace and defense industries. As such, we understand we may be subject to reporting requirements as we introduce these substances into the state. We rely on safety data sheets (SDSs) to determine product composition. However, I'm concerned about scenarios where PFAS may not be disclosed on the SDS. Specifically, I would appreciate your guidance on the following: • Would we be required to obtain declarations from manufacturers for each product we distribute in Minnesota, confirming whether or not the product contains intentionally added PFAS? o If so, securing these declarations in advance would be a significant challenge. Without confirmation, we may be unable to distribute certain products without conducting our own testing, which could be prohibitively expensive. • Alternatively, would reliance on SDSs be considered sufficient, given that PFAS should be disclosed due to their hazardous nature? Your

input on these points would be extremely helpful in planning our compliance efforts. I look forward to your response.

> **RESPONSE:** The agency appreciates your questions on safety data sheets and obtaining information regarding intentionally added PFAS in products you distribute in Minnesota. In the proposed rules for due diligence standards under part 7026.0080, manufacturers bear the responsibility for reporting products with intentionally added PFAS and requesting detailed disclosure of information required as well as maintaining records of all communications including emails, letters and responses they receive from other entities in their supply chain. The proposed rules in part 7026.0030 provide specific content required in the report, and manufacturers need to provide that information regardless of whether or not it is available on a safety data sheet. All PFAS are not required to be listed in an SDS, and the SDS only requires disclosure if an ingredient is >1% (10,000 ppm) or lesser if required by cut off values for certain hazard classes. This same section of the rules clarifies that manufacturers can report "present but the amount or concentration range is unknown" or use a total organic fluorine test to confirm if some level of PFAS is present in each product and/or component. Manufacturers are expected to provide updates or additional information as it becomes available.

Recordkeeping:

Iizuka-16: Subp. 3. Documentation and recordkeeping, Section C, specifies that the date when PFAS are removed from the supply chain is the starting point for recordkeeping, but it is impossible for manufacturers to know when that date occurs. After a manufacturer has sold a distributor a product containing PFAS which was intentionally added, the manufacturer cannot know when the distributor has finished the sales of the product. We would like to request that recordkeeping begin from the "manufacturing date "of the product, which is controllable by the manufacturer.

Iizuka-17: MPCA should clarify the documents that need to be kept as records in Section A of 7026.0080DUEDILIGENCE. Subp. 3. Documentation and recordkeeping. We would like to request that the scope of recordkeeping be limited to documents that prove the presence of PFAS selected by the manufacturer.

Thomas-27: "We are also concerned that the documentation and recordkeeping language in 7026.0080, Subp. 3. A-C (lines 13.16-14.3) is overly broad and unreasonable. We propose that "A manufacturer or group of manufacturers must maintain documentation of its relevant reporting responsibility agreements with and/or notifications from other manufacturers as provided in part 7026.0020, Subp. 2." Additionally, Subp.3.C. (lines 14.1-14.3) would create a permanent retention policy for products that are not subject to the ban or obtain a critical use

exemption and are not reformulated. We would ask that MPCA revise the language to specify a length of time (ex: 3 years) or while the reporting responsibility agreement remains in effect."

Friest-22: "The proposed rule requires documentation of all communication with suppliers to be kept for at least five years after products containing intentionally added PFAS are removed from the supply chain (paragraph C). The language is confusing and the requirements to maintain documentation are open-ended. If PFAS remains in use in a component as a "currently unavoidable use", does that mean that records related to that PFAS and/or part must be kept forever? Reasonable limits on the length of time that documentation must be kept, should be included in clear, understandable language. Retention of documentation should not be required beyond 5 years after submission of a report."

Kallen-20 (pre-hearing comment and hearing testimony): "Lines 13.17 – 13.20 require that documentation of all communication between manufacturers regarding PFAS reporting compliance and responsibility agreements be maintained. This is overbroad and onerous, especially given the five-year retention period proposed in lines 14.1 – 14.3. Furthermore, these reporting responsibilities already exist between suppliers and customers who have on-going responsibilities to share information on product material substance content to comply with restricted and declarable substance regulations."

Hall-31: "7026.0080, subp. 3.C A manufacturer or group of manufacturers must maintain <u>required</u> records according to this subpart for five years <u>after any report that relies on such records to demonstrate completeness of submission or compliance with due diligence obligations.</u> ~~products containing intentionally added PFAS are removed from the supply chain.~~

• The timeframe for maintaining this volume of data and information (even after a company has ceased selling product into the state) is unreasonable, impracticable, and overly costly.

• It is also inconsistent with other, established approaches for recordkeeping and due diligence requirements for regulated entities."

Branstad-40: "Subpart 3.A. The proposed rule contemplates that a "manufacturer or group of manufacturers must maintain documentation of all communication with other manufacturers, including emails, letters, and responses regarding PFAS reporting compliance and reporting responsibility agreements as provided in part 7026.0020, subpart 2." We interpret the language to apply only to manufacturers who participate in an agreement with other manufacturers. Also, the scope of this provision is overly broad. The requirement to maintain "all" records is an unreasonable burden, particularly if the intent of the requirement is to assure retention of

records necessary to document compliance with the rule. We offer the following less burdensome language:

> A manufacturer or group of manufacturers must maintain documentation of ~~all~~ communication with other manufacturers~~, including emails, letters, and responses~~ regarding intentionally added PFAS reporting compliance and reporting responsibility agreements as provided in part 7026.0020, subpart 2, sufficient to demonstrate compliance with this rule."
>
> **RESPONSE:** The SONAR discusses the reasonableness of recordkeeping on page 38The agency is requiring that manufacturers maintain records for five years after the product is removed from the supply chain. This five-year recordkeeping requirement is found elsewhere in MPCA rules (Chapters 7007, 7011, 7017, and 7019) but has been modified slightly for this proposed rule so that instead of ending five years after the report is submitted, it is required for five years after the product is removed from the supply chain. This requirement is to account for the long-term risks associated with PFAS and to support ongoing monitoring and enforcement of PFAS use in products.
>
> The MPCA also believes that recordkeeping to this extent is a benefit to the manufacturer, as it provides proof that they met the required reporting and due diligence standards in rule. These ongoing records may also be needed to support their request for a currently unavoidable use determination in 2032. If the agency had not provided requirements for recordkeeping in the proposed rule, it would be unclear to manufacturers on what could be used to provide evidence of effort for compliance. This may have resulted in some manufacturers not keeping any retention of records, and others saving all records. Providing this requirement in rule provides a clear and reasonable expectation for manufacturers' recordkeeping.

Comments specific to the rule language:

Hall-32: "7026.0080, subp. 2 PREFERRED OPTION 1 • Delete entire subpart OPTION 2 • Delete current language and replace with: "Manufacturers should include in their reports any information they have obtained from suppliers within their supply chain that is within the scope of information required for submission. This regulation does not require manufacturers to undertake any action to request information from any third-party, particularly any third-party that has no independent reporting obligation.

• An affirmative and potential ceaseless obligation to request information from an undefined "supply chain" is improper as a matter of law because, among other things, it (1) is impermissibly vague and unenforceable given the absence of a reasonable definition of "supply

chain," particularly when the term that can, for even a single product subject to the reporting law, require detailed information from a complex global web of suppliers for necessary materials / components; (2) seeks to improperly expand the rule-making beyond MPCA statutorily-defined authority under Subdivision 2 of the stature; (3) imposes an unprecedented and expansive burden to affirmatively and repeatedly seek to force companies far removed from Minnesota to provide information.

• The provision is also unlawful because it improperly imposes a disparate impact on manufacturers that rely on suppliers that are not independently required to report under Minnesota's law. Manufacturers who rely more heavily or extensively on suppliers who already sell/distribute their products in Minnesota can more easily obtain timely and complete information with limited additional burden. Manufacturers whose suppliers do not already have such obligation may not understand the requirement; may not have mobilized with readily available responses; may provide incomplete, inaccurate, or untimely responses; or may simply be unable or unwilling to provide the information despite repeated, costly, and frustrating requests Forcing only these manufacturers to compete in the Minnesota market while bearing the substantial additional costs for pursuing, perhaps futilely, this third-party information "until all information is known" is unlawful."

Hall-33: "7026.0080, subp. 3.A REPLACE EXISTING SUBPART 3.A WITH: A manufacturer or group of manufacturers must maintain sufficient documentation to, upon request, demonstrate to MPCA that known or reasonably ascertainable reporting information has been provided to MPCA for products or components in scope of the reporting requirement or, if the manufacturer has not yet submitted complete information, that manufacturer has undertaken the reasonable and customary business due diligence practices to review reasonably available information within its custody and control to complete the reporting requirements. This documentation could include communications (e.g., emails, letters, forms) exchanged with suppliers.

Alternatively: "A manufacturer or group of manufacturers must maintain documentation of its relevant reporting responsibility agreements with and/or notifications from other manufacturers as provided in part 7026.0020, subpart 2."

• This is incredibly overbroad and onerous (especially given the retention period proposed.

• The data management requirements to maintain, particularly for years and years, EVERY email with all suppliers is an unnecessary and unreasonably costly requirement. It is inconsistent with and far more expansive that other product or chemical reporting laws.

• The language about maintaining all documents relating to reporting and compliance all sweeps up other company documents that should not be subject to the record retention requirements or considered as due diligence."

Branstad-41: "Subpart 2. The expectation of "until all required information is known" is unreasonable and ignores the realities of supply chains. Suppliers will not provide their trade secret information in response to a customer inquiry unless they have confidence that the customer will continue to protect it as carefully as the supplier, which cannot be guaranteed, even with the use of legal tools like non-disclosure agreements, especially if that information is destined to be shared across multiple levels of a supply chain or multiple supply chains, or reported to an agency with no assurance that trade secret status will be granted. We offer the following language to make the expectation here more reasonable:

> A manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain necessary to obtain ~~until~~ all required information ~~is known~~ and take reasonable steps to obtain responses.

Again, MPCA must clarify that a manufacturer will not be deemed non-compliant if the manufacturer can demonstrate reasonable diligence in its requests of supply chain vendors and good faith reliance on the information received (or not received) from those vendors."

Melkonian-7: Recommendation - "Notwithstanding the rest of this subpart, a manufacturer that cannot obtain all required information is deemed compliant with this subpart if it demonstrates a good faith effort in attempting to obtain it."

Palin-25 (pre-hearing comment and hearing testimony): "The Due Diligence Standard of "Until All Required Information is Known" is Burdensome and Does Not Comport with Reporting Deadlines: The draft PFAS in Products: Reporting and Fees Rule proposes regarding supply chain information requests that "[a] manufacturer or group of manufacturers must request detailed disclosure of information required in part 7026.0030 from their supply chain until all required information is known." Auto Innovators finds this to be an impracticable and unreasonable due diligence threshold and recommends that PCA reconsider. PCA explains this choice in the SONAR:

> Subpart 1 is proposed to make clear that a manufacturer must assume responsibility for reporting unless notification has been received from a manufacturer in the supply chain in accordance with part 7026.0020, subpart 2, confirming that the reporting requirements have been fulfilled…. By ensuring that manufacturers trace PFAS usage through multiple tiers of manufacturers in the supply chain, the MPCA can gather comprehensive and accurate data on PFAS in products, thereby preventing gaps in

reporting that could undermine the rule's effectiveness. This thorough approach ensures that all relevant PFAS data is captured, regardless of where in the supply chain the chemicals were introduced, promoting transparency and accountability across the entire manufacturing process. It also helps mitigate the risk of non-compliance, ensuring that no stage of the production process is overlooked and that the ultimate responsibility for accurate reporting is fulfilled.

Manufacturers of products subject to the notification requirement should be able to rely solely on documents or information provided by suppliers and the supply chain to determine whether such products or product components contain intentionally added PFAS. If a supplier informs the manufacturer that the components they purchase that are incorporated into their end products do not contain PFAS, a manufacturer should be able to rely on that information in the absence of contrary evidence. The notification requirement should make clear that a manufacturer's inquiry regarding PFAS content with respect to any supplier ends with the existing information provided to a manufacturer by that supplier.

It would be unreasonable for the PFAS in Products: Reporting and Fees Rule to require manufacturers to mount a burdensome due diligence effort essentially to prove what they already believe, namely the absence of PFAS in parts and components that go into their end products. Most manufacturers have had little or no reason to collect information from their foreign suppliers about the presence of PFAS in the components they use. End product manufacturers typically have complex global supply chains, and each end product can have thousands of individual parts and components sourced from a variety of suppliers. For example, a side mirror alone can contain over 30 individual parts.

The approach proposed by PCA is clear overreach. Amara's Law does not authorize investigation of a manufacturer's supply chain. PCA should not use a reporting requirement for products to get data that is beyond the scope of the statute and to force manufacturers to investigate the entire global supply chain. As previously explained, many suppliers may be outside of the scope of Amara's Law and may not be legally obligated to report their information to PCA.

As discussed above, both our products and our supply chain are highly complex. The automotive industry will struggle to get information "until it is known," and we expect that to get information potentially 10 tiers down through the supply chain will take several months at best. That due diligence standard does not comport with the reporting deadline of January 1, 2026—less than eight months from now. Additionally, the requirement to keep pursuing information "until it is known" will mean substantial expenditures of reporting company staff time and resources; if OEMs cannot determine the information or the supply chain will not

provide it in that time, then presumably OEMs would not be permitted to sell vehicles, which would be an unreasonable outcome.

We recommend that PCA adopt the due diligence threshold that EPA set for its similar Toxic Substances Control Act Section 8(a)(7) PFAS reporting rule, where EPA acknowledged the complexity and burden required by gathering such data. That requirement is for obligated entities to report required information "to the extent known to or reasonably ascertainable by them[.]" In turn, "known to or reasonably ascertainable by" is defined as "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know." This requirement is more tempered and does not require reporters to search to the ends of the earth to find information, as is currently the case under this draft. Even EPA itself recognized that "it may not be within the scope of 'reasonably ascertainable' to survey all articles and products, especially for article importers." EPA also notes that "if particular information cannot be derived or reasonably estimated without conducting further customer surveys (i.e., without sending a comprehensive set of identical questions to multiple customers), it would not be 'reasonably ascertainable' to the submitter. Thus, there is not a need to conduct new surveys for purposes of this rule." This makes clear how much more burdensome Minnesota's standard is beyond what the EPA found in 2023 to be an appropriate level of due diligence. PCA already referenced the TSCA 8(a)(7) rule when proposing a definition for the term "publicly available" as stated in the SONAR.

Maine, the only other state with a PFAS reporting requirement that comes close to being as extensive as the one proposed by Minnesota, also uses EPA's "known to or reasonably ascertainable by" standard."

> **RESPONSE:** While the MPCA appreciates these comments that have provided suggestions for the proposed rule language, the MPCA does not find EPA's "known or reasonably ascertainable" standard enforceable. See the MPCA's response to "Request for Known or Reasonably Ascertainable Standard" under part 7026.0080 of this document for a more in-depth response.

Part 7026.0090 EXEMPTIONS

Replacement and aftermarket parts:

Iizuka-18: We request the derogation for service parts from reporting. Service parts mean the parts for repair (i.e. enabling to use the products longer) and consumables or replacing parts for EEE (i.e. being consumed during product use and need to be replaced or resupplied regularly). Normally, service parts are already reported as a part of products since they are the same with

original parts. If service parts are separately reported from the products themselves, the part of service parts and their original parts will be duplicated and the report won't be correct.

Erny-9 (pre-hearing comment and hearing testimony): "Will replacement or aftermarket parts be exempt from the reporting requirement, particularly if sold individually outside of the original vehicle?"

> **RESPONSE:** The MPCA appreciates the comments regarding replacement and aftermarket parts. While the rule does not provide a categorical exemption for these parts, the agency's intentions are to be consistent with a response provided during the public workshop on July 18, 2024, that manufacturers can report replacement parts sold moving forward as a component in a given product being reported with intentionally added PFAS.
>
> However, if a third-party manufacturer independently produces and sells an aftermarket or replacement part that contains intentionally added PFAS and is sold, offered for sale, or distributed in Minnesota, that third-party manufacturer is responsible for reporting the part.

Part 7026.0100 FEES

Fees for an extension request:

Branstad-42: "Subpart 5. We oppose the proposed imposition of a fee for submission of an extension request. In most instances, extension requests will be prompted by factors beyond the control of the manufacturer. These factors may include MPCA inaction or delayed action, such as delayed issuance of reporting guidance, delayed rollout of the reporting database, or delayed promulgation of final reporting regulations. A manufacturer should not be burdened with fees to request an extension, when the extension is, in all likelihood, necessitated by factors beyond the manufacturer's control."

Rondeau-3: "Additionally, while we appreciate the allowance to file an extension while we continue to investigate our supply chain, paying $300 fee per extension request is an additional cost for products that may not contain PFAS. IDEXX has been investigating our supply chain for the past 7 years for regulated chemicals, including PFAS, and have partnered with Claigan Environmental to better understand the use of PFAS in the electronics sector and still have limited success in gathering comprehensive data for our most complex materials. Additionally, some of our veterinary medical devices contain more than 1000 complex electrical components, including PCB (printed circuit boards) and other complex electrical and

mechanical assemblies. These are purchased parts made by manufacturers often multiple tiers down in our supply chain. We are prepared to report on what is known and continue to investigate our supply chain, but it is economically unfeasible to only grant 90-day extensions and pay $300 for each extension fee. Instead, an extension should be granted for good faith efforts with no penalty fee. Alternatively, we suggest capping the extension fee to a reasonable one-time fee and/or lengthening the extensions granted to 12 months or the annual recertification window."

RESPONSE: The proposed fee for an extension request is a one-time $300 fee per manufacturer that is intended to cover MPCA staff time to review the request.