40410 Pollution Control Agency Post-Hearing Comment Period on PFAS in Products Reporting and Fee Rule

Closed Jun 23, 2025 · Discussion · 15 Participants · 1 Topics · 15 Answers · 0 Replies · 0 Votes

15	1	15	0	0
PARTICIPANTS	TOPICS	ANSWERS	REPLIES	VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

15 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Elizabeth Emerson · Citizen · (Postal Code: unknown) · May 27, 2025 8:16 am

0 Votes

Polaris comments to MN proposed permanent rules relating to PFAS in products; reporting and fees

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Jennifer Breitinger · Citizen · (Postal Code: unknown) · Jun 04, 2025 4:13 pm

0 Votes

Animal Health Institute comments to MN proposed permanent rules regarding PFAS in products.

Addison Otto · Citizen · (Postal Code: unknown) · Jun 16, 2025 4:22 pm

0 Votes

The MPCA has provided responses to the comments received during the pre-hearing comment period and the hearing in the attached document. The MPCA will file an additional response to comments before the end of the post-hearing comment period.

Perri Moeller · Citizen · (Postal Code: unknown) · Jun 17, 2025 2:00 pm

0 Votes

Honeywell appreciates the opportunity to comment on Minnesota's PFAS In Products Reporting and Fees rule. Please do not hesitate to reach out if MPCA has further

questions or comments.

Andrew Morley · Citizen · (Postal Code: unknown) · Jun 19, 2025 11:40 am
0 Votes

Please find the attached comments from the Minnesota Chamber of Commerce.

Steve Bennett · Citizen · (Postal Code: unknown) · Jun 20, 2025 8:51 am
0 Votes

Comments submitted on behalf of the Household & Commercial Products Association

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Matthew Bennett · Citizen · (Postal Code: unknown) · Jun 20, 2025 1:15 pm
0 Votes

Perlick's additional comments submitted following the May 29, 2025, public hearing to provide further clarity regarding enforceability concerns for out-of-state manufacturers. This includes recommending a shift in reporting responsibility from manufacturers to first distributors to improve legal clarity, practical enforceability, and consistency with interstate commerce protections.

Jeffery Sepesi · Citizen · (Postal Code: unknown) · Jun 22, 2025 8:02 am
0 Votes

Please find attached comments on the proposed reporting and fee rule on behalf of a client with Minnesota operations.

Emily Schwartz · Citizen · (Postal Code: unknown) · Jun 23, 2025 11:16 am
0 Votes

Please see attached comments submitted on behalf of a client who is a worldwide leader in the manufacture of information and communications technology products.

Jason Malcore · Citizen · (Postal Code: unknown) · Jun 23, 2025 2:38 pm
0 Votes

Please see attached comments from the Association of Equipment Manufacturers.

Quinn Carr · Citizen · (Postal Code: unknown) · Jun 23, 2025 2:47 pm
0 Votes

The MPCA has provided responses to the comments received during the pre-hearing comment period and the hearing in the attached document. The MPCA filed a part 1 document of responses on 6/16/2025, and this is the remaining responses from the agency before the rebuttal period begins.

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Closed Jun 23, 2025 · Discussion · 15 Participants · 1 Topics · 15 Answers · 0 Replies · 0 Votes

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Peter Lance · Citizen · (Postal Code: unknown) · Jun 23, 2025 3:03 pm
0 Votes

Comments submitted by the Fluid Sealing Association

Chris Cleet · Citizen · (Postal Code: unknown) · Jun 23, 2025 3:27 pm
0 Votes

Please see the attached comments from the Information Technology Industry Council (ITI)

Erika Millon · Citizen · (Postal Code: unknown) · Jun 23, 2025 3:52 pm
0 Votes

Please see the attached comments submitted by Watlow

Daniel Moyer · Citizen · (Postal Code: unknown) · Jun 23, 2025 4:29 pm
0 Votes

Please see attached comments from CTA

RECEIVED
By: OAH on 5/27/2025
Elizabeth Emerson Attachment

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

Revisor ID: R-4828

OAH Docket No. 5-9003-40410

Minnesota Rules: Chapter 7026

May 21, 2025

Polaris recommends a two year extension to comply with the requirement to ensure complete reporting. The current six-month period for data collection, analysis, and reporting is insufficient for manufacturers like Polaris with a large product portfolio, including complex vehicles, accessories and apparel.

7026.0020, Subpart 1 – Clarification is needed for 'distributed' and should clearly indicate that the scope of product is for those distributed within the state of Minnesota for sale in Minnesota. As a manufacturer of products manufactured within the state, but distributed from our manufacturing facilities for sale outside of Minnesota, clarification is necessary as this category of products should not be in scope for reporting.

7026.0020, Subpart 1 – Report for each product/component: Polaris requests greater clarity for what is intended to be considered a product/component and that clarification should allow for broad groupings based on product types. At $1,000 per report, costs will be excessive if a report is required for each unique variation of product made with thousands of parts from hundreds of suppliers. Product types should be broad. For example, all-terrain vehicle, motorcycle, jacket, pants, personal protective equipment. This approach accomplishes sufficient reporting without the need and cost to report for all unique combinations.

7026.0020, Subpart 2 – Having all manufacturers assume responsibility will result in over-reporting the use of PFAS in products. Distinction should be made that only manufactures of end-use products have responsibility for reporting.

7026.0300, Subpart 1 – Language should be modified so that reports need only be submitted for products put into the market after December 31st, 2025. Traceability and records do not exist for providing reports for products in stores or in warehouses prior to January 1, 2026.

7026.0040, Subpart 4 – Fees charged for updates will not encourage manufacturers to provide updates as they continue due diligence in collecting PFAS data.

7026.0070 – Trade Secret Data must be granted and provided for all reporting. The litigation environment associated with PFAS is intense. Manufacturers who fulfill their reporting obligations must be afforded protection for their data in order not to be made public, mitigating lawsuits similar to what the BiC company encountered when reporting PFAS into the state of Maine.

Service parts should not require their own report when those parts are included in a complex product report.

No reporting method nor reporting template has been made available to appropriately assess full impact, nor provide full commentary for what will be required to fulfill reporting requirements. Additional commentary may be needed when these details are made available.

Mike Orlikowski

Materials Compliance Manager

Michael.orlikowski@polaris.com

651-408-6626

RECEIVED
By: OAH on 6/4/2025

Jennifer Breitinger Attachment

ANIMAL HEALTH INSTITUTE

Representing manufacturers of animal health products

May 21, 2025

Thank you for the opportunity to provide comments on R-4828, Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees.

Minnesota is the only state that has enacted a broad PFAS reporting requirement that does not exempt animal health products. In HF 2310, the legislature was either silent on specific definitions, or gave the MPCA broad leeway to provide flexibility and clarity through rulemaking.

First, HF 2310 was silent on whether products would be considered "products with intentionally added PFAS" if the product itself was not a fluorinated chemistry, but its packaging was.

While biologics (including vaccines) and medical devices do not contain active PFAS ingredients, their packaging can include PFAS chemistries in stoppers for injectables, bottles, and syringe barrels and caps. PFAS helps prevent adulteration of biologics and medical devices. A PFAS coating provides an effective barrier against organic and inorganic extractables and minimizes interaction between the biologic and the primary packaging component. The tiny amounts of PFAS in biologics packaging and medical device packaging, compared to the difficulty and cost of complying with the reporting requirement, and the legislature's silence on the issue, gave the MPCA the flexibility to clarify that "product" and "product component" do not include product packaging and that product packaging is excluded from the Products Containing PFAS law.

The certified draft does provide clarity: "Component includes packaging only when the packaging is inseparable or integral to the final product's containment, dispensing, or preservation". The conclusion is that the more important a fluorinated chemistry is to the stability of your product's packaging, the more likely it is that your product will be considered a product with intentionally added PFAS. If the goal is to incentivize shifting packaging away from fluorinated chemistries, it seems counterproductive to specifically target packaging for which there are no alternatives.

If the goal is to provide the public with transparency, it would make more sense for MPCA's database to simply say "vial stoppers" and "syringes" than compile information on every biologic that is packaged in a syringe or vial. In addition, since biologics manufacturers do not make the packaging their products are sold in, obtaining the necessary information to report will be difficult.

Second, HF 2310 provides as follows:

Subd. 8. Exemptions. (a) This section does not apply to:
(1) a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority . . .

The certified rule states:

7026.0090 REPORTING EXEMPTIONS.

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www.ahi.org

The following are exempt from the reporting requirements under parts 7026.0020 to 7026.0080:
A. a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority . . .

"A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority" is a broad grant of regulatory authority from the legislature. The certified rule fails to give any meaning to this exemption. If the MPCA wanted to refine its approach and remove from its workload the active pharmaceutical ingredients that are highly regulated and known to be safe, it should bring meaning to this legislative directive and exempt animal health products regulated by federal agencies.

Third, HF 2310 provided that Subdivisions 4 and 5 (testing & certificate of compliance, banning by rule, and the 2032 ban) do not apply to a prosthetic or orthotic device or to any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the United States Food and Drug Administration. The notification requirement, however, still applies. The result is that while drugs cannot be banned from sale for having a fluorinated chemistry as an active ingredient, they can be banned for failing to notify the MPCA that the active ingredient, labeled on the product, is a fluorinated chemistry.

Finally, regarding the proposed fees, there is a wide diversity of animal health products and components with diverse uses of PFAS, and the proposed fee structure is so specific as to be punitive for these important products. We offer two suggestions:

1. For the $1000 notification fee and the $500 annual recertification fee, we suggest either a cap on fees or suggest the department broaden the scope of products that can be bundled. Products can be bundled if the use of PFAS is the same chemical, same concentration range, or same CAS.
2. The proposed rule provides for extension requests if more time is needed to receive information from the supply chain. We suggest the fee apply only to the first extension request only. Other possibilities would be to grant longer extensions, as 90 days is insufficient to resolve supply chain outreach, or cap the fee.

Requiring notification of the presence of intentionally added PFAS in products, and the payment of fees, does not make sense for products that are exempt from the 2032 product ban. We appreciate the opportunity to provide comments.

Sincerely,

Mandy Hagan
Director, State Government Affairs

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Honeywell

June 13, 2025

Honorable Jim Mortenson
Administrative Law Judge
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

RE: In the Matter of Proposed New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828, OAH Docket No. 5-9003-40410

Dear Judge Mortenson:

Honeywell appreciates the opportunity to comment on the above-referenced Proposed Rules regarding reporting requirements for Per- and Polyfluoroalkyl Substances ("PFAS") and related fees pursuant to Minn. Stat. § 116.943 issued by the Minnesota Pollution Control Agency ("MPCA" or the "Agency").

Honeywell is a diversified U.S. technology and manufacturing company, serving customers worldwide with specialty materials and process technologies, aerospace products and services, control, sensing, security and life safety technologies for buildings, homes, and industry. The company traces its roots in Minnesota back to 1927 when the Honeywell Heating Specialty Company merged with the Minneapolis Heat Regulator Company to form the Minneapolis-Honeywell Regulator Company.

Today, Honeywell's workforce in Minnesota includes approximately 1,870 employees at five facilities across the State. Three of these sites develop and manufacture various equipment and materials for the aviation, space, and defense sectors ("Aerospace & Defense" or "A&D").[1] Within the A&D sector, fluorinated substances comprise critical and necessary components of aircrafts, vessels, satellites, rockets, and missile actuation systems, and enable critical functions including thermal management, life support, avionics, fuel supply, engine operation, auxiliary power, navigation, communication, microelectronics, sensors, radars, insulation, and hydraulics. Key materials include wire insulation, hydraulic fluids, and insulating coatings/adhesives. These are performance-critical materials due to their material properties assisting in chemical stability, temperature resistance, and durability. These products are critical to maintaining the Honeywell Aerospace & Defense business portfolio through key performance materials to our designs manufactured in our Minneapolis-based facilities and suppliers.

In addition to Aerospace & Defense, Honeywell operates two additional sites in Minnesota that produce a variety of switches, safety shut-off valves, flow meters, flame detectors, pressure regulators, residential heat, water, and gas meters, and other materials in the smart energy and

[1] Across the United States, the Aerospace and Defense industry supported 2.1 million jobs in 2022. *See* https://www.aia-aerospace.org/industry-impact/.

thermal solutions sectors.

Introduction

On May 24, 2023, Minnesota Governor Tim Walz signed into law Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minn. Stat. § 116.943) ("Minnesota Statute"). The Minnesota Statute requires "a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS" to submit certain information to the MPCA "[o]n or before January 1, 2026[.]" Subdivision 9 of the Minnesota Statute allows the MPCA to adopt "rules necessary to implement this section." The MPCA issued two requests for comments regarding the reporting and fee aspects of this rulemaking on September 11, 2023. Honeywell provided comments to both on November 27, 2023. A subsequent request for comments was issued by MPCA in November 2024.

Honeywell now submits these additional comments in response to the MPCA's March 28, 2025, Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS) and in response to the hearing held on May 22, 2025.

Honeywell continues to fully support MPCA's authority to collect information that has a bearing on human health and the environment and to mitigate unreasonable risks with sensible regulations when such risks are presented by specific chemical substances. However, Honeywell is concerned the Proposed Rules will impose considerable burdens on the regulated community without achieving commensurate benefit to human health or the environment and would be duplicative of new federal product reporting requirements. Accordingly, Honeywell offers comments and suggests changes to the Proposed Rules to improve the effectiveness in gathering information, which will be critical to MPCA's mission of assessing and mitigating potential risks to human health and the environment.

As detailed in the comments below, Honeywell believes that the Proposed Rules can be further clarified to serve the legislative goals by:

- Addressing the various operational concerns to reduce the unreasonable burden on regulated parties. This can be accomplished by:
    - Establishing an initial automatic six-month extension to allow reporters to move into a position to accurately report.
    - Adopting due diligence standards based on reasonableness.
    - Providing more detailed and adequate information about the reporting platform and revise the Proposed Rules to address issues faced by other states utilizing similar platforms.
    - Establishing a grace period for resolving reporting failures or inadequacy.
    - More directly tying fees to anticipated costs.

  - Taking additional measures, including a beta testing phase, to protect confidential business information.

- Removing total organic fluorine as a reporting standard.
- Identifying appropriate test methodologies for PFAS concentration measurement.
- Establishing a second category of waivers that provides a blanket waiver for products already reported to or approved by a federal agency.
- Providing better clarity and addressing unreasonable burden and risk by further defining key terms such as:
  - "Fully fluorinated carbon atom" to exclude fluorinated gases and fluoropolymers from the definition of PFAS since they are not demonstrated to have clear persistent, toxic, and bioacumulative characteristics.
  - "Manufacturer" to address the reporting responsibilities of licensors, certain users of mixed products, and various entities in the supply chain.
  - "Component" to address PFAS-containing packaging used to store or deliver other products.
  - "Distribute for sale" to address supply chain participants who merely offer to sell a product that is not actually sold in Minnesota.

I. LOGISTICAL CONCERNS SHOULD BE ADDRESSED TO REDUCE UNREASONABLE BURDENS ON REGULATED PARTIES WHILE STILL ACHIEVING STATUTORY OBJECTIVES.

a. Compliance Date, Extensions, and Waivers

The compliance date of January 1, 2026, is an impossible target for industry to meet given the shortcomings of the proposed rules and lack of available information about the reporting platform. Honeywell recommends that MPCA seek legislative approval to extend the January 1, 2026, compliance timeline until all aspects of the rule have been appropriately vetted and reporters have sufficient time to become familiar with Minnesota's reporting system under the Interstate Chemicals Clearinghouse (IC2) High Priority Chemicals Data System.[2] In the event legislative action is not practicable, Honeywell recommends that MPCA add an automatic initial extension period of six months (180 days) to part 7026.0060 upon a simple request and without the fee requirement of part 7026.0060, Subpart 4. If subsequent extensions are requested after the 180-day run, a more detailed justification for extension may be appropriate. Alternatively, the reporting deadline should be harmonized with reporting under the Toxic Substances Control Act (TSCA) § 8(a)(7) and not be due before October 13, 2026, given the overlap in reporting obligations.

Further, the general extension and waiver response timelines as framed in the Proposed Rules are inadequate and unreasonable. For example, if MPCA denies a request for a waiver, the prescribed 30-

[2] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-07.pdf.

day response time is insufficient to compile the required information. Further, extension requests must be made at least 30 days in advance of the reporting deadline under the proposed rules, but many reporters will likely be collecting relevant information from their supply chain much closer to the reporting deadline and unable to accurately gauge the need for a 30-day extension in advance of the due date. Additionally, both the applications for extension and waiver require the reporter to provide a great deal of substantive information that may not be available at the time of application.

Allowing for more time between promulgation of a final rule and the reporting deadline makes it more likely that the data generated will be complete and accurate since reporters will have more time to gather the required data and familiarize themselves with the reporting system. Similar to federal obligations, MPCA should also take into account how long it will take regulated manufacturers to comply with the reporting requirements of the planned rule and work to make that burden as minimal as possible.[3]

Honeywell encourages MPCA to extend its timelines, simplify the application requirements, and provide reporters at least 180 days to compile reportable information. Doing so would align with the approach of other jurisdictions, while streamlining compliance activities for the regulated community.

b. Due Diligence and Document Retention

While Honeywell understands and anticipates that many companies subject to Minnesota's reporting requirement will request information from their suppliers to obtain the detailed chemical and composition information necessary for reporting, MPCA's proposed rules in § 7026.0080 *et seq.* are unnecessarily burdensome and not aligned with commonly accepted due diligence standards in the U.S. and abroad. Accordingly, Honeywell recommends that MPCA's rulemaking adopt a due diligence standard based on reasonableness and omit the current draft's mandatory supply chain information request currently set forth in § 7026.0080, Subpart 2. Honeywell also suggests that the document retention requirement be limited in scope to any order, contract, or agreement regarding PFAS reporting compliance. Further, the retention timeframe should not exceed three years from the end of the reporting period for which the documentation was provided.

Both the U.S. federal government and Canada have PFAS reporting requirements based on reasonably available information. For example, Canada's PFAS reporting requirement outlines "[i]f you are subject to the notice, you are required to provide information that your company possesses or to which you may be reasonably expected to have access." Environment and Climate Change Canada, *Guidance manual for responding to the: Notice with respect to certain per- and polyfluoroalkyl substances (PFAS)* (2024), at 15. Similarly, U.S. EPA's TSCA reporting rule requires reporters to provide information that is "known or reasonably ascertainable" by the reporter. 40 CFR § 705.15. Both standards are premised on what a typical company in a similar situation would know or do. These standards are more fair and more practical than MPCA's currently proposed version, which mandates supply chain inquiries "until all required information is known." Given the tremendous limitations of testing PFAS, it is probable that some reporters will not be able to obtain all information from their

[3] The Paperwork Reduction Act (PRA) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the federal government. *See* 44 U.S.C. §.3501, *et seq*.

supply chain that is mandated by MPCA. And, given the enormous scope of this rule, it is probable that many reporters will have difficulty obtaining timely and complete responses from their supply chain. In such cases, it is both impractical and unfair for MPCA to impose a standard on reporters which effectively amounts to strict liability when such reporters are doing what is reasonably in their power to obtain and report information to the agency.

If the due diligence requirement remains unchanged, reporters can be held responsible for the circumstances of third parties entirely beyond the reporter's control. For example, to comply with the rule, Company A may send inquiries to Supplier B, but despite numerous outreaches by Company A, Supplier B may be nonresponsive. In such case, Company A should not be responsible for its inability to obtain information from Supplier B. Further, many reporters will be forced to select the "unknown concentration option," which does not advance the core purpose of the rule: to understand the type and quantity of PFAS used in products in the state. This situation is likely to occur in the event a supplier has gone out of business and its records are no longer accessible.

Moreover, MPCA's proposed requirement that companies maintain "all communication with other manufacturers, including emails, letters, and responses regarding PFAS reporting compliance and reporting responsibility agreements" is both impractical and unnecessary. It is impractical because maintaining records of all emails, calls, texts, and other communications regarding compliance with the rule is virtually impossible in today's work environment. Instead of mandating retention of communications, Honeywell suggests that MPCA require retention of any order, contract, or agreement regarding PFAS reporting compliance. And, the timeframe of retention should be specified and should not exceed three years from the end of the reporting period for which the documentation was provided. Section 7026.0080 Subpart 3, C. includes a document retention requirement of five years from the date intentionally added PFAS are removed from the supply chain. This timeframe is both indeterminable at the time of a document is received, and impractical to implement under most companies' document retention policies.

MPCA should align its due diligence requirements to other jurisdictions to ensure that the regulated community can comply with this rule. For example, the final TSCA reporting requirement allows a reporter, if no information has been identified after "reasonable due diligence," to report that certain information is "not known or reasonably ascertainable."[4] To the extent MPCA wants or needs a unique due diligence standard, it should also be based on reasonably available information. Reporters should be responsible for putting forth information that is within the direct control of the company. Holding reporters responsible for the responses of external parties imports liability for acts and omissions outside the scope of the reporter's control. Document retention requirements should be limited to orders, contracts, and agreements related to PFAS reporting compliance and exceed no more than three years from the end of the reporting period for which the documentation was provided.

c. Inadequate Platform Information

The state has not provided adequate materials upon which industry can comment regarding the logistics of submitting required information through the proposed reporting portal, the Interstate

[4] https://www.epa.gov/system/files/documents/2024-05/tsca-8a7-faqs-may-2024.pdf.

Chemicals Clearinghouse (IC2). To ensure effective implementation of this reporting, industry should have the opportunity to review and comment on the process and substance of the reporting platform, including the opportunity to provide feedback on beta testing of the platform and associated guidance. Without adequate information regarding the platform, industry will be providing incomplete feedback to the state regarding the proposed rules. And, if industry does not have the opportunity to understand the larger reporting ecosystem prior to finalization of the rules, industry will be inadequately prepared to comply with these rules.

The reporting platform is not detailed in the proposed rules themselves, but rather the Statement of Need and Reasonableness simultaneously published with the proposed rules. Because the Statement contains necessary details that were omitted from the proposed rules, both documents should be given proper review within the rulemaking process.

When new environmental reporting takes effect, industry usually has six months to become familiar with the reporting portal and ensure that the specifically required reportable information is gathered and formatted appropriately for submission. For example, EPA's CDX platform for the TSCA 8(a)(7) reporting is scheduled to open in April 2026 when reports are due in October 2026. However, in Minnesota's case, industry still does not know what the portal's submission form will look like; what, if any, categorizations or classifications must be made of the product or component subject to reporting; and, if applicable, how such categorizations or classifications are defined within the reporting platform.

For example, products subject to Washington State's reporting through IC2's High Priority Chemicals Data System (HPCDS) must be classified per IC2's "product brick" codes, and impacted "component" must be identified through a pre-populated list. Additionally, the "chemical function" must be identified using pre-populated options. It is unclear what, if any, limits and definitions the portal itself will impose on reporters. This must be clarified with sufficient time for reporters to gather relevant information from their supply chains.

The following questions exemplify the gaps in information currently available to reporters concerning the IC2 system:

- Will products be reported by type and/or form (e.g., is a refrigerant to be reported as a chemical, gas, aerosol, or a refrigerant itself)?
- Will the chemical function of the PFAS molecule be limited to a single option or may a molecule be indicated for multiple functions (e.g., temperature resistance, flame retardancy, and oil/water repellency)?
- Will the chemical function need to be selected from a pre-populated list, and if so, what are the definitions for each pre-populated option?
- If a product has multiple forms (e.g., refrigerant, blowing agent, and solvent), will the system allow multiple selections?
- How will the system allow the grouping of multiple SKUs of the same PFAS molecule?

- Where packaging is considered a component, how will it be reported in relation to the underlying product, especially when the packaging and product contain different PFAS molecules?
- If a product's packaging contains multiple component parts, such as a separate lid and bottle, how are these components and respective PFAS molecules distinguished from one another while still being reported with the associated product?
- Does the system allow entries of "not applicable" or "none"?
- How do reporters mark confidential or trade secret information within the platform?
- What information is needed to justify a confidentiality or trade secret claim and how do reporters submit such information within the platform?
- Will confidentiality and trade secret justifications be pre-populated as options within the platform?
- Will the platform allow a reporter to identify the presence of a PFAS that constitutes confidential or trade secret information on behalf of a third party and then allow the third party to provide specific details such as chemical identity or concentration to MPCA without revealing such details to the reporter? An analogous function is the joint submission method allowed through CDX for TSCA reporting.
- Does the platform allow reporters to save their entries and revisit/revise prior to submission?
- Are reporters able to submit multiple reports before the deadline and still pay a single fee, and if so, when is the fee assessed through the platform?

Absent detailed information about the portal, industry is unable to provide adequate feedback to MPCA or sufficiently prepare for the deadline of January 2026.

d. Burden on Small Businesses and Impact on MN Economy

Minnesota Statutes Section 14.127 specifically requires MPCA to determine the financial impact of its rules on small businesses and municipalities. If MPCA determines that the rule will cost these entities more than $25,000 in the first year after the rule takes effect, affected entities may apply for an exemption that can only be overridden by subsequent legislative action. A failure on the part of MPCA to consider these entities will result in a deviation from proper rulemaking procedures under Minnesota's Administrative Procedures Act. While Honeywell is not a small business under this statute, many of its supply-chain partners in Minnesota fall into this category. Therefore, Honeywell will be working closely with our small business partners to assist MPCA's evaluation of how PFAS regulation will impact these entities pursuant to Minn. Stat. § 14.127.

For example, most foam blowing contractors in Minnesota that are reliant on Honeywell's hydrofluoroolefin (HFO) blowing agents, which are considered PFAS under the Minnesota Statutes, are characterized as small businesses. The Minnesota Commercial Energy Code (MEC) and

the Minnesota Residential Energy Code (MNRC) require these products to have specific resistance to heat flow for insulation in various building components to meet state energy efficiency standards. These enterprises often operate on a local or regional scale, providing insulation services to residential, commercial, and industrial clients. Due to the specialized nature of their work, these contractors typically have limited resources and may face challenges in transitioning to alternative blowing agents. Financial analysis assessments should be conducted to understand the burden on small business owners.

e. Provisions for Delinquent Reporting

Honeywell recommends including provisions that address delinquent reporting within the regulatory framework. Specifically, Honeywell suggests a grace period of 90 days for entities to submit required information upon receiving notice from MPCA of a reporting failure or inadequacy. This approach would provide a reasonable timeframe for compliance, ensuring that entities can rectify their reporting status before facing penalties.

Honeywell also urges MPCA to utilize is discretion under Minn. Stat. § 116.943 to engage with regulated parties without penalty, particularly as this new regulatory scheme is implemented. It will take some time for regulated parties to understand the scope of reporting expectations and, if good faith efforts are being made to correct delinquent reporting, MPCA should actively engage with these parties and not penalize them.

f. Considerations Regarding Fees

The MPCA should not promulgate a fee rule until the costs of administering the program are better understood. The rationale for setting fees should be transparent about revenue generated by fees and how the fees will be used to manage the program. Fees should be calibrated appropriately such that the MPCA is not collecting more in fees than what are needed to administer the program. To this end, Honeywell suggests that the MPCA publish a publicly available annual audit of fees collected and program administration costs incurred. Where possible, the MPCA should cap fees.

Without a more thorough explanation of what costs the MPCA would incur when a manufacturer provides an update, Honeywell does not support the MPCA levying a new fee when such an update is provided. An update concerning an increased amount of intentionally added PFAS in a previously reported product would appear to create marginal, if any, new work. Honeywell does not support an additional fee in either case.

g. Protection of Confidential Business Information

As the MPCA is certainly aware, it will receive reports for hundreds of thousands of products, if not more, from all sectors of the economy. Honeywell is concerned about the ability of any reporting tool being developed and administered by MPCA or a third-party vendor to manage this task since MPCA and common third-party vendors in this space, including IC2, have not developed a reporting system of this scope and magnitude. Consequently, it will be essential that MPCA take whatever measures are necessary to build in a beta testing phase to ensure that the reporting tool is sufficiently robust to

manage and protect the number of users and volume of information anticipated while remaining sufficiently flexible to allow for reporting of information that may not conform to a particular format contemplated by MPCA.

U.S. EPA's TSCA reporting platform, CDX, has been problematic and is the cited reason for multiple extensions of the federal PFAS reporting deadline. Despite this warning sign, MPCA has not yet opened the IC2 portal for its reporters to review nor has MPCA published any FAQs or guidance related to the portal or the steps MPCA and IC2 will take within the portal to protect confidential information. Given the volume and corporate trade secret sensitivity of collected data, it will be essential that comprehensive steps are taken to protect information from cyberattack or other malicious efforts to obtain or compromise the data.

II. THE WAIVER PROCESS SHOULD DISTINGUISH BETWEEN EXISTING AND CONCURRENTLY DEVELOPED FEDERAL PFAS REPORTING PROGRAMS AND OTHER PUBLICLY AVAILABLE DATA AND PROVIDE A BLANKET WAIVER FOR PRODUCTS REPORTED OR APPROVED BY THE FEDERAL GOVERNMENT.

The Proposed Rules appropriately allow manufacturers to request a reporting waiver when "substantially equivalent information is publicly available." In some circumstances, the waiver request requirements in part 7026.0050, subp. 2 are extensive but appropriate to allow MPCA to determine if the substantially equivalent information would "impose an undue burden in terms of resources required for collection." However, if a manufacturer is already reporting substantially equivalent information to the federal government in a well-established product reporting or approval program, requiring every manufacturer to justify the same federal reporting processes creates a significant and unreasonable burden. Alternatively, MPCA should create a separate blanket waiver where a manufacturer has already reported the product or component to a federal agency under specified federal reporting programs facilitated under TSCA, Department of Defense (DOD), Food and Drug Administration (FDA) and Significant New Alternatives Policy (SNAP). This blanket waiver would not require the regulated party to provide the detailed waiver request information identified in part 7026.0050, subps. 2(C)-2(F).

Other federal product approval processes to consider for inclusion in a separate blanket waiver include:

- Federal Aviation Authority (FAA) Approval
- Department of Transportation (DOT) Approval
- Department of Defense (DOD) Approval
- National Aeronautics and Space Administration (NASA) Standards
- International Traffic in Arms Regulations (ITAR) controlled

Honeywell believes the MPCA Rules should avoid unnecessary or duplicative reporting. Reporting obligations should only be imposed on manufacturers most likely to have relevant information not otherwise available to the MPCA.

a. Products and Components Required to be Reported to EPA Pursuant to Section 8(a)(7) of TSCA

On September 28, 2023, the EPA issued a final rule requiring PFAS manufacturers, including importers of articles containing certain PFAS, to report certain information to EPA pursuant to Section 8(a)(7) of TSCA. In September 2024, EPA delayed the reporting deadline for this rule from May 2025 until January 2026. Then, in May 2025, EPA again delayed the reporting deadline, this time until October 13, 2026, to allow itself additional time to test and prepare the reporting application. Generally, the TSCA PFAS reporting requirement applies to entities that have manufactured or imported PFAS for a commercial purpose in any year since January 1, 2011, alone or in any type of industrial or consumer product subject to EPA's authority.

There is significant overlap between the TSCA PFAS reporting requirement and the Minnesota Statutes PFAS reporting requirement:

	Federal (TSCA, Section 8(a)(7); 40 CFR § 705)	**State (MN Stat. § 116.943)**
Regulatory Agency	Environment Protection Agency	MN Pollution Control Agency
Applicable period of reporting	January 1, 2011 to Present, by October 13, 2026 for most regulated businesses (small businesses that import articles have until April 13, 2027).	No later than January 1, 2026 for regulated products sold, offered for sale, or distributed in Minnesota as of that date.
Who must report?	PFAS manufacturers and processors, including article importers, used in consumer and commercial products (*See* § 8(a)(1)(A)).	Manufacturers of products that contain intentionally added PFAS (*See* § 116.943, Subd. 2(a)).
What must be reported?	1. The common name and molecular structure of the chemical. 2. Categories of use of the product. 3. Total amount manufactured or processed. 4. Description of byproducts from the manufacturing and/or processing of PFAS. 5. All existing information concerning the environmental and health effects. 6. The number of people exposed, potentially exposed, and the length of exposure in their workplace.	1. Product description. 2. PFAS chemicals used in the product. 3. PFAS function in product. 4. Concentration of PFAS in product. 5. Manufacturer contact information and specific representative for the manufacturer. 6. Any additional information as requested by the commissioner (*See* § 116.943, Subd. 2(a)(1-5)). OR Upon approval by the commissioner, report all information (Subd. 2(a)(1-

	7. Manner and method of disposal (*See* § 8(a)(2)(A-G)).	5)) per category or type of product (*See* § 116.943, Subd. 2(b)).
What chemicals are covered?	The PFAS definition relies on a structural definition and includes compounds with at least one of the following three structures: • R-(CF2)-CF(R')R'', where both the CF2 and CF moieties are saturated carbons. • R-CF2OCF2-R', where R and R' can either be F, O or saturated carbons. • CF3C(CF3)R'R'', where R' and R'' can either be F or saturated carbons. EPA estimates that at least 1,462 PFAS that are known to have been made or used in the United States since 2011 based on this definition.	PFAS is defined as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." (Minn. Stat. § 116.943, Subd. 1).

Regulated manufacturers of products containing PFAS will already be under a significant regulatory burden to comply with the TSCA PFAS reporting rule and such information, much of which will be publicly available, should meet the Minnesota statutory desire for this information.

Subdivision 3(a) of the Minnesota Statute authorizes the MPCA to "waive all or part of the information requirement under subdivision 2 if the commissioner determines that substantially equivalent information is already publicly available." Based on this language, MPCA should exempt any manufacturer from reporting to the MPCA any product that is already reported to EPA under the new TSCA reporting rule as detailed above. Given the significant but not identical overlap between the TSCA PFAS reporting requirements and the Minnesota Statute, MPCA should explicitly identify that any products identified in submissions to EPA pursuant to 40 CFR § 705 do not need to be duplicate reported to MPCA pursuant to the Planned Rule.

Under the TSCA PFAS reporting rule, EPA also eliminated the need to report "duplicative" information if a PFAS manufacturer has previously submitted the requested information to EPA for that same PFAS in that same year through Chemical Data Reporting (CDR), Toxics Release Inventory (TRI), Greenhouse Gas Reporting Program (GHGRP), or TSCA Sections 8(d) and 8(e), or is also reporting a PFAS byproduct on its own reporting form. *See* 40 CFR § 705.22. MPCA should similarly limit its reporting requirement if such reporting to Minnesota would be duplicative of reporting through these other federal programs.

Further, as noted, EPA has delayed the TSCA PFAS reporting deadline until October 13, 2026. MPCA should delay its reporting deadline to, at minimum, align with the TSCA deadline. Currently, the Minnesota Statute PFAS reporting deadline is seven months away, and there is no finalized rule clarifying what data manufacturers must collect and report. MPCA should delay the reporting deadline to give manufacturers sufficient time to conduct the extensive supply chain analysis required by the Minnesota Statute. Additionally, aligning the reporting deadlines, especially given the similarity of the reportable information, will allow manufacturers to consolidate their data collection processes and focus on meeting both state and federal requirements efficiently.

b. Products and Components Required to be Reported to or Approved by DOD, FDA, and SNAP Reporting

Beyond TSCA, other federal laws and regulations require the authorization or approval of the product's performance characteristics by the federal government and should qualify for a blanket waiver as described above. These laws and regulations include, but are not limited to:

- Materials regulated by the Department of Defense or similar military specifications;
- Products regulated as drugs or dietary supplements;
- Medical devices as well as their packaging;
- Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, and diagnostics used to treat or administer to animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, *et seq.*), the federal Virus-Serum-Toxin Act (21 U.S.C. § 151, *et seq.*), or the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Act (7 U.S.C. § 136, *et seq.*); and
- Substances manufactured or imported pursuant to administrative orders issued or exemptions granted pursuant to Section 5 of the Toxic Substances Control Act.

An example of a product already reviewed and approved by the FDA is Honeywell's blister packaging material, Aclar©. In general, the regulation of pharmaceutical drug packaging involves ensuring the safety, efficacy, and quality of packaging materials used for medications. Aclar© has been approved by FDA as a packaging material for a range of health products including pharmaceuticals and medical devices. The packaging is viewed as part of the final medical device where the FDA already considers human health and safety risks, optimal product quality, and assessment of who will be utilizing the device (practitioner or patient) in their approval processes for medical devices and medical products. The health risks of these medical devices are thoroughly assessed by the FDA before they make it on the market and must undergo multiple tests to prove biocompatibility in compliance with the international biocompatibility standard, ISO 10993.9.

As part of FDA's regulatory process for medical devices coming to market, materials of the product as well as the packaging may be considered a component of the device itself or it could be a part of the final design specifications of the device as it's meant to be sold and distributed. FDA must validate these products as safe, non-toxic, and resilient enough to withstand sterilization, transport, storage,

and normal use so that it can function as intended without any damage or harm to the patient. Understanding this, Aclar© and other products that have been similarly vetted and determined by the FDA not to pose a human health nor safety risk, should be subject to a blanket waiver.

Introducing PFAS regulations in Minnesota that impact pharmaceutical drug packaging and medical devices may introduce differences in packaging standards leading to additional compliance costs and potential cross-state complexities where drug companies must track and monitor within the 50 states, which could lead to drug shortages or inferior products entering the market. Implementing different packaging requirements for Minnesota would increase production costs, disrupt supply chains, and potentially lead to confusion or errors in distribution. Additionally, it could hinder access to essential medications for patients if manufacturers decide to limit distribution to specific regions due to the complexities of compliance.

Furthermore, in addition to the potential for drug shortages, the costs associated with changes to other packaging formats (technology, machinery, tooling, etc.) are borne by producers of packaging, pharmaceutical and medical device companies and ultimately patients.

As another example, products which have been approved under the EPA's SNAP program, which implements section 612 of the amended Clean Air Act of 1990 and includes evaluation of overall risk to human health and the environment, should also be included in a blanket exemption. SNAP already generates lists of acceptable and unacceptable substitutes for major industrial use sectors and provides smooth transitions to safer alternatives.

III. REGULATORY CLARITY CAN BE OBTAINED THROUGH FURTHER DEFINITION OF KEY TERMS AND OTHER LANGUAGE.

a. "Fully Fluorinated Carbon Atom"

While Honeywell appreciates the effort to clarify what constitutes PFAS, the Proposed Rule is still unnecessarily broad and includes fluorinated gases and fluoropolymers that are not bioaccumulative or present a risk to human health or the environment.

"PFAS" as is written under the statute is currently defined as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." The proposed PFAS class is unified only by a single chemical feature, which results in an overly broad group of substances with vastly different chemical, toxicological, and degradation properties, such that treating the whole class as a "toxic substance" departs from the aim of targeting well-defined groups of substances that have been demonstrated to have actual or potential hazardous effects on the environment or on human health. Honeywell continues to believe that the scope of any PFAS reporting requirement should be tailored to substances with recognized persistent and bioaccumulation characteristics.

Honeywell notes that an overly broad definition of PFAS will include chemicals that are non-toxic, non-persistent, and non-bioaccumulative. Many are approved for their respective end-use applications by the EPA under Section 612 of the Clean Air Act ("CAA"), as well as specific TSCA significant new use rules and various Section 5(e) Consent Orders, and these substances also are already subject to CAA and TSCA reporting requirements.

For example, HFOs are energy efficient options utilized in some Honeywell products and are preferrable to other industrial alternatives, as confirmed via the U.S. EPA's Significant New Alternatives Policy (SNAP) Program and recent studies conducted by the Oak Ridge National Laboratory (ORNL).[5] Among the study's findings were significant performance differences when it comes to energy efficiency. As compared to alternatives, HFO-based systems will consume 8%-50% less energy over the lifetime of a commercial refrigerator when compared to CO2-based systems, and 5%-21% less energy when compared to propane-based systems. This is important for keeping energy bills low for households and businesses and reducing strain on our electricity grids.

According to the United Nations Environment Programme, Environmental Effects Assessment Panel (EEAP) 2022 Assessment Report, "all PFAS should not be grouped together, persistence alone is not sufficient for grouping PFAS for the purposes of assessing human health risk, and that the definition of appropriate subgroups can only be defined on a case-by-case manner" and that "it is inappropriate to assume equal toxicity/potency across the diverse class of PFAS". Additionally, Honeywell has conducted toxicological studies published in a peer-reviewed journal which concludes that "all PFAS are not similar from toxicological point of view and, therefore, should not be clubbed together for human health hazard assessment or chemical regulation perspective" (Sodani et al., 2025).[6]

The EPA introduced its own definition of PFAS in 2021 through the National PFAS Testing Strategy: "chemicals with at least two adjacent carbon atoms, where one carbon is fully fluorinated and the other is at least partially fluorinated." The EPA's narrower definition is based on the agency's goal of identifying and regulating PFAS compounds that have been demonstrated to pose the highest potential risk to the environment and human health. By targeting compounds with specific structural features, the EPA can prioritize its resources and efforts on those PFAS compounds that have a demonstrated persistence, bioaccumulation potential and toxicity**.** MPCA should follow suit and adopt a more targeted and narrow definition of "fully fluorinated carbon atom" that excludes fluorinated gases and fluoropolymers.

i. Fluorinated Gases

There is little to no evidence regarding the hazards associated with many subclasses of PFAS caught by the overly broad definition in the Proposed Rule. Further, for some subclasses there is a robust body of scientific evidence that demonstrates a low or negligible risk profile, such that many regulatory agencies, including the EPA in its final rules for PFAS reporting pursuant to TSCA,[7] have deemed these

[5] https://info.ornl.gov/sites/publications/Files/Pub200582.pdf.

[6] Sodani K, Ter Braak B, Hartvelt S, Boelens M, Jamalpoor A, Mukhi S. Toxicological mode-of-action and developmental toxicity of different carbon chain length PFAS. Toxicol Lett. 2025 Mar; 405:59-66. doi: 10.1016/j.toxlet.2025.02.003. Epub 2025 Feb 9. PMID: 39933616.

[7] EPA's reporting rules at 40 CFR § 705.3 define *Per- and polyfluoroalkyl substances* or *PFAS as* any chemical substance or mixture containing a chemical substance that structurally contains at least one of the following three sub-structures: (1) R-(CF2)-CF(R')R", where both the CF2 and CF moieties are saturated carbons; (2) R-CF2OCF2-R', where R and R '□can either be F, O, or saturated carbons; or (3) CF3C(CF3)R'R", where R ' and R" can either be F or saturated carbons.

substances out of scope.[8]

The EPA also states that "in evaluating alternatives using its comparative risk framework, [Significant New Alternatives Policy] SNAP already considers potential risks to human health and the environment. Regardless of what definition of PFAS is used, not all PFAS are the same in terms of toxicity or any other risk. Some PFAS have been shown to have extremely low toxicity, for example. If a chemical has been found to present lower overall risk to human health or the environment, it might be found acceptable under SNAP regardless of whether or not it falls under a particular definition of PFAS."[9]

ii. Fluoropolymers

Fluoropolymers have unique properties distinct from non-polymeric substances within the proposed PFAS group.[10] Accordingly, they should be excluded from the definition of "PFAS." They exhibit low reactivity, low water solubility, and a high average molecular weight with low levels of oligomers and residual monomers, and do not degrade under typical conditions of use. They are not subject to long-range transport, and with an average molecular weight well over 100,000 Da, fluoropolymers cannot cross the cell membrane, and thus are not bioavailable or bioaccumulative. Due to these characteristics, fluoropolymers exhibit low human and environmental toxicity concerns.

As previously mentioned, Honeywell operates five Aerospace & Defense sites within Minnesota. Numerous key components of this equipment such as adhesives, seals, batteries, bearings, gaskets, hoses, O-rings, insulation, tubing, cables and wiring, filters, barrier films, refrigerants, fire suppression gases, etc., contain PFAS. Due to their unique physicochemical properties, these fluorinated substances exhibit exceptional characteristics for materials and equipment required by the Aerospace & Defense industry and mandated under applicable SAE Aerospace Standards (AMS) as well as European Union Aviation Safety Agency ("EASA") regulations/certificates and competent aviation authorities worldwide (e.g., the U.S. Department of Defense, Federal Aviation Administration, etc.). All technical specifications (*see*, e.g., AMS3255 or AMS3678 standards) need to be complied with simultaneously in all jurisdictions where aircrafts are produced, used, flown, and serviced. In this regard, most materials in question are fluoropolymers with physicochemical characteristics and exposure profiles that are different from most other types of PFAS substances, satisfy the OECD criteria for a Polymer of Low Concern (PLC),[11] and are deemed to be environmentally and humanly benign.

[8] EPA has acknowledged that its definition of PFAS (i.e., "structurally contain the unit R-(CF2)-C(F)(R')R") excludes "fluorinated compounds that contain only one CF3 group, such as some fluorinated gases[.]" *See* EPA, Response to Comments Document on the Draft Fifth Contaminant Candidate List (CCL 5).

[9] Page 26414, Federal Register, Vol. 88, No. 82, Friday, April 28, 2023, Rules and Regulations, 2023-08663.pdf (govinfo.gov).

[10] A Critical Review of the Application of Polymer of Low Concern and Regulatory Criteria to Fluoropolymers, Integrated Environmental Assessment and Management, Volume 14, Number 3, pp. 316–334 (2018).

[11] *See* detailed analysis in *A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluoroelastomers*, Stephen H. Korzeniowski *et al.*, Integrated Environmental Assessment and Management — Volume 19, Number 2—pp. 326–354 (2022).

b. "Manufacturer"

Clarity is needed on the definition of the term "Manufacturer." As defined in the Proposed Rule, the term "Manufacturer" includes the entity that manufactures a product or whose brand name is legally affixed to the product. However, there are numerous circumstances when two different entities meet that definition: one may manufacture the product and the other may legally affix their name to the product but have no role in the manufacturing of the product. In such circumstances, it is not clear who the "manufacturer" is and therefore which entity has the reporting requirement.

The Planned Rule also does not adequately account for the possibility, and likelihood, that manufacturers whose products are sold by distributors may be unaware that their products are being offered for sale in Minnesota and therefore may, as a practical matter, be unable to report under the rule. The final rule must appropriately account for this type of scenario – for example, by requiring the distributor to report instead of the manufacturer.

For products sold directly to distributors outside of Minnesota and not directly to retailers or individuals in Minnesota, it will be virtually impossible for the original product manufacturer to report on sales into Minnesota. For example, if a manufacturer in Colorado sells a product containing intentionally added PFAS to a distributor in Illinois, who then sells to retail outlets in Minnesota, the original manufacturer of the product will not have access to the distributor's data for products sold into Minnesota. The manufacturer will only know what it sells to the distributor. This is not an uncommon scenario, particularly for common consumer and household products.

The same is true for sales made through online platforms where the original manufacturer is not the entity fulfilling the sale of the product into Minnesota. Products sold to members of the public through online platforms can come from anywhere, and the original manufacturer has little to no control over that sale or the ability to obtain sales information through such channels. MPCA needs to address these realities in the definition of "manufacturer," and in the description of data and information that a "manufacturer" as currently defined can be reasonably expected to provide.

Honeywell recommends that MPCA clarify how the reporting requirements apply to multiple businesses in the supply chain for finished products that will be distributed with multiple PFAS-containing components, when sales can be made through online platforms, as well as situations where the manufacturer may sell the good to a distributor outside the state and further transactions bring the product into scope when it crosses state lines.

The proposed regulation must make clear whether the responsibility falls upon the maker of the PFAS-containing components, the brand owner, a brand licensee, an importer, or the company that is distributing the finished product for sale within the state when multiple parties fit into the definition of manufacturer. If left undefined, Honeywell predicts significant confusion and a high likelihood of duplicative reporting emerging from the current definition of manufacturer, which will likely result in an overestimation of the amount of PFAS in products in Minnesota and any conclusions about human or environmental exposure will be erroneously based on such estimates.

i. Licensed Products

The final rule should clarify that for licensed products, the reporting requirement is managed by the licensee not the licensor. Often a licensor has little to no visibility into how licensed products are made. The burden and costs on the licensor are arbitrary and unreasonable. There are other instances in which a manufacturer has their logo branded on a product but do not manufacture or sell the product.

For example, Company A licenses their logo and brand name to company B to sell company B's product. Company A has no visibility into Company B's supply chain and has no control over the sales of company B's product. In this instance Company B, the one making the product, should be the one to comply with the reporting requirements. However, as written, Company A would be unfairly required to report, and this could infringe upon Company B's license to operate.

ii. "[P]erson that Creates or Produces a Product"

There are also instances where a contractor purchases a PFAS-containing product from another company and is then, per product requirements, required to mix it on-site with another chemical to produce the required reaction for the needed construction function. Based on the definition, the contractor may be a "manufacturer" by producing a product by using an already reported product.

For example, a Honeywell blowing agent, that contains PFAS and would be reported under the Proposed Rules, is sold to Company A. Company A sells a two-tank system that contains the Honeywell blowing agent in one tank and a non-PFAS spray foam agent in another tank. The system is sold under Company A's brand name to a contractor. The contractor then installs the system into a mobile delivery truck to bring to job sites.

At a job site, the contractor activates the system and material from Tank A and material from Tank B is mixed to produce an activated spray foam insulation material that is then deployed as the construction material. Under this scenario, the contractor may unreasonably be deemed a manufacturer of a product although the PFAS-containing element would have already been reported to MPCA by Honeywell. To avoid double counting, this activity should be considered out of scope of this regulation.

iii. Reporting as a Group

Honeywell appreciates that the MPCA created an opportunity to report along supply chains to alleviate the challenges of supply chain information. However, having manufacturers report as a group would not enable streamlined reporting as intended. As there are no provisions for reasonably ascertainable information, the due diligence requirements are impossible to meet. This would extend to ensuring all members of the supply chain are also included. Similarly, the group may take on additional risk as the liability may be shared by all members of a supply chain if one supplier was unable to access data, despite their best efforts to reasonably ascertain them.

Since these groups will be interconnected via supplier/customer relationship, they will essentially be reporting around the same item either as product (for a supplier company) or as component (for

customer company), so the reporting requirement and fees, including recurring fees related to reporting updates, will be duplicative.

For example, consider an O-ring used in products manufactured by Honeywell Aerospace for use in an aircraft satellite that relies on several PFAS substances. Honeywell Aerospace does not manufacture the PFAS substances but relies on upstream manufacturers to provide them. Honeywell would be a user of a PFAS-containing O-ring that is used in a component for an aircraft satellite. Per the Proposed Rule, the upstream PFAS substance manufacturers, the O-ring manufacturer, Honeywell Aerospace, and the downstream aircraft satellite manufacturer may all be manufacturers and would all have to report and pay fees under the Proposed Rules due to the same PFAS substances provided by the upstream manufacturers. Even if the PFAS substances manufacturer takes responsibility for reporting on behalf of their downstream customers by setting up an agreement, those customers would still have to pay fees. This is inefficient, burdensome, and creates unnecessary burdens throughout the supply chain.

c. "Component"

The Proposed Rules define "component" as "a distinct and identifiable element or constituent of a product." The definition goes on to clarify that packaging is included as a component when "the packaging is inseparable or integral to the final product's containment, dispensing, or preservation."

As written, certain product packaging such as returnable cylinders or disposable containers, though not the intended sale product, would be included in this rule. This appears to be an unintended broad consequence of the Proposed Rules as currently drafted. Below are examples of the real-life application for this unintended consequence. Should this broad definition include packaging, this would be an unreasonable expectation on manufacturers and provides no material benefit to the goal of this legislation.

i. Example 1: High Purity Chemicals

High purity chemicals are essential for various types of educational, research, commercial and consumer testing activities. An academic, government, industrial or commercial laboratory conducting research and testing involving chemical substances or articles would require high purity chemicals either as laboratory reagents, reactants or standards. Some examples of such activities include a high school teacher demonstrating principles of chemistry and biochemistry; an industrial quality testing laboratory; a government laboratory testing food, water, soil, or the environment to ensure public safety; an academic research laboratory performing studies to identify new drugs and disease modalities and many more. There are thousands of such reagent grade chemicals which are sold with more than 95-99% purity levels in solid, liquid and gaseous forms.

The intended product for all these high purity chemical substances is the substance itself and not the package within which the substance is contained. However, by including packaging required for "containment, dispensing or preservation" of product within the definition of 'component,' the manufacturer of high purity chemicals would now face the unnecessary burden of surveying the suppliers of packaging materials which are critical for preserving the chemical substance. As an

example, a high purity acetic acid (>99.9% pure) product contained in a plastic bottle needs to be surveyed for intentionally added PFAS in an empty plastic bottle and reported as PFAS when the intended product is >99.9% pure acetic acid.

Given the critical role of high-purity chemicals used in testing, the agency should consider excluding these from the reporting requirement as EPA has consistently excluded research chemicals from TSCA section 6 risk management rules.

ii. Example 2: B2B Gas Sales

Gases sold business-to-business are often provided in returnable cylinders where the buyer removes the gas and puts it into a plant holding chamber and then returns the cylinder to the seller. Under this definition, the cylinder would seem to be a component even though it is not the intended product for sale and is not sold to the buyer. If the cylinder would be included in this rule as a component, then all parts of the cylinder would need to be considered. This includes the material of the cylinder, gaskets, O-rings, and the paint on the cylinder itself.

iii. Example 3: B2C Gas Sales

Business-to-consumer gases are frequently sold in disposable containers purchased from a store for consumer use. The gas manufacturer sells a gas to a retailer who then sells it to a customer who takes the container with the gas. The consumer then disposes of the container when they are done. In this instance, the gas is still the intended product for sale; however, the container is also sold as a transportation mechanism. The gas is then used for its intended purpose and the container is disposed of as it is not the desired performance product. In this instance, the container (and all its parts) would likely be included in this rule although it is not the intended product. This would turn any individual product into a complex article and would require a level of assessment from the supply chain that would likely not be aware of the PFAS concentrations within their product.

This broad definition of “component” would create significant problems for a supply chain that is not historically set up for this analysis and would cause significant delays in shipments of products to consumers. Honeywell recommends that MPCA explicitly exclude from the definition of “component” any “product packaging or shipping container used to display, market, handle, store, or deliver the product[.]” This is the same definition that MPCA uses in its 2025 PFAS prohibitions per its guidance.[12]

d. “Distribute for Sale”

According to Section 7026.0010, Subp. 9 of the Proposed Rules, “distribute for sale" means “to ship or otherwise transport a product with the intent or understanding that the product will be sold **or offered for sale** by a receiving party after the product is delivered.” (emphasis added). As written, this could require reporting by a company that widely offers to sell a product even if no sale is ever effectuated or even intended in Minnesota. Honeywell recommends that MPCA focus on products sold or more narrowly intended for sale in the state as opposed to generally offered for sale.

[12] *See* MPCA, 2025 PFAS prohibitions (available at https://www.pca.state.mn.us/air-water-land-climate/2025-pfas-prohibitions).

e. Reporting of PFAS by Concentrations, Including Total Organic Fluorine

Pursuant to Minn. Stat. § 116.943, Subdiv. 2(2), MPCA can prescribe concentration ranges for manufacturers to use in reporting the amount of PFAS in a product or component. While Honeywell does not oppose concentration-based reporting in lieu of volume-based reporting, identifying the concentration of a specific PFAS chemical in a particular product or component does not identify that product's potential risk to human health or the environment. Moreover, the concentration of total organic fluorine does not identify the concentration of PFAS. MPCA should remove total organic fluorine as a reporting standard within regulations intended to evaluate intentionally added PFAS content. Total organic fluorine is a rudimentary measurement of assessing PFAS concentration in a product and often not appropriate.

f. Analytical Methods

Analytical methods to measure concentrations of PFAS must be appropriate for the PFAS that are the target of the analysis and for the physical form of the product, e.g., gas, liquid, or solid. Analytical methods differ in which PFAS they are capable of detecting. For example, the analytical method EPA uses to identify PFAS in food contact materials targets 17 PFAS. In contrast, EPA's Draft Method 1633 is designed to identify 40 different PFAS in aqueous media (i.e., water, wastewater, landfill leachate), soil, biosolids, sediment, and biological tissues.

To create an even playing field, the MPCA should elaborate the appropriate test methodology. It would be inappropriate in our view for the MPCA to allow the use of any method that any commercial lab says it can perform on any product matrix with no consideration of whether the method is fit for its purpose or has undergone any multi-laboratory validation or otherwise assessed for the purpose for which they are being used (i.e., accuracy, precision, specificity, detection limit, and quantification limit). Doing so would be well outside the realm of good regulatory science. It also creates scenarios where similar products are tested with vastly different methodologies and do not reflect accurate relative concentrations within a product class.

With unclear methodologies there will be inconsistencies in where (and when) products will be tested. These inconsistencies will materially impact PFAS concentrations. As an example, wire for Honeywell's Aero electronics designs typically have PFAS-containing insulation, which is put on either at the wire manufacturer, or by a second-tier supplier that does the insulation only. The wire then can go to several distributors or other levels of the supply chain before a built board is delivered to a Honeywell facility where it typically has more wire added to it to connect it to the rest of the final product. Even if it is built into the wire manufacturer's certification that PFAS concentrations should be provided, it can be five or six levels down the supply chain that would need this information for reporting purposes. For an O-ring, there is no methodological guidance of whether to test the rubber compound or the coating for the O-ring.

It is critically important for the MPCA to recognize that many commercial PFAS compounds are proprietary chemicals for which there are no commercially available analytical methods. Moreover, without analytical standards for these proprietary chemicals, commercial laboratories will not be able

to develop analytical methods. In addition, determining exact PFAS concentrations for complex articles in robust supply chains like automotive and aerospace, which are wholly dependent on full material supplier disclosure and product knowledge, can be a source where a supplier does not disclose certain information where unintentional omissions would occur.

Honeywell also recommends that the MPCA incorporate the concept of validation into its regulatory explanation of what commercially available analytical methods will be acceptable.

Conclusion

Honeywell appreciates your consideration of these suggested modifications to the Proposed Rules and would be glad to participate in further discussions about these comments.

Sincerely,

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MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

June 19, 2025

The Honorable Jim Mortenson
Minnesota Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, Minnesota 55164-0620

Your Honor:

On behalf of the Minnesota Chamber of Commerce (Chamber), a statewide organization representing 6,300 businesses and more than half a million employees throughout Minnesota, we appreciate the opportunity to provide feedback on the Minnesota Pollution Control Agency (MPCA's) PFAS in Products: Reporting and Fees Draft Rule, Revisor's ID Number R-4828, OAH docket number 5-9003-40410 (Draft Rule).

Minnesota is currently the only state in the country to require reporting on all products that contain PFAS and a total ban those products by 2032. Being such a significant outlier will make business compliance difficult, and in turn, will make further in-state business investment, manufacturing, and economic growth harder to attract. Therefore, the Chamber recommends to the MPCA that changes to the Draft Rule must be done in a way that makes reporting feasible.

Missing Information
The Draft Rule omits important information to the business community, including clarity and consistency on relevant PFAS and how the reporting system will function.

Clarity and consistency on relevant PFAS:
Minn. Stat. § 116.943, subds. 2, 3 and 6—the three statutory subdivisions relevant to this set of draft rules—make it clear that only manufacturers of products with intentionally added PFAS sold, offered for sale, or distributed in Minnesota are obligated to provide information to the MPCA Commissioner and pay fees associated with the provision of that information. While the modifier "intentionally added" precedes "PFAS" in some places in the draft rules, it must be present on a consistent basis throughout the draft rules so there is no doubt as to manufacturers' reporting and payment obligations. Among the places where the modifier "intentionally added" must precede "PFAS" are draft Minn. R. 7026.0010, subp. 18; 7026.0030, subp. 1.A(1)(a)(i – iii), (b) and (b)(i – iii), B, C and C(2), D; 7026.0040, subp. 3; 7026.0080, subp. 3.A; and 7026.0090, item E.

Reporting System:
At its July 18, 2024 webinar, MPCA suggested the reporting system it will use to receive information mandated under the statute and the new rules will be based on the High Priority Chemicals Data System model that is part of the Interstate Chemicals Clearinghouse. With just over seven months to go before the statutory reporting deadline, MPCA has yet to provide any additional details as to exactly what the

final reporting system will be, how and when beta testing of the new system will occur to ensure a smooth reporting experience, and other critical details about system implementation. The Chamber encourages MPCA to share information about the reporting system as soon as possible, so the regulated community may have sufficient time to consider and provide input on the reporting system and process.

The State of Maine was overloaded with information through a variety of data submissions, including physical documents, flash drives, compact discs, and more. Without clear guidance as to how businesses should submit information, Minnesota may be unequipped to handle the massive influx of reporting by January 1.

The proposed January 1, 2026, reporting compliance date is unreasonable, as the final rule has not been written and the reporting platform is not yet operational. The absence of a finalized rule, particularly the Currently Unavoidable Use (CUU) rule, creates significant uncertainty for affected parties attempting to prepare for compliance. Any preliminary steps taken could require costly adjustments if the final rule or CUU provisions change. The Chamber urges the MPCA Administrator to use their authority to extend the reporting requirement timeframe to at least 6-12 months after the reporting system is tested and ready to receive reports, and 6-12 months following the publication of the finalized CUU rule. This extension would allow for clear, unambiguous requirements, enabling manufacturers to perform due diligence and ensure compliance. Additionally, with an extension, manufacturers located in the state of Minnesota would be provided relief from parts and raw material suppliers who would otherwise be unable to sell into the state.

Comments on Draft Rules
The Chamber respectfully asks MPCA to consider and take action on the following aspects of the draft rules:

7026.0010 (Definitions):
Subp. 14.**Manufacturer.** "Manufacturer" means **the person that creates or produces a product, that has a product created or produced,** or whose brand name is legally affixed to the product….

Additional clarity is needed in the definition of manufacturer for the person who produces a product. There are instances where a contractor purchases a PFAS-containing product from a company and is then, as per product requirements, required to mix it on-site with another chemical to produce the required reaction for the needed construction services. Under the above definition the contractor would be the “manufacturer” of an already produced and reported product. To avoid double counting, this activity should be considered outside the scope of this regulation.

Definitional clarity is required for the term “packaging” within the definition of “component.” As written, it would appear that certain packaging of a product, and the intended sale product, would be included in this rule. The Chamber recommends that only the product intended for sale be considered the reportable product to ensure the reporting outcomes are targeted and specific to the products that are actually being sold. This approach will help avoid unnecessary reporting of packaging materials, which are not the primary focus of the regulation.

Additionally, the statute does not state that reporting should be required for packaging. The September 12, 2024 *Progress on PFAS rule development webinar* question and answer document states that reporting for packaging should fall on the manufacturer of the packaging and not the product. We

recommend this reporting requirement for the intended sale product and not the packaging of the product is made clear in the rule.

7026.0020 (Parties Responsible for Reporting)
Subp. 1 (Scope): The plain wording of this subpart currently requires a manufacturer or group of manufacturers to submit a separate report for each single product subject to reporting obligations under the rule, i.e., they shall "submit a report for each product or component that contains intentionally added PFAS." (Emphases added.) Other aspects of the proposed rules and the Statement of Need and Reasonableness (SONAR), however, suggest MPCA did not intend such a clearly onerous requirement. For instance, draft Minn. R. 7026.0030, subp. 1.A(1)(a) allows the grouping together of similar products. The Chamber therefore suggests the wording of subpart 1 should be changed to something like, "A manufacturer or group of manufacturers of a product or component sold, offered for sale, or distributed in the state that contains intentionally added PFAS must submit a report under part 7026.0030. An individual report may include information for more than one product or component."

We appreciate the clarity offered verbally by MPCA during the May 22, 2025 Administrative Hearing. However, we ask this clarification be made explicit in the rule.

Subp. 2 (Reporting on behalf of other manufacturers)
Item C requires each manufacturer whose information obligations are being satisfied via a group submission must still "verify . . . that data submitted on their behalf is accurate and complete." This requirement would seem to undermine the presumed intent of a group submission, which is to obviate the need for every single manufacturer of a product or component to partake in the submission process. This verification concern could more easily be satisfied by including a component in the group submission in which the reporting manufacturer certifies that it has notified the other manufacturers pursuant to item A and that those manufacturers have assured the information they provided the reporting manufacturer and included in the report is accurate and complete, without the need for individual verifications by each member of the group.

It is also unclear whether Item C requires testing results on behalf of other manufacturers. The Rule should clarify whether a report submitted on behalf of other manufacturers must include testing results that yields a non-detect or "chemical not in use/formulation" designation.

Under **Item D**, an entire report submitted by a group of manufacturers and possibly covering many different products and components would be invalidated if even a single manufacturer covered by the report failed to pay an applicable fee under Minn. R. 7026.0100. The more equitable punishment for such a failure would be for that manufacturer's submission obligations to be invalidated for its payment failure. The other manufacturers should not bear the burden of ensuring their fellow manufacturers have all made payments nor should their own efforts be invalidated because of the failings of other members of the group.

The Chamber asks that this same concept also be applied to draft Minn. R. 7026.0030, subp. 3; 7026.0040, subp. 5; 7026.0050, subp. 5; and 7026.0060, subp. 4.

7026.0030 (Report; Required Information)
Subp. 1 (Report required): As with the recommended change to Minn. R. 7026.0010, subp. 1, MPCA should make clear here, as well, that a single report can satisfy information submission requirements for more than one product or component. The Chamber suggests a change such as " . . . must submit a

report that may include information for more than one product or component to the commissioner . . ." to the first sentence of subpart 1.

Subp. 1.D: The Chamber 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.

Subp. 1.F: The plain wording of this item suggests that, in the case of a report submitted on behalf of a group of manufacturers, contact information for the "authorized representative" and their alternative applies only to the reporting manufacturer, not to every member of the group. The Chamber asks MPCA to confirm this is the case, if necessary, through the additional language that makes that clearer.

7026.0040 (Reporting Updates)
Subp. 1.A: Minn. Stat. § 116.943, subd. 5(c), prohibits the sale, etc., of all products that contain intentionally added PFAS, except those with a currently unavoidable use, by January 1, 2032. The reporting requirements here must therefore end once the ban takes place, and the rule should reflect that the last required year of reporting should be February 1, 2032.

Subparts 1.A.(2) and (3): The draft rule should clarify that a manufacturer need only provide "new product information" under item 2 that is relevant to the information required for submission under part 7026.0030. Item 3 should clarify that the "new product" is one that includes intentionally added PFAS.

7026.0050 (Waivers)
Subp. 2: Subpart 2 requires manufacturers to request a new waiver for a previously waived information request each year. This burdensome requirement could more easily be addressed by modifying part 7026.0040 to all manufacturers (or a reporting manufacturer, in the case of a group) to no longer require an annual waiver once the initial waiver has been submitted and approved, unless there is a fundamental change to the basis of the waiver.

Subp. 4: **Item A** should clarify that if a manufacturer or group of manufacturers submit a timely waiver request, they are automatically relieved of the requirement to submit information by the applicable deadline unless the commissioner denies a waiver under item B, even if the commissioner fails to act on the waiver request by that deadline. **Item B** should clarify that the "report" that may be required under here applies only to those pieces of information for which a waiver request was denied.

7026.0060 (Extensions)
Subp. 3 (Extension request deadline; approval or denial): Subpart 3 requires a manufacturer or group of manufacturers who wish to seek a deadline extension must submit that request at least 30 days before the reporting due date. The draft rule says nothing, however, about what happens if a timely request is submitted but the MPCA has not acted on the request by the reporting due date. To provide manufacturers with some degree of certainty and to allow them to plan resources accordingly, subpart 3 should include a provision that states a timely extension request alleviates the requesting manufacturer(s) of responsibility to file by the applicable due date unless the commissioner issues a denial of the request under subpart 3.C.

Should a company face difficulties obtaining data, a three-month extension is an unreasonable period to finalize this data from their supply chain. The Chamber recommends extensions be 180 days to allow manufacturers to obtain the data required from a complex supply chain in good faith.

Further, the Chamber recommends accepting already existing testing methods and listings. Testing methods relied on by the federal government are already in use in supply chains. Creating a new testing protocol will create further cost, redundancy, and complexity.

7026.0070 (Trade Secret Data Request)
Subp. 1 (Procedure for trade secret data request): Subpart 1 lists three types of data that may constitute non-public data. The use of the word "includes" suggests, but does not make explicit, that the three data types are among the types of potential not public data but do not constitute the entire set of such data. To make clear that manufacturers have the right to make the case that additional types of data may be not public, subpart 1 should be amended to say "Trade secret data that is eligible to be considered not public information includes, but is not limited to: . . ."

Furthermore, subpart 1 should clarify that any data subject to a request for not public data classification shall be treated as such unless and until the commissioner affirmatively denies that classification request.

Subp. 2 (Public data; alternative data request): The protections for trade secrets offered by the MPCA are currently insufficient. Under the current Draft Rule, manufacturers must disclose the purpose and function of PFAS in the product and in product components. Products and components purchased by manufacturers from suppliers are not party to the specific chemical composition of each because that formulation is proprietary to that supplier. The current Draft Rule effectively requires companies creating a specific part for sale to detail its proprietary information to its competitors via the MPCA.

7026.0080 (Due Diligence)
Subp. 1 (Reporting due diligence): Subpart 1 alleviates a manufacturer of its reporting obligation if it receives notification from another manufacturer that it has provided relevant information on the former's behalf. The Chamber supports this approach but believes this is another example of why the verification under part 7026.0020, subp. 2.C should be removed. The MPCA should include a provision that the data from another manufacturer be reasonably ascertainable. If the submission of information by another manufacturer alleviates a manufacturer of its reporting obligations, then it makes no sense to make the latter take the additional step of verification, if the report itself allows such verification, as the Chamber suggests above.

Subp. 2 (Supply chain requests): The simple fact is that even the most diligent and tenacious manufacturer lacks complete control over the completeness of the data it receives from its supply chain vendors. MPCA therefore must account for this in its rule, e.g., by allowing manufacturers an affirmative defense against enforcement if it can document a reasonable level of diligence in its request of a supply chain vendor and its good faith reliance on the data provided by the vendor to the manufacturer or the absence of certain data, despite repeated demands.

Furthermore, a reporting manufacturer only should be responsible for submitting information within its direct control. Businesses with complex supply chains will be unable to acquire information from thousands of suppliers. Even the most diligent cannot extract information that is not offered. For example, a member company communicating with a subset of less than 25% of their supplier universe is

receiving a less than 40% response rate. Of those responding, rarely do they receive the full required information from each supplier. Forcing reporting manufacturers to rely on external parties to satisfy the former's compliance obligations adds a liability to companies outside the scope of their control. If the due diligence requirement remains unchanged, reporting manufacturers will be forced to select the "unknown concentration option" which seems contradictory to all information being required. Further, reporting manufacturers would be unable to provide information on behalf of suppliers no longer in business.

As currently written, MPCA proposes that manufacturers' due diligence consists of manufacturers requesting detailed disclosure information from their supply chain "until all information is known." To obtain this level of due diligence, testing of all products and components would be required, but it is unlikely that there is sufficient laboratory capacity to handle the testing requirements. The Chamber asks that the MPCA change this proposed rule to allow manufacturers to submit PFAS information for their products that is known or reasonably ascertainable.

Subp. 3 (Documentation and recordkeeping): **Item 3.C** should be amended to clarify that a manufacturer need not retain this information past January 1, 2037, i.e., five years after the ban on all products or components containing intentionally added PFAS, unless the use of the PFAS in the product or component is currently unavoidable.

In addition, there should be a provision that the requested data be "reasonably ascertainable." MPCA should align its due diligence requirements to other jurisdictions to ensure that the regulated community can comply to this rule. For instance, Canada's PFAS reporting requirement outlines "If you are subject to the notice, you are required to provide information that your company possesses or to which you may be reasonably expected to have access." Similarly, the TSCA reporting rule requires reporters 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."

7026.0090 (Reporting Exemptions)
There should be exemptions for products that have gone through federal approval processes. Exemptions should include, but not limited to:

Environmental Protection Agency (EPA) Significant New Approval Policy (SNAP) Approval: SNAP Products have gone through rigorous environmental and human health assessments. These products implement section 612 of the amended Clean Air Act of 1990 and includes evaluation of overall risk to human health and the environment. SNAP already generates lists of acceptable and unacceptable substitutes for major industrial use sectors and provides smooth transitions to safer alternatives. These products are critical components of Minnesota's economy and are critical to reaching critical climate change goals as they provide allowance for use of low greenhouse warming potential gasses.

Food and Drug Administration (FDA) Approval: Medical Products and their packaging that have received FDA approval have already gone through rigorous assessments on their safety and uses. The health risks of these FDA applications are thoroughly assessed by the FDA before they make it on the market and must undergo multiple tests to prove biocompatibility in compliance with the international biocompatibility standard, ISO 10993.

Introducing unique regulations in Minnesota that impact pharmaceutical drug packaging and medical devices may introduce differences in medical application and packaging standards leading to additional compliance costs and potential cross-state complexities. These additional burdens could hinder access to essential medications for patients if manufacturers decide to limit distribution to specific regions due to the complexities of compliance. This could lead to drug shortages or inferior products entering the market and consequently limit diagnostician options and impact patient care results. Implementing different packaging requirements for Minnesota would increase production costs, disrupt supply chains, and potentially lead to confusion or errors in distribution.

Federal Aviation Administration (FAA), Department of Defense (DoD) Approval, National Aeronautics and Space Administration (NASA) Standards and U.S. Department of State International Traffic in Arms Regulations (ITAR) Controlled Products: Due to the sensitive nature of materials that, if disclosed, could be considered a threat to national security, the MPCA should expressly exempt any federally classified, controlled unclassified, or export-controlled information from its PFAS reporting requirements. This will ensure compliance with federal statutes and regulations applicable to products having United States Government end use. Additionally, these products are crucial for the functioning and health of the environment and society. Any impact on the distribution of these products into Minnesota would have drastic impacts to the welfare of Minnesotans and the economy.

7026.0100 (Fees)
A manufacturer whose products or components may be captured under more than one group manufacturer's report will not have to pay more than $1,000, i.e., will not have to pay more than once just because its product or component may be captured under more than one report. If so, the Chamber suggests the rule be clarified to reflect this fee cap. The same would be true for other applicable fees under part 7026.0100.

Thank you for your consideration of these comments. The implementation of the Draft Rule will have a significant impact on the business community. To continue growing Minnesota's economy, we highly recommend incorporating our suggestions to make reporting and fees feasible.

Sincerely,

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HOUSEHOLD & COMMERCIAL PRODUCTS ASSOCIATION
Innovative Products For Home. Work. Life.

June 20, 2025
Office of Administrative Hearings, Attn: William Moore
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55164-0620
Submitted via eComments website at https://minnesotaoah.granicusideas.com

Re: Proposed New Rules Governing PFAS in Products, Minnesota Rules, chapter 7026

Dear Mr. Moore,

On behalf of the Household & Commercial Products Association[1] (HCPA) and its members, we want to convey our comments on Proposed New Rules Governing PFAS in Products, Minnesota Rules, chapter 7026. HCPA has commented throughout the process and appreciates the efforts by the Minnesota Pollution Control Agency (MPCA) to ensure the regulation is implemented effectively and that the information collected is consistent with the legislative intent. HCPA notes that this is the first widespread product-level PFAS reporting activity to be implemented in the United States, and many of the complexities previously identified in various discrete chemical PFAS reporting schemes will be significantly compounded by reporting at the product level.

HCPA remains committed to promoting responsible production, use, and management of fluorinated substances, with a strong focus on regulatory requirements that safeguard both human health and the environment, particularly in cases involving persistent, bioaccumulative, and toxic (PBT) chemistries.

While HCPA acknowledges that MPCA is bound by the broad definition of PFAS as outlined in the law, it is crucial to consider the diversity of chemicals falling under this broad definition and their unique applications. Adopting a singular policy approach towards PFAS in products does not align with the current marketplace. In addition, we strongly advise the agency to closely monitor related activities undertaken by the U.S. Environmental Protection Agency (EPA) and other state regulators. This will both assist the MPCA in meeting its statutory requirements and minimize the likelihood of competing or redundant requirements on manufacturers.

HCPA requests a 12-month extension of the reporting deadline to January 1, 2027, or longer, depending upon when MPCA completes the rulemaking process and the

[1] HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

reporting portal. Our members cannot begin gathering the necessary information to meet the reporting requirements until it is clear that MPCA has completed the rule and the required data elements. Additionally, manufacturers cannot commence preparing reporting submissions until MPCA has finalized and ensured that the reporting portal can receive and securely store the submissions. This is particularly critical as the statute and the proposed rule include provisions for the submission of Trade Secret Data under the provisions of Minnesota statutes, section 13.37.[2] The challenges associated with developing a PFAS reporting submission portal are readily demonstrated by EPA's multiple delays in operationalizing their PFAS Reporting Rule under TSCA. HCPA members and MPCA would both benefit from the additional time to ensure a successful reporting period once effectuated.

Definitions

HCPA offers the following comments to clarify Chapter 7026.0010, "Definitions," that apply to rules regulating PFAS in products as outlined in the proposed rule.

HCPA is concerned that the definition for Subp. 6. Chemical name is too narrow and does not cover substances that do not have an IUPAC systematic name. We recommend including additional naming systems, such as the INCI Dictionary,[3] the HCPA Consumer Product Ingredients Dictionary,[4] trade names, or generic names, arranged in a hierarchical manner. This approach is consistent with the public disclosure approach utilized in California under the Cleaning Products Right to Know Act,[5] which many of our members utilize for their disclosure efforts.

HCPA requests additional clarity with the definition of Subp. 7. Component, especially as it relates to the definition of Subp. 16. Packaging. As noted, the definition of component includes packaging only when the packaging is inseparable or integral to the final product's containment, dispensing, or preservation, while "Packaging" has the meaning given under Minnesota Statutes, section 115A.03. This would appear to make any product a complex article and would likely require manufacturers of formulated products to solicit information on the PFAS content of all primary packaging. Amara's Law makes no explicit mention of reporting being required for packaging, and the Q&A Document indicated that the reporting for packaging "generally falls on the actual manufacturer of the packaging," not on the manufacturer of the product. HCPA requests additional clarity to ensure MPCA receives the necessary information without unduly burdening manufacturers.

HCPA is concerned that the definition for Subp. 8. Consumer appears to be in conflict with the plain reading of consumer and other statutorily definitions of

[2] See https://www.revisor.mn.gov/statutes/cite/13.37

[3] See https://www.personalcarecouncil.org/science-safety/winci/

[4] See https://www.productingredients.com

[5] See https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB258

consumer within Minnesota[6] and Federal law.[7] In addition, the only references to "consumer(s)" within the Proposed Rule are for self-evident cases. 1) "consumer price index" (as the basis for future inflation of fees) and 2) "Global Product Classification system for consumer products" (as the basis for product numbering), which is already defined within the product number provision by references to brick codes and universal product codes. Further, the Statement of Need and Reasonableness (SONAR) indicates that the definition of "consumer" is being added to the Proposed Rule for purposes of clarifying its meaning in Amara's Law, but the addition of the definition of "consumer" is superfluous and circular. In Amara's Law, "product" is defined as "an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including but not limited to its product components, sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products." The definition of "product" establishes that commercial and industrial products are in scope of the rule, so the definition of "consumer" is unnecessary. HCPA recommends clarifying the definition of "consumer" by the removal of commercial and industrial from the scope of the definition.

HCPA requests additional clarity with the definition of Subp. 9 "Distribute for Sale." As written, it appears that this could impact a company if someone offers in passing that a product could be sold in Minnesota, rather than simply offering to sell and then executing the sale. This definition could encompass catalog sales, internet sales, or products transported through Minnesota, even if they do not occur within the state's confines. HCPA recommends that the term "offered for sale" means sold *within* the state, and that MPCA clarify that catalog sales and internet sales outside of the manufacturer's control be excluded from the definition of "offered for sale."

HCPA requests additional clarity with the definition of Subp. 11. "Function." As written, the inclusion of "any stage" is very broad and may be beyond the control of the manufacturer or reporting entity. This language suggests that there is a requirement for more information than just what PFAS is intentionally added to a product, but instead, includes PFAS that may be used in the manufacture of a product. For example, this would appear to include situations in which PTFE lubricant is used on a conveyor belt at any stage of manufacturing a product or any component thereof. According to the definition of "function" within the SONAR, manufacturers will need to specify the function of the PFAS in the product according to a specific list of Functional Use

[6] For example, Minn. Stat. § 325M.11(g) defines Consumer as "a natural person who is a Minnesota resident acting only in an individual or household context. Consumer does not include a natural person acting in a commercial or employment context."

https://www.revisor.mn.gov/statutes/cite/325M/full#stat.325M.11

[7] The Consumer Product Safety Act defines the term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

https://www.law.cornell.edu/uscode/text/15/2052#a_5

Categories. The list of functions is used for Chemical Data Reporting (CDR), and although it contains a broad range of functions, it is primarily directed at manufacturers of chemicals.[8] Our members are formulators, and most do not report under CDR; instead, they more commonly utilize lists of functions intended for formulators.[9] In addition, it is not clear if or how ingredients with multiple functions would or could be included in the reporting. All these factors make it clear that manufacturers will need significant time to work with their technical staff and suppliers to align the specific functions of each ingredient, as per the CDR list provided. HCPA recommends that additional flexibility be provided to allow the usage of other pertinent function sources.

HCPA requests additional clarity with the definition of Subp. 14. Manufacturer. "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. The term "Manufacturer" includes the entity that manufactures a product or whose brand name is legally affixed to the product. However, there are numerous circumstances when two different entities meet that definition: one may manufacture the product, and the other may legally affix their name to the product. In such circumstances, it would be unclear who is considered the "manufacturer" and, therefore, which entity has the reporting requirement. In the event that two different entities meet the definition of "manufacturer", HCPA recommends clarifying that the entity responsible for the sale and distribution of the finished product within the state and whose brand is legally affixed to the product is responsible for all obligations. In addition, the proposed rule does not adequately account for the possibility, and likelihood, that manufacturers whose products are sold by distributors may be unaware that their products are being offered for sale in Minnesota and therefore may, as a practical matter, be unable to report under the rule. HCPA recommends that a hierarchy of responsibility be added to the definition to provide clarity to manufacturers and for MPCA to determine reporting obligations and enforcement.

Chapter Provisions

HCPA recommends that Chapter 7026.0020, Parties Responsible for Reporting, Subpart 1, Scope, be modified to clarify that a manufacturer is required to submit a single report encompassing all products, consistent with MPCA's description in the Statement of Need and Reasonableness and with MPCA's testimony at the May 22

[8] The full list of Chemical Data Reporting Functions is available in Appendix D-1 at https://www.epa.gov/system/files/documents/2024-03/draft-cdr-2024-instructions-for-reporting-january-2024.pdf

[9] For example, the HCPA Consumer Product Ingredients Dictionary defines numerous functions at https://www.productingredients.com/docs/glossary-ingredient-functions.pdf.

Administrative Law Judge hearing. We recommend that "each product or component" be changed to "all products or components" in the provision to make it clear that each manufacturer submits a single report, rather than one report per product.

HCPA appreciates the intent but is concerned that Chapter 7026.0020, Parties Responsible for Reporting, Subpart 2, Reporting on behalf of other manufacturers, may not be structured in a manner to encourage its utilization of the streamlined reporting, and it may also result in double-counting. While there is a requirement for an agreement establishing reporting responsibilities, it is unlikely that a company would attest to meeting the due diligence requirements and assume liability for supply chain information that they do not necessarily control. Or to state it another way, the complexity of a legal agreement to address the multitude of potential business and supply chain complexities would vastly exceed the benefit of combined reporting. In addition, given the complexity of supply chains and the supplier-to-customer relationship, any of whom may be considered a manufacturer, products or components may unknowingly be double-counted. HCPA recommends reconsidering this section to ensure it is fully utilized.

HCPA recommends that Chapter 7026.0030. "Information Required in Report" applies only if a product will continue to be manufactured with PFAS after January 1, 2026. The SONAR indicates that one of the purposes of the information collection under Amara's Law is to inform future Agency program development and rulemaking. MPCA will have more accurate information regarding products containing PFAS and will better direct its resources to "an effective pollution prevention program" if MPCA restricts its data collection to products that are currently manufactured with PFAS. The inclusion of the manufactured date will also incentivize those manufacturers who wish to avoid reporting to manufacture their products without PFAS by January 1, 2026. This clarification will also reduce the amount of irrelevant data that MPCA collects and processes.

HCPA notes that there appears to be an ambiguity between Chapter 7026.0030, Subpart 1, and Chapter 7026.0040, Subpart 1.A.(3) with respect to new products. Section 7026.0030 reads: 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; and Section 7026.0040 reads: By February 1 each year, a manufacturer or group of manufacturers must submit an update to the report submitted under part 7026.0030 if during the previous 12 months: (3) a new product was sold, offered for sale, or distributed in or into the state. These provisions are inconsistent or ambiguous. If the manufacturer is required to provide a report for a new product under 7026.0030, then updates would not be necessary for new products under 7026.0040, Subpart 1.A.(3). HCPA recommends that the language under Chapter 7026.0030, Subpart 1, be removed and rely upon the annual reporting update requirements of 7026.0040 and adjust the Section 7026.0100 fee requirements accordingly.

HCPA is concerned that if a waiver under the provisions of Chapter 7026.0050 is denied, the 30-day response time is insufficient. HCPA recommends extending the

response time for denied waivers to at least 90 days and providing an option for manufacturers to request additional time if warranted to compile the requested information.

HCPA is concerned that if an extension under the provisions of Chapter 7026.0060 is denied, the 30-day response time is insufficient. HCPA recommends extending the response time for denied extensions to at least 90 days and providing an option for manufacturers to request additional time if warranted to compile the requested information.

HCPA recommends the addition of joint or blinded submissions under Chapter 7026.0070 "Trade Secret Data Request." This provision would provide an avenue for formulators and their suppliers to disclose the chemical identity of a PFAS-containing raw material to MPCA while also offering trade secret protections to the supplier.

HCPA is concerned that the Chapter 7026.0080. "Due Diligence" requirements may be difficult to comply with. Reporters should be responsible for presenting information that falls within the direct control of the company; placing the responsibility of company compliance on external parties adds liability to companies outside the scope of their control. Canada's PFAS reporting requirement outlines, "If you are subject to the notice, you are required to provide information that your company possesses or to which you may be reasonably expected to have access."[10] Similarly, the TSCA reporting rule requires 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 was known to or reasonably ascertainable by the reporter."[11] HCPA recommends that MPCA align its due diligence requirements with other jurisdictions to ensure that the regulated community can comply with this rule.

HCPA recommends the inclusion of a provision in Chapter 7026.0100 to address delinquent reporting within the regulatory framework. Specifically, we recommend allowing a 90-day grace period for entities to submit their reports after being informed of their failure to report. This approach would provide a reasonable timeframe for compliance, ensuring that entities can rectify their reporting status before facing penalties.

In many HCPA members' products, PFAS have never been utilized or have been reformulated to alternative chemistries for a long time. In addition, many of HCPA members' products are already prohibited from containing intentionally added PFAS in Minnesota under the product categories that went into effect earlier this year. For any remaining products that may be impacted, ambiguity in the proposed regulation may require significant efforts to determine if a manufacturer has a reporting obligation. It is crucial that the issues outlined in these comments be addressed before the regulation

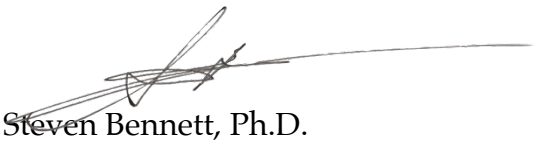
[10] See https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/pfas-s71-guidance-manual.html

[11] See https://www.epa.gov/system/files/documents/2024-12/tsca-8a7-reporting-instructions_11-25-24.pdf

is finalized.

In conclusion, HCPA appreciates the opportunity to provide these comments and looks forward to collaborating with MPCA and other stakeholders to ensure that Minnesota residents continue to have access to products that enhance their daily lives. If the Agency staff would like to discuss our comments further, please do not hesitate to contact us.

Sincerely,



Steven Bennett, Ph.D.
Executive Vice President, Scientific & Regulatory Affairs

PERLICK®

June 18, 2025

Perlick Corporation submits this written comment in addition to the verbal comments provided during the Office of Administrative Hearings hearing on May 22, 2025. This supplemental comment is submitted to provide further clarity regarding the practical and legal implications of the current language in the Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees, Part 7026.0010 DEFINITIONS, Subp. 14.

We respectfully request a revision of the existing language that assigns reporting obligations solely to manufacturers, including those out of state. Instead, we propose changing Minnesota's language with a "first distributor" model, which places responsibility on the first entity that introduces a product into the state.

Rationale and Legal Concern:
The current rule language in 7026.0010 subpart 14 effectively requires all manufacturers—regardless of their location or role in the supply chain—to track and report data about PFAS in products that may or may not ultimately be sold in Minnesota. For upstream manufacturers like Perlick, who sell through independent third-party distributors, this requirement presents a significant compliance challenge. Manufacturers often lack visibility into the final destinations of products post-sale, making it difficult, if not impossible, to accurately report product information specific to Minnesota.

For example, Perlick, based in Milwaukee, Wisconsin, may sell equipment to a distributor in Illinois. That distributor could then route products to a regional sales representative in Missouri, who may in turn sell to a customer in Minnesota. Alternatively, that same distributor might fulfill orders to customers in California, Oregon, or elsewhere—none of which Perlick has visibility into. Those customers, in turn, may or may not place product on the Minnesota market.

To ensure compliance under this rule, we would be forced to track *all downstream movement of our products*, even if the final destination is outside of our control or unknown. This would effectively require us to monitor and document product flow beyond state borders, across multiple levels of the supply chain, based purely on the possibility that one unit *might* end up in Minnesota. Creating such a tracking system would be logistically complex, financially burdensome, and in many cases functionally impossible, especially for smaller manufacturers with limited resources. It is also legally questionable.

This approach thus imposes reporting obligations *before* products even enter Minnesota, effectively regulating commercial behavior that occurs entirely outside the state's jurisdiction. In doing so, the rule extends beyond state borders, raising serious concerns about extraterritorial enforcement and the constitutional limits of state authority. Meanwhile, Minnesota-based manufacturers that sell only within the state or through direct channels would not face these same reporting burdens, creating an unequal and potentially discriminatory compliance landscape.

While some Minnesota businesses may experience similar burdens, many will not, particularly smaller in-state manufacturers that focus on local markets. As such, the proposed language results in an uneven playing field and may conflict with the *Dormant Commerce Clause* by discriminating against or unduly burdening interstate commerce.

Suggested Language Change:
We propose modifying the current definition of manufacturer in 7026.0010, Subpart 14, as follows:

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

The current language addressing the importing of products into the United States potentially regulates product sale structure at the point of US import, as opposed to the point of State import. Removing the "United States" language and replacing it with "Minnesota" confines the regulations to Minnesota territory and provides clarity of legislative intent. Using "into" instead of "in" reinforces that the law applies to products entering the state, not just those that happen to end up in the state through indirect means.

Modifying the manufacturer definition reduces the necessity to revise other portions of the law.

Conclusion:
Perlick fully supports PFAS regulation and public health protection efforts. Our concern lies not in the purpose of the rule, but in the method of its enforcement. Revising the reporting responsibility language to reflect a first-in-state distributor approach will better align with legal precedent, protect interstate commerce, and still achieve the desired transparency and regulatory outcome.

We appreciate your consideration of this request.

Best regards,

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RECEIVED
By: OAH on 6/22/2025
Jeffery Sepesi Attachment

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June 22, 2025

VIA ELECTRONIC SUBMISSION: https://minnesotaoah.granicusideas.com

Honorable Judge Jim Mortenson
600 North Robert Street
St. Paul, MN 55101

Re: Minnesota Pollution Control Agency's Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and Polyfluoroalkyl Substances (PFAS), Revisor's ID Number R-04828, OAH docket number 5-9003-40410

Dear Judge Mortenson

Environmental Law and Science PLLC appreciates the opportunity to respond to the Minnesota Pollution Control Agency's (MPCAs) request for comments on the proposed PFAS in Products Reporting and Fee Rule. These rules implement subdivision 2 of Minn. Stat. 116.943, also as known as Amara's Law (referred herein as the statute). The following comments are being submitted on behalf of one of our clients.

Proposed Minn. R. 7026.0030, Subpart 1.A(a) and (b): MPCA Needs to Change the Product Grouping Criteria to Reflect Product Realities

The proposed reporting rules allow the grouping of homogenous products and product components only if all of four criteria are met: (1) the PFAS chemical composition is the same; the PFAS chemicals fall into the same concentration range; the PFAS chemicals have the same function; and the products have the same basic form and function. Proposed Minn. R. 7026.0030, Subpart 1.A(a) and (b).See also pages 39-40 of MPCA's hearing presentation.

Moreover, MPCA has crafted a grouping scheme that contains more restrictions than contemplated by the statute, which merely states that "a manufacturer may supply the information required [product information] for a category or type of product rather than for each individual product." Minn. Stat, 166.943, subd 2(b).The resulting proposed grouping scheme is too restrictive and prevents the grouping of functionally identical or similar products. It suggests that MPCA does not fully understand how companies make products today.

The proposed rule clearly does not accommodate product manufacturing and supply chain realities where any or all of the following situations can occur: (1) PFAS content of otherwise identical or similar products differ because interchangeable product components sourced from different suppliers use different PFAS with the same function; (2) the configuration of otherwise identical or similar products differ in the type and quantity of

components used; and (3) a product uses components with the same PFAS that have different functions.

The proposed rule prevents product grouping for the above examples. It requires reporters to submit multiple reports[1] for otherwise identical or similar products sold under the same product group name and number. This unnecessary and duplicative product reporting will burden manufacturers by make reporting extremely difficult to manage. It will provide little useful additional information to MPCA and not otherwise promote the goals of the statute.

For the reasons described below, MPCA should change its proposed grouping criteria to allow grouping based solely on the fourth criteria –products under the same product type or category have the same basic form and function. This would meet the statute's mandate to allow reporting for a category or type of product and allow a single report for any such product category or type. Any differences in PFAS chemical composition, concentrations or function could be conveyed within this single report.

Supply Chain Variability Can Result in PFAS Differences in Interchangeable Parts

The practical reality is that PFAS composition can differ across units of otherwise identical or similar products or components sold under the same high level product group and product number. This PFAS variability results because suppliers often only need to meet certain functional or performance requirements. Chemical composition is not necessarily a design specification in complex products made up of anywhere from a few dozen to thousands of subparts. In fact, suppliers of components used in a manufacturer's end products often develop proprietary materials that may have differences in PFAS content between equally qualified interchangeable components in a product. During MPCA's presentation at the public hearing it showed coated wires as an example of a product that could be grouped. The reality is that such wire, which may be interchangeable and otherwise identical within the same product could have different PFAS content. For example if there were more than one insulation material sub-tier supplier where each uses a different chemical formulation containing various confidential or non-confidential PFAS-based additives not used in the other sub-tier supplier's material (see Slide 39).

To the product consumer, such products are interchangeable and fungible. The brief product description for these products required under the proposed rule would be identical. The currently proposed grouping criteria would require, however, separate reports for these products because of this variation in PFAS content between units of product that are identically named and numbered and otherwise would appear identical to the consumer and manufacturer.

Homogenous and Otherwise Identical Products Can Have Different Internal Configurations

In some situations, complex products sold under the same high level product group and product number may have different configurations to create many versions of products that

[1] MPCA recent stated that it will only require one report per company. This will provide only minor regulatory relief unless MPCA allows more expansive grouping as we suggest herein. The "one report" umbrella will still have multiple, repetitive product specific entries (or reports) for essentially identical or similar products. This will not reduce the regulatory burden described in this comment.

meet a wide range of variable customer requirements under the same basic general product. Like the example above, these products at the consumer use level are functionally similar, even though they have different customer or market-specific configurations due to differences in the type and quantity of components used to customize the final configuration needed by the customer, which may or may not be visible to the customer. These configuration changes could result in differences in product features, performance, and appearance and possible differences in PFAS content.

During MPCA's presentation at the public hearing it showed cars and TVs as examples of complex products that could be grouped. (see Slide 40). The reality is that at such products would be interchangeable and otherwise identical for the user, even if they contain somewhat different configurations. The brief product description for these products required under the proposed rule would be identical. Nonetheless, the proposed rules would not allow their grouping, and manufacturers would be forced to prepare and submit multiple reports instead of one report.

Products May Contain the Same PFAS Serving Multiple Functions

The same PFAS chemical can have different purposed or functions within a product and strays from the statutory mandate to . Take for example, the fluoropolymer PTFE, i.e., Teflon. It could be used, for example in an O-ring (sealant function), coated wire (insulator) or filter coating (resistance to chemicals, moisture, and high temperatures). It is not uncommon for complex products to employ multiple PTFE-based components serving more than one function or purpose. Under the proposed rule, these products could not be grouped because the PFAS would not be serving the same purpose.

MPCA Must Revise and Simplify Its Product Grouping Criteria

In sum, the proposed rule fails to account for supply chain realities and variability and strays from the statutory mandate to allow reporting based on a category or type of product rather than for each individual product. Many commenters have already made abundantly clear that the proposed rules are poorly designed to accommodate product and supply chain complexities where differences in PFAS composition and concentration exist in otherwise identical end products due to multi-sourcing of interchangeable product components and configuration differences.

MPCA needs to recognize this situation and amend the proposed rules accordingly. MPCA should allow grouping of categories or type of products have the same basic form and function and meet the same brief product description. The rule should allow for a single report for any such product category or type. The manufacturers would be allowed to report the potential PFAS content of products within a high-level product category that manufacturers define based on their business definition of a product type, group or category. The report would include the PFAS chemical name, CAS number, concentration range (if used), and function (with the ability to list more than 1 function for each PFAS). Any variability in PFAS composition, concentrations or function could be addressed within the single product report.

This reporting alternative is the most straight forward approach to address supply chain and product complexities and meets the statutes overall goal discovering what products sold in

Minnesota contain PFAS. It also furthers the understanding that not every PFAS reported may be present in any given unit of the product sold, but nonetheless informs MPCA of potential differences in PFAS content within otherwise identical products caused by multi-sourcing and configuration differences.

This reporting alternative would provide more useful information to MPCA than multiple reports for essentially identical products. It would provide the agency information that at a glance describes PFAS variability within a product. At the same time, this reporting approach would be less burdensome for the reporting manufacturers who might otherwise struggle to meet the requirements of the proposed rules because of such PFAS content variability.

Closing Statement

In closing, on behalf of my client, we appreciate the opportunity to provide comments on the proposed PFAS Product Reporting and Fee rules. Our is hope that the agency will hear the concerns of my client and other commenters and honestly consider them.

We recognize that the legislature was well intentioned in passing Amara's Law. We believe and that MPCA made a good faith effort in drafting the proposed rules. Nonetheless, good intentions notwithstanding, the law and the proposed rules make it difficult and costly for companies of all sizes to comply. The flawed proposed grouping criteria is a prime example.

We look forward to a fruitful sharing of ideas that will result in improved rules that facilitate the reporting of practical information without burdening companies doing business in Minnesota. Such information might help inform public policy decisions regarding PFAS.

Best regards,

Jeffery Sepesi

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June 23, 2025

Submitted via the Minnesota Office of Administrative Hearings eComments Website

Katrina Kessler
Commissioner, Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155-4194

Re: Information and Communications Technology Client Request for De Minimis Threshold in Reporting Rule Regarding Products Containing Per- and Polyfluoroalkyl Substances (PFAS)

Dear Commissioner Kessler:

On behalf of a client who is a worldwide leader in the manufacture of information and communications technology products, thank you for the opportunity to provide comments on the Minnesota Pollution Control Agency (MPCA) proposed rule concerning submission of information on products containing PFAS, implementing Minn. St. § 116.943, subdivision 2.

In the MPCA's Part One Pre-Hearing and Hearing Response to Comments, the agency reasoned that Minn. Stat. § 116.943 does not provide the MPCA discretion to exempt intentionally added PFAS based on concentration, and a de minimis threshold would contradict this legislative directive. Our client disagrees. The legislature left room for the MPCA to adopt a de minimis threshold by rule, particularly when viewed in light of the broader statutory framework where the MPCA must give due consideration for commerce and economic factors in its rulemakings.

Minnesota's Administrative Procedure Act at Minn. Stat. § 14.002 requires the MPCA when promulgating a rule to foster maximum flexibility for regulated parties in meeting the goals of the rule's authorizing statute. Moreover, Minn. Stat. § 116.07 directs the MPCA to give due consideration to commerce, economic factors, and other material matters affecting the feasibility and practicality of any proposed rule. While Minn. Stat. § 116.943 does not expressly use a de minimis threshold, that law does not forbid such a threshold. Instead, Minn. Stat. § 116.943 instructs the MPCA to adopt rules "necessary" to implement its provisions. A de minimis threshold is necessary in this situation.

The MPCA's own proposed rule includes several discretionary implementation tools that are not specifically addressed in the statute but are clearly intended to make compliance more workable—such as allowing manufacturers to report concentrations as unknown, permitting product group reporting, accepting supplier declarations, and adding an exemption for classified information. These are practical, flexible mechanisms developed by the agency to ensure the rule can function in the real world. A de minimis threshold serves the same purpose. Incorporation of such a

threshold is a lawful, reasonable exercise of rulemaking discretion that helps the statute function as intended.

Minnesota's PFAS-in-products statute is uniquely broad, but not without its limits. Unlike Maine, California, Canada, and the EU, Minnesota's PFAS reporting obligation applies to all consumer products, regardless of product category, volume, or exposure pathway. There are only minimal built-in exemptions. This statutory structure makes the potential reach of the MPCA's PFAS reporting rule unprecedented among state and international PFAS regulations. However, as mentioned above, the Minnesota Legislature did not intend implementation of the state's PFAS-in-products law to be unbridled from reality. If the MPCA will not allow risk-based targeting, then a de minimis threshold is the only viable way to focus implementation on material PFAS use.

The MPCA's own guidance put forward on the current rulemaking acknowledges that:

- Tracing PFAS at extremely low concentrations across multilayered supply chains is often impractical.

- Companies may lack sufficient visibility into the chemical makeup of upstream components.

- The current structure of the proposed rule may present serious implementation challenges for manufacturers of complex products.

Despite these facts, the MPCA insists on requiring reporting at all concentrations, including trace levels that may not be reliably detected or measured. While "unknown" reporting is permitted, that is not a workable compliance strategy for companies subject to enforcement. This approach will overwhelm both regulated parties and the agency.

A numerical de minimis threshold (e.g., 50 ppm fluorine or 25 ppb individual PFAS) would not subvert the statute's goals. This threshold would enhance the rule's enforceability, preserve agency capacity, and increase the likelihood of accurate, useful disclosures. In fact, the MPCA already plans to accept supplier declarations and grouping strategies—both of which are implementation tools to be adopted by rule to moderate the law's reach as the legislature envisioned. These tools reflect a recognition that the statute must be applied reasonably and flexibly. A de minimis threshold is no different in principle or legal structure. It simply defines the level at which reporting becomes meaningful.

Learning from REACH: The Global Gold Standard

The European Union's REACH regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals) has long served as the most comprehensive and influential chemical safety framework in the world. The EU's recent proposal to restrict PFAS across thousands of use categories includes clearly defined de minimis thresholds, such as:

- 25 parts per billion (ppb) for individual PFAS,
- 250 ppb for total PFAS, or
- 50 ppm for total fluorine where specific PFAS cannot be measured.

These thresholds are not arbitrary. They are part of a deeply considered and publicly reviewed justification process that balances public health protection with regulatory enforceability and economic viability. Furthermore, REACH is not an outlier – other European chemical regulatory programs, including EU RoHS (Restriction on Hazardous Substances), also employ de minimis thresholds. Minnesota can draw on this success to enhance the agency's own credibility and effectiveness in PFAS-in-products regulation.

Why Thresholds Matter

Regulatory Precision

A de minimis threshold helps agencies focus their enforcement on real risks rather than pursuing confirmation of trace-level detections which are also under limits for accurate and reliable detection. De minimis thresholds therefore improve the targeting, efficiency, and credibility of enforcement actions. Such a threshold also helps businesses focus on compliance parameters, which makes their reporting more consistent and enables agencies to efficiently analyze and act on the data collected.

Fairness to Businesses and Supply Chains

Without a de minimis threshold, small businesses and low-volume users—who may not even be aware of trace PFAS in complex imported goods—are subject to the same obligations as major manufacturers. The EU has acknowledged this concern and calibrated its policy to avoid placing undue burden on sectors that pose minimal risk.

Evidence-Based Governance

The EU's rationale for de minimis thresholds is rooted in science, proportionality, and cost-benefit analysis. The REACH proposal notes that such limits prevent runaway compliance costs and administrative gridlock from unmanageable reporting volumes. These are the same policy principles Minnesota aims to uphold.

Enhanced Consumer Understanding

The MPCA has acknowledged that one benefit of the PFAS reporting rule will be that consumers will be better informed about which products contain PFAS and can take action through purchases to safeguard their health. The inclusion of a de minimis threshold in this rule will help ensure that consumers are not overwhelmed or misled by trace-level PFAS disclosures. Without such a threshold, consumers may struggle to differentiate between products containing only trace-level PFAS levels and those with more substantial concentrations. This situation could lead to confusion, unnecessary concern, and misinformed purchasing decisions.

Conclusion

Incorporating a reasonable de minimis threshold into Minnesota's PFAS-in-products rules is necessary to support the MPCA's enforcement capacity, protect businesses from unwarranted burden, and maintain Minnesota's leadership in environmental and public health. This approach reflects both international best practice and practical governance.

Our client strongly urges the MPCA to adopt a science-based de minimis threshold in the final rule as a necessary measure to ensure the rule is both durable and workable in practice.

Sincerely,

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By: OAH on 6/23/2025

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Re: Proposed Permanent Rules Related to PFAS in Products; Reporting and Fees

Revisor's ID Number R-4828
OAH Docket No. 5-9003-40410

Dear Commissioner Kessler,

The Association of Equipment Manufacturers (AEM) appreciates the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA) proposed rule; *Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees*,[1] hereafter referred to as the Proposed Rule. We look forward to sharing the expertise and technical knowledge of our industry sectors. We believe it is critically important when developing regulations that the interests of all stakeholders be considered and understood.

AEM is the North American-based international trade group representing non-road equipment manufacturers and suppliers with more than 1,000 member companies and over 200 product lines in the construction, agriculture, mining, forestry, and utility industries. The equipment manufacturing industry in the United States supports 2.8 million jobs and contributes roughly $288 billion to the economy every year. Our industries remain a critical part of the U.S. economy and represent 12 percent of all manufacturing jobs in the United States. Our members develop and produce a multitude of technologies in a wide range of products, components, and systems that ensure non-road equipment remains safe and efficient, while at the same time reducing carbon emissions and environmental hazards. Finished products have a life cycle measured in decades and are designed for professional recycling of the entire product at the end of life. Additionally, our industry sectors strive to develop climate friendly propulsion systems and support robust environmental stewardship programs around the world.

The non-road equipment manufacturing industry understands the value and importance of using sound science to inform future policymaking decisions. AEM strives to be a key stakeholder in these policymaking discussions. To ensure that new rules meet their objectives, AEM urges MPCA to consider taking the following actions regarding their Proposed Rule:

1. Delay reporting deadline by at least 18 months from Jan 2026 to July 2027.
2. Align the reporting and recordkeeping requirements with the EPA's existing *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances* final rule.

[1] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-06.pdf

3. Align with EPA's known or reasonably ascertainable reporting standard and refrain from requiring absolute result due diligence and expensive analytical testing as part of the due diligence requirement.
4. Streamline the product grouping definitions to align with MPCA intent for "manufacturers […] to bear minimal costs to comply with the reporting rule.
5. Amend the text of the rule to reflect the intent that there will be one report per manufacturer with one flat fee, covering all products made by that manufacturer.
6. Remove the annual recertification requirement for products that have not undergone a design change that would affect the PFAS content found in their equipment.
7. Increase the standard extension timeframe, include the modality to apply for multiple consecutive extensions for initial reporting, annual updates, and recertifications.
8. Clarify how groups of manufacturers can submit their reports together and whether trade associations may submit on behalf of their members.
9. Issue clear guidance on the reporting systems and desired format in a reasonable, clear, and legally binding manner.
10. Align the recordkeeping provision with EPA's 5-year retention rule.
11. Grant a broad waiver based on data submitted under EPA's TSCA 8(a)7 PFAS Recordkeeping and Reporting Rule

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Please review the background and reasoning for AEM's requests:

1. <u>Delay reporting deadline by at least 18 months from Jan 2026 to July 2027</u>

The non-road equipment industry produces incredibly complex articles consisting of hundreds of thousands of unique parts supplied by tens of thousands of suppliers around the world. This global supply chain network faces numerous challenges when it comes to reporting on novel substances like PFAS rather than performance characteristics required. These challenges include data management, education and awareness, and confidential business information barriers, to name a few. For these reasons, non-road manufacturers need as much time as possible to obtain this information to meet the compliance requirements.

The industry and supply chain have been experiencing a lot of challenges with data availability and material data communication, in the effort to prepare for the EPA PFAS reporting as required under the Toxic Substance Control Act.

The statutory deadline for reporting is January 1, 2026, only 6 months away from today. Given that MPCA has yet to finalize the reporting rules as well as the reporting portal or online environment, it would be extremely unreasonable and overly burdensome to continue promulgating January 1, 2026, as the deadline for initial report.

AEM understands that MPCA Commissioner has the statutory authority to grant extensions:

> *The commissioner may extend the deadline for submission by a manufacturer of the information required under subdivision 2 if the commissioner determines that more time is needed by the manufacturer to comply with the submission requirement.*[2]

[2] Sec. 116.943 Subd. 3 (d) 2024 Minnesota Statutes.

While AEM is aware that Minnesota House File 1627 (2025-2026) that includes the proposed extension of the reporting deadline from January 2026 to January 2028, is no longer advancing in legislature, we implore MPCA Commissioner to use the statutory powers to grant an industry-wide delay for initial reporting efforts. In the absence of clear and reasonable reporting rules, and given the current challenges in data gathering, it would be incredibly burdensome and highly ineffective to maintain the 2026 initial report deadline.

Request:
Please delay the reporting deadline for the initial report by at least 18 months from Jan 2026 to July 2027.

2. **Align the reporting and recordkeeping requirements with the EPA's existing Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances final rule**

The non-road equipment industry is a global industry subject to disparate global regulatory requirements. These requirements can range from engine emissions rules to product safety laws to chemical management regulations. To enable our industry's collective compliance efforts, addressing the administrative and regulatory requirements, our industry favors the harmonization of global requirements. This streamlines the compliance activities for manufacturers, helps educate and prepare the supply chain when collecting data, and helps policymakers achieve their intended regulatory goals.

In the United States the Environmental Protection Agency (EPA) has already promulgated its *Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances* final rule.[3] This rule places PFAS reporting and recordkeeping requirements on industry actors with an effective date of April 13, 2026.[4] It established a data collection standard (often referred to as the known or reasonably ascertainable (KRA) standard), a unifying definition of PFAS and other manufacturing terms, as well as a requirement to report through their robust and nationally recognized reporting system; the Central Data Exchange (CDX) system.

As a comparison, the state of Maine promulgated their own PFAS restriction legislation over the last several years (Maine Public Law 2021, c. 477).[5] This law contained many of the same reporting and restriction provisions as those found in Minnesota's Session Law – 2023, Chapter 60, H.F. No. 2310. However, Maine later amended the law to include the "known to or reasonably ascertainable by" standard, aligning the standard with EPA.[6] Furthermore, to accommodate low risk, complex article manufacturers, Maine amended its law[7] to specifically exempt various products, such as construction, forestry and farm equipment.

Harmonizing with an existing EPA reporting standard allows for the administrative framework with necessary time for industry to educate and leverage supply chains, leading to increased consistency of data quality producing a single data set and avoiding delay and duplicative compliance activities.
Request

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[3] https://www.federalregister.gov/documents/2023/10/11/2023-22094/toxic-substances-control-act-reporting-and-recordkeeping-requirements-for-perfluoroalkyl-and

[4] https://www.federalregister.gov/documents/2025/05/13/2025-08168/perfluoroalkyl-and-polyfluoroalkyl-substances-pfas-data-reporting-and-recordkeeping-under-the-toxic

[5] https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1113&item=5&snum=130

[6] Public Law 2023, c. 630, An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances (LD 1537, 131st Legislature, effective August 9, 2024), https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0610&item=3&snum=131

[7] https://legiscan.com/ME/text/LD987/id/3233799/Maine-2025-LD987-Chaptered.pdf

AEM requests that MPCA align its reporting and recordkeeping requirements with the EPA's existing *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances* final rule.

3. **Align with EPA's known or reasonably ascertainable reporting standard and refrain from requiring absolute result due diligence and expensive analytical testing as part of the due diligence requirement**

The Proposed Section 7026.0030 subpart 1(C)(2) states:

> *"The total organic fluorine, determined using commercially available analytical methods, if the amount of each PFAS is not known within applicable due diligence standards under part 7026.0080."*

The Proposed Section 7026.0080 Subp. 2, states:

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

The complex articles that AEM's member companies manufacture contain over 100,000 unique parts. These parts are specified for performance, safety, and quality, not chemical content. The supply chain has never collected this data for regulatory purposes in the past, leaving the manufacturers at the bottom of the supply chain uncertain as to where PFAS may be found within their finished products.

This process of gathering supply chain information is currently underway, but various obstacles will prevent the OEMs from obtaining all the required information in the near term. Supplier education issues, distributor models and trade secret protections, combined with a lack of leverage with international suppliers, among many other issues, will delay and complicate this process.

A rule requiring absolute due diligence is unreasonable and unfeasible given the realities of complex supply chains that are sometimes more than 20 levels deep. The supply chain challenges listed above create a situation where even though non-road manufacturers have put forward robust data collection efforts on the PFAS content of their products, they will inevitably experience extreme and potentially insurmountable obstacles due to events and conditions outside of their control. In this environment, no matter how much effort or resources a manufacturer puts forward, they will not get to the desired results of "all information known".

Additionally, these supply chain challenges create additional data quality issues which put our industry at risk of non-compliance. In some cases, supply chain actors may certify that a PFAS containing component they sell is PFAS free. In other cases, two different suppliers of the same component may certify different concentrations of PFAS to the OEM. Each of these scenarios place the end manufacturer with a tremendous amount of uncertainty and compliance risk when looking to comply with the law.

Knowing the education challenges endemic throughout the supply chain, AEM urges MPCA to adopt the "known or reasonably ascertainable" standard used by the US EPA under their *Toxic Substance*

Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances final rule. [8]

Absent a "known or reasonably ascertainable" data collection standard, finished goods manufacturers would be responsible for an unreasonably burdensome testing requirement to comply with the reporting mandate in the proposed rule. The global laboratory testing infrastructure is far too small to accommodate the testing needs of the manufacturing industry, much less the needs of the non-road equipment sector. The lack of available testing companies will create immediate scarcity and introduce bottlenecks for companies looking to meet their due diligence requirements, as well as limit the ability of MPCA to receive high quality, meaningful data. Furthermore, this bottleneck in testing will increase our industry's compliance costs to unsustainable levels. Testing costs for each individual component is already a very expensive process, costing thousands of dollars for individual parts and millions of dollars to test the more than 100,000 unique components in an individual machine.

Furthermore, obtaining the total fluorine from a product or component part does not provide enough detailed information to determine whether the product contains a PFAS chemical. Testing for total fluorine in a complex article is an imprecise test that provides inaccurate and incomplete data at a fixed point in time. This testing data will not provide the analysis needed to determine the actual risk factors associated with having PFAS in a product.

With these conditions in mind, even under our industry's best efforts, we will not be able to comply with the January 1st, 2026, reporting deadline. The fast-approaching reporting deadlines with no final rule in place, the supply chain education issues, the lack of testing infrastructure, and the incredibly high testing costs, and many other factors will severely hinder the ability of industry to provide compliant equipment into the Minnesota market in the near term.

Request:

AEM urges that MPCA refrain from requiring absolute result due diligence, and request that MPCA adopt a "known or reasonably ascertainable" data collection standard, similar to the data collection standard found in the EPA's *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances* final rule. Furthermore, AEM stresses that MPCA refrain from requiring unreasonable analytical testing as part of the due diligence requirement.

4. **Streamline the product grouping definitions to align with MPCA intent for "manufacturers […] to bear minimal costs to comply with the reporting rule**

Under section 7026.0030 Subpart 1 A (1) (a) and (b) of the Proposed Rule, MPCA provides manufacturers with the ability to group similar products and components together, if they meet several underlying conditions, such as having the same chemical composition, concentration range, functionality and product use.

The non-road equipment industry produces hundreds of different machine forms, which are further broken down into numerous different models for each machine form on a per company basis. Each individual piece of non-road equipment oftentimes contains over a hundred thousand unique components. Furthermore, each of these component parts will undergo periodic redesign and

[8] https://www.federalregister.gov/documents/2023/10/11/2023-22094/toxic-substances-control-act-reporting-and-recordkeeping-requirements-for-perfluoroalkyl-and

revisions, potentially requiring additional reporting obligations as these parts are shipped into Minnesota for repair and maintenance operations.

This section, as proposed, will impose an undue burden on the manufacturers of non-road equipment. It would mean that each manufacturer will have to submit thousands of unique reports to MPCA to accurately represent their sales of equipment as well as service parts business on an annual basis.

The MPCA Statement of Need and Reasonableness aims for "manufacturers […] to bear minimal costs to comply with the reporting rule."[9] As drafted the effect of the rule will be contrary to the stated intention.

Request:

To maintain the intent of MPCA to avoid overburdening manufacturers, please amend this proposed rule to reflect a more streamlined and manageable approach to product grouping and therefore product reporting. Complex machines bring a much more complex reporting obligation when compared with other industries.

5. **Amend the text of the rule to reflect the intent that there will be one report per manufacturer with one flat fee, covering all products made by that manufacturer**

The Statement of Need and Reasonableness repeatedly confirms that the fee will be a flat fee per manufacturer per report type.[10] The non-road manufacturers agree that one report per manufacturer is reasonable and in line with the stated intent. However, the text of the proposed sections lends itself to a different interpretation, therefore making this proposed rule ambiguous and confusing. As it is the rule that will have the legally binding effect on AEM membership and not the statement of intent, AEM requests that MPCA amend the proposed rule so it reflects the stated intent.

Currently, the following interpretation is possible: a manufacturer will submit a report for every product it makes and pay the multiplied fee for all the reports for its products. As illustrated above, based on the diversification of non-road equipment and its components, this could amount to thousands of products and thus exorbitant fees per manufacturer.

A fee per report (Sec. 7026.0100 Subp. 1), and report per product or component (Sec. 7026.0020 Subp. 1), and product is defined as an item […] (H.F. No.2310 (Amara's Law) Sec 21, Subd. 1 Definitions).

> *"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." (Sec. 7026.0020 Subp. 1).*
>
> *"A manufacturer of products or components that is required to **submit a report** under part 7026.0030 or 7026.0040 or that submits a request under part 7026.0050 or 7026.0060 **must pay a fee** for the submittal to be considered complete." (Sec. 7026.0100 Subp. 1).*
>
> *"(q) "Product" means an **item** manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including but not limited to its product components, sold or distributed*

[9] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-07.pdf at pg. 42.
[10] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-07.pdf at pg. 11, 40, 41, 42, 45, 58, 59.

for personal, residential, commercial, or industrial use, including for use in making other products." (H.F. No.2310 (Amara's Law) Sec 21, Subd. 1 Definitions).

Consequently, as written, the proposed rule is unreasonable, overly burdensome, and opposite to stated intent. The effect of the text as proposed would be catastrophic for the industry and would not be reasonable or feasible. AEM understands the potential consequences of this ambiguous rule and interprets that the intent is for a manufacturer to pay a $1,000 fee on an initial report that lists all its products, and a flat fee of $500 per annual update that also covers all products made by that manufacturer.

Request:

AEM membership appreciate MPCA's intent of avoiding undue burden on manufacturers and creating legal certainty with its rulemaking, but requests MPCA streamline the text of the Proposed Rule with its intent. It is essential to confirm that one report per manufacturer for all the products it makes (initial and update report) and thus one annual fee (initial, update, or waiver) is the extent of the obligation for each manufacturer.

6. **Remove the annual recertification requirement for products that have not undergone a design change that would affect the PFAS content found in their equipment.**

With the large number of product types and componentry in the non-road industry, the act of annually recertifying per company, or per group of manufacturers, is an immense administrative burden for OEMs to comply with. AEM understands that design changes to the machine may warrant a recertification with MPCA. However, given the complexity of this exercise, combined with the time and resources this would involve, requiring annual recertification in the absence of any design changes that affect the PFAS content in the products would be unreasonable, arbitrary and unrealistically burdensome upon the non-road equipment industry and the wider complex article manufacturing sector.

Request:

AEM requests that MPCA does not require an annual recertification for products that have not undergone a design change that would affect the PFAS content found in their equipment.

7. **Increase the standard extension timeframe, include the modality to apply for multiple consecutive extensions for initial reporting, annual updates, and recertifications**

Section 116.943 Subd 3 (a)-(d) of the 2024 Minnesota Statutes grants the commissioner the authority to provide waivers and extend timelines of the reporting requirements for manufacturers or groups of manufacturers. The statute does not put a time limit on any waiver or extension granted by the commissioner. The proposed rule affords regulated entities the ability to request waivers and extensions on the reporting due date. However, in the Proposed Rule, MPCA states that a waiver can be requested by a manufacturer or group of manufacturers for a 90-day extension.[11] For non-road equipment manufacturers, and complex article manufacturers in general, a 90-day extension is a highly inadequate amount of time to address some of the deeper challenges embedded in the supply chain. Those deeper challenges are the very reason to request the extension in the first place. Some of these larger reporting and restriction issues will take years and, in some cases, decades to

[11] Draft Sec. 7026.0060, Subp. 3 B, line 12.9, pg. 12.

fully address. As stated above, and in line with Section 116.943 Subd 3, a mere 90-day extension period is arbitrary and highly unreasonable.

Request:

AEM urges MPCA to amend the standard extension to a longer, reasonable period of time, containing at least 180 days, and to allow multiple consecutive extensions for initial reports, annual updates, and recertifications (where product composition change affected PFAS content).

8. **Clarify how groups of manufacturers can submit their reports together and whether trade associations may submit on behalf of their members**

In section 7026.0020 of the Proposed Rule, subpart 1 states that:

> *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….*

AEM understands the term "group of manufacturers" to potentially include groups such as trade associations or an OEM with their supply chain partners. In Subpart 2, MPCA indicates that different manufacturers in the same supply chain can assume the reporting obligations of other manufacturers if they meet certain administrative requirements. This language is ambiguous, and industry needs more certainty on what types of associations and business relationships can qualify for group submissions.

Request:

Clarify how groups of manufacturers can submit their reports together and whether trade associations may submit on behalf of their members.

9. **Issue clear guidance on the reporting systems and desired format in a reasonable, clear, and legally binding manner**

In the Statement of Need and Reasonableness MPCA states:[12]

> *Detailed guidance on how reporting entities can submit on behalf of multiple manufacturers will be included in the reporting system instructions or in a supplemental guidance document. This information will be available once the reporting system's functional capabilities are fully established, ensuring that entities have clear, practical steps for submission on behalf of multiple manufacturers.*

AEM appreciates MPCA's commitment to issue guidance and provide clarity. However, data collection efforts will face additional challenges, such as those listed in the above sections, if the guidance documents are not issued in a timely manner. Complex article manufacturers, with extensive supply chains, need extensive amounts of time to survey their suppliers. Anytime less than a year is not reasonable for industry to respond to, and manufacturers are concerned with the upcoming January 1st, 2026, deadline which is fast approaching.

Furthermore, AEM requests legal clarity as well. AEM requests that these clarifications are clearly stated in legally binding documents, such as a final rule. Placing these types of suggestions in non-

[12] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-07.pdf See pg. 27

binding legal documents, like the Statement of Need and Reasonableness, does not provide the legal certainty that companies would rely on prior to developing complex business relationships between different organizations around important issues, such as data collection compliance.

Request:

AEM requests that MPCA issue guidance on their reporting systems and desired format in a reasonable and clear manner through legally binding means of documentation.

10. Align the recordkeeping provision with EPA's 5-year retention rule

In section 7026.0080(3)(C), MPCA requires manufacturers to maintain records for 5 years after all PFAS chemicals have been removed from the supply chain. As detailed in the sections above, the process to remove PFAS from the non-road equipment supply chain will be a long and effort-intensive process, with hundreds of thousands of different steps required throughout the entire industry sector. Requiring the maintenance of records until PFAS are removed from the supply chain would create an unreasonable administrative and practical burden on the industry. Conversely, the EPA PFAS reporting rule states that: "[…] *Relevant records must be retained for a period of 5 years beginning on the last day of the submission period.*][13] The latter requirement creates a reasonable administrative framework with which the industry is able to comply.

Request:

AEM requests that MPCA align their recordkeeping requirements with those found in the EPA's *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances*[14] final rule.

11. Grant a broad waiver based on data submitted under EPA's TSCA 8(a)7 PFAS Recordkeeping and Reporting Rule

Sec. 116.943 Subd. 3(a) of the 2024 Minnesota Statutes (Amara's Law) states that:

> *…the commissioner may waive all or part of the information required under subdivision 2 [part 7026.0030 of the proposed rule] if the commissioner determines that substantially equivalent information is already publicly available.*

Under the EPA's *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances*[15], companies that manufacture or import PFAS, or products that contain PFAS, into the U.S. market are required to report a set of PFAS related data into the EPA's Central Data Exchange (CDX) system. The data reported into this system is publicly available, is substantially equivalent to the data being requested under the proposed rule and would be readily accessible to MPCA staff with minimal associated costs. Therefore, based on the authority granted to the MPCA in Amara's Law and section 7026.0050 of the proposed rule, AEM believes it would be prudent to grant a waiver to industry stakeholders who have made their PFAS data publicly available through EPA's reporting requirements.

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[13] 40 CFR 705.25.

[14] https://www.federalregister.gov/documents/2023/10/11/2023-22094/toxic-substances-control-act-reporting-and-recordkeeping-requirements-for-perfluoroalkyl-and

[15] https://www.federalregister.gov/documents/2023/10/11/2023-22094/toxic-substances-control-act-reporting-and-recordkeeping-requirements-for-perfluoroalkyl-and

Request:

AEM requests that the MPCA grant a broad waiver of the reporting requirements (under sections 7026.0020 and 7026.0030 of the proposed rule) to the extent that the data submitted to the EPA's CDX system according to TSCA 8(a)7 PFAS reporting rule corresponds to the data requirements found in Section 7026.0030.

Summary of Requests:

The non-road equipment manufacturing industry recognizes the importance of uncovering the presence and usage related to PFAS chemicals. Additionally, non-road equipment manufacturers understand the value in collaborating with policymakers to communicate the needs of industry during crucial rulemaking decisions. To ensure new rules meet their objectives with accurate and complete data, AEM requests that MCPA:

1. Delay reporting deadline by at least 18 months from Jan 2026 to July 2027.
2. Align the reporting and recordkeeping requirements with the EPA's existing *Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances* final rule.
3. Align with EPA's known or reasonably ascertainable reporting standard and refrain from requiring absolute result due diligence and expensive analytical testing as part of the due diligence requirement.
4. Streamline the product grouping definitions to align with MPCA intent for "manufacturers […] to bear minimal costs to comply with the reporting rule.
5. Amend the text of the rule to reflect the intent that there will be one report per manufacturer with one flat fee, covering all products made by that manufacturer.
6. Remove the annual recertification requirement for products that have not undergone a design change that would affect the PFAS content found in their equipment.
7. Increase the standard extension timeframe, include the modality to apply for multiple consecutive extensions for initial reporting, annual updates, and recertifications.
8. Clarify how groups of manufacturers can submit their reports together and whether trade associations may submit on behalf of their members.
9. Issue clear guidance on the reporting systems and desired format in a reasonable, clear, and legally binding manner.
10. Align the recordkeeping provision with EPA's 5-year retention rule.
11. Grant a broad waiver based on data submitted under EPA's TSCA 8(a)7 PFAS Recordkeeping and Reporting Rule

AEM appreciates your consideration of these comments and requests.

Please feel free to contact me at Jmalcore@aem.org if you have any questions or require any further information.

Best Regards,

Jason Malcore
Senior Director – Safety & Product Leadership

Association of Equipment Manufacturers (AEM)

June 23, 2025

The Honorable James Mortenson
Minnesota Office of Administrative Hearings (OAH)
600 North Robert Street
PO Box 64620
St. Paul, Minnesota 55164-0620

Submitted Electronically via Office of Administrative Hearings (OAH) Rulemaking eComments Website

RE: Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828, OAH docket number 5-9003-40410 (Post Hearing Comments)

Dear Judge Mortenson:

Thank you for the opportunity to submit these comments on behalf of the Fluid Sealing Association (FSA) to the Minnesota Pollution Control Agency (MPCA) regarding the Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees (proposed rule).

The FLUID SEALING ASSOCIATION® (FSA) is an international trade association founded in 1933. Member companies produce and market a wide range of fluid sealing devices targeted to the industrial market. FSA membership includes a number of companies in Europe and Central and South America but is most heavily concentrated in North America. FSA members account for a majority of the manufacturing capacity for fluid sealing and containment devices in the Americas market.

Fluid sealing devices are used in virtually every industry in America today. Their function is to ensure that media (liquids, gases or solids) used in industrial processes are contained inside process equipment (i.e. valves, pumps, and piping systems) and not leaking media into the environment. Fluid sealing devices are relied on to serve critical applications in many industries, most notably water and wastewater; oil and gas; chemical; construction; power generation (traditional and new energy sources); mining; pharmaceutical; pulp and paper and food & beverage.

When present in the products manufactured by our member companies, fluoroelastomers and fluoropolymers are used due to their unique properties that provide for effective sealing, create barriers for emissions, reduce energy use, and enhance performance in highly corrosive or high temperature environments. Fluoroelastomers and fluoropolymers provide highly reliable performance which is particularly important when access to the production system is difficult

and dangerous, and they provide a safe and reliable production process. Additionally, fluoroelastomers and fluoropolymers allow products to meet detailed specifications required by accepted standards and regulations designed to protect health, safety, the environment, and efficient operations – of paramount importance when failure of these products could result in catastrophic consequences.

The FSA has the following concerns with the PFAS in Products Reporting and Fee Rule: implementation and waiver timelines, due diligence requirements, the complexity of the rule and lack of clarity on some definitions, reporting PFAS concentration levels, and reporting responsibilities and fees. Without modifications, the rule would impose a significant reporting and fee burden on manufacturers in the industrial sealing device industry.

Implementation Timelines

The current reporting and fee rule deadline is unreasonable, given that the reporting platform has to be released and there is no clarity on the information that will be required to report. For companies with complex supply chains such as our members, gathering information will take significant time in order to be sure that it is accurate and useful to the state of Minnesota.

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

Reporting of PFAS concentration -7026.0030, Subpart 1C

High molecular weight fluoroelastomers and fluoropolymers are used in the manufacture of gaskets, mechanical seals, compression packing, pumps, coatings, chemical piping and industrial valves, all of which are integral to the production of products core to maintaining modern life. 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.

Recommendation: In lieu of specific PFAS concentration information for fluoropolymers and fluoroelastomers, we recommend that MCPA provide a checkbox to indicate that the product is a fluoropolymer or fluoroelastomer. MCPA could assign a common concentration level for those products if desired. Can the MCPA provide this type of check box?

Report: Required Information 7026.0030, Subpart 1

There are two reporting scenarios outlined, one beginning January 1, 2026, and one for new products not yet reported. Both scenarios note that a report must be submitted for each product "sold, offered for sale, or distributed in the state".

This does not clearly define how to determine what products should be included in the reports, or what the time period is that should be included. For example, product catalogs can contain

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hundreds, thousands and tens of thousands of products, but those products may not be sold into the state. Additionally, quotes may be offered for products, but a sale may not be made so those products are never sold into the state. Requiring reports on all these products that never enter the state is extremely burdensome to companies, and it would provide a gross overestimate of the amount of PFAS in the state of Minnesota. It would also provide so much inaccurate data that any conclusions drawn from the data would be meaningless.

Recommendation: 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. Can the MCPA make this clarification?

Further, can 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 <u>in the state of Minnesota</u> by a receiving party after the product is delivered."?

Waiver Requests – 7026.0050, Subpart 4B

If a waiver request is denied, there needs to be sufficient time for companies to collect accurate information throughout their supply chain.

Recommendation: Can the 'sufficient time' phrase be revised to require reports to be submitted no sooner than 90 days after a denial of a waiver request.

Extensions – 70026.0060 – Subpart 3 C

If an extension request is denied or granted, there needs to be sufficient time for companies to collect accurate information throughout their supply chain.

Recommendation: Can the 'sufficient time' phrase be revised to require reports to be submitted no sooner than 90 days after a denial of a waiver request.

Trade Secret – 7026.0070

Companies may choose to use a fluoropolymer or fluoroelastomer in order to meet the requirements of a particular use application or function, which can provide a competitive advantage to the company**.**

Recommendation: Add "function" for trade secret protection.

Due Diligence – 7026.0080, Subpart 2

As written, the requirement to request detailed disclosure information "until all required information is known" is unrealistic and imposes a significant burden on reporters. Many different parts can be used in the assembly of industrial sealing devices, coming from many different suppliers located globally. Because of the complexity of managing global supply chains, products may be purchased and stored for months or years. When asking for information, suppliers can be reluctant to share their sensitive trade data, or suppliers may no longer be in business.

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Crucially, this language is not aligned with other similar reporting requirements. In particular, FSA 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."

Recommendation: Can the MPCA adopt the KRA due diligence standard as defined in the U.S. EPA TSCA PFAS reporting program?

Reporting Responsibility and Fees

Both the proposed definition of "manufacturer" as well as the reporting scope do not consider complex supply chains or final products that have numerous component parts. Additionally, clarity is needed to clearly identify the entity ("manufacturer") who has primary compliance responsibility.

Recommendation: Can you consider the following definition of "Manufacturer:"?: The person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed to the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state. In the case of a product that is imported into the United States when the person that created or produced the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer means either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.

In addition, under 7026.0020, Subpart 1 and 2, can this be modified to allow a parent company to submit one report and pay one fee that covers the final products, component parts, brand names and subsidiaries? This would allow only one fee to be payable and reduce duplicate reporting.

* * * * *

Thank you again for the opportunity to submit comments. We welcome further discussion or any questions you may have. These can be directed to Peter Lance at pete@fluidsealing.com.

Sincerely,

Peter M. Lance
Executive Director
Fluid Sealing Association

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RECEIVED
By: OAH on 6/23/2025

Chris Cleet Attachment

ITI Promoting Innovation Worldwide

Katrina Kessler
Commissioner, Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155-4194

Re: Request for De Minimis Threshold in Reporting Rule Regarding Products Containing Per- and Polyfluoroalkyl Substances (PFAS)

OAH Docket No. 5-9003-40410

Dear Commissioner Kessler:

The Information Technology Industry Council (ITI) appreciates the feedback the Minnesota Pollution Control Agency provided on the Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS). ITI is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers with the broadest perspective and thought leadership from technology, hardware, software, services, and related Industries. ITI members have a long history of reducing or eliminating harmful chemicals in electronics.

In the MPCA's Part One Pre-Hearing and Hearing Response to Comments, the agency reasoned that Minn. Stat. § 116.943 does not provide the MPCA discretion to exempt intentionally added PFAS based on concentration, and a de minimis threshold would contradict this legislative directive. Our client disagrees. The legislature left room for the MPCA to adopt a de minimis threshold by rule, particularly when viewed in light of the broader statutory framework where the MPCA must give due consideration for commerce and economic factors in its rulemakings.

Minnesota's Administrative Procedure Act at Minn. Stat. § 14.002 requires the MPCA when promulgating a rule to foster maximum flexibility for regulated parties in meeting the goals of the rule's authorizing statute. Moreover, Minn. Stat. § 116.07 directs the MPCA to give due consideration to commerce, economic factors, and other material matters affecting the feasibility and practicality of any proposed rule. While Minn. Stat. § 116.943 does not expressly use a de minimis threshold, that law does not forbid such a threshold. Instead, Minn. Stat. § 116.943 instructs the MPCA to adopt rules "necessary" to implement its provisions. A de minimis threshold is necessary in this situation.

The MPCA's own proposed rule includes several discretionary implementation tools that are not specifically addressed in the statute but are clearly intended to make compliance more workable—such as allowing manufacturers to report concentrations as unknown, permitting product group reporting, accepting supplier declarations, and adding an exemption for classified information. These are practical, flexible mechanisms developed by the agency to ensure the rule can function in

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the real world. A de minimis threshold serves the same purpose. Incorporation of such a threshold is a lawful, reasonable exercise of rulemaking discretion that helps the statute function as intended.

Minnesota's PFAS-in-products statute is uniquely broad, but not without its limits. Unlike Maine, California, Canada, and the EU, Minnesota's PFAS reporting obligation applies to all consumer products, regardless of product category, volume, or exposure pathway. There are only minimal built-in exemptions. This statutory structure makes the potential reach of the MPCA's PFAS reporting rule unprecedented among state and international PFAS regulations. However, as mentioned above, the Minnesota Legislature did not intend implementation of the state's PFAS-in-products law to be unbridled from reality. If the MPCA will not allow risk-based targeting, then a de minimis threshold is the only viable way to focus implementation on material PFAS use.

The MPCA's own guidance put forward on the current rulemaking acknowledges that:

- Tracing PFAS at extremely low concentrations across multilayered supply chains is often impractical.
- Companies may lack sufficient visibility into the chemical makeup of upstream components.
- The current structure of the proposed rule may present serious implementation challenges for manufacturers of complex products.

Despite these facts, the MPCA insists on requiring reporting at all concentrations, including trace levels that may not be reliably detected or measured. While "unknown" reporting is permitted, that is not a workable compliance strategy for companies subject to enforcement. This approach will overwhelm both regulated parties and the agency.

A numerical de minimis threshold (e.g., 50 ppm fluorine or 25 ppb individual PFAS) would not subvert the statute's goals. It would enhance the rule's enforceability, preserve agency capacity, and increase the likelihood of accurate, useful disclosures. In fact, the MPCA already plans to accept supplier declarations and grouping strategies—both of which are implementation tools to be adopted by rule to moderate the law's reach as the legislature envisioned. These tools reflect a recognition that the statute must be applied reasonably and flexibly. A de minimis threshold is no different in principle or legal structure. It simply defines the level at which reporting becomes meaningful.

Learning from REACH: The Global Gold Standard

The European Union's REACH regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals) has long served as the most comprehensive and influential chemical safety framework in the world. The EU's recent proposal to restrict PFAS across thousands of use categories includes clearly defined de minimis thresholds, such as:

- 25 parts per billion (ppb) for individual PFAS,
- 250 ppb for total PFAS, or
- 50 ppm for total fluorine where specific PFAS cannot be measured.

These thresholds are not arbitrary. They are part of a deeply considered and publicly reviewed justification process that balances public health protection with regulatory enforceability and economic viability. Furthermore, REACH is not an outlier – other European chemical regulatory programs, including EU RoHS (Restriction on Hazardous Substances), also employ de minimis thresholds. Minnesota can draw on this success to enhance the agency's own credibility and effectiveness in PFAS-in-products regulation.

Why Thresholds Matter

Regulatory Precision

A de minimis threshold helps agencies focus their enforcement resources on material risks rather than pursuing confirmation of trace-level detections that may fall below actionable concern, and which are also under limits for accurate and reliable detection given available test methods. Such a threshold also helps businesses focus on compliance parameters, which makes their reporting more consistent, and enables agencies to efficiently analyze and act on the data collected.

Fairness to Businesses and Supply Chains

Without a de minimis threshold, small businesses and low-volume users—who may not even be aware of trace PFAS in complex imported goods—are subject to the same obligations as major manufacturers. The EU has acknowledged this concern and calibrated its policy to avoid placing undue burden on sectors that pose minimal risk.

Evidence-Based Governance

The EU's rationale for de minimis thresholds is rooted in science, proportionality, and cost-benefit analysis. The REACH proposal notes that such limits prevent runaway compliance costs and administrative gridlock from unmanageable reporting volumes. These are the same policy principles Minnesota aims to uphold.

Enhanced Consumer Understanding

The MPCA has acknowledged that one benefit of the PFAS reporting rule will be that consumers will be better informed about which products contain PFAS and can take action through purchases to safeguard their health. The inclusion of a de minimis threshold in this rule will help ensure that consumers are not overwhelmed or misled by trace-level PFAS disclosures. Without such a threshold, consumers may struggle to differentiate between products containing only trace-level PFAS levels and those with more substantial concentrations. This situation could lead to confusion, unnecessary concern, and misinformed purchasing decisions.

Conclusion

Incorporating a reasonable de minimis threshold into Minnesota's PFAS-in-products rules is necessary to support the MPCA's enforcement capacity, protect businesses from unwarranted burden, and maintain Minnesota's leadership in environmental and public health. This approach reflects both international best practice and practical governance.

We strongly urge the MPCA to adopt a science-based de minimis threshold in the final rule as a necessary measure to ensure the rule is both durable and workable in practice.

ITI appreciates this opportunity to provide input on the Minnesota PFAS reporting rule and welcomes the opportunity to work with the Agency. If you have any questions, please contact Chris Cleet at ccleet@itic.org.

Regards,

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June 23, 2025

VIA ELECTRONIC SUBMISSION: https://minnesotaoah.granicusideas.com/
Honorable Judge Jim Mortenson
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

Public Comment on Proposed PFAS in Products Reporting and Fees Rule
Re: Minnesota Pollution Control Agency's Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and Polyfluoroalkyl Substances (PFAS), Revisor's ID Number R-04828, OAH Docket Number 5-9003-40410

Dear Judge Mortenson,

Watlow appreciates the opportunity to respond to the State of Minnesota Pollution Control Agency's (MPCA) request for comments on the PFAS in Products Reporting and Fees Rule. We commend MPCA for engaging industry stakeholders in this important process.
Watlow is a global industrial technology company that provides advanced thermal systems to many of the world's leading companies, offering high-impact solutions that help our customers thrive. We are a market leader in machine automation solutions, applications, power and process control systems, supported by robust software and services. Our technology is used in critical applications globally and within Minnesota. Watlow manufactures valued thermal solutions across a broad range of industries, including:

- Semiconductor processing
- Glass, steel, and cement processing
- Power generation
- Oil and gas
- Petrochemical
- Diesel emissions
- Heat treatment
- Aerospace and defense
- Industrial materials processing
- Life sciences
- Food and beverage
- Medical, clinical, and analytical equipment

Watlow respectfully submits the following concerns regarding the implementation of the Minnesota Pollution Control Agency's (MPCA) PFAS in Products Reporting and Fee Rule:

We are particularly concerned about the proposed implementation deadline, the lack of clarity regarding product scope, the extension request process, and the absence of a defined due diligence standard. These issues present significant challenges for manufacturers like Watlow, who manage complex global supply chains and produce a high volume of technically sophisticated products.
Given the scale and complexity of our operations, timely and accurate compliance requires clear guidance, reasonable timelines, and alignment with established regulatory practices. Without these, the risk of non-compliance increases despite good-faith efforts and substantial resource investment.

We urge MPCA to consider adjustments that reflect the realities of modern manufacturing and supply chain management.

1. Clarification on Scope of Reporting Obligations (Section 7026.0020, Subpart 1)

The current language appears to limit reporting to products that are "sold, offered for sale, or distributed in the state." However, clarification is needed to confirm that products manufactured in Minnesota but not entering the Minnesota market are excluded from reporting. We respectfully request clarification on the following:

- Are products manufactured in Minnesota but sold or distributed exclusively to end users or distributors located outside of Minnesota considered in scope?
- Are in-process goods manufactured in Minnesota and transferred to another internal company site located outside of Minnesota subject to reporting?

Recommendation: Limit the reporting obligation to products intended for sale or distribution within Minnesota. Including out-of-state or internal transfers would create a significant administrative burden for products not intended for the Minnesota consumer market. Long terms these products would be captured in other markets.

2. Due Diligence Requirements and Practical Challenges (Section 7026.0080, Subpart 1)

The current rule does not include a due diligence clause that allows reporting based on "known or reasonably ascertainable information." Manufacturers face significant challenges in complying with the proposed PFAS reporting requirements, including:

- Low supplier response rates, despite ongoing efforts to improve engagement.
- Supplier fatigue due to repeated data requests across multiple regulatory programs.
- Complex supply chains involving distributors and OEMs not subject to the same reporting obligations, necessitating time-consuming outreach and coordination.

Recommendations:
To ensure robust compliance while acknowledging the practical realities of global supply chains, we respectfully recommend the following adjustments to the rule:

- Incorporate a due diligence standard based on "known or reasonably ascertainable information," consistent with frameworks used by the U.S. EPA, Environment and Climate Change Canada (ECCC), and several U.S. states.
- Allow flexibility for continued data collection beyond the initial reporting deadline without penalty, recognizing that supplier engagement is an iterative and resource-intensive process.

These changes would align Minnesota's rule with broader regulatory practices and support meaningful compliance without placing undue burden on manufacturers and their supply chains.

3. Concerns Regarding Extension Denial Timeline (Section 7026.0060, Subpart 3, Part C)

The current language requires manufacturers to comply within 30 days of an extension denial or by the reporting deadline, whichever is later. This timeline is problematic for manufacturers who are already struggling to meet the deadline due to supplier data dependencies.

Recommendations:

- Use the criteria in Subpart 2 as the basis for granting extension approvals.
- Allow a more flexible compliance timeline in cases where delays are due to supplier responsiveness or data availability.
- Clearly define acceptable criteria for extension approvals.

4. Enforcement Date is Premature

The proposed effective date of January 1, 2026, is premature. The rule has not yet been finalized, leaving manufacturers without the clarity needed to define product scope or implement effective data collection strategies. Additionally, the absence of a finalized reporting format increases the likelihood of rework in what is already a labor-intensive process.

This timeline also coincides with other significant regulatory obligations, including the U.S. EPA's TSCA Section 8(a)(7) PFAS reporting requirements, creating substantial resource constraints for compliance teams.

Recommendations:

- Postpone enforcement by one year to align with the EPA's PFAS reporting deadline, allowing manufacturers to streamline efforts and reduce duplicative work.
- Alternatively, extend the 90-day reporting extension period to accommodate manufacturers making good-faith efforts to comply, recognizing the complexity and scale of the data collection required.

These adjustments would support more effective compliance while maintaining the integrity of the program's environmental objectives.

Conclusion

Watlow appreciates the opportunity to provide these comments and respectfully requests that the MPCA consider these recommendations to ensure a more practical, effective, and achievable implementation of the PFAS reporting rule.

Respectfully,

Watlow Compliance

Contact Details: Erika Millon, Erika.Millon@watlow.com

RECEIVED
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June 23, 2025

The Honorable Jim Mortenson
Minnesota Office of Administrative Hearings
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PO Box 64620
St. Paul, Minnesota 55164-0620

Re: Minnesota Pollution Control Agency's Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828, OAH Docket Number 5-9003-40410

Dear Judge Mortenson:

On behalf of the Consumer Technology Association (CTA), we respectfully submit these supplementary comments on MPCA's Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing PFAS (Proposed Rule). These comments are in addition to those we submitted on May 21. CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. We appreciate the opportunity to provide these comments and welcome continued dialogue with MPCA as the Agency implements the 2023 Products Containing PFAS Law.[1]

On June 16, MPCA released "Part One Pre-Hearing and Hearing Response to Comments"[2] which included responses from the Agency to written comments submitted before the May 22 hearing as well as responses to verbal comments given during that hearing. In their response section titled "De minimis," MPCA acknowledged the concerns raised by several commenters about "the practical challenges of identifying and confirming low-concentration PFAS in complex supply chains." However, the Agency argued that Minn. Stat. §116.943 prohibits a de minimis standard and ultimately concluded that "a numerical de minimis threshold is not included in the rule due to statutory constraints."

We respectfully disagree with this assessment and ask that the Agency consider including a de minimis threshold in the Proposed Rule. The law MPCA is implementing is broadly written and the Agency has used its discretion to implement flexible requirements throughout the Proposed Rule. The reporting requirements in the statute require reporting on intentionally added PFAS in products. The focus on "intentionally added" suggests an intent not to capture trace amounts of

[1] Minn. Stat. § 116.943
[2] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule1-07g.pdf

PFAS in products due to impurities or byproducts. A common way to prevent reporting these trace amounts in products is to use a de minimis threshold. In our initial comments on the Proposed Rule, we suggested MPCA align with minimum threshold limits established by EU REACH and Canadian PFAS regulations. Setting a de minimis standard would not be contrary to the intent of the statute and would make the program more workable for the Agency and manufacturers. We direct the Agency to the many comments from stakeholders describing in detail the difficulty of complying with a reporting rule which requires reporting trace amounts of PFAS.

We respect the Agency's response, but we ask that it implement a de minimis limit in its Rule. We appreciate the Agency's recognition of the difficulties presented by a lack of de minimis threshold. If the Agency still considers it cannot implement a threshold due to statutory constraints, we support it continuing to evaluate harmonization opportunities with other jurisdictions as well as considering whether future rule revisions, statutory changes, or programmatic guidance can address these concerns.

Conclusion

Thank you again for the opportunity to provide these comments on the Proposed Rule. If you have any questions about our comments, please do not hesitate to reach out to me at dmoyer@cta.tech.

Sincerely,
Dan Moyer
Sr. Manager, Environmental Law & Policy
Consumer Technology Association