MINNESOTA POLLUTION CONTROL AGENCY

PFAS in Products: Reporting and Fees

Rebuttal Period Post-Hearing Response to Comments

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

June 30, 2025

Contents

Introduction

13 commenters submitted comments to the Office of Administrative Hearing's (OAH's) eComments website by 4:30 pm on June 23, 2025, for the post-hearing comment period for the rule hearing that was held on May 22, 2025. Many of the comments received included multiple components. The agency has provided its responses to those comments below, and where possible, has grouped similar comments together to provide a single response. The MPCA also posted its "Part One Pre-Hearing and Hearing Responses to Comments" and "Part Two Pre-Hearing and Hearing Responses to Comments" to OAH's eComments website. This rebuttal will address the comments received during the post-hearing comment period.

General Comments

The MPCA received 14 general comments not specific to any rule part which are listed and responded to as follows

Undue burden:

Cleet-1: "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."

Schwartz-1: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "Undue burden" (pages 8 and 9) and "Part Two Pre-Hearing and Hearing Response to Comments" (response to Palin-14; page 5) for the MPCA's response to comments regarding undue burden.

Bennett-Matthew-1: "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."

> **RESPONSE:** Please see the MPCA's response on page 52 in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING, Subpart 1. Scope., Who must report.

PFAS chemical class approach:

Moeller-1: "*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 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."

> **RESPONSE:** Please see the MPCA's response in the "Part One Pre-Hearing and Hearing Response to Comments" under the section PFAS chemical class approach on page 9.
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> See "Part One Pre-Hearing and Hearing Response to Comments" under the headings "Requested exemption for PFAS substitutes listed under EPA's SNAP Program" (pages 99–102) and "Requested Definition of 'PFAS'" (pages 47–49) for the MPCA's response to comments regarding the inclusion of fluorinated gases and fluoropolymers in the scope of the rule. The MPCA explains that Minn. Stat. § 116.943, subd. 1(p) defines PFAS as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom," and the agency must implement that definition as written.

Reporting system and guidance:

Moeller – 2: "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."

Morley-1: "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."

Emerson-1: "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."

Bennett-Steve-1: "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. 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."

> **RESPONSE:** Please see the agency's response in "Part Two Pre-Hearing and Hearing Response to Comments" on page 74 under Part 7026.0070 TRADE SECRET DATA REQUEST, implementation.

See “Part One Pre-Hearing and Hearing Response to Comments” (pages 14 to 19) for the MPCA’s response to comments under the heading “Reporting system and guidance”.

Additionally, the agency plans to conduct beta testing of the reporting system. With an extension to the reporting deadline planned, manufacturers will have additional time to test the system and become familiar with the reporting requirements before submissions are due.

Moeller-3: “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?"

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" (pages 14 to 19) for the MPCA's response to comments under the heading "Reporting system and guidance". The MPCA acknowledges the need for detailed system information and confirms that many of the platform-specific features; such as trade secret markings, save-and-return functionality; will be addressed in forthcoming implementation guidance and system instructions, not in the rule text itself. With an extension to the reporting deadline planned, the MPCA intends to provide adequate time for stakeholders to understand system functionality, receive technical support, and ensure accurate, complete submissions. Updates will be communicated as system development progresses.

Regulations under other jurisdictions:

Morley-2: "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."

Bennett-Steve-2: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "Regulations under other jurisdictions" (pages 20 to 23) and "Part Two Pre-Hearing and Hearing Response to Comments" (response to RendallJackson-4; pages 5 & 6) for the MPCA's response to comments regarding regulations under other jurisdictions.

Risk-based approach:

Cleet-2: "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."

Schwartz-2: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "De minimis" (page 67) and "Part Two Pre-Hearing and Hearing Response to Comments" (response to Wagner-4, pages 12, 13) for the MPCA's response to comments regarding de minimis.

The use of "intentionally added":

Morley-3: "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."

RESPONSE: Please see the agency's response in "Part One Pre-Hearing and Hearing Response to Comments" under the heading "The use of "intentionally added" (page 76).

Comments Specific to the Proposed Rules

The MPCA received 109 comments related to specific rule parts which are summarized and responded to as follows.

Part 7026.0010 DEFINITIONS

Definition of "Chemical name"

Bennett-Steve-3: "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, the HCPA Consumer Product Ingredients Dictionary, 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, which many of our members utilize for their disclosure efforts."

> **RESPONSE:** see response in Part One Pre-Hearing and Hearing Response to Comments, on page 32-33 under the heading Definition of "Chemical Name" for the agency's response.

Definition of "Component"

Morley-4: "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."

Bennett-Steve-4: "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”

Moeller-4: “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.” Examples provided for high-purity chemicals, B2B gas sales, and B2C gas sales.

> **RESPONSE:** For Bennett: “Part One Pre-Hearing and Hearing Response to Comments” under the heading “Definition of ‘Component’” (pages 33–38) and “Requested exemption for packaging” (page 106) for the MPCA’s response to comments regarding the inclusion of packaging in the definition of component and whether packaging should be subject to reporting.
>
> Packaging such as returnable cylinders or disposable containers is required to be reported if it is inseparable or integral to the final product's containment, dispensing, or preservation. A manufacturer has the option to enter an agreement with the packaging supplier to report the component on their behalf."

Breitinger-1: “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."

> **RESPONSE:** The MPCA appreciates the comment and recognizes the challenges associated with reporting intentionally added PFAS in packaging components, particularly in the context of biologics and medical devices. However, reporting only general packaging types such as "vial stoppers" or "syringes" would not provide sufficient information to determine which specific products the packaging is associated with. This level of detail is necessary to meet the transparency and public right-to-know goals of the statute.
>
> If a biologics manufacturer does not produce or control the packaging, they may request that the packaging manufacturer submit the required information on their behalf. This option is intended to ease the reporting burden while still ensuring complete and accurate data.

Definition of "Consumer"

Bennett-Steve-5: "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 consumer within Minnesota6 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."

RESPONSE: See “Part One Pre-Hearing and Hearing Response to Comments” under the heading “Definition of ‘Consumer’” (page 38) for the MPCA’s response to comments regarding the necessity and scope of the definition of “consumer,” including clarification of its relationship to Amara’s Law and the inclusion of commercial and industrial use.

Definition of “Distribute for sale”

Bennett-Steve-6: “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.””

Moeller-5: “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.”

RESPONSE: See “Part Two Pre-Hearing and Hearing Response to Comments” under the headings “Definition of ‘Distribute for sale’” and “Requested Definition of ‘Sold, offered for sale, or distributed’” (pages 7 and 14–15) for the MPCA’s response to comments regarding the scope and intent of “distribute for sale” and “offered for sale.” The MPCA clarifies that these terms are drawn directly from Minn. Stat. § 116.943 and must be implemented as written.

Definition of “Function”

Bennett-Steven-7: “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 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."

> **RESPONSE:** See "Part Two Pre-Hearing and Hearing Response to Comments" under the heading "Definition of 'Function'" (pages 9–10) for the MPCA's response to comments regarding the scope and clarity of the term "function." The MPCA clarifies that the definition is not intended to expand the reporting obligation beyond intentionally added PFAS. Instead, it is used to describe the purpose of PFAS already determined to be intentionally added.

Definition of "Homogenous material"

Sepesi-1: "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 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."

> **RESPONSE:** The MPCA appreciates the comment and recognizes that product variations are common in complex goods. The rule allows manufacturers to group products for reporting under Minn. R. 7026.0030, subp. 1(E), provided the products have the same intentionally added PFAS composition, same PFAS function, fall within the same concentration range, and share the same basic form and function, with only minimal differences that do not affect PFAS-related attributes.
>
> If product configurations result in differences in the type, concentration, or function of intentionally added PFAS, the manufacturer may need to provide separate entries within their report to accurately reflect those distinctions. However, the reporting requirement applies to the manufacturer as a whole; not to each individual product, so these distinctions are made within a single report submission.

Definition of "Manufacturer"

Morley-5: "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."

Lance-1: "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."

Bennett-Matthew-2: "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."

Bennett-Steve-8: "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."

Moeller–6: "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…. 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."

> **RESPONSE:** Please see the MPCA's response in "Part One Pre-Hearing and Hearing Response to Comments" under the section Definition of "Manufacturer" on pages 43-44

Definition of "Packaging"

Morley-6: "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."

RESPONSE: See “Part One Pre-Hearing and Hearing Response to Comments” under the headings “Definition of ‘Packaging’” (page 44) and “Requested exemption for packaging” (page 106) for the MPCA’s response to comments regarding reporting obligations for packaging. The MPCA clarifies that reporting is only required for packaging when it meets the definition of a component.

Requested Definition of “Intentionally added PFAS”

Cleet-3: “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.”

Schwartz-3: “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.”

RESPONSE: See “Part One Pre-Hearing and Hearing Response to Comments” under the heading “Requested Definition of ‘Intentionally added PFAS’” (pages 47–49) and “Part

Two Pre-Hearing and Hearing Response to Comments" under the heading "Requested Definition of 'Intentionally added PFAS'" (pages 11–14) for the MPCA's response to comments regarding the inclusion of a de minimis threshold and clarification of what qualifies as "intentionally added."

Requested Definition of "PFAS"

Moeller-7: "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… 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.

RESPONSE: See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "Requested Definition of 'PFAS'" (pages 47–49) for the MPCA's response to comments requesting a narrower or risk-based definition of PFAS.

Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING

Subpart 1 Scope:

Emerson-2: "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."

> **RESPONSE:** Please see the agency's response in "Part Two Pre-Hearing and Hearing Response to Comments" under the headings "Definition of Distribute for Sale" on pages 7-8.

Morley-7: "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."

Bennett-Steven-9: "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 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."

Emerson-3: "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."

> **RESPONSE:** See "Part Two Pre-Hearing and Hearing Response to Comments" under the heading "Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING" (page 15) and "Part 7026.0030 REPORT; REQUIRED INFORMATION" under "Item A: Grouped product or component reporting" (pages 40–49) for the MPCA's response to comments requesting clarification on whether a separate report is required for each product or component. The MPCA confirms that grouping is allowed when the criteria in part 7026.0030, subpart 1(A)(1)(a) are met, and that a single submission may contain multiple grouped products or components.

Subpart 2 Reporting on behalf of others:

Bennett-Steven-10: "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.

Emerson-4: 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.

Malcore-1: "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."

Malcore-2: "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- 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."

Moeller-8: "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."

> **RESPONSE:** See "Part Two Pre-Hearing and Hearing Response to Comments" under the heading "Part 7026.0020 PARTIES RESPONSIBLE FOR REPORTING" (page 15) for the MPCA's response to comments on Subpart 2 regarding reporting on behalf of other manufacturers.
>
> Manufacturers entering into agreements to report on behalf of one another are not required to submit these agreements into the reporting system. Any documentation of these agreements should be kept in case the agency needs to request them to ensure compliance.

Moeller-9: "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."

> **RESPONSE:** If the contractor creates a new product via mixing of a previously reported product, they may be subject to reporting if they intend on selling this new product in the state.

Item C:

Morley-8: "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."

Morley-9: "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."

> **RESPONSE:** Please see the MPCA's response in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Reporting on behalf of other manufacturers, Item C on page 57.

Item D:

Morley-10: "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."

> **RESPONSE:** Please see the MPCA's response in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Reporting on behalf of other manufacturers, Item D on page 58.

Complexities of grouped reporting:

Bennett-Steven-11: "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."

Moeller-10: "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."

> **RESPONSE:** See *"Part One Pre-Hearing and Hearing Response to Comments"* under the heading "7026.0020 PARTIES RESPONSIBLE FOR REPORTING" (page 58) for the MPCA's

response to concerns about the complexities of grouped reporting. The MPCA emphasizes that while the rule allows manufacturers to report on behalf of others within a supply chain, this is an optional pathway designed to provide flexibility not an additional burden.

The rule provision requires a formal agreement and due diligence documentation to prevent confusion and ensure accountability, but manufacturers are not required to use this provision if it poses challenges for them related to liability, data access, or supply chain coordination. The MPCA chose to include this option to support streamlined for those with coordinated supplier relationships.

Distribute for sale:

Millon1: "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."

Lance-2: "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.

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 in the state of Minnesota by a receiving party after the product is delivered."?"

RESPONSE: See "Part Two Pre-Hearing and Hearing Response to Comments" under the headings "Definition of 'Distribute for sale'" and "Requested Definition of 'Sold, offered

for sale, or distributed'" (pages 7-8 and 14) for the MPCA's response to comments regarding the applicability of reporting to products manufactured in Minnesota but not sold or distributed in the state.

Part 7026.0030 REPORT; REQUIRED INFORMATION

Subpart 1 Report Required:

Emerson-5: "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."

Morley-11: "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."

Bennett-Steven-12: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "7026.0020 PARTIES RESPONSIBLE FOR REPORTING" (page 50) for the MPCA's response to comments regarding whether manufacturers must submit individual reports for each product. The MPCA agrees that the original language in Subpart 1 did not clearly reflect its intent to allow submission of a single report covering multiple products or components. The agency has proposed changes to the rule language to clarify this point (see also the section titled "Changes to the Proposed Rules").

Please see the agency's response in "Part Two Pre-hearing and Hearing Response to Comments" under the heading 'Existing Products" on page 30.

Item A: Grouped product or component reporting

Sepesi-2: "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 2 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 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."

Malcore-3: "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 revisions, potentially requiring additional reporting obligations as these parts are shipped into Minnesota for repair and maintenance operations.

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."

> **RESPONSE:** See "Part Two Pre-Hearing and Hearing Response to Comments" under the heading "Item A: Grouped product or component reporting" (pages 40–49) for the MPCA's detailed response to comments regarding the grouping criteria under Minn. R. 7026.0030, Subpart 1(A). The MPCA explains that the grouping criteria—same PFAS chemical composition, concentration range, function, and basic form and function—are intended to ensure that grouped products are chemically and functionally similar enough to support meaningful reporting.
>
> The agency acknowledges the complexity of modern supply chains and product variation but maintains that these criteria are necessary to preserve the utility and accuracy of the reported data. However, MPCA also confirms that a single report can include multiple grouped products or components when these criteria are met.

De Minimis

Cleet-4: "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.

Schwartz-4: "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."

Moyer-1: "The focus on "intentionally added" suggests an intent not to capture trace amounts of 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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "De minimis" (page 67) and "Part Two Pre-Hearing and Hearing Response to Comments" (response to Wagner-4, pages 12, 13) for the MPCA's response to comments regarding de minimis.

Item C: Reporting PFAS concentrations

Lance-3: "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?"

Moeller-11: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" under the heading "Fluoropolymer reporting" (pages 67- 69) for the MPCA's response to comments on fluoropolymers and fluoroelastomers. The MPCA clarifies that under Minn. Stat. § 116.943, subd. 2(a)(2), it is authorized to require reporting of PFAS concentrations using prescribed ranges, not exact amounts, and has adopted this approach to ease reporting burdens.

Moeller-12: "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."

> **RESPONSE:** See "Part Two Pre-Hearing and Hearing Response to Comments" under the headings "Item C: Reporting PFAS concentrations" (pages 52–54) and "Product Testing" (pages 54–58) for the MPCA's response to comments regarding the challenges of testing for PFAS concentrations in complex articles and supply chains.

Item D: Reporting PFAS function

Morley-12: "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."

> **RESPONSE:** Please see the MPCA's response in the "Part Two Pre-Hearing and Hearing Response to Comments" under the section Item D: Reporting PFAS Function on page 60.

Item F:

Morley-13: "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."

> **RESPONSE:** In the reporting system each manufacturer that would be included in a group submission or being reported on behalf of will have a company profile. If someone is reporting on behalf of another, they will be required request authorization of the company they are reporting on through the system. Exact instructions on this function will be provided in instruction and support documents for the reporting system and is not required to be included in rule.

Reporting deadline:

Emerson-6: "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."

Millon-2: "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, recognitiing the complexity and scale of the data collection required."

Morley-14: "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 finalitied 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."

Lance-4: "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 finalitied and open?"

Bennett-Steve-13: "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 reporting portal."

Malcore-4: "Delay reporting deadline by at least 18 months from Jan 2026 to July 2027 -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."

Moeller-13: "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."

> **RESPONSE:** see response in Part Two Pre-Hearing and Hearing Response to Comments, under the heading 'Reporting Deadline' on pages 28-29.

New products:

Lance-5: "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

hundreds, thousands and tens of thousands of products, but those products may not be sold into the state.

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?"

> **RESPONSE:** Please see the agency's response in "Part Two Pre-Hearing and Hearing Response to Comments" under the headings "New products" (pages 64–65) and "Part One Pre-Hearing and Hearing Response to Comments" under the heading "Subpart 1. Report required" pages 62-63.

Bennett-Steven-14: "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."

> **RESPONSE:** Please see the agency's response in "Part One Pre-Hearing and Hearing Response to Comments" on page 6 under Changes to Proposed Rule for 7026.0030 Report; Required Information, subpart 1.

Replacement parts:

Emerson-7: 'Service parts should not require their own report when those parts are included in a complex product report."

> **RESPONSE:** Please see the agency's response in "Part Two Pre-Hearing and Hearing Response to Comments" under 'Replacement Parts' on page 35.

Part 7026.0040 REPORTING UPDATES

Duration of reporting:

Morley-15: "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."

> **RESPONSE:** Please see the MPCA's response on page 84 in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Part 7026.0040 REPORTING UPDATES, Duration of reporting.

New products:

Morley-16: "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."

> **RESPONSE:** Please see the MPCA's response on page 34 in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Part 7026.0030 REPORT; REQUIRED INFORMATION, New Products.

Subpart 4 Fee Required:

Emerson-8: "7026.0040, Subpart 4 – Fees charged for updates will not encourage manufacturers to provide updates as they continue due diligence in collecting PFAS data."

> **RESPONSE:** Please see the MPCA's response on page 111 in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Part 7026.0100 REPORT; REQUIRED INFORMATION, Annual update and recertification fee.

Part 7026.0050 WAIVERS

General Comments:

Malcore-5: "Under the EPA's Toxic Substance Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances15, 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.

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."

Moeller-14: "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)."

> **RESPONSE:** See the agency's response in "Part One Pre-Hearing and Hearing Response to Comments" under Waiver Eligibility on pages 88-89.

Subpart 2:

Morley-17: "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."

RESPONSE: Each waiver request must be evaluated individually to ensure that the information is both publicly accessible and truly equivalent to what is required under Minn. R. 7026.0030. Annual waiver requests ensure that the MPCA knows that previous waiver requests are still needed and the information is still available and up to date per 7026.0050 subpart 2.

Subpart 4:

Morley-18: "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."

Lance-6: "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."

Bennett-Steven-15: "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."

RESPONSE: Please see the MPCA's responses on page 91 and 92 in the "Part One Pre-Hearing and Hearing Response to Comments" under the section Part 7026.0050 WAIVERS, Comments specific to the rule language.

Part 7026.0060 EXTENSIONS

Process to review extension requests:

Morley-19: "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."

Bennett-Steven-16: "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."

> **RESPONSE:** Please see response on page 71 of Part Two Pre-Hearing and Hearing Response to Comments under the subheading 'implementation'.

Duration of extension:

Morley-20: "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."

Lance-7: "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."

Malcore-6: "For nonroad 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 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)."

> **RESPONSE:** See response in Part Two Pre-Hearing and Hearing Response to Comments on page 70 under the subheading 'Duration of Extension'.

Implementation:

Morley-21: "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."

> **RESPONSE:** The manufacturer may determine the best test method to ensure accurate PFAS reporting for their products. Another option is to test for Total Organic Fluorine (TOF) and report those results in place of specific PFAS compounds.

Part 7026.0070 TRADE SECRET DATA REQUEST

General concerns:

Emerson-9: "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."

Morley-22: "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: . . ."""

Morley-23: "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."

> **RESPONSE:** See response in "Part Two Pre-Hearing and Hearing Response to Comments" on page 74 under Part 7026.0070 TRADE SECRET DATA REQUEST, General concerns.

Morley-24: "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."

RESPONSE: Please see the agency's response in "Part Two Pre-Hearing and Hearing Response to Comments" on page 74 under Part 7026.0070 Trade Secret Data Request, General Concerns. If the agency determines that submitted information does not qualify for trade secret protection, the manufacturer will be notified and given an opportunity to respond before disclosure

Specific trade secret information requests:

Bennett-Steven-17: "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."

RESPONSE: See Part Two Pre-Hearing and Hearing Response to Comments on page 77 for the agency's response under Specific trade secrets information requests. Manufacturers may utilize the reporting on behalf of option within their supply chain to avoid a supplier disclosing trade secret information.

Comments specific to rule language:

Lance-8: "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."

RESPONSE: See Part Two Pre-Hearing and Hearing Response to Comments on page 77 under Specific trade secrets information requests for the agency's response to function request under trade secrets.

Part 7026.0080 DUE DILIGENCE

General concerns:

Bennett-Steven-18: "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." 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." HCPA recommends that MPCA align its due diligence requirements with other jurisdictions to ensure that the regulated community can comply with this rule."

> **RESPONSE**: Part 1 page 22 'Regulations under other jurisdictions' and part 2 pages 106-107 for 'Request for Known or Reasonably Ascertainable Standard'.

Difficulty of complex supply chain information gathering:

Millon-3: "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."

Morley-25: "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"

Malcore-7: "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"."

Moeller 15 – "Given the tremendous limitations of testing PFAS, it is probable that some reporters will not be able to obtain all information from their 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."

> **RESPONSE:** See response in "Part Two Pre-Hearing and Hearing Response to Comments" on page 94 under Part 7026.0080 DUE DILIGENCE, Difficulty of complex supply chain information gathering and pages 28-29 under 7026.0030 Report; Required Information, Reporting deadline

Request for Known or Reasonably Ascertainable Standard

Millon-4: "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."

Morley-26: "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."

Morley-27: "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."

Morley-28: "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."

Lance-9: “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.

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?”

Malcore-8: “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….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. 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.”

Moeller-16: “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."

> **RESPONSE:** See response in "Part Two Pre-Hearing and Hearing Response to Comments" on pages 106-107 under Part 7026.0080 DUE DILIGENCE, Request for Known or Reasonably Ascertainable Standard.

Recordkeeping:

Morley-29: ": 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.

Malcore-9: "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 Substances14 final rule."

Moeller-17: "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."

> **RESPONSE:** See response in "Part Two Pre-Hearing and Hearing Response to Comments" on pages 110 under Part 7026.0080 DUE DILIGENCE, Recordkeeping.

Part 7026.0090 EXEMPTIONS

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

Morley-30: "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."

Breitinger-2: 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.

Moeller-18: "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."

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" (pages 94 to 98) for the MPCA's response to comments under the heading "Requested exemption for FDA-regulated products (medical devices, drugs, etc.)".

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

Morley-31: "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."

RESPONSE: See "Part One Pre-Hearing and Hearing Response to Comments" (pages 99 to 102) for the MPCA's response to comments under the heading "Requested exemption for PFAS substitutes listed under EPA's SNAP Program".

Products for which federal law governs the presence of PFAS:

Morley-32: "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."

RESPONSE: The MPCA appreciates stakeholder concerns related to federally classified, controlled unclassified or export-controlled information. Please see page 39 of the SONAR for the agency's response to sensitive data that could impact national security. At this time, the agency does not intend to change the proposed rule for 7026.0090 REPORTING EXEMPTIONS.

The proposed reporting and fees rule does not include any product prohibitions. The enabling statute includes prohibitions of PFAS containing products categories effective as of January 1, 2025, and further product prohibitions that will be effective as of January 1, 2032. The commissioner may specify specific products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use, which would be included in a separate rulemaking.

Part 7026.0100 FEES

General comments:

Moeller – 19: 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.

> **RESPONSE:** Please see our response in the "Part One Pre-Hearing and Hearing Response to Comments" document under Part 7026.0100 FEES in the General Comments sub header on page 107.

Annual update and recertification fee:

Malcore-10: "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 tee 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."

> **RESPONSE:** Please see the agency's response on "Part One Pre-Hearing and Hearing Response to Comments" under the section Annual update and recertification fee on page 111.

Extension Request Fee:

Breitinger-3: "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."

> **RESPONSE:** Please see the agency's response on "Part Two Pre-Hearing and Hearing Response to Comments" under Part 7026.0100 Fees, Fees for an extension request on page 116.

Company size/tiered fee structure:

Moeller-20: "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."

> **RESPONSE:** Please see our response in the "Part One Pre-Hearing and Hearing Response to Comments" document under Part 7026.0100 FEES, Company size/tiered fee structure on page 109.
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> The agency would like to reiterate that the reporting rule cost analysis for businesses does not include costs for businesses to transition to alternative products, only costs to businesses to report the required information.
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> As stated on pages 58 and 59 of the SONAR, direct fees to small businesses will be much lower than $25,000 and the agency has not received specific comments identifying staff time costs for small business reporting that would exceed $25,000 in the first year.

Requested clarity on fees:

Morley-33: "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."

Malcore-11: "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…

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."

Breitinger 4: 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.M

> **RESPONSE:** See "Part One Pre-Hearing and Hearing Response to Comments" (pages 112 to 117) for the MPCA's response to comments under the heading "Requested clarity on fees".

Enforcement:

Bennett-Steven-19: "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."

Moeller-21: “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.”

> **RESPONSE:** MPCA's focus in the initial phases of implementation of Amara's Law is education to promote awareness and encourage compliance. The MPCA reserves the right on how to enforce this rule when noncompliance is found. Enforcement may include non-penalty or penalty actions and will be determined on a case-by-case basis.