

Minnesota's PFAS in Products: Currently Unavoidable Use (CUU) rule concepts



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This webinar is being recorded, and the recording will be available for review on the rule webpage.

The screenshot shows a web browser window with the URL `pca.state.mn.us`. The page header includes the Minnesota Pollution Control Agency logo and navigation links for 'Air, Water, Land, Climate', 'Trending Topics', 'Business With Us', 'Get Engaged', and 'About MPCA'. A breadcrumb trail reads 'Get Engaged / Proposed rules / PFAS in products'. The main heading is 'PFAS in products: Currently unavoidable use'. A sidebar on the left contains a 'PFAS IN PRODUCTS' menu with sub-items: 'PFAS in products: Currently unavoidable use' (selected) and 'PFAS in products: Reporting and fees'. Below the sidebar is a 'Contacts' section listing 'Andria Kurbondski'. The main content area features a 'Revisor ID: R-4837' and a paragraph explaining the MPCA's planning for new rules on PFAS. A 'Minnesota Session Law - 2023, Chapter 60, H.F. No. 2310' link is provided. A callout box at the bottom right, titled 'Informational meeting', includes a calendar icon and text about a meeting on Feb. 26, 2026.

MINNESOTA POLLUTION CONTROL AGENCY

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PFAS in products: Currently unavoidable use

[< PFAS IN PRODUCTS](#)

PFAS in products: Currently unavoidable use

PFAS in products: Reporting and fees

Contacts
Andria Kurbondski

Revisor ID: R-4837

The Minnesota Pollution Control Agency (MPCA) is planning new rules governing how the MPCA determines currently unavoidable uses of per- and polyfluoroalkyl substances (PFAS) in products. The main purpose of this rulemaking is to establish criteria the MPCA will use to make decisions on which, if any, uses of intentionally added PFAS will qualify as currently unavoidable uses in products sold, offered for sale, or distributed in Minnesota, as directed by [Minnesota Session Law - 2023, Chapter 60, H.F. No. 2310](#).

Informational meeting

Register to attend this informational meeting at 1 p.m. on Feb. 26, 2026. The presentation will include an overview of the proposed rule, some proposed rule concepts, and introduce topics for which the

- This webinar is meant to provide an update to inform those interested in the proposed rule on the status of the rulemaking process.
- The rule concepts presented today are still in draft form and are intended to be used for discussion purposes.
- At this time, comprehensive draft rule language is not being provided.
- Information provided in this presentation is subject to change.

Agenda

Statutory authority

Rule overview

CUU request content

CUU determination process

Trade secrets

Due diligence

Economic considerations

Request for feedback

Minn. Stat. § 116.943 PRODUCTS CONTAINING PFAS; Amara's Law

Subdivision. 1 (j): "Currently unavoidable use" means a use of PFAS that the commissioner has determined by rule under this section to be essential for health, safety, or the functioning of society and for which alternatives are not reasonably available.

Subd. 5 (d): Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state any product that contains intentionally added PFAS, unless the commissioner has determined by rule that the use of PFAS in the product is a currently unavoidable use. The commissioner may specify specific products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use. The commissioner may not determine that the use of PFAS in a product is a currently unavoidable use if the product is listed in paragraph (a).

Rule process overview

COMPLETE

**Dec. 18, 2023 –
March 1, 2024**
Request for comments
Comment period



We are here
2026
Outreach & Engagement

- *Check-in groups*
- *Webinars*
- *Requests for feedback*



Date TBD
Notice of Hearing
Comment period



Date TBD
Rule adoption



In progress
2024 – 2026
Rule writing
SONAR development

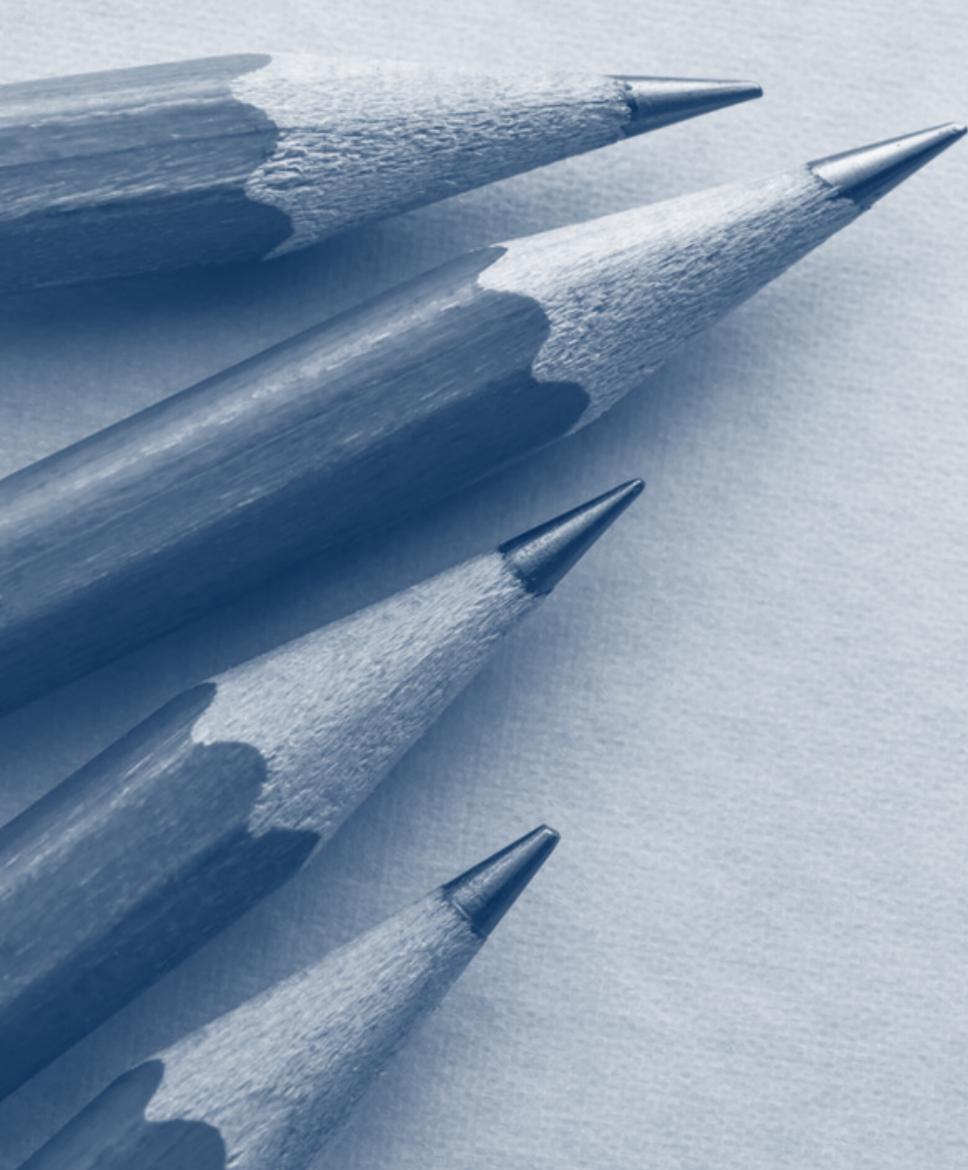
2027
Incorporating feedback into
proposed rule and SONAR

Dates TBD
Rule hearing
*Post-hearing comment &
rebuttal period*



Goals of the CUU rule

- **Transparency for both the public** tracking the commissioner's CUU determinations **and for manufacturers** requesting a CUU determination
- **Specificity on what needs to be included** in a request for a CUU determination, **and how** the commissioner will make determinations
 - Outlined in the “CUU request content” portion of this webinar
- **Opportunities for engagement for both the public** that may want to weigh in on specific CUU determinations, **and manufacturers** to defend their request for a CUU determination
 - Outlined in the “CUU determination process” portion of this webinar



- Eligibility
- Applicant information
- Product information
- CUU information
- Assessment of PFAS alternatives
- Additional information required

CUU request content

Need to meet the statutory definition of “currently unavoidable use”

- "Currently unavoidable use" means a use of PFAS that the commissioner has determined by rule under this section to be **essential for health, safety, or the functioning of society** and for which **alternatives** are not **reasonably available**.

Key terms that the MPCA must define in the proposed rule:

- “essential for health, safety, or the functioning of society”
- “alternatives”
- “reasonably available”



Definition:

Essential for health, safety, or the functioning of society

"Essential for health, safety, or the functioning of society" means a use of a PFAS in a product or component when the function provided by the PFAS is, at the time of a determination by the commissioner, necessary for the product, component, or spare or replacement component to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product's service to be unavailable, which would result in:

(continued on next slide...)

Continued

Definition:

Essential for health, safety, or the functioning of society

- A. A significant increase in negative health outcomes;
- B. An inability to mitigate significant risks to human health or the environment; or,
- C. A significant disruption of commercial, public, or ecosystem services on which society relies, including:
 - 1. Provision of food, water, shelter, health, hygiene, or bare necessities for human survival;
 - 2. Provision of transportation and utilities such as gas, electricity, data, communications, and sewer;
 - 3. Provision of personal, occupational, or public safety particularly for extreme conditions of use; and,
 - 4. Other services not covered under subitems (1) through (3) that serve the basic needs of human beings.

Definition: Alternative

“Alternative” means a non-PFAS chemical, substance, material, manufacturing process change, non-chemical change, or other product that, if used in place of a PFAS or PFAS-containing product, would result in a functionally equivalent product.

Definition: Reasonably available

“Reasonably available” means that one or more alternatives to a PFAS can perform comparably to the PFAS being considered for replacement in a product or component and is currently available in sufficient quantity. PFAS alternatives that are in use in equivalent products or components are considered “reasonably available.” Conditions of current reasonable availability may change over time as a result of new research or innovation.



Request
for
feedback

Please carefully review the proposed definitions for these key terms:

- essential for health, safety, or the functioning of society
- alternatives
- reasonably available

Do you have any recommended changes or other considerations that you think the MPCA should consider when defining these terms?

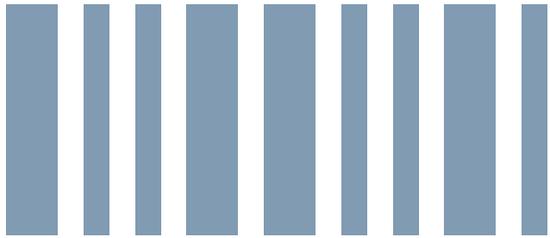
An applicant is a person representing a manufacturer or group of manufacturers

- Manufacturer information and applicant contact information required
- Manufacturer name(s) must match the name(s) submitted for PFAS reporting under part 7026.0030 or updates under part 7026.0040
- CUU determinations apply *only* to the manufacturers listed on the request for a CUU determination



Applicant information continued...

- An applicant *may* request a similar CUU determination if the commissioner has issued a positive CUU determination for a product in the same product category
 - The applicant *must* still submit a request for a CUU determination
 - The applicant's request will still go through the public comment process laid out in rule
- The purpose of this provision is to allow applicants to demonstrate the similarity between their product and one that has received a positive CUU determination
- The purpose is not to bypass the CUU determination process



Numeric product codes are already reported pursuant to Minn. R. part 7026.0030

The request must include an indication of the applicable product or product category

- The term “product category” will be defined
- The agency will not require a NAICS or SIC codes or numeric product codes as part of the request for a CUU determination
- Numeric product codes and manufacturer information is already obtained in PFAS reporting under part 7026.0030 subpart 1 item A subitem (2) and item E subitem (3)

Definition:

Product category

“Product category” means a group of similar products that are used for a similar purpose and that could functionally replace each other for that purpose and does not mean variations within a product that do not affect the product’s primary function.



Request
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When considering the proposed definition of “product category”, how broadly should the agency group product categories?

- Examples:

“Vehicles” versus “Sedans, SUV’s, Vans, Trucks, RV’s”

“Printers” versus “Receipt printers, thermal printers, label printers, residential printers, commercial printers”

Should each request for a CUU determination be limited to a single product category, or should applicants be allowed to submit a request for a CUU determination for multiple product categories?

Product information continued...

“Existing product” information will already be reported (July 1, 2026, deadline)

- Existing products are those that are currently sold, offered for sale, or distributed in the state

For “novel products”, the applicant must submit the information under part 7026.0030 along with the request for a CUU determination

- Novel products are those introduced for sale in Minnesota after the deadline to submit a request for a CUU determination
- Note: The applicant will not be required to pay the reporting fee unless the commissioner issues a positive CUU determination

As it relates to the definition of “currently unavoidable use”, the applicant must include a description of:

- The use of PFAS in the product that meets the definition of “essential for health, safety, or the functioning of society” and how the lack of PFAS in that product would disrupt the *service* it provides;
- Reasonably available alternatives to the intentionally added PFAS within the product *or the* product itself; and,
- *If applicable*, a description of the “extreme conditions of use” that require intentionally added PFAS for the product to provide its *service*

Emphasis on the service that the product provides and any alternatives

Definition: Extreme conditions of use

“Extreme conditions of use” means an environment that results in one or more of the following:

- A. High or low operating temperatures, or both;
- B. High or low material pH, or both;
- C. High corrosivity not covered under item B;
- D. Low reactivity with one or multiple chemicals;
- E. High or low operating pressures, or both;
- F. High tear, crack, or other stress potential;
- G. High or the possibility of high friction or vibration;
- H. High or sustained humidity or moisture;
- I. High or concentrated voltage requiring dielectric strength;
- J. Elevated radiation levels;
- K. High exposure to oxygen with risk of oxidation or fire; or,
- L. Others the commissioner may designate.

Extreme conditions of use continued...

If applicable, information regarding extreme conditions of use is *required* in a request for a CUU determination

This provision and corresponding definition is intended to allow manufacturers an opportunity to explain *why* PFAS is needed in their product and *what* extreme conditions of use the product must withstand

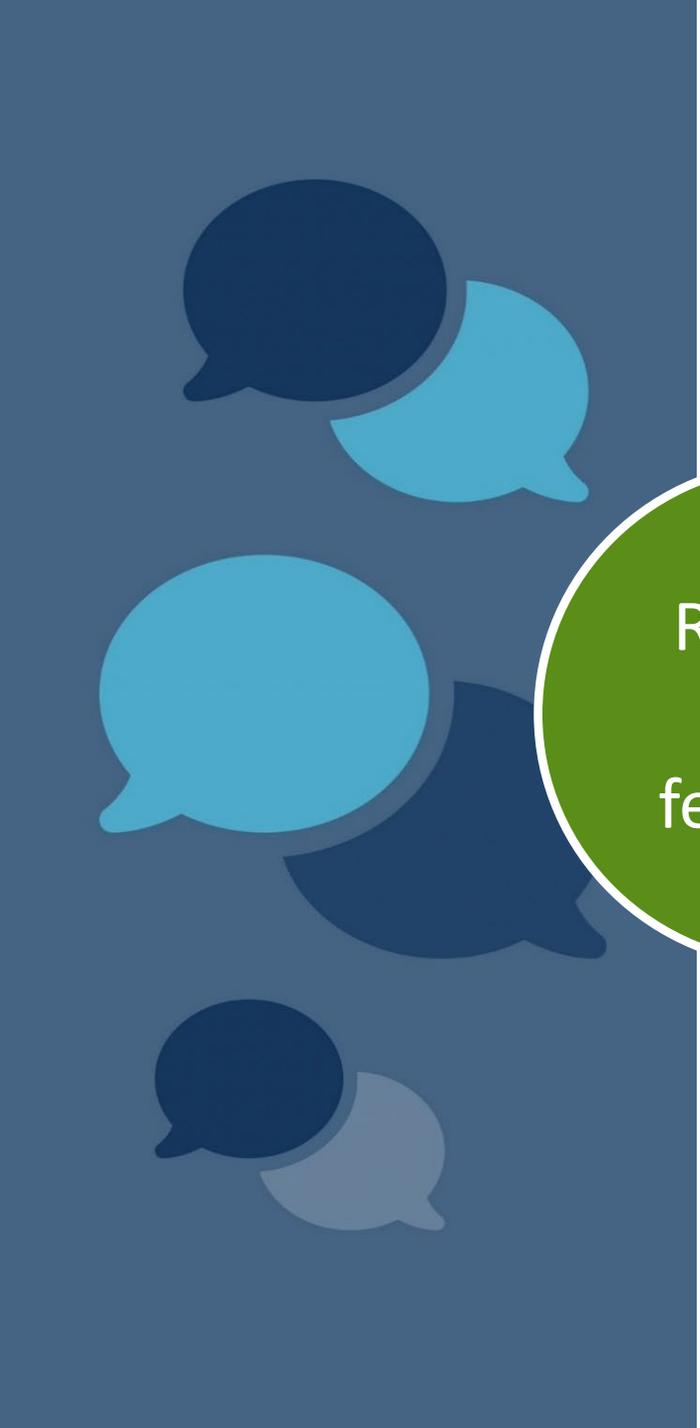


CUU information continued...



An applicant must provide information regarding safety or other standards that require the use of PFAS in the product

- Must include a citation to the standard
- Is PFAS *required* to meet the standard, or just being used to meet the standard?
 - Assess whether any alternatives could be used to meet the standard instead of PFAS



Request
for
feedback

What safety or other standards require the use of PFAS in a product?

- Will be asked to include a specific citation if applicable.

Assessment of alternatives

- The applicant must submit an assessment of alternatives
 - Failure to submit an assessment of alternatives, or a statement that there are no alternatives without further explanation will result in the commissioner considering the request incomplete
- The applicant may use assessment services offered by a qualified third-party provider
- The applicant must not rely solely on simplicity, convenience, or lower cost of a PFAS as justification that there are no reasonably available alternatives

Reminder:
the proposed definition of “reasonably available” is focused on comparable *performance* and *quantity*

Information required in assessment of alternatives

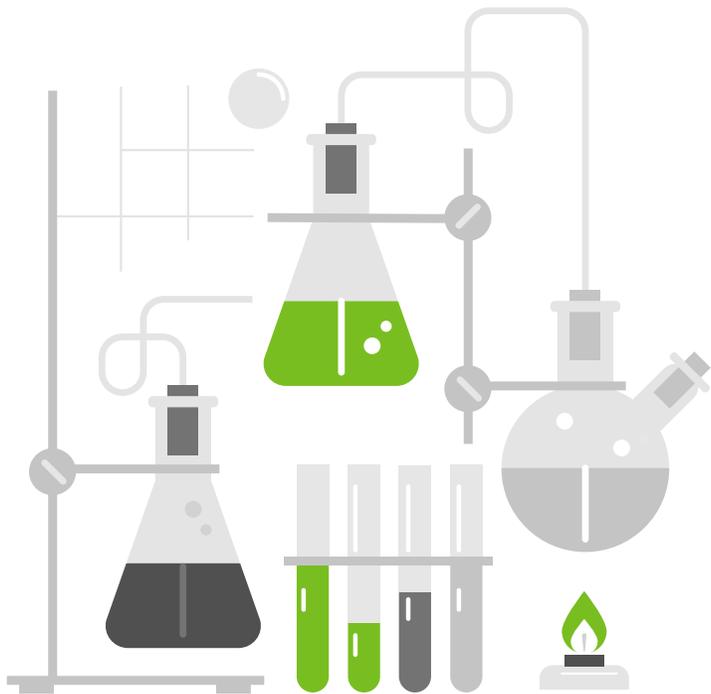
- Identification of potential alternatives
 - Reminder: per the proposed definition of “alternative”, this could include a chemical, substance, material, manufacturing process change, non-chemical change, or other product that could be used in place of a product or intentionally added PFAS
 - For chemical alternatives, include the chemical name and chemical identifying number
- An assessment of how the alternatives meet the specific function that the PFAS is meeting for the product or component to provide its service
- If applicable, the concentration of the alternative that would be needed for the product or component to provide its service

Emphasis on the ability of the product or component to still provide its service

Information required in assessment of alternatives

- An assessment of whether the alternatives identified are available in sufficient quantities *without* regard to cost
 - If not available in sufficient quantity, a forecast of how availability is expected to change
- An assessment of the cost difference between using PFAS in a product versus using the PFAS alternatives identified
 - Reminder: the applicant cannot rely solely on lower cost of a PFAS as justification that there are no reasonably available PFAS alternatives
 - What is the cost to society for the continued use of PFAS?

Information required in assessment of alternatives



- An indication of whether an alternative is listed on any regulatory chemical of concern list
 - Include what list(s) it is included on; and,
 - Describe the chemical traits that make it a concern
- An estimated timeline needed for transition to an alternative
- Other information the applicant believes is relevant to the feasibility of alternatives

Additional information required

- An applicant *must* provide information about any finalized CUU determination (approved or denied) made by other jurisdictions in the United States
- An applicant *must* provide information on restrictions on the sale or use of PFAS in the same product or product category in other jurisdictions
 - Note: This is not limited to the United States
- All manufacturers *must* certify that the data they submit or the data that the applicant submits on their behalf is accurate and complete

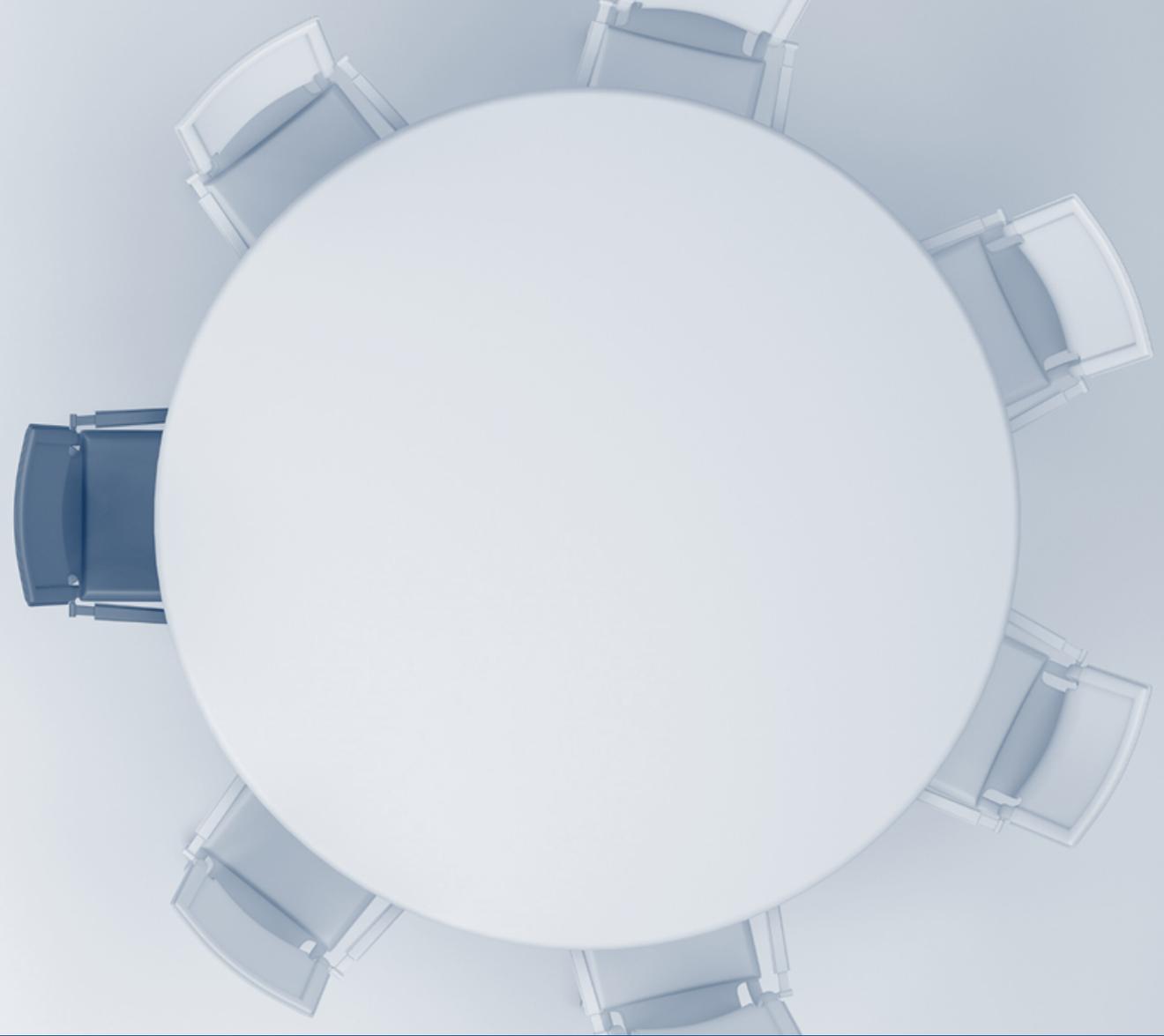
Recap of CUU request content

Eligibility: must meet the statutory definition of “currently unavoidable use”

Request for a CUU determination must include:

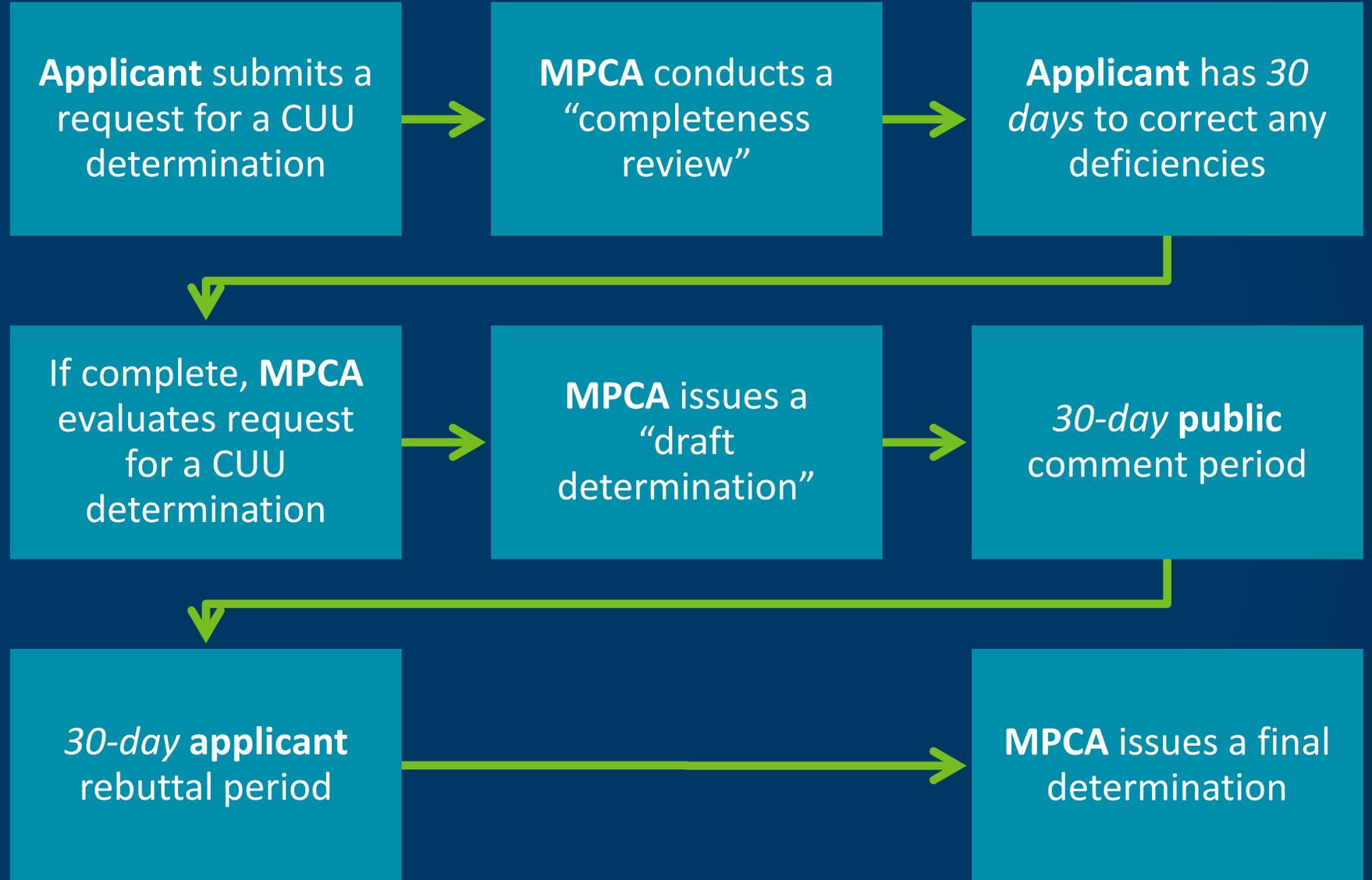
- 1 Applicant information
- 2 Product information
- 3 CUU information
- 4 Assessment of alternatives
- 5 Information regarding other CUU determinations
- 6 Information regarding sales and use restrictions
- 7 Certification that data is accurate and complete

- Process
- Proposed deadline
- Timeline components
- Duration
- Renewal
- Trade secrets
- Due diligence



CUU determination process

Process



Proposed Deadline

The MPCA does not have statutory authority to allow “sell through” provisions past January 1, 2032 without a positive CUU determination issued by the commissioner

- This includes requests that are still pending that have not received a final CUU determination

Requests for a CUU determination for “existing products” are **due January 1, 2030**

- Review of these requests will be prioritized over requests for a CUU determination for “novel products” that are not yet sold, offered for sale, or distributed for sale in the state
- “Novel products” includes those products where the applicant misses the January 1, 2030, deadline to submit a request for a CUU determination

Timeline components

Once the commissioner notifies the applicant of an incomplete request, the applicant will have **30 days** to submit revisions to correct any deficiencies

- If no revisions are submitted within 30 days, the applicant will have to submit a new request
- A new request submitted after the January 1, 2030 deadline would then be for a “novel product”
- This ensures progress will continue to be made toward a complete application

After notification of an incomplete request:



Timeline components continued...

Public comment period after draft determination: **30 days**

Applicant rebuttal period after public comment: **30 days**

- Information provided in rebuttal must be relevant to the comments received

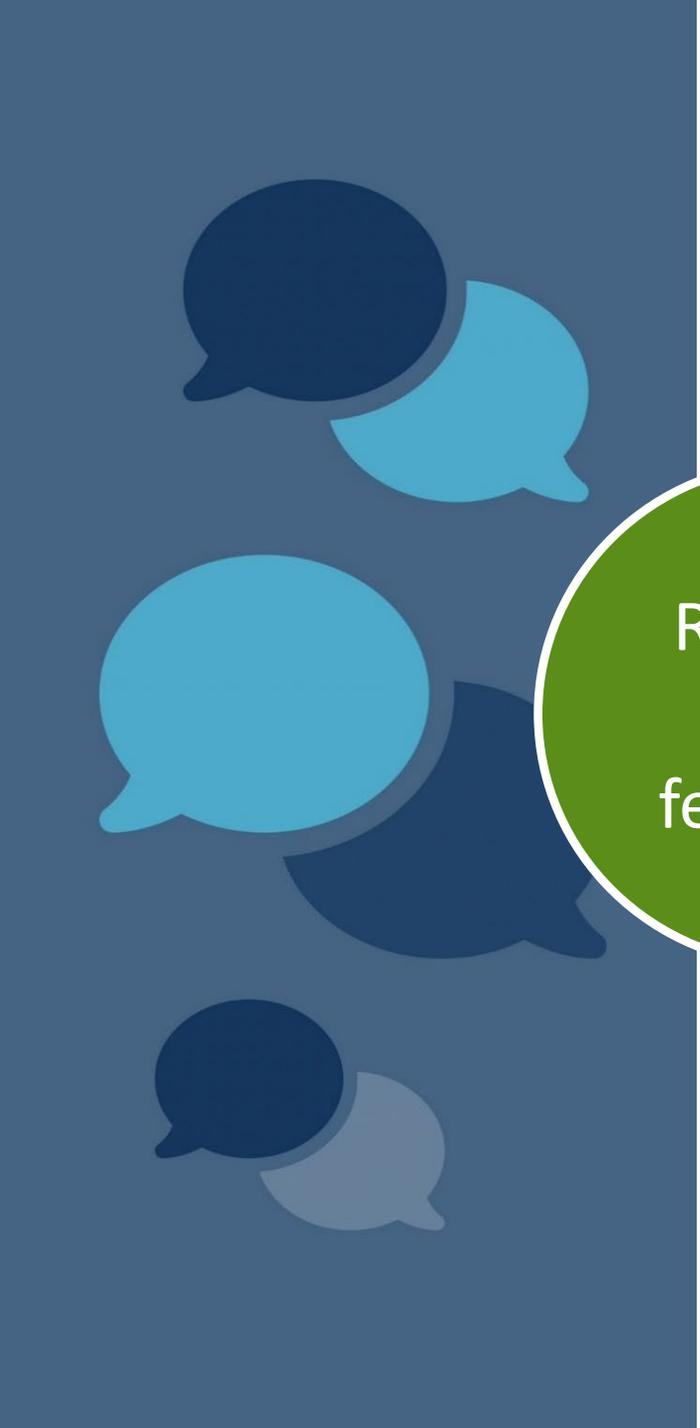
Both groups must submit comments “in a format specified by the commissioner”

- Likely an online comment platform such as “SmartComments” to promote transparency





- Initial positive CUU determinations for existing products will expire **8 years from the date of issuance**
 - Note that the date of issuance may pre-date the January 1, 2032 prohibition
 - This is intended to stagger renewal deadlines and reduce the administrative bottleneck for review of future renewals
- CUU determinations for novel products will expire 5 years from the date of issuance

A decorative graphic on the left side of the slide features a dark blue vertical bar. Overlapping this bar are several speech bubbles in various shades of blue and green. A prominent green circle with a white border is centered on the bar, containing the text 'Request for feedback'.

Request for feedback

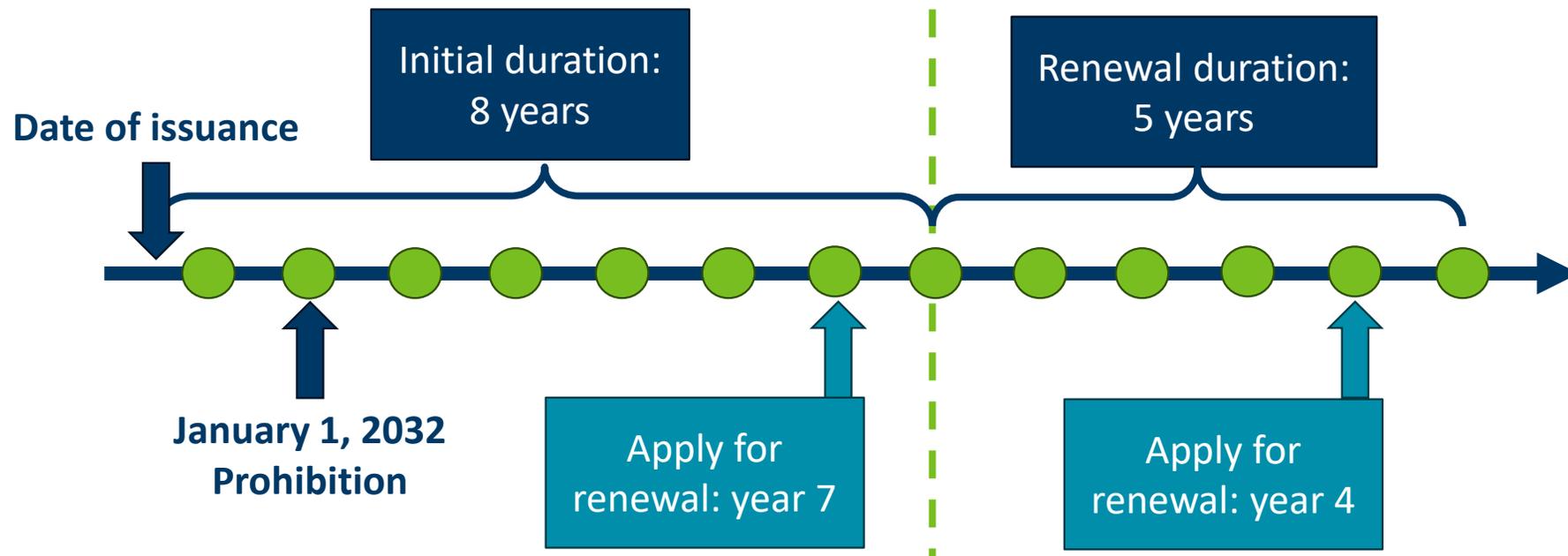
The agency is seeking feedback on the potential that the initial positive CUU duration for existing products will expire eight years from the date of issuance regardless of product category. This is intended to stagger renewal deadlines and ease the administrative burden of processing renewals.

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations to stagger renewal deadlines?**

Renewal

After the first initial CUU determination, ongoing renewals of a positive CUU determination will expire after a duration of **5 years from the expiration of the positive CUU determination**

- Must apply for a renewal at least **one year** before the expiration of the positive CUU determination



Since applications will be going through a public comment process and some information will be made public, applicants may submit trade secret requests that qualify under Minnesota Statutes, section 13.37.

The applicant will be required to provide alternative data that can be made public for data deemed not public information

The agency is seeking feedback on data that may be eligible for consideration, including:

- chemical name;
- chemical identifying number;
- chemical concentration or formula;
- Reformulation or redesign of the product, technique, or production process that a manufacturer may need to implement an alternative;
- The physical description that would best identify a non-chemical alternative; and,
- Specific supply chain information.



Request
for
feedback

The MPCA has developed a preliminary list of potentially eligible data categories that may be considered for trade secret requests.

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations for data that should or should not be eligible for trade secret requests?**

Due diligence

- Recordkeeping: Must maintain records (including communications, findings, and justifications) for:
 - Any request for a CUU determination,
 - Research of alternatives (including ongoing assessments), and
 - An agreement by a group of manufacturers that data submitted on their behalf is accurate and complete
- Must maintain for at least **ten years** after a positive CUU determination is issued, and provide records to the commissioner upon request

Recap of CUU determination process

Process

- Outlined in rule; includes opportunity for engagement and feedback

Deadline

- January 1, 2030 for existing products

Timeline

- 30 days to submit revisions, 30 days public comment, 30 days applicant rebuttal

Duration

- 8 years from date of issuance for existing products; 5 years for novel products

Renewal

- 5 years from date of expiration of the positive CUU determination

Trade secrets

- Must submit trade secret requests; only certain information is eligible

Due diligence

- Maintain records for 10 years after issuance

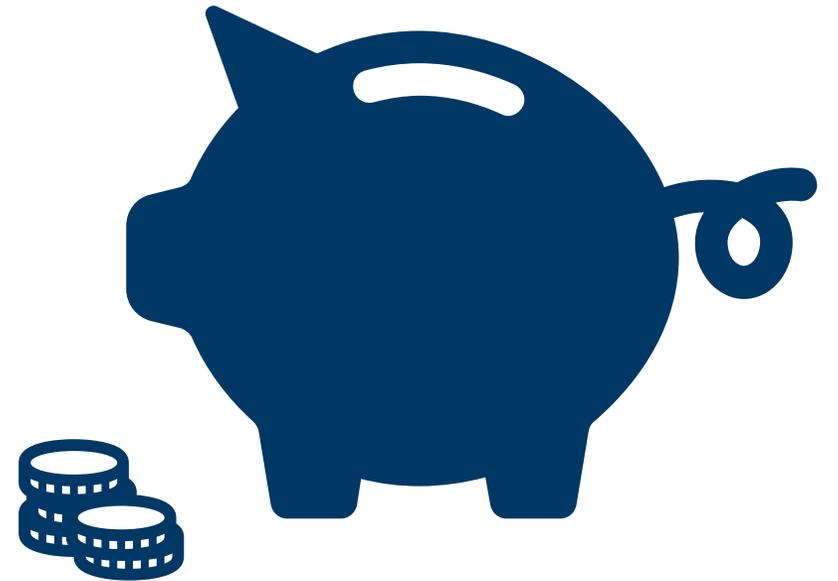
Economic considerations

Manufacturers will face a cost to request a CUU determination (staff time)

- Cost to hire a third-party provider for an assessment of alternatives (not required)

The agency must consider the cost of continued use of PFAS within a product or product category

- Environmental and human health impacts
- PFAS remediation is expensive





Request
for
feedback

Questions regarding economic considerations are detailed in SmartComments, but the general topics we are seeking feedback from manufacturers on include:

- 1. Costs to society for the continued use of PFAS**
(environmental, human health, or remediation costs)
- 2. Administrative cost of requesting a CUU determination**
- 3. Expenditure considerations when seeking non-PFAS alternatives**
- 4. Research and development safety validation cycles**

Request for feedback: SmartComment Period



**We want to hear
from you!**

**Open now through 4:30 pm CST
March 29, 2026**

“Draft Rule Concept Summary” document summarizes the information presented today

- A recording of this presentation will be uploaded to the PFAS in products currently unavoidable use webpage: <https://www.pca.state.mn.us/get-engaged/pfas-in-products-currently-unavoidable-use>

<https://mpca.commentinput.com?id=fGW4cdeEZ>

Thank you!

For general questions about PFAS, email:

Pfasinfo.pca@state.mn.us

For questions about how to comment, email:

Addison Otto, Rule Coordinator

Addison.Otto@state.mn.us

*Note – unable to answer *rule content* questions

Stay connected!

Sign up for our email list to receive rule updates:

