

Request for Comments

Minnesota Pollution Control Agency

Possible New Rules Relating to the Packaging Waste and Cost Reduction Act, Minnesota Rules, 7035; Revisor's ID Number R-04992

Overview. The Minnesota Pollution Control Agency (MPCA or Agency) requests comments on possible new rules regarding waste. This rulemaking project is referred to as the Packaging Waste and Cost Reduction Act (PWCRA) Rule and may affect *Minnesota Rules*, chapter 7035.

This request for comments (RFC) is the MPCA's legal notice of its intention to change or add to existing rule text. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule yet; we want your feedback to inform us about the ideas we are considering.

Subject of Rules. The MPCA is considering new rules to implement the PWCRA (*Minnesota Statutes*, sections 115A.144 to 115A.1463), which places new requirements on producers, registered producer responsibility organizations, markets for covered materials, public and private waste reduction, reuse, recycling, and composting service providers and facilities. The PWCRA provides a requirement for producers to implement and finance a statewide program for covered materials including certain packaging and paper products, as defined by the law. This will encourage redesign to reduce environmental impacts, human health impacts, and generation of covered materials waste.

Waste reduction, reuse, recycle programs, and compost programs are encouraged through this program by providing for the collection, transportation, and processing of used covered materials.

While this is a request for comments, and the elements of this rulemaking may change based on comments received or other information, the MPCA has six main goals for the possible new rule as directed by *Minnesota Statutes*, sections 115A.144 to 115A.1463. The public will have additional opportunities to comment on any proposed rulemaking. At this time, the MPCA anticipates developing new rule language to address the following:

1. Definitions for terms used that are not defined in statute
2. Exemptions

There are two exemption pathways within the existing statutory language and one criterion to be further defined.

The commissioner has the authority to determine if a material or any portion of material is exempt if it meets *Minnesota Statutes*, section 115.1441, subdivision 16 (11), "are packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard, Code of Federal Regulations, title 29, section 1910.1200, that prevent the packaging from being waste reduced or made reusable, recyclable, or compostable, as determined by the commissioner."

The MPCA would appreciate comments on the following question, as well as any other comments relating to a process for establishing exemptions:

2(a): Under *Minnesota Statutes*, section 115A.1441, subdivision 16 (11), what criteria should be used to determine that a specific hazardous or flammable products regulated by the 2012 federal OSHA CFR, title 29, section 1910.1200 that prevents a material, any proportion of material, or packaging cannot be waste reduced, made reusable, recyclable, or compostable? What information should be submitted by a producer to demonstrate against those criteria?

The commissioner has the authority to determine a product as exempt under *Minnesota Statutes*, section 115A.1453, subdivision 6. Under this authority the commissioner only has authority to classify packaging as exempt if it is determined “that a specific federal or state health and safety requirement prevents the packaging from being waste reduced or made reusable, recyclable, or compostable.”

The MPCA would appreciate comments on the following question, as well as any other comments relating to a process for establishing exemptions:

2(b): Under *Minnesota Statutes*, section 115A.1453, subdivision 6., what criteria should be used to determine that a specific federal or state health and safety requirement prevents a material, any proportion of material, or packaging cannot be waste reduced, made reusable, recyclable, or compostable? What information should be submitted by a producer to demonstrate against those criteria?

Minnesota Statutes, section 115.1441, subdivision 24 mentions another criterion to be further established for “products that recycling or composting facilities will not accept because of the unsafe or unsanitary nature of the paper product”.

The MPCA would appreciate comments on the following question, as well as any other comments relating to a process for defining “unsafe and unsanitary”:

2(c): Should criteria be defined for “unsafe and unsanitary” in relation to *Minnesota Statutes*, section 115.1441, subdivision 24? If so, what should those criteria be? Should this be tied to what is accepted on the covered material lists?

3. Collection lists

The MPCA must determine what covered materials should be placed on the lists established in *Minnesota Statutes*, section 115A.1453. The creation of these lists will establish when a covered material is recyclable or compostable.

The MPCA must also establish a process to allow the agency to identify when a covered material can be incorporated or must be removed from the collection lists.

The MPCA would appreciate comments on the following questions, as well as any other comments relating to a process for determining whether a covered material should be included on a collection list or requirements for alternative collection programs:

3(a): What should the threshold for “current availability of collection” services be for recycling? For organics recycling? Should they be different or the same?

3(b): What is the threshold for access to recycling and composting processing infrastructure? Should it be determined by distance to a percent of the population, total coverage of a percent of the total population, or something else? Should it differ for covered entities in Greater Minnesota versus in the Twin Cities Metro Area?

3(c): In evaluating the capacity and technology for sorting covered materials, how much processing capacity should be set as the threshold for a covered material to be included on a collection list? Should it be set as a percentage or another measure?

3(d): What is the minimum availability of responsible markets for a covered material to be included on a collection list? Is there a threshold relating to capacity, number, distance, or some combination of thresholds?

3(e): What are the recommended thresholds for the presence and amount of a residual, contaminant, and/or toxic substance for a covered material to be excluded from the collection list?

3(f): What is the quantity of a covered material estimated to be available and recoverable that should cause a covered material to be included on a collection list?

3(g): What are some examples of future conditions of these criteria to be considered?

3(h): Are there any other criteria recommended to be considered? Are there criteria mentioned above or in statute that are not recommended to be considered?

3(i): Relating to alternative collection systems, what are the considerations for what meets “convenience” and what would the minimums be? Should it differ for covered entities in Greater Minnesota versus in the Twin Cities Metro Area?

3(j): Are there any considerations to how covered materials collected through alternative collection must be accurately measured?

4. Statewide requirements and measurement

Statewide requirements are to be set by the commissioner as established in *Minnesota Statutes*, section 115A.1451, subdivision 7.

The commissioner must establish the units by which certain rates are set and may modify how a recycling performance target is met and measured as established in *Minnesota Statutes*, section 115A.1451, subdivision 6.

A service provider is required to meet performance standards, ensure that covered materials are sent to responsible markets, and provide transparency on cost relating to what is reimbursed by a producer responsibility organization by this law as established in *Minnesota Statutes*, section 115A.1449.

The commissioner must also approve when a reusable covered material meets the criteria set in *Minnesota Statutes*, section 115A.1451, subdivision 6. Return rate is also defined in *Minnesota Statutes*, section 115A.1441, subdivision 32.

The MPCA would appreciate comments on the following questions related to requirements for recycling, systems of reuse, and statewide requirements and criteria:

4(a): What criteria should be considered to set a return rate?

4(b): How might a producer or producer responsibility organization demonstrate a return rate?

4(c): Are there any considerations the agency should evaluate when determining statewide requirements?

5. Stewardship plan and annual reports

A producer responsibility organization must submit a stewardship plan by October 1, 2028, and every five years thereafter, to the commissioner that describes the proposed operation by the organization of programs to fulfill the requirements of *Minnesota Statutes*, sections 115A.144 to 115A.1463 and that incorporates the findings and results of needs assessments. The stewardship plan is required to meet the criteria established in *Minnesota Statute*, section 115A.1451, subdivision 3.

The commissioner must review and approve, deny, or request additional information for a draft stewardship plan.

The annual reports of registered producer responsibility organizations in *Minnesota Statutes*, section 115A.1456, subdivision 1 contain information used to administer the program and keep the public informed.

5(a): Are there any items within the stewardship plan requirements that may need to be further clarified?

5(b): Are there any items within the annual reports from registered producer responsibility organizations that may need to be further clarified?

5(c): What information should the MPCA request to verify producer responsibility organization costs and reimbursement rates in a stewardship plan and/or annual report as part of a budget and any financial and programmatic auditing?

5(d): Does any part of the stewardship plan and plan amendment approval process need to be further clarified?

6. Other topics

Additionally, the MPCA would appreciate any comments related to the PWCRA and areas where there could be clarification provided through the rulemaking. The Agency also requests any information pertaining to the cumulative effect of the possible new rule with other federal and state regulations related to the specific purpose of the rule. *Cumulative effect* means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

Parties Affected. The possible new rules could affect covered entities, producers, registered Producer Responsibility Organizations (PROs), responsible markets, service providers, and the public, as defined in *Minnesota Statutes*, section 115A.1441, subdivision 9, 26, 27, 31, and 36.

Producers may be located in Minnesota or anywhere outside the state, as long as any covered materials introduced (sold, offered for sale, distributed, or used to ship within or into the state) by a person. Service providers and responsible markets may also be located in Minnesota or anywhere outside the state, as long as they provide covered services for covered materials generated by covered entities.

An evaluation of disparities in service levels across the state as well as evaluating environmental justice concerns associated with management of packaging and paper waste will be included as part of the Needs Assessment for the PWCRA, as mentioned in *Minnesota Statutes*, section 115A.1450, subdivision 4 (9). In addition to the Needs Assessment, a “workplace conditions and equity study” will be initiated in 2032 to look at working conditions, barriers to ownership of facilities by minorities and women, and review convenience and opportunities within the state through a lens of working towards equity. This study will not be impacted by this rulemaking but demonstrates the focus of equity in the PWCRA.

As required by the PWCRA, the MPCA has an advisory board to comment on the possible new rules. The [packaging extended producer responsibility \(EPR\) advisory board](https://www.pca.state.mn.us/air-water-land-climate/packaging-extended-producer-responsibility-advisory-board) (<https://www.pca.state.mn.us/air-water-land-climate/packaging-extended-producer-responsibility-advisory-board>) includes 18 individuals representing a wide range of impacted parties under the

PWCRA. Members will review activities conducted by the MPCA and PRO and advise on program implementation.

The MPCA does not anticipate that the possible new rules will require a local government to adopt or amend an ordinance or other regulation under the new rule. Local governments may submit written information to the contrary.

Statutory Authority. *Minnesota Statutes*, section 115A.1459 authorizes the Agency to adopt rules that implement the PWCRA: “The commissioner may adopt rules to implement sections 115A.144 to 115A.1463. The 18-month time limit under section 14.125 does not apply to the commissioner's rulemaking authority under this section.”

Agency Contact Person. Submit written comments via the Court of Administrative Hearings (CAH) eComments website at <https://minnesotaoah.granicusideas.com/discussions> or other methods described in the Public Comment section below. The MPCA contact person for questions, requests to receive a paper copy of the draft rule when it has been prepared, or additional information on this rulemaking project is Rule Coordinator Aubrey Sondrol at 7381 Airport View Dr. SW Rochester, MN 55902; email aubrey.sondrol@state.mn.us; telephone 507-206-2664. You may also call the MPCA at 651-296-6300 or 800-657-3864; use your preferred relay service. Please note that you may not submit rulemaking comments by phone or email.

Where to Get More Information. Information about this rulemaking is available on the rulemaking webpage at <https://www.pca.state.mn.us/get-engaged/packaging-waste-and-cost-reduction-act>. As stated above, draft rule language is not available at this time. If you are interested in being notified when a draft of the rule is available and of other activities relating to this rulemaking, please register for GovDelivery e-mail updates at http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_580 (MPCA GovDelivery: EPR for Packaging and Paper Products).

Public Comment. Interested parties may submit comments or information on these possible rules in writing until 4:30 p.m. on July 24, 2026. The MPCA will not publish a Notice of Intent to adopt the rules until more than 60 days have elapsed from the date of this RFC.

During the public comment period associated with this RFC, submit written comments or information to the:

1. CAH eComments website at <https://minnesotaoah.granicusideas.com>;
2. CAH attn: William Moore, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620, by US Mail or in person; or
3. CAH fax 651-539-0310.

You can review frequently asked questions about the CAH eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf.

Note: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The Agency is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent.

Rule Drafts. The MPCA has not yet drafted this new rule. Parties interested in being notified when a draft of the rule text is available or other activities relating to this rulemaking are encouraged to register at http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_580 (MPCA GovDelivery: EPR for Packaging and Paper Products).

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the Agency Contact Person listed above.

April 27, 2026

[Date]

Katrina Kessler

Katrina Kessler, Commissioner Minnesota
Pollution Control Agency