CAH 5-9003-40410
Revisor R-4828

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Relating to Amara's Law, PFAS in Products: Reporting and Fees, Minnesota Rules 7026.0010 through .0100

REPORT OF THE ADMINISTRATIVE LAW JUDGE

Administrative Law Judge Jim Mortenson presided over a public hearing in this rulemaking on May 22, 2025. The hearing was conducted virtually via WebEx and began at 2:00 p.m. Nearly 200 participants attended the hearing and 11 individuals made comments. The Judge ensured everyone who wished to make a statement or ask a question concerning the proposed rules had the opportunity to do so.

The hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act (MAPA).[1] The Minnesota legislature designed the rulemaking process to ensure that state agencies have met all requirements of Minnesota law for adopting rules. Those requirements include evidence that the proposed rules are necessary and reasonable, and that any modifications made by the agency after the proposed rules were initially published do not result in the rules being substantially different from what the agency originally proposed. The hearing is intended to allow the agency and the judge reviewing the proposed rules to hear public comments regarding the impact of the proposed rules and consider what changes might be appropriate.

The Pollution Control Agency (PCA or Agency) was represented at the hearing by Emily McMillan, Associate General Counsel; Andria Kurbondski, PFAS Pollution Prevention Program Lead; Peder Sandhei, Green Chemistry and Safer Product Program Coordinator; and Quinn Carr, Rule Coordinator. Kurbondski made the Agency's presentation at the hearing. The Judge admitted the Agency's exhibits for the rulemaking into the record at the hearing.[2] There were approximately 190 participants and observers of the hearing and comments from interested parties were received at the hearing. Other staff who worked on the proposed rule included: Joshua Swenson, PFAS Pollution Prevention Program Specialist; Derric Pennington, Economic Policy Analyst; and Megan Saley, compliance and enforcement.[3]

After the hearing, the Judge kept the administrative record open for an additional 20 working days, until June 23, 2025, to allow interested persons and organizations, as

[1] Minn. Stat. §§ 14.001 -.69 (2024).
[2] Exhibits (Exs.) A-1, A-2, C, E, F, G-1, G-2, G-3, H, K-1, K-2, K-3, K-4, I and L.
[3] Ex. D at 60-61.

well as the Agency, to submit written comments. The hearing record closed on June 30, 2025, following the five-working day rebuttal period.[4]

Due to the extensive public comments addressing highly technical issues concerning the production and distribution of products for which reporting is required and the Judge's need to analyze and incorporate that information into the report, the Chief Administrative Law Judge extended the due date for this Report by 30 days to August 29, 2025.[5]

REPORT SUMMARY

In passing and signing Amara's Law in 2023, the legislature and Governor created a regulatory framework for products containing perfluoroalkyl and polyfluoroalkyl substances (collectively referred to as PFAS). Amara's Law banned eleven categories of products containing PFAS and prescribed reporting requirements for people and organizations manufacturing or bringing PFAS-containing products into Minnesota. The PCA was assigned the duty to enforce these requirements and authorized to create rules to implement the statute.[6]

Amara's Law requires the Agency to collect certain information from manufacturers of certain products that contain "intentionally added PFAS" before those products may be sold or distributed in Minnesota.[7] This information includes what the product is, the purpose of the PFAS in the product, the amount of PFAS in the product, and the identification of the manufacturer. The statute permits the commissioner of the PCA (Commissioner) to request any additional information "necessary to implement the requirements" of Amara's Law.[8] The statute also grants the Commissioner authority to establish fees to be paid with these reports "to cover the agency's reasonable costs to implement" Amara's Law.[9]

First, the rules must be **DISAPPROVED** for a procedural reason: the Agency failed to include an assessment of the cumulative effect of the proposed rules with federal regulations on PFAS reporting. Second, based on a careful examination of the law, the Agency's explanations, and public comments, this Judge finds several provisions of the proposed rules which must be **DISAPPROVED** because they are either not rationally related to the Agency's objective or the record does not demonstrate the need or reasonableness of the rule; exceeds, conflicts with, or does not comply with the enabling statute; and is not a rule or is otherwise not an enforceable law. These critical deficiencies are found at proposed Minn. R. 7026.0010, subp. 14, .0040, .0050, .0090, and .0100. The Judge offers recommendations for correcting these deficiencies and suggestions for

[4] Minn. Stat. § 14.15, subd. 1.
[5] Order Extending Deadline (July 18, 2025).
[6] Minn. Stat. § 116.943, subds. 6, 9 (2024). Amara's Law was amended during the 1st Special Session of the legislature in June 2025. Any applicable changes to the law are reflected in the findings below.
[7] Minn. Stat. § 116.943, subd. 2(a) (2024).
[8] Minn. Stat. § 116.943, subd. 2(a)(5).
[9] Minn. Stat. § 116.943, subd. 6.

additional improvements to the proposed rules for the Commissioner to consider. The details are provided below.

NOTICE

Because the Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for approval. If the Chief Judge approves the adverse findings contained in this Report, he will advise the Agency of actions that will correct the defects, and the Agency may not adopt the rules until the Chief Judge determines that the defects have been corrected. However, if the Chief Judge identifies defects that relate to the issues of need or reasonableness, the Agency may either adopt the actions suggested by the Chief Judge to cure the defects or, in the alternative, submit the proposed rules to the Legislative Coordinating Commission for the Commission's advice and comment. The Agency may not adopt the rules until it has received and considered the advice of the Commission. However, the Agency is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Agency's submission.

If the Agency elects to adopt the actions suggested by the Chief Judge and make no other changes and the Chief Judge determines that the defects have been corrected, the Agency may proceed to adopt the rules. If the Agency makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Judge for review before the Agency may adopt the rules in final form.

After adopting the final version of the rules, the Agency must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Judge will notify the Agency, and the Agency will notify those persons who requested to be informed of their filing.

Based on the administrative record and applicable law, the Judge makes the following:

FINDINGS OF FACT

I. Nature and Background of the Proposed Rules

1. The Minnesota legislature has charged the Department of Health with identifying chemicals of high concern.[10] This task is to be completed following consultation with the PCA.[11]

[10] Minn. Stat. § 116.9402, subd. 1 (2024).
[11] *Id.*

2. Chemicals of high concern are:

identified on the basis of credible scientific evidence by a state, federal, or international agency as being known or suspected with a high degree of probability to:

(1) harm the normal development of a fetus or child or cause other developmental toxicity;

(2) cause cancer, genetic damage, or reproductive harm;

(3) disrupt the endocrine or hormone system;

(4) damage the nervous system, immune system, or organs, or cause other systemic toxicity;

(5) be persistent, bioaccumulative, and toxic; or

(6) be very persistent and very bioaccumulative.[12]

3. Effective January 1, 2025, the legislature outlawed the distribution and sale of some products containing a group of chemicals of high concern: perfluoroalkyl and polyfluoroalkyl substances, commonly known as PFAS.[13] PFAS are "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."[14]

4. PFAS consist of exceptionally durable molecules, which have proven so resistant to decay that they persist and build-up in the environment, including in the bodies of all living things on Earth.[15] "Many PFAS have been proven to be toxic, associated with adverse health outcomes such as altered immune and thyroid function, liver disease, kidney disease, adverse reproductive and developmental outcomes, and cancer."[16]

5. PFAS spread throughout the environment when disposed of, including when placed in landfills and incinerators. When products containing PFAS are placed in a landfill, the PFAS appear in the "soil, leachate, groundwater, and stormwater."[17] Landfills are a major source of PFAS pollution.[18] When PFAS are not destroyed in the

[12] Minn. Stat. § 116.9401(e) (2024).
[13] Minn. Stat. § 116.943, subd. 5 (Supp. 2025).
[14] Minn. Stat. § 116.943, subd. 1(q) (Supp. 2025).
[15] Ex. D. at 8, c*iting* Buck, R.C., Franklin, J., Conder, J.M., Cousins, I.T., de Voogt, P., Jensen, A.A., Kannan, K., Mabury, S.A., and van Leeuwen, S.P. (2011), *Perfluoroalkyl and polyfluoroalkyl substances in the environment: Terminology, classifications, and origins. Integrated Environmental Assessment and Management,* 7(4), 513-541. https://doi.org/10.1002/ieam.258.
[16] Ex. D at 8, *citing* Fenton, S.E., Ducatman, A., Boobis, A., DeWitt, J.C., Lau, C., Ng, C., Smith, J.S., and Roberts, S.M. (2020), *Per- and polyfluoroalkyl substance toxicity and human health review: Current state of knowledge and strategies for informing future research. Environmental Toxicology and Chemistry*, 40(3), 606-630. https://doi.org/10.1002/etc.4890.
[17] Ex. D. at 8.
[18] *Id.*

incineration process, the PFAS are emitted into the air.[19] Moreover, when PFAS-polluted water enters wastewater treatment plants, many plants are unable to remove the PFAS and they are sent on to surface waters.[20] The biosolids from wastewater plants also contain PFAS, and those biosolids are often used to fertilize agriculture fields where the PFAS enter the food chain.[21]

6. Preventing PFAS pollution is the most economical method of reducing exposure to PFAS and reducing need for treatment and remediation. The cost to buy PFAS to make consumer products ranges from $50 to $1000 per pound. The cost to remove and destroy PFAS from, for example, municipal wastewater ranges from $2.7 million to $18 million per pound of PFAS.[22]

II. Rulemaking Authority

7. In reviewing proposed rules, the administrative law judge must determine whether the agency has authority to engage in rulemaking.[23]

8. Tracking and testing for PFAS that have already been released into the environment is challenging and expensive. A common test used by the federal Environmental Protection Agency (EPA) can only detect 40 of the potentially millions of types of PFAS. Thus, the legislature created a regulatory mechanism to help track the introduction of the types of PFAS into the state. The mechanism primarily relies on product manufacturers reporting to the state (the PCA) the quantity of PFAS manufacturers intentionally add to their products which are then distributed in Minnesota.

9. The regulatory mechanism was prescribed by the legislature and the legislature specifically gave the Commissioner the authority to adopt rules necessary to implement the mechanism found at Minn. Stat. § 116.943.[24] The legislature also granted the Commissioner authority to set fees to be paid by manufacturers who must report on PFAS in their products.[25] The fees are "to cover the agency's reasonable costs to implement" Amara's Law.[26]

10. The proposed rules address what the Agency believes are necessary clarifications and procedures to implement the statutory regulatory scheme for reporting PFAS intentionally added to products not otherwise banned and which are sold and distributed in Minnesota.[27] The proposed rules include additional information the Agency

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[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 9.
[23] Minn. Stat. § 14.05. Following a determination of rulemaking authority, the judge must, as part of the review, determine whether the proposed rules – or portions of them – exceed the agency's authority. This is examined later in this report.
[24] *Id.* at subd. 9.
[25] *Id.* at subd. 6.
[26] *Id.*
[27] Ex. D.

seeks to collect from manufacturers who must report, and the fees to be paid with reports.[28]

III. Rulemaking Legal Standards

11. Rulemaking is controlled by MAPA and the statutory procedures must be followed to create a valid rule.[29]

12. In a rulemaking proceeding, the agency must establish the need for and reasonableness of the proposed rules by an affirmative presentation of facts.[30] To support a rule, an agency may rely on legislative facts, including general facts concerning questions of law, policy, and discretion, or it may simply rely on interpretation of a statute or stated policy preferences.[31]

13. When adopting a rule, an agency must prepare and publish a statement of need and reasonableness (SONAR) which addresses the following factors:

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

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[28] *Id.*

[29] Minn. Stat. §§ 14.001 - .47; *White Bear Lake Care Ctr., Inc. v. Minn. Dep't of Pub. Welfare*, 319 N.W.2d 7, 8-9 (Minn. 1982).

[30] Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100 (2025).

[31] *See Mammenga v. Dep't of Human Servs.*, 442 N.W.2d 786, 791-92 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.[32]

14. The standards of review for a final proposed rule are stated in Minn. R. 1400.2100. Pursuant to that rule "[a] rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);

B. is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;

C. is substantially different than the [initially] proposed rule, and the agency did not follow the procedures of part 1400.2110;

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency's powers to another agency, person, or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law; or

[32] Minn. Stat. § 14.131; Minn. R. 1400.2070 (2025).

H. is subject to Minnesota Statutes, section 14.25, subdivision 2, and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is not consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).[33]

15. Although reasonable minds might disagree about the wisdom of a certain course of action, it is not the administrative law judge's role to determine which policy alternative presents the "best" approach, because this would invade the policy-making discretion of the agency.[34] Similarly, "a reviewing court will not substitute its judgment if an agency can demonstrate that it has complied with rulemaking procedures and made a considered and rational decision."[35] Where MAPA requires agency action in rulemaking, the administrative law judge's function is to determine whether the agency performed the required action and not to perform the action in place of the agency.[36]

16. Agencies must not, however, attempt to rewrite statutes. "When words of a law are clear and unambiguous, amendments to the law must be made by the legislature in the form of a statute. They cannot be made by the Commissioner in the form of a rule."[37] The plain meaning of words in an unambiguous statute should be applied as written, without "judicial or administrative construction."[38]

IV. Compliance with Procedural Requirements

A. Overview of Procedural Requirements

17. The administrative law judge must assess whether the agency complied with the rule-adoption procedures which include notice and public involvement requirements.[39]

18. An agency must create and share a statement of need and reasonableness (SONAR) of its proposed rules.[40] The SONAR is, itself, a procedural requirement and the Agency's compliance with the legal requirements for the SONAR are addressed in Section IV.J below.

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[33] Minn. R. 1400.2100.
[34] *See Minn. Envtl. Science and Econ. Review Bd.,* 870 N.W.2d at 102 ("An agency decision, including rulemaking, enjoys a presumption of correctness and a court should defer to an agency's expertise and special knowledge." (quotation omitted)).
[35] *Id.* at 98.
[36] *Builders Ass'n of Twin Cities v. Minn. Dep't of Labor and Industry,* 872 N.W.2d 263, 274 (Minn. Ct. App. 2015).
[37] *J.C.Penny Cp., Inc., v. Commissioner of Economic Sec.*, 353 N.W.2d 243, 246 (Minn. Ct. App. 1984).
[38] *Id., citing Chanhassen Estates Residents Association v. City of Chanhassen*, 342 N.W.2d 335, 339 (Minn. 1984); *W.H. Barber Co. v. City of Minneapolis*, 34 N.W.2d 710, 714 (1948); Minn. Stat. § 645.08(1) (2024).
[39] Minn. R. 1400.2100(A); *See* Minn. Stat. §§ 14.05 - .20.
[40] Minn. Stat. § 14.131.

19. The agency must respond to comments "in a manner that states the main reasons for its decision and explains why the agency reached the decision it did."[41]

20. If changes to the proposed rule are made by the agency or suggested by the administrative law judge after original publication of the rule in the *State Register*, the judge must also determine if the new language is substantially different from that which was originally proposed. MAPA sets forth the applicable standards to determine whether the changes create a substantially different rule. Under the statute, a modification does not make a proposed rule substantially different if: (1) the differences are within the scope of the matter announced in the notice of hearing and are in character with the issues raised in that notice; (2) the differences are a logical outgrowth of the contents of the notice of hearing and the comments submitted in response to the notice; and (3) the notice of hearing provided fair warning that the outcome of the rulemaking proceeding could be the rule in question.[42]

21. In determining whether modifications result in a rule that is substantially different, the judge must consider whether: (1) persons who will be affected by the rule should have understood that the rulemaking proceeding could affect their interests; (2) the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of hearing; and (3) the effects of the rule differ from the effects of the proposed rule contained in the notice of hearing.[43]

B. Request for Comments

22. "An agency must comply with [Minn. Stat. §] 14.101, before publishing a notice of intent to adopt rules or notice of hearing."[44] Minn. Stat. § 14.101 (2024) requires that an agency, at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing, solicit comments from the public on the subject matter of a proposed rulemaking. Such notice must be published in the State Register.

23. On September 25, 2023, the Agency published in the *State Register* a Request for Comments (RFC) on the fees for reporting PFAS in products which would be established by rule.[45]

24. On September 25, 2023, the Agency published in the *State Register* an RFC on the planned rules for manufacturer reporting of PFAS in products.[46]

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[41] *Minn. Envtl. Science and Econ. Review Bd.,* 870 N.W.2d at 101, *citing Pub. Citizen, Inc. v. Fed. Aviation Admin.,* 988 F.2d 186, 197 (D.C.Cir. 1993); Minn, Stat. § 14.14, subd. 2a.
[42] Minn. Stat. § 14.05, subd. 2(b).
[43] *Id.*, subd. 2(c).
[44] Minn. R. 1400.2050 (2025).
[45] Ex. D at 16, 52.
[46] *Id.;* Ex. A-1.

25. The two RFC matters (above) were subsequently combined, and a new combined RFC was published in the *State Register* for this rulemaking on November 18, 2024.[47]

26. The Agency also sent the combined RFC to the 2,175 subscribers on its "Rulemaking: PFAS" GovDelivery list on November 18, 2024, sent it to contacts for the Minnesota Tribal Nations, and posted it on the Agency website.[48]

27. The Agency complied with Minn. Stat. § 14.101 regarding the RFC.

C. Notice of Hearing

28. A notice of hearing (Notice) under Minn. Stat. § 14.14 (pertaining to rulemaking hearings), must contain the information required under Minn. R. § 1400.2080, subps. 2 and 4.[49]

29. The agency must obtain the administrative law judge's approval of the Notice before it is mailed and published in the *State Register*.[50]

30. The PCA requested approval of its Notice on April 11, 2025.[51]

31. The Judge approved the Notice on April 18, 2025.[52]

32. The agency must mail or email the Notice at least 30 days before the end of the comment period or the date of the hearing and publish the Notice in the State Register at least 30 days prior to the end of the comment period or the date of hearing.[53]

33. The Notice of Intent to Adopt Rules was published in the *State Register* on April 21, 2025.[54]

34. The Notice was emailed to 5,008 recipients on its rulemaking list on April 21, 2025. The Notice was not sent via U.S. mail.[55]

35. The comment period ended May 21, 2025, 30 days following publication of the Notice.[56]

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[47] Ex. D at 16, 52; Ex. A-2.
[48] Ex. D at 16, 52.
[49] Minn. R. 1400.2080, subp. 1.
[50] Minn. R. 1400.2080, subp. 5.
[51] Letter to Judge Mortenson from Quinn Carr (Apr. 11, 2025).
[52] Order on Review of Additional Notice Plan (Apr. 18, 2025).
[53] Minn. Stat. § 14.14, subd. 1a(a) (2024), and Minn. R. 1400.2080, subp. 6 (2025).
[54] Ex. F. 49 SR 1165 (Apr. 21, 2025).
[55] Ex. G.
[56] *Id.* at 1167.

36. The public hearing occurred on May 22, 2025, 31 days following publication of the Notice.[57]

37. Notice of the hearing was proper. The Agency complied with Minn. Stat. § 14.101.

D. Notice to Legislators

38. Under Minn. Stat. § 14.116, an agency is required to send a copy of its notice of intent to adopt rules and the SONAR "to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission."[58] "[I]f the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the [SONAR] to all sitting legislators who were chief…authors of the bill granting the rulemaking authority."[59]

39. On April 21, 2025, the PCA emailed the Notice, including the SONAR and proposed rules, to the chairs and ranking minority party members of the Senate State and Local Government Committee, the Senate Commerce and Consumer Protection Committee, Senate Environment, Climate, and Legacy Committee, House Environment and Natural Resources Finance and Policy Committee, the House Commerce Finance and Policy Committee, and to the Legislative Coordinating Commission (LCC).[60] The material was also sent to Senate authors Seeberger, Mann, McEwen, Bolden, and House authors Frederick, Jordan, Hansen, Hollins, Norris, Elkins, Agbaje, Howard, Greenman, Gomez, Lee, Fischer, Pursell, Bahner, Bierman, Hemmingsen-Jaeger, Cha, Reyer, Hussein, Hill, Finke, Vang, Noor, Freilberg, Xiong, Curran, Youakim, Kraft, and Moller.[61]

40. The PCA fulfilled its notification responsibilities under Minn. Stat. § 14.116.

E. Notice to the Legislative Reference Library

41. An agency must send a copy of the SONAR to the Legislative Reference Library when the Notice of Hearing is mailed.[62]

42. On April 22, 2025, the PCA emailed the SONAR to the Legislative Reference Library.[63]

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[57] *See, e.g., id* at 1166.
[58] Minn. Stat. § 14.116(b) (2024).
[59] Minn. Stat. § 14.116(c).
[60] Ex. K-2.
[61] *Id.*
[62] Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3 (2025).
[63] Ex. E.

43. The Agency complied with Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3.

F. Notice to Commissioner of Agriculture

44. Before adopting "rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture."[64] This must be done at least 30 days prior to publishing the proposed rules in the *State Register*.[65]

45. Amara's Law specifically addresses reporting requirements concerning pesticides, fertilizers, agricultural liming material, plant amendments, and soil amendments, providing that where such products must be registered with Department of Agriculture the manufacturer can use the data reported under Amara's Law.[66] The PCA may not prohibit those agricultural products that contain intentionally added PFAS unless the Commissioner of Agriculture approves the prohibition.[67]

46. The PCA's proposed rules do not impose restrictions or have an impact on farming operations. As a result, the PCA was not required to notify the Commissioner of Agriculture. Nevertheless, the PCA provided the Commissioner of Agriculture with a courtesy copy of the proposed rules a week before the hearing.[68]

G. Consultation with Minnesota Management and Budget (MMB)

47. An agency is required to "consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."[69]

48. On April 7, 2025, the Agency asked the Executive Budget Officer (EBO) for MMB to evaluate the fiscal impact and benefits of the proposed rules on local units of government. The Agency sent the SONAR, including the proposed rule, to MMB.[70]

49. MMB responded on April 24, 2025. The EBO stated that he had reviewed the proposed rules and SONAR to help evaluate the fiscal impact the proposed amendments may have on local governments. The EBO stated the proposed rules do not have any identified fiscal impact on local governments and that the Agency would be the sole government agency responsible for the regulatory enforcement. Moreover, according to the EOB, the only costs will be to reporting manufacturers, which will be covering the costs of enforcement by the Agency.[71]

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[64] Minn. Stat. § 14.111.
[65] *Id*.
[66] Minn. Stat. § 116.943, subds. 3(b).
[67] Minn. Stat. § 116.943, subd. 5(d).
[68] Ex. K-4.
[69] Minn. Stat. § 14.131.
[70] Ex. K-3.
[71] *Id.*

50. The Agency fulfilled its obligation to consult with MMB as required by Minn. Stat. § 14.131.

H. Compliance Costs for Small Businesses and Cities

51. An agency must "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees."[72]

52. The Agency reports that because cities are not regulated by the proposal, they will bear no costs.[73]

53. Small businesses, on the other hand, may incur costs in excess of $25,000 in working to comply with the law. The Agency reports that it may be able to assist such businesses through its Small Business Environmental Assistance Program (SBEAP) so that they do not have to incur such costs in hiring consultants or additional staff to achieve compliance.[74]

54. The Agency fulfilled its obligation to make the determinations under Minn. Stat. § 14.127.

I. Adoption or Amendment of Local Ordinances

55. An agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Judge must review the determination and approve or disapprove it.[75]

56. The Agency determined that local governments will not be required to adopt or amend an ordinance or other regulation to comply with the proposed amendments because they are not regulated by the proposal.

57. The Agency fulfilled its obligation to make the determination under Minn. Stat. § 14.128, subd. 1.

J. SONAR

58. As stated above, Minn. Stat. § 14.131 requires an agency adopting rules to make a reasonable effort to ascertain eight pieces of information and record that information in the SONAR. (See Finding of Fact 13.) The Agency's analysis of each of these factors are discussed below (subitems 1 – 8).

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[72] Minn. Stat. § 14.127.
[73] Ex. D at 59.
[74] *Id.* at 58-59.
[75] Minn. Stat. § 14.128, subd. 1.

59. The SONAR need not, "contain evidence and argument in rebuttal of evidence and argument presented by the public."[76] Thus, when the SONAR contains references to the evidence the agency relied on in making its determinations about a proposed rule, and that evidence is part of the record, the SONAR does not need to "include or address rebuttal evidence."[77]

60. The SONAR "must describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems."[78] A performance-based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and provides maximum flexibility for the regulated party and the agency in meeting those goals.[79] Compliance with this procedure is discussed below at subitem 9.

61. In addition, the SONAR must include the agency's description of efforts to provide additional notice to people or classes who may be affected by the proposed rule or explain why such notice was not provided.[80] An agency must make reasonable efforts to notify persons or classes of persons, not on its rulemaking list, who may be significantly affected by the rule being proposed by more broadly sharing its Notice. This may be done through newsletters, newspapers, or other publications, or through other means of communication.[81] This process is detailed by an agency in its additional notice plan.[82] Compliance with this procedure is discussed below at subitem 10.

62. The Agency's SONAR contains clerical errors for proposed rules 7026.0040, .0050, .0060, 0070, 0090, and .0100.[83] These errors concern the organization of the affected rules, are not substantive, and were addressed by the Agency in its Letter of Errata dated June 10, 2025. They are harmless errors.[84]

1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.[85]

63. The Agency described the classes of persons who will be affected by the rule, including those that will bear the costs and those that benefit.

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[76] *Builders Ass'n of Twin Cities,* 872 N.W.2d at 273*, citing* Minn. R. 1400.2070.
[77] *Id.*
[78] Minn. Stat. § 14.131.
[79] Minn. Stat. § 14.002.
[80] Minn. Stat. § 14.131.
[81] Minn. Stat. § 14.14, subd. 1a(a).
[82] *Id.*, Minn. R. 1400.2060.
[83] Compare Ex. D at 31-41 and Proposed Rules.
[84] *See* Minn. Stat. § 14.26, subd. 3(d).
[85] Minn. Stat. § 14.131(1).

64. Manufacturers selling product in Minnesota that contain intentionally added PFAS will be required to report under the rule and pay the required fee when reporting.[86] This is required by statute, and the Rule attempts to operationalize the legislation.

65. The Agency cannot determine the number of affected manufacturers precisely. The Agency estimates between 5,000 and 10,000 manufacturers will be affected by the rule.[87]

66. The Agency states the public will be impacted over time as the data about PFAS in products grows and the public can make informed choices about products they obtain.[88]

67. The Agency explains that its responsibility for collecting the data will enable it to respond more quickly and effectively to new health-based data about PFAS pollution. The Agency also notes that it will incur costs in enforcing the rule.[89]

2) The probable costs to the Agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

68. The Agency described its probable costs in implementing and enforcing the proposed rules and the anticipated effect on state revenues.

69. The Agency states that it is the only state agency responsible for implementation and enforcement of the rules.[90]

70. The programs within the Agency responsible for implementation and enforcement include data analysis, green chemistry and safer products, compliance and enforcement, and small business environmental assistance program.[91]

71. The Agency estimates that it will cost $6.027 million to implement the proposed rules over nine years, including initial upfront costs and the costs of the rulemaking proceeding. This breaks down to approximately $667,000 annually for that time period. The Agency detailed these costs in the SONAR.[92]

72. The Agency also estimated the costs for the rulemaking process, $617,618. The expenditures which make up this figure are also detailed in the SONAR.[93]

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[86] Ex. D at 41-42.
[87] *Id.* at 42.
[88] *Id.*
[89] *Id.*
[90] *Id*.
[91] *Id*.
[92] *Id.* at 42-44.
[93] *Id.* at 43.

73. The Agency expects to collect five to ten million dollars initially from manufactures from reporting fees.[94] That figure is based on the initial reporting fee ($1,000) multiplied by the predicted number of manufacturers who will be required to report (5,000-10,000).[95] Subsequent annual reports from the same manufactures are estimated to generate $2.5 to $5 million every year, based on a fee of $500.[96] Thus, over the next eight years (excluding the current year for which the Agency incurred costs and collected no fees), the Agency expects to collect $22.5 to $45 million. (This is based on adding the initial year to the product of the subsequent seven years, using the lowest and highest numbers of the Agency's estimate.)

3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

74. The Agency determined there are no less costly or less intrusive methods to achieve the purpose of the proposed rule.

75. Statute requires the reporting addressed by the rule and the rule operationalizes that requirement.[97]

76. The Agency considered using data reported under federal law and determined that the data reported to the federal government did not align with the data required by state law.[98]

77. The Agency also considered collecting data reported to another state which had a similar reporting requirement (Maine). Maine has since changed its law, and so that method of collecting the information Minnesota law requires is no longer viable.[99]

4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

78. The Agency examined alternatives to achieving the purpose of the rule and determined that none of them would be viable.

79. The Agency considered requiring product labeling for intentionally added PFAS. It was determined that this method of collecting the required data would result in incomplete data that would be difficult to compile for broader public awareness and education. It was also determined that such labeling would be more expensive for

[94] *Id.* at 40.
[95] *Id.*
[96] *Id.*
[97] *Id.* at 44.
[98] *Id.*
[99] *Id.*

manufacturers than the reporting process described in the proposed rule. Moreover, the Agency asserts that it lacks a central database to compile the data from product labels.[100]

80. The Agency considered product testing as the primary means of collecting the required data. This is a high-cost approach and a much more intrusive means to obtain the data, according to the Agency. Moreover, without knowing what precise PFAS to test for, a process of product testing would make data collection nearly impossible.[101]

81. The Agency considered voluntary (as opposed to required) reporting. The Agency reports that in other matters it has relied on voluntary reporting "with varying degrees of success" due to the lack of incentive to report and report accurately.[102]

82. With regard to the fees, the Agency considered using a "per product" rate to charge manufacturers. The Agency determined that a "per manufacturer" fee was better because it would not incentivize under-reporting, and because a per product fee could disproportionately impact small businesses.[103]

83. Finally, the Agency considered not requiring reporting. This approach did not comply with Minn. Stat. § 116.943 and would require the statute to be amended. Moreover, not reporting would result in the loss of data the Agency believes is necessary to make sound regulatory decisions because there is a current dearth of PFAS data.[104]

5) The probable costs of complying with the proposed rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

84. The Agency considered the probable costs of complying with the proposed rules.

85. The Agency determined the costs to manufactures, who pay the fees, will be minimal, despite the potential need to add staff to handle the data collected and reporting. Moreover, the Agency found that the fees to be paid by manufacturers ($1000 for an initial report and $500 annually afterwards) would also be minimal.[105]

86. The Agency determined that its costs in data collection, testing, and enforcement will likely include hiring additional staff. The cost of this, however, will not be borne by the public (likely due to the fees charged manufacturers).[106]

6) The probable costs or consequences of not adopting the proposed rule, including those costs borne by individual

[100] *Id.* at 44-45.
[101] *Id.* at 45.
[102] *Id.*
[103] *Id.*
[104] *Id*
[105] *Id.*
[106] *Id.* at 45-46.

categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

87. The Agency considered the probable costs or consequences of not adopting the proposed rule, including those costs borne by individual categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

88. The Agency states that reporting and the related fees are mandated by statute. Moreover, without the reporting, the state will forego the benefits of better knowledge about the presence of PFAS around us and the impact that knowledge should have on future policymaking.[107]

89. The Agency states in the SONAR that the data collected by virtue of the rule will increase understanding of PFAS exposure routes and both the benefits of the chemicals and the negative health impacts. This will be important to make determinations on which products to ensure are permitted to continue to utilize PFAS, and where the chemicals can be eliminated or replaced by manufacturers.[108]

90. The Agency also restates some of its position regarding public knowledge about the presence of PFAS without the rules. In addition, the Agency remarks that businesses selling products containing PFAS will continue to operate without a full understanding or appreciation of the toxicity of their products, if the rules are not adopted.[109]

7) An assessment of differences between the proposed rule and existing federal regulations and the need for and reasonableness of each difference.

91. The Agency assessed the differences between the proposed rule and existing federal regulations and the need for and reasonableness of each difference.

92. The Agency pointed to reporting on PFAS required by the EPA under the federal Toxic Substances Control Act (TSCA) as the only applicable federal regulation.[110]

93. The TSCA has required data collection on PFAS every four years, but only in limited circumstances. Under the requirements, only one Minnesota business has reported the manufacture or use of PFAS since 1998.[111]

94. The Agency stated that a new regulation under TSCA requires additional reporting on PFAS that will capture much more data. This regulation, however, only looks historically – from 2011 through 2022 – and will be not an ongoing collection of data. As

[107] *Id.* at 46.
[108] *Id.*
[109] *Id.*
[110] *Id.* at 47.
[111] *Id.*

a result, this federal regulation will also not meet the requirements of Minn. Stat. § 116.943.[112]

8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

95. The Agency did not assess the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. This is a procedural flaw which must be corrected to approve the rules.[113]

96. Despite a reasonably thorough review and explanation of the federal regulations related to PFAS reporting as noted above, the Agency states that because Minnesota's PFAS reporting requirement is the only one of its kind, "[t]here will be no significant burden to report this information to the state."[114]

97. "Cumulative effect" is defined by statute. It 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."[115]

98. TSCA and its regulations require certain data about PFAS to be reported by businesses. It is not reasonable to conclude, without a more thorough assessment by the Agency, what effect Minnesota's PFAS reporting requirements will have on businesses in relation to the federal reporting requirements. This is an analysis which must be conducted by the Agency, not the Judge, and the rules cannot be approved without it.[116]

9) Performance-Based Regulation

99. The Agency considered and is attempting to implement rules for the PFAS regulatory program that emphasize superior achievement in meeting the Agency's regulatory objectives and maximum flexibility for the manufacturers who must report on PFAS and the Agency in meeting these goals.[117]

100. The PCA attempted to create rules offering clarity and adaptability so that manufacturers could relatively easily comply.[118] To accomplish this, the PCA used the following approaches:

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[112] *Id.*
[113] Minn. Stat. §§ 14.05, subd. 1; .131; Minn. R. 1400.2100(A); *Builders Ass'n of Twin Cities,* 872 N.W.2d at 274 (finding rule invalid where agency failed to perform a statutorily required analysis).
[114] *Id.* at 48, 59-60.
[115] Minn. Stat. § 14.131.
[116] *Builders Ass'n of Twin Cities,* 872 N.W.2d at 274, describing that when the statute requires the agency to perform an assessment and make a determination, this precludes the administrative law judge from making the substantive determination. Rather, the judge's duty is to determine whether or not the agency carried out its prescribed function and, if not, the judge must find a violation of the rulemaking procedures.
[117] Minn. Stat. §§ 14.002, .131.
[118] Ex. D. at 57.

101. Permitting manufacturers to report similar products and similar product components in groups rather than individually.

102. Allowing manufacturers to report PFAS content in concentration ranges instead of precise measurements, which helps protect trade secret data.

103. Permitting manufacturers to submit trade secret requests to ensure such data is protected.

104. Permitting manufacturers to request extensions to reporting deadlines when they are faced with challenges in meeting deadlines.

105. Permitting manufacturers to report on behalf of others if they provide products in various supply chains and thereby avoiding duplicate reports.[119]

10) Additional Notice

106. An agency must make reasonable efforts to notify persons or classes of persons, not on its rulemaking list, who may be significantly affected by the rule being proposed by more broadly sharing its Notice. This may be done through newsletters, newspapers, or other publications, or through other means of communication.[120] This process is referred to as "additional notice" and is detailed by an agency in its additional notice plan.[121]

107. Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notice. Alternatively, the agency must detail why additional notification efforts were not made.[122]

108. An agency may request approval of its additional notice plan by an administrative law judge and, if it does so, the agency must get the judge's "approval before it publishes the…notice of proposed rules.[123]

109. The PCA requested the Judge approve its additional notice plan for the Notice on April 11, 2025.[124] The plan included four components:

- Publishing of the Notice on the agency webpage;
- Providing the Notice to tribal authorities in Minnesota;
- Providing the Notice to the 35 commenters who commented on the RFC; and

[119] *Id.*
[120] Minn. Stat. § 14.14, subd. 1a(a).
[121] *Id.*, Minn. R. 1400.2060.
[122] Minn. Stat. § 14.131.
[123] Minn. R. 1400.2060.
[124] Letter to Judge Mortenson from Quinn Carr, SONAR at 52-57.

- Providing the Notice to approximately 90 associations and environmental groups.[125]

110. The Judge approved the additional notice plan on April 18, 2025.[126]

111. On April 21, 2025, the PCA documented that it followed the additional notice plan when, on Monday, November 25, 2024, it:

- Published the Notice of Intent to Adopt Rules on the PCA's public notice webpage at: https://www.pca.state.mn.us/public-notices;

- Provided specific notice to tribal authorities via email with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to the 11 federally recognized tribes in Minnesota;

- Provided specific notice to associations, environmental groups, and other entities identified in the Additional Notice Plan section of the SONAR via email with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule; and

- Posted relevant rulemaking updates and associated documents including the Notice, SONAR, and proposed rule on the PFAS in Products: Reporting and Fees rulemaking webpage at https://www.pca.state.mn.us/get-engaged/pfas-in-products.[127]

112. The PCA did not comply with Minn. Stat. § 14.14, Minn. R. 1400.2060, and the additional notice plan because it did not provide the Notice after the approval of the additional notice plan.

113. Given that these rules are for manufacturers, and there was significant communication with and involvement of manufacturers and representative groups for manufacturers and others in the rulemaking process, the Agency's failure to comply with its additional notice plan and related laws did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process and is therefore harmless error.[128]

V. Rule Hearing and Submission of Written Comments

114. The Judge conducted a public rulemaking hearing on May 22, 2025. The Agency's panel at the hearing included: Emily McMillan, Associate General Counsel of the PCA; Andria Kurbondski, PFAS Pollution Prevention Lead, PCA Resource Management and Assistance Division; Peder Sandhei, Green Chemistry and Safer

[125] *Id.*
[126] Order on Review of Additional Notice Plan.
[127] Ex. H.
[128] *See*, Minn. Stat. § 14.15, subd. 5.

Product Program Coordinator, PCA Resource Management and Assistance Division; and Quinn Carr, PCA Rule Coordinator.[129]

115. Prior to the hearing, 67 commenters submitted comments about the proposed rules following the April 21, 2025 Notice.[130]

116. In support of its request for approval to adopt the proposed rules, the Agency offered the following documents into the record as exhibits, as required by Minn. Stat. § 14.14, subd. 2a, and Minn. R. 1400.2220, and they were all entered into the record:[131]

Exhibit (Ex.) A-1: The PCA's Request for Comments as published in the State Register on September 25, 2023.

Ex. A-2: The PCA's second Request for Comments as published in the State Register on November 18, 2024.

Ex. C: The proposed rules dated April 11, 2025, including the Revisor's approval.

Ex. D: The PCA's SONAR, dated March 28, 2025.

Ex. E: The transmittal letter showing that the PCA sent the SONAR to the Legislative Reference Library on April 22, 2025.

Ex. F: The *State Register* for April 21, 2025, which included the PCA's Notice of Hearing for the Proposed Permanent Rules Relating to PFAS in Products, Reporting and Fees.

Ex. G-1: The Certificate of Mailing the Notice of Intent to Adopt Rules with a Public Hearing to the rulemaking mailing list.

Ex. G-2: The GovDelivery bulletin with subscriber count.

Ex. G-3: The Certificate of Accuracy of the rulemaking mailing list.

Ex. H: The Certificate of Giving Additional Notice under the Additional Notice Plan.

Ex. I: A statement that written comments and submissions on the proposed rules during the comment period for the Notice of Hearing were directed to the Office of Administrative Hearings.[132] The comments are part of the record.

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[129] Transcript (Tr.) at 2.

[130] Part One Pre-Hearing and Hearing Response to Comments at 5 (Jun. 16, 2025) (Agency Response to Comments 1); Part Two Pre-Hearing and Hearing Response to Comments at 4 (Jun. 23, 2025) (Agency Response to Comments 2).

[131] Tr. at 18-19.

[132] The Office of Administrative Hearings was renamed the Court of Administrative Hearings effective August 1, 2025. Minn. Stat. § 14.48, subd. 1 (Supp. 2025).

Ex. K-1: The Certificate of Sending the Notice and the SONAR to Legislators and the LCC.

Ex. K-2: The transmittal letter showing the Notice was sent to required legislators, dated April 21, 2025.

Ex. K-3: The PCA letter requesting consultation with MMB, dated April 7, 2025, and MMB's response, dated April 24, 2025.

Ex. K-4: The transmittal email showing PCA, as a courtesy, notified the Commissioner of Agriculture of the rulemaking on May 14, 2025.

Ex. L: The Agency's hearing slide presentation.

117. Nearly 200 people attended the virtual hearing on May 22, 2025. The Judge convened the hearing at 2:00 p.m. and permitted speakers to appear until 5:00 p.m.[133] Eleven individuals from the public made statements during the hearing.[134]

118. The Judge extended the time for submission of public comments for another 20 working days – until June 23, 2025 – to permit interested persons and the Agency additional time to submit written comments.[135] During the post-hearing initial public comment period, 13 members of the public submitted extensive written comments.[136]

119. Following the initial comment period, the hearing record remained open an additional five business days to permit interested persons and the Agency to reply to the earlier-submitted comments. The Agency and seven other commenters filed rebuttal comments on June 30, 2025.[137] The rebuttal comment period and hearing record closed on June 30, 2025.

VI. Summary of Comments

120. Commenters fall into three general groups: (1) advocates for manufacturers and businesses involved with sale and distribution of products that contain PFAS who critiqued or opposed the proposed rule; (2) advocates for organizations focusing on environmental and human health who supported the proposed rule; (3) PCA officials notifying commenters of the PCA's comment responses. One business (BP Polymers, LLC) actively supported the rulemaking and criticized federal regulation of PFAS.

[133] Tr. at 1, 5, 8, 94.
[134] Tr. at 3, 36, 39, 43, 49, 55, 61, 69, 74, 78, 83, 88, 91; Agency Response to Comments 1 at 5; Agency Response to Comments 2 at 4.
[135] *Id.* at 14, 94; *see* Minn. Stat. § 14.15, subd. 1.
[136] Rebuttal Period Post-Hearing Responses to Comments at 5 (Jun. 30, 2025) (Agency Rebuttal Comments).
[137] Agency Rebuttal Comments.

121. The topic of comments generally fell into six areas: deadline extensions, reporting requirements, due diligence, exemptions, confidential information, and fees. These areas will be used below in organizing the summaries of comments.

A. Deadline Extension

122. Most manufacturers criticized the statutory initial reporting deadline of January 1, 2026, stating that it was unreasonable or impossible to obtain all the required reporting information by that date.[138] Some commenters additionally blamed the unreasonableness of the deadline on the Agency failing to provide the reporting requirements or finalize the reporting process in a timely manner, noting that rule reporting requirements differ from those in the statute.[139] The proposed rule, however, includes the opportunity for a 90-day extension to the initial and annual filing deadline.[140]

123. Some commenters from environmental health organizations supported the initial reporting deadline, stating that the reporting requirements are not a surprise to industry since Amara's Law was passed in 2023, that Maine has similar reporting requirements, and that due to reporting requirements from the EPA, manufacturers should already have much of the information required.[141] One commenter (AGC Chemicals Americas, Inc.) directly addressed the EPA point, distinguishing the EPA's reporting requirements from the proposed rule by noting that the EPA rule uses a narrower definition of PFAS and a different due diligence standard, so the information is not directly applicable, and that the EPA deadline still needed to be extended multiple times despite its less stringent requirements.[142]

124. Some commenters recommended extensions ranging from 6 months to 2 years, rather than 90 days.[143] Some commenters recommended a general extension to the initial reporting deadline to a point in time after the reporting process has been

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[138] *See*, e.g., Comment of Jos Huxley Attachment at 1-2 (May 21, 2025); Comment of Jason Sloan Attachment at 1-3 (May 21, 2025); Comment of Adrienne Frederick Attachment at 3 (May 21, 2025); Comment of Tillie Fowler Attachment at 2-3 (May 21, 2025); Comment of Elizabeth Nugent Morrow Attachment at 1 (May 21, 2025).

[139] *See*, e.g., Comment of Ryan Fleming Attachment at 7 (May 21, 2025); Comment of Ben Kallen Attachment at 9 (May 21, 2025); Comment of Jason Sloan Attachment at 2-3 (May 21, 2025); Comment of Maureen Hardwick Attachment at 2 (May 21, 2025).

[140] Ex. D at 35.

[141] *See*, e.g., Comment Craig Tangren Attachment at 1 (May 21, 2025); Comment of Lori Olinger Attachment at 1 (May 21, 2025).

[142] Comment of Julia McGowan Attachment at 1-3 (June 30, 2025).

[143] *See, e.g.,* Comment of Chris Cleet Attachment at 2 (May 16, 2025); Comment of Marcus Branstad Attachment at 2 (May 21, 2025); Comment of Jason Sloan Attachment at 1-2 (May 21, 2025); Comment of Jeffery Sepesi Attachment at 1-2 (May 21, 2025); Comment of Julia McGowan at 1-2 (May 21, 2025); Comment of Eric Barnes Attachment at 1 (May 21, 2025); Comment of Edith Nagy Attachment at 3 (May 21, 2025); Comment of Stacy Tatman (Hearing Transcript at 42).

finalized, noting that the deadline should allow for sufficient time for manufacturers to comply with the reporting requirements.[144]

125. Several commenters criticized the 90-day timeline for individual extension requests, stating it is not sufficient, particularly in cases where the extension denial comes near the deadline.[145] One commenter (Leech Lake Band of Ojibwe) stated that the deadline extension should remain the same.[146] Some commenters expressed concern over how no deadline was provided for the commissioner to issue extension requests.[147] Various commenters suggested longer extension periods such as 180 days.[148] Some manufacturers also believe that the requirements for obtaining an extension are too onerous and the only requirement should be a request.[149]

B. Reporting Requirements

1) Difficulty and Expense

126. Many manufacturers and businesses noted that Amara's Law and the subsequent rulemaking are far more expansive and stringent than elsewhere in the United States.[150] The proposed rule (7026.0030) imposes more reporting requirements for information that many manufacturers believe will be difficult to obtain.[151] Manufacturers cited difficulties such as tracking the complex supply chains involved with their products, suppliers' unwillingness to provide information, and the amount of coordination required between various companies.[152]

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[144] *See, e.g.*, Comment of Ben Kallen Attachment at 9 (May 21, 2025); Comment of Robert Denney Attachment at 3-4 (May 20, 2025); Comment of Marcus Branstad Attachment at 2 (May 21, 2025); Comment of Julia McGowan Attachment at 1 (May 21, 2025).

[145] *See, e.g.*, Comment of Michael Michaud Attachment at 2 (May 21, 2025); Comment of Hayley Davis Attachment at 7 (May 21, 2025); Comment of Dawn Friest Attachment at 6 (May 21, 2025); Comment of Latoya Thomas Attachment at 8 (May 21, 2025); Comment of Edith Nagy Attachment at 10 (May 21, 2025).

[146] Comment of Craig Tangren Attachment at 1 (May 21, 2025).

[147] *See, e.g.*, Comment of Adrienne Frederick Attachment at 9 (May 21, 2025); Comment of Latoya Thomas Attachment at 7 (May 21, 2025); Comment of Andrew Morley Attachment at 4 (June 19, 2025).

[148] *See, e.g.*, Comment of Latoya Thomas Attachment at 7 (May 21, 2025); Comment of Marcus Branstad Attachment at 12 (May 21, 2025); Comment of Daniel Moyer Attachment at 2 (May 21, 2025); Comment of Perri Moeller Attachment at 3 (June 27, 2025); Comment of Andrew Morley Attachment at 5 (June 19, 2025).

[149] *See, e.g.*, Comment of Jason Sloan Attachment at (May 21, 2025); Comment of Avonna Starck Attachment at 1 (May 21, 2025); Comment of Tillie Fowler Attachment at 3 (May 21, 2025).

[150] *See, e.g.*, Comment of Chris RendallJackson Attachment at 2 (May 19, 2025); Comment of Andrew Bemus Attachment at 1-2 (May 21, 2025); Comment of Javaneh Tarter Attachment 2 at 2 (May 21, 2025); Comment of Hayley Davis Attachment at 1 (May 21, 2025); Comment of Aya Iizuka Attachment 1 at 11 (May 21, 2025).

[151] *See, e.g.*, Comment of Hayley Davis Attachment at 1 (May 21, 2025); Comment of Catherine Palin Attachment at 1 (June 20, 2025); Comment of Julia McGowan Attachment at 2-3 (May 20, 2025); Comment of Jeffery Sepesi Attachment at 1 (May 20, 2025); Comment of Judah Prero Attachment at 6 (May 21, 2025); Comment of Dawn Friest Attachment at 2-3 (May 21, 2025); Comment of Andrew Bemus Attachment at 3 (May 21, 2025).

[152] *See, e.g.*, Comment of Robert Denney Attachment at 4 (May 20, 205); Comment of Julia McGowan Attachment at 2-5 (May 20, 2025); Comment of Dawn Friest Attachment at 2-5 (May 21, 2025); Comment of Bruce Nustad Attachment at 1 (May 21, 2025).

127. A significant number of manufacturers believe that complying with the proposed rules will significantly increase expenses to manufacturers due to increased tracking of supply chains and the lack of commercially available techniques to assess all possible PFAS chemicals.[153] One commenter (Alliance for Automotive Innovation) noted that in the SONAR the agency stated that manufacturers were anticipated to bear minimal costs to comply with the reporting rule, which the commenter heavily disagreed with.[154] Manufacturers expect that the proposed rules will impact their businesses significantly by causing disruptions to supply chains, forcing them to lose opportunities for federal funding, and potentially force them to move their operations out of Minnesota entirely if they are unable to meet the reporting requirements.[155] At the hearing, one commenter (Perlick) inquired as to whether the agency had considered the interstate commerce laws that prevent undue burdens being placed on out of state manufacturers in the rulemaking process.[156]

128. Health organizations supported the reporting and fee rules as proposed, stating that they allow the agency to fulfill its directive to better track data on intentionally added PFAS.[157]

2) Clarity

129. The manufacturers expressed that the requirements of the proposed rules are unclear, such as the definition of PFAS or what constitutes "intentionally added" PFAS.[158] Various commenters noted that several definitions could lead to confusion or duplicate reporting, such as the "manufacturer" definition, which may refer to multiple entities, or what is meant by components being the "same" for purposes of group reporting.[159] Other commenters noted that it was unclear how the agency would handle a lack of compliance despite a manufacturer's best efforts to obtain the required information, such as when a supplier goes out of business or refuses to provide the information.[160] Several manufacturers stated that it was unreasonable to expect

[153] *See, e.g.*, Comment of Amy Neal Attachment at 5 (May 19, 2025); Comment of Matthew Bennett Attachment at 1 (June 20, 2025); Comment of Brad Bretecher Attachment at 2 (May 6, 2025); Comment of Latoya Thomas Attachment at 3-4 (May 21, 2025); Comment of Adrienne Frederick Attachment at 4 (May 21, 2025); Comment of Ben Wagner at 3 (May 21, 2025).
[154] Comment of Catherine Palin Attachment at 16 (May 21, 2025).
[155] *See, e.g.*, Comment of Aya Iizuka Attachment at 10 (May 21, 2025); Comment of Eric Barnes Attachment at 2 (May 21, 2025); Comment of Ben Kallen Attachment at 3 (May 21, 2025).
[156] Tr. at 91.
[157] *See, e.g.*, Comment of Tracy Whitney Attachment at 1 (May 21, 2025); Comment of Keira Callahan Attachment at 1 (May 21, 2025).
[158] *See, e.g.*, Comment of Latoya Thomas Attachment at 4 (May 21, 2025); Comment of John Keane Attachment at 5 (May 21, 2025); Comment of Hayley Davis Attachment at 7 (May 21, 2025); Comment of Ben Wagner Attachment at 4 (May 21, 2025).
[159] *See, e.g.*, Comment of Thompson Tom Attachment at 2 (May 14, 2025); Comment of Hayley Davis Attachment at 7 (May 21, 2025); Comment of Adrienne Frederick Attachment at 5 (May 21, 2025); Comment of Marcus Branstad Attachment at 4 (May 21, 2025); Comment of Heather Rhoderick Attachment at 4 (May 21, 2025).
[160] *See, e.g.*, Comment of Julie McGowan Attachment at 4 (May 20, 2025); Comment of Latoya Thomas Attachment at 6 (May 21, 2025); Comment of Judah Prero Attachment at 8 (May 23, 2025).

compliance with the proposed rule's reporting requirements before the agency clarifies and finalizes its system for reporting.[161]

130. One commenter (AGC Chemicals Americas, Inc.) characterized the lack of reporting system details in the rulemaking process as unpromulgated rulemaking, stating Minnesota Statute § 14.101 requires PCA to solicit comments from the public on the subject matter of a possible rulemaking proposal actively being considered by the agency, which may relate to 1400.2100 (A), (D), (E) or (G).[162]

3) Burdensome Requirements

131. Manufacturers expressed that several reporting requirements in the proposed rule overburden them and potentially go beyond the scope of what the legislature intended.[163]

132. Many manufacturers criticized what they view as the proposed rule's implied requirement that manufacturers may need to conduct their own PFAS testing in order to obtain the information required by the rule.[164] Manufacturers noted that methods for testing are limited and that the timeframe and costs involved would render products economically unviable.[165] SEMI and SIA stated that the suggestion that manufacturers need to test their own products goes beyond legislative intent, pointing to the text of Minn. Stat. § 116.943, which emphasizes manufacturer knowledge and intent by limiting the law's reach to intentionally added PFAS, rather than the physical detection of PFAS that is the focus of product testing.[166] They further note that subdivision 4 of the statute gives the PCA the authority to require product testing if the Agency has reason to believe a product in the state contains intentionally added PFAS, therefore explicitly limiting the scope of product testing under the statute to a reactive enforcement scenario, as opposed to a blanket expectation in preparation for reporting.[167]

133. Manufacturers criticized the annual recertification reporting requirement, stating that it is overly burdensome because these reports require a significant amount of resources and in many cases, there would be no changes to previously reported information that would warrant an update.[168] One commenter (Consumer Technology

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[161] *See, e.g.*, Comment of Latoya Thomas Attachment at 3 (May 21, 2025); Comment of Elizabeth Nugent Morrow Attachment at 1 (May 21, 2025); Comment of Ivan Rydkin Attachment at 2-3 (May 21, 2025); Comment of Adrienne Frederick Attachment at 3 (May 21, 2025).
[162] Comment of Julia McGowan Attachment at 2 (June 30, 2025).
[163] *See, e.g.*, Comment of Dawn Friest Attachment at 3 (May 21, 2025); Comment of Connor O'Brien Attachment at 2 (May 21, 2025); Comment of Catherine Palin Attachment at 12 (May 21, 2025).
[164] *See, e.g.*, Comment of Robert Denney Attachment at 6 (May 20, 2025); Comment of Eric Barnes Attachment at 3 (May 21, 2025); Comment of Ben Kallen Attachment at 8 (May 21, 2025); Comment of Chris Cleet Attachment at 6 (May 21, 2025).
[165] *See, e.g.*, Comment of Robert Denney Attachment at 6 (May 20, 2025); Comment of Eric Barnes Attachment at 3 (May 21, 2025); Comment of Jos Huxley Attachment at 4 (May 21, 2025).
[166] Comment of Ben Kallen Attachment at 8 (May 21, 2025).
[167] *Id.* at 5.
[168] *See, e.g.*, Comment of Chris Rendall Jackson Attachment at 2 (May 19, 2025); Comment of Jeffery Sepesi Attachment at 5 (May 20, 2025); Comment of Dawn Friest Attachment at 6 (May 21, 2025); Comment of Julia McGowan Attachment at 4 (May 21, 2025).

Association) stated that the agency did not suitably justify this requirement.[169] Another commenter (Environmental Law and Science PLLC) stated that this requirement directly contradicts the agency's goal of reducing reporting burdens and is outside the scope of the enabling statute.[170] Manufacturers recommended update cycles between 3-5 years and an option to provide voluntary updates or only require updates when changes do occur.[171]

134. Manufacturers made similar comments regarding the proposed requirement that manufacturers with products to be sold into Minnesota beginning after January 1, 2026, must preemptively report prior to the sale of the product.[172] One manufacturer (AdvaMed) suggested that these reports could hamper patient access to necessary medical technologies, while another called the requirement redundant and unnecessary (American Coatings Association).[173] Manufacturers expressed concerns that this requirement would not be feasible for products already on the market.[174]

135. One commenter (Consumer Technology Association) claimed preemptive reporting is not required by the enabling statute, and that this preemptive process may breach a company's confidentiality requirements or put it at a disadvantage.[175] Another commenter (Technology Industry Council) added that this requirement was inconsistent with the statutory requirement that a report be submitted "whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state," noting the statute uses the past tense to refer to sale, offer for sale, and distribution, meaning that requiring submission of a report beforehand is inconsistent with the law's text.[176]

4) Scope

136. Several commenters criticized the scope of PFAS reporting required by the proposed rule.[177] Many manufacturers noted that not all PFAS are equivalent and many

[169] Comment of Daniel Moyer Attachment at 3 (May 21, 2025).
[170] Comment of Jeffrey Sepesi Attachment at 5 (May 20, 2025).
[171] *See, e.g.*, Comment of Eric Barnes Attachment at 1 (May 21, 2025); Comment of Adrienne Frederick Attachment at 8-9 (May 21, 2025); Comment of Latoya Thomas Attachment at 7 (May 21, 2025); Comment of Marcus Branstad Attachment at 11-12 (May 21, 2025).
[172] *See, e.g.*, Comment of Daniel Moyer Attachment at 2 (May 21, 2025); Comment of Robert Denney Attachment at 3 (May 20, 2025); Comment of Aya Iizuka Attachment at 12 (May 12, 2025); Comment of Judah Prero Attachment at 5 (May 21, 2025).
[173] Comment of Adrienne Frederick Attachment at 7 (May 21, 2025).
[174] *See, e.g.*, Comment of Catherine Palin Attachment at 15 (May 21, 2025); Comment of Eric Barnes Attachment at 3 (May 21, 2025); Comment of Hardwick Attachment at 1 (May 21, 2025).
[175] Comment of Daniel Moyer Attachment at 2 (May 21, 2025).
[176] Comment of Chris Cleet Attachment at 2 (May 21, 2025).
[177] *See, e.g.*, Comment of Amanda Duerr Attachment at 1 (May 20, 2025); Comment of Robert Denney at 6 (May 20, 2025); Comment of Julia McGowan Attachment at 1-2 (May 20, 2025); Comment of Andrew Frisbie Attachment at 2 (May 21, 2025); Comment of Catherine Palin Attachment at 12 (May 21, 2025).

PFAS may not pose risk of harm to human health or the environment.[178] One commenter (Chemical Users Coalition (CUC)) stated that because of the wide variety of PFAS, the goal of educating and informing consumers to make educated purchasing decisions is not met by the reporting requirements and will only impose burdens on submitters and state workers, as simple reporting data on thousands of unique substances and products fails to inform the consumer that there are significant differences among them.[179] Some commenters expressed confusion over whether their products, such as flexible packaging, would fall under the scope of reporting.[180] Some manufacturers believe that the scope of the reported data will be impracticably large for both the manufacturers and the agency to handle, suggesting a phased approach instead.[181] One commenter (Environmental Law and Science PLLC) stated that there was no clear vision in the SONAR for what the agency will do with all the information once they get it, with it not being clear how it will result in better public policy and then outweigh the burden and costs on the industry.[182]

137. Some commenters believe that requiring reporting for products distributed in the state rather than only products sold in the state is overbroad and places a significant burden on manufacturers.[183] Some manufacturers also criticized the agency's contention that legacy or replacement parts must be reported on, as in some cases it will be difficult if not impossible to obtain PFAS information for them, which may force automakers to violate federal law in order to comply with Minnesota law, as federal law requires automakers to fix warranty-related problems with legacy parts that cannot be reported on in Minnesota.[184] One commenter (AGC Chemicals Americas, Inc) referred to this requirement as being unnecessary to achieve the intent of the legislature and arguably unconstitutional.[185] Other commenters requested that reporting requirements be limited to those who first distribute the product in Minnesota.[186]

138. Many manufacturers believe that reporting at the component level rather than the product level will significantly increase the reporting burden while not providing

[178] *See, e.g.*, Comment of Thomson Tom Attachment at 2 (May 14, 2025); Comment of Todd Titus Attachment at 1 (May 21, 2025); Comment of Judah Prero Attachment at 2 (May 23, 2025); Comment of Latoya Thomas Attachment at 2 (May 21, 2025).
[179] Comment of Judah Prero Attachment at 1-2 (May 21, 2025).
[180] *See, e.g.*, Comment of Andrew Morley Attachment at 6-7 (June 19, 2025); Comment of Conor O'Brien Attachment at 1-2 (May 21, 2025); Comment of Hayley Davis Attachment 6-7 (May 21, 2025).
[181] *See, e.g.*, Comment of Judah Prero Attachment at 2 (May 21, 2025); Comment of John Keane Attachment at 3 (May 21, 2025); Comment of Andrew Bemus Attachment at 2 (May 21, 2025).
[182] Comment of Jeffery Sepesi Attachment 1-7 (May 20, 2025).
[183] *See, e.g.*, Comment of Ben Kallen at 12 (May 21, 2025); Comment of Clayton Hall Attachment at 8 (May 21, 2025); Comment of Andrew Frisbie Attachment at 1-3 (May 21, 2025).
[184] *See, e.g.*, Comment of Catherine Palin Attachment at 15-16 (May 21, 2025); Comment of Elizabeth Emerson Attachment at 1 (May 27, 2025); Comment of Catherine Palin Attachment at 3 (June 30, 2025).
[185] Comment of Warren Lehrenbaum Attachment at 1-2 (June 30, 2025).
[186] *See, e.g.*, Comment of Andrew Frisbie Attachment at 2 (May 21, 2025); Comment of Marcus Branstad Attachment at 5 (May 21, 2025); Comment of Michael Michaud Attachment at 4 (May 21, 2025).

useful information to the public.[187] One commenter (SEMI and the Semiconductor Industry Association) suggested that the proposed rule goes beyond what the statute requires or authorizes, stating that the only reference to components in Subdivision 2 of the statute states that manufacturers must report "the purpose for which PFAS are used in the product, including any product component," implying that the statute does not require or envision reporting at the component level.[188]

5) Flexibility

139. Manufacturers also requested that the PCA consider greater flexibility regarding various reporting requirements.[189] Many manufacturers found the standards needed to qualify for group reporting of components to be too stringent to be useful, suggesting that they be loosened.[190] One commenter (Flexible Packaging Association (FPA) stated that the requirement that each individual manufacturer verify the information in group reporting contradicts the intent of group reporting and that instead, the reporting manufacturer should simply contact the other manufacturers involved with the submission and assure the information is accurate and complete.[191]

140. One commenter (Watlow) suggested that a provision be added to the reporting deadline provision allowing for flexibility without penalty for continuing efforts to report.[192] Other manufacturers suggested alternatives to information requested, such as being allowed to use certain chemical names or the use of TOF values in place of concentration ranges, or the ability to state that the concentration range or amount of PFAS is unknown when obtaining information is not feasible.[193] Several commenters noted that TOF testing is not an accurate measure for determining the amount of PFAS in a component and would result in misleading information, suggesting that manufacturers be allowed to make reasonable estimates instead.[194]

141. One commenter (Leech Lake Band of Ojibwe) felt that manufacturers should provide more information than the proposal requires.[195] This commenter stated that the concentration requirement is inadequate, noting that Minn. Stat. §116.943, subd. 2(3) requires an amount in addition to concentration.[196] This commenter also stated that

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[187] *See, e.g.*, Comment of Judah Prero Attachment at 3 (May 21, 2025); Comment of John Keane Attachment at 1-2 (May 21, 2025); Comment of Elizabeth Emerson Attachment at 1 (May 27, 2025); Comment of Marcus Branstad Attachment at 3 (July 21, 2025).
[188] Comment of Ben Kallen Attachment at 7 (May 21, 2025).
[189] *See, e.g.*, Comment of Judah Prero at 4 (May 21, 2025); Comment of Adrienne Frederick Attachment at 8 (May 21, 2025); Comment of Emily Sobel Attachment at 1-2 (May 21, 2025).
[190] *See, e.g.*, Comment of Judah Prero Attachment at 3 (May 21, 2025); Comment of Clyton Hall Attachment at 4 (May 21, 2025); Comment of Gary Cross Attachment at 4 (May 21, 2025); Comment of Hayley Davis Attachment at 4 (May 21, 2025).
[191] Comment of Kayla Fisher Attachment at 3 (May 21, 2025).
[192] Comment of Erika Millon Attachment at 2-3 (June 23, 2025).
[193] *See, e.g.*, Comment of Julia McGowan Attachment at 2 (May 20, 2025); Comment of Judah Prero Attachment at 6 (May 21, 2025); Comment of Latoya Thomas Attachment at 6 (May 21, 2025).
[194] *See, e.g.*, Comment of Erin Herlihy Attachment at 3 (May 21, 2025); Comment of Chris Cleet Attachment at 3 (May 21, 2025); Comment of Riaz Zaman Attachment at 3-4 (May 21, 2025).
[195] Comment of Craig Tangren Attachment at 1-2 (May 21, 2025).
[196] *Id*.

part 7026.0030, subpart 1.C(i) creates a loophole for inadequate reporting and that part 7026.0040 should be amended to require that any manufacturer who has previously reported PFAS concentrations as unknown be required to submit an updated report including the mass of individual PFAS components and the total mass of all PFAS compounds, as well as the concentration of PFAS per proposed 7026.0030, subpart 1.C(a-h).[197]

C. Due Diligence

142. Many manufacturers criticized the proposed due diligence standard of needing to report "until all required information is known" as being vague and going far beyond other due diligence standards.[198] Manufacturers believe that this standard is overly burdensome, unreasonable, and unrealistic given the reality of complex supply chains.[199]

143. Manufacturers argue that this standard sets them up for failure and enforcement actions despite their best efforts to comply, and borders on being arbitrary and capricious.[200] Manufacturers note that suppliers are often unwilling to provide information due to trade secret concerns and are not under the same legal obligations to provide information as manufacturers are.[201] Some commenters claimed that it was inequitable to punish manufacturers for failing to obtain information that suppliers will not provide them with.[202] Manufacturers argue that it is not reasonable to require an essentially unending obligation to continually pursue information from suppliers when it is clear they will not get it.[203] One manufacturer (Daikin Applied) noted that they have been attempting to obtain information from their suppliers for nearly a year and only received a 40 percent response rate from them, and these requests were for less information than the rule requires.[204]

144. Some manufacturers noted that in a 2024 Q&A document, the Agency stated that a reporting standard must "acknowledg[e] the challenges posed by unknowns in best testing practices, the unavailability of data from all supplier levels, and the varying costs of information gathering across organizations with different resources" and that its intention was to "ensure that due diligence efforts are reasonable and feasible for

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[197] *Id*. at 2.
[198] *See, e.g.*, Comment of Jeffery Sepesi Attachment at 6 (May 20, 2025); Comment of Connor O'Brien Attachment at 2 (May 21, 2025); Comment Dawn Friest Attachment at 5 (May 21, 2025); Comment of Bruce Nustad Attachment at 2 (May 21, 2025); Comment of Edith Nagy Attachment at 3 (May 21, 2025).
[199] *See, e.g*, Comment of Julia McGowan at 3 (May 20, 2025); Comment of Bruce Nustad at 2 (May 21, 2025); Comment of Andrew Bemus Attachment at 4 (May 21, 2025).
[200] *See, e.g.*, Comment of Judah Prero Attachment at 8 (May 21, 2025); Comment of Clayton Hall at 7 (May 21, 2025); Comment of Elizabeth Nugent Morrow Attachment at 2 (May 21, 2025).
[201] *See, e.g.*, Comment of Julia McGowan Attachment at 2 (May 20, 2025); Comment of Adrienne Frederick Attachment at 10 (May 21, 2025); Comment of Ben Wagner Attachment at 2 (May 21, 2025); Comment of Gary Cross Attachment at 3 (May 21, 2025).
[202] *See, e.g.*, Comment of Julia McGowan Attachment at 2 (May 20, 2025); Comment of Adrienne Frederick Attachment at 10 (May 21, 2025); Clayton Hall Attachment at 8 (May 21, 2025).
[203] *See, e.g.*, Comment of Comment of Riaz Zaman Attachment at 5 (May 21, 2025); Comment of Jason Malcore Attachment at (June 23, 205).
[204] Comment of Ivan Rydkin Attachment at 1-2 (May 21, 2025).

manufacturers."[205] These manufacturers believe that the due diligence standard in the proposed rule is inconsistent with these goals.[206]

145. One commenter (Alliance for Automotive Innovation) characterized the due diligence standard as an overreach inconsistent with the enabling statute.[207] The commenter stated the statute does not authorize investigation of a manufacturer's supply chain and that the Agency is using the reporting requirements to get data that is beyond the scope of the statute by forcing manufacturers to investigate the entire global supply chain, as many suppliers may be outside of the scope of the statute and may not be legally obligated to report their information directly.[208]

146. Many manufacturers suggested that the Agency instead adopt the "Known to or Reasonably Ascertainable By" (KRA) standard used by other jurisdictions including federal agencies like the EPA.[209] Several commenters argued that this would harmonize requirements across the country and be less of a compliance burden on manufacturers.[210] The Agency rejected the KRA standard, claiming that it was not an enforceable standard.[211] Several commenters disagreed with this assessment and stated that the Agency has not sufficiently justified their position, noting that the EPA has used the KRA standard for decades.[212]

147. Manufacturers also criticized the document retention requirements set up by the due diligence standard, requesting that they be limited in scope to any order, contract, or agreement regarding PFAS reporting compliance.[213] Manufacturers stated that maintaining records of all communications regarding compliance is virtually impossible and the proposed retention timeline is impractical to implement.[214]

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[205] *See, e.g.*, Comment of Robert Denney Attachment at 5 (May 20, 2025); Comment of Ben Kallen Attachment at 5 (May 21, 2025); Comment of Ryan Fleming Attachment at 5-6 (May 21, 2025).
[206] *See, e.g.*, Comment of Robert Denney Attachment at 5 (May 20, 2025); Comment of Ben Kallen Attachment at 5 (May 21, 2025).
[207] Comment of Catherine Palin Attachment at 12 (May 21, 2025).
[208] *Id*. at 12-13 (May 21, 2025).
[209] *See, e.g.*, Comment of Robert Denney Attachment at 2 (May 20, 2025); Comment of Catherine Palin Attachment at 13 (May 21, 2025); Comment of Daniel Moyer Attachment at 3-4 (May 21, 2025); Comment of Hayley Davis Attachment 4-5 (May 21, 2025).
[210] *See, e.g.*, Comment of Robert Denney Attachment at 5 (May 20, 2025); Comment of Chris Cleet Attachment at 3 (May 21, 2025); Comment of Ben Kallen Attachment at 5 (May 21, 2025); Comment of Ryan Fleming Attachment at 5-6 (May 21, 2025).
[211] Agency Response to Comments 2 at 106-107.
[212] *See, e.g.*, Comment of Ben Kallen Attachment at 2-3 (May 21, 2025); Judah Prero Attachment 1 at 2 (June 30, 2025); Judah Prero Attachment 2 at 8 (June 30, 2025).
[213] *See, e.g.*, Comment of Dawn Friest Attachment at 5 (May 21, 2025); Comment of Latoya Thomas Attachment at 8 (May 21, 2025); Comment of Marcus Branstad Attachment at 14-15 (May 21, 2025); Comment of Clayton Hall Attachment at 8 (May 21, 2025); Comment of Adrienne Frederick Attachment at 10 (May 21, 2025); Comment of Ben Kallen at 12 (May 21, 2025).
[214] *See e.g.*, Comment of Marcus Branstad Attachment at 14-15 (May 21, 2025); Comment of Latoya Thomas Attachment at 8 (May 21, 2025); Comment of Adrienne Frederick Attachment at 10 (May 21, 2025); Comment of Ben Kallen at 12 (May 21, 2025).

D. Exemptions

148. Several commenters sought exemptions for the particular products that they manufacture.[215] Manufacturers requested exemptions for products such as electrical and electronic equipment (EEE), medical devices, animal health care products, legacy parts, semiconductors, and fluoropolymers, or a blanket exemption for complex products of any kind.[216] One commenter (Minnesota Retailers) requested an exemption or alternate pathway for products where PFAS is intentionally added but inaccessible to the consumer and serves a functional, technical purpose.[217]

149. Some commenters noted a federal law governing the presence of PFAS exemption and requested that it be expanded by providing that the exemption would apply to products that are required to meet federal standards or requirements by departments or authorized products by federal agencies.[218] Other commenters requested exemptions for products that have already gone through federal approval requirements as the information is publicly available and there is minimal cost to the Agency in obtaining it.[219] Commenters noted that several PFAS products are already heavily regulated by federal agencies, and it is unnecessary to require the same information for state agencies.[220]

150. Many of those requesting exemptions did so because these products were already exempt under federal reporting requirements or other states, arguing that the Agency should harmonize reporting requirements to reduce confusion and burden in complying with the rule.[221] Similarly, some commenters noted that there are some exemptions already listed in state statute that should be included within the rule language.[222] Others requested exemptions because of the difficulty of obtaining the required reporting information for - or for ease of use of - the products, including the use

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[215] *See, e.g.*, Comment of Todd Titus Attachment at 1 (May 15, 2025); Comment of Victoria Mwanza Attachment 1 at 1 (May 21, 2025); Comment of Andrew Bemus Attachment at 4 (May 21, 2025); Comment of Latoya Thomas Attachment at 1-2 (May 21, 2025).

[216] *See, e.g.*, Comment of Chris RendallJackson Attachment at 1-2 (May 19, 2025); Comment of Aya Iizuka Attachment 1 at 10 (May 21, 2025); Comment of Latoya Thomas Attachment at 1-2 (May 21, 2025); Comment of Andrew Bemus Attachment at 4 (May 21, 2025); Comment of Edith Nagy Attachment at 2 (May 21, 2025); Comment of Jennifer Breitinger Attachment at 1-2 (June 4, 2025).

[217] Comment of Bruce Nustad Attachment at 2 (May 21, 2025).

[218] *See, e.g.*, Comment of Judah Prero Attachment at 9 (May 21, 2025); Comment of Andrew Bemus Attachment at 4 (May 21, 2025); Comment of Edith Nagy Attachment at 5-6 (May 21, 2025); Comment of Carlos Gutierrez Attachment at 2-3 (May 21, 2025); Comment of Tillie Fowler Attachment at 1-2 (May 21, 2025).

[219] *See, e.g.*, Comment of Ian Choiniere Attachment at 4 (May 21, 2025); Comment of Hayley Davis Attachment at 6-7 (May 21, 2025); Comment of Tillie Fowler Attachment at 1-2 (May 21, 2025); Comment of Maureen Hardwick Attachment at 1-2 (May 21, 2025).

[220] *See, e.g.*, Comment of Todd Titus Attachment at 3-4 (May 21, 2025); Comment at Ben Wagner Attachment at 1-2 (May 21, 2025); Comment of Latoya Thomas Attachment at 1-2 (May 21, 2025).

[221] *See, e.g.*, Comment of Carlos Gutierrez Attachment at 2-3 (May 21, 2025); Comment of Ian Choiniere Attachment at 4 (May 21, 2025); Comment of Tillie Fowler Attachment at 1-2 (May 21, 2025); Comment of Aya Iizuka Attachment at 2-3 (May 21, 2025).

[222] *See, e.g.*, Comment of Jason Sloan Attachment at 3-4 (May 21, 2025); Comment of Carlos Gutierrez Attachment at 4 (May 21, 2025); Comment of Tillie Fowler Attachment at 1-2 (May 21, 2025); Comment of Clayton Hall Attachment at 4 (May 21, 2025); Comment of Edith Nagy Attachment at 2 (May 21, 2025).

of medical devices or being able to easily replace parts.[223] Some commenters stated that not all PFAS bear the same health risks, such as federally approved and regulated refrigerants, and an exemption is reasonable given the lower risk, suggesting that wholesale PFAS regulation does not accomplish the Agency's goals.[224] Several commenters noted that they believe their products would fall under "currently unavoidable use" (CUU) status and suggested that the proposed rule be delayed so that these efforts could be combined with the CUU designation rulemaking.[225]

151. Several commenters suggested that the Agency establish a de minimis threshold, where components that have less than 1% PFAS be exempted from the reporting process.[226] Manufacturers argue that identifying PFAS concentrations at low concentrations across multitiered supply chains is often infeasible, the option to report PFAS concentration as "unknown" as provided in the proposed rule is insufficient to address this issue, and that these low PFAS components do not represent a notable risk to the public.[227]

152. In its response to comments, the Agency declined to add a de minimis threshold to the reporting rule on the basis that the statute does not provide the Agency discretion to adopt such a threshold.[228] Several commenters disagreed with this reasoning, noting that even though Minn. Stat. § 116.943 does not expressly use a de minimis threshold, there is no indication in the law's text that the PCA is forbidden to adopt such a threshold by rule.[229] These commenters further noted that Minn. Stat. §§ 14.002 and 116.07 require that the PCA ensure its rules are workable for regulated parties.[230] One commenter (Emily Schwartz) noted that the Agency has already used its rulemaking discretion in the proposed rule to allow reporting through unknown concentrations, product grouping, and supplier declarations—none of which are mentioned in the

[223] *See, e.g.,* Comment of Adrienne Frederick Attachment at 1-2 (May 21, 2025); Comment of Maureen Hardwick Attachment at 1-2 (May 21, 2025); Comment of Aya Iizuka Attachment at 12 (May 21, 2025); Comment of Edith Nagy Attachment at 2 (May 21, 2025).
[224] *See, e.g.,* Comment of Adrienne Frederick Attachment at 1-2 (May 21, 2025); Comment of Todd Titus Attachment at 1-4 (May 21, 2025); Comment of Latoya Thomas Attachment at 1-2 (May 21, 2025).
[225] *See, e.g.*, Comment of Chris Rendall Jackson Attachment at 1-2 (May 19, 2025); Comment of Thomas Cortina Attachment at 1 (May 20, 2025); Comment of Dawn Friest Attachment at 7 (May 21, 2025).
[226] *See, e.g.,* Comment of Robert Denney Attachment at 3 (May 20, 2025); Comment of Edith Nagy Attachment at 5-6 (May 21, 2025); Comment of Erin Herlihy Attachment at 4 (May 21, 2025); Comment of Chris Cleet Attachment at 4-5 (May 21, 2025); Comment of Ben Kallen Attachment at 11-12 (May 21, 2025); Comment of Javaneh Tarter Attachment 1 at 3 (May 21, 2025).
[227] *See, e.g.*, Comment of Ben Kallen Attachment at 4-6 (May 21, 2025); Comment of Aya Iizuka Attachment at 12 (May 21, 2025); Comment of Chris Cleet Attachment at (May 21, 2025).
[228] Agency Response to Comments 1 at 67.
[229] *See, e.g.*, Comment of Ben Kallen Attachment at 4-5 (June 30, 2025); Comment of Emily Schwartz Attachment at 1-2 (June 30, 2025); Comment of Catherine Palin Attachment at 1-2 (June 30, 2025); Comment of Chris Cleet Attachment at 1-4 (June 23, 2025); Comment of Daniel Moyer Attachment at 1-2 (June 23, 2025).
[230] *See, e.g.*, Comment of Ben Kallen Attachment at 4-5 (June 30, 2025); Comment of Emily Schwartz Attachment at 1-2 (June 30, 2025); Comment of Chris Cleet Attachment at 1-4 (June 23, 2025).

statute.[231] The commenters argue that a de minimis threshold would similarly be making the rules workable for manufacturers.[232]

153. Many commenters made suggestions that waiver provisions exempt various products such as refrigerants or complex products.[233] Many comments suggested modifications to the waiver provisions exempting certain kinds of information from required reporting.[234] Some manufacturers requested that "substantially similar" information reported to federal agencies or in other states be waived from reporting requirements.[235] The Agency clarified in a response that the waiver provision is specifically for when "substantially equivalent information is publicly available" and the intent is not to exempt a manufacturer or group of manufacturers from reporting requirements but an opportunity for manufacturers to avoid duplicative reporting if the required information is already available to the public outside of the Agency's reporting system.[236] The Agency responded that there are no equivalent PFAS reporting requirements at the state or federal level that are collecting the data required by Minn. Stat. §116.943.[237]

154. One commenter (BP Polymers, LLC) noted that manufacturers have hidden their PFAS production behind reporting exemptions, and the PCA should be aware of how companies attempt to utilize these exemptions to obfuscate their PFAS generation.[238] This commenter requested the agency limit exemptions to situations in which it is absolutely necessary.[239]

E. Confidential Information

155. Many manufacturers claimed that the proposed rule will require confidential and trade secret information to be reported.[240] Some commenters asked the Agency to explain how this information will be protected, particularly when it may be shared with

[231] Comment of Emily Schwartz Attachment at 1-4 (June 30, 2025).
[232] *See, e.g.*, Comment of Ben Kallen Attachment at 4-5 (June 30, 2025); Comment of Emily Schwartz Attachment at 1-2 (June 30, 2025); Comment of Daniel Moyer Attachment at 1-2 (June 23, 2025).
[233] *See, e.g.*, Comment of Hayley Davis Attachment at 6-7 (May 21, 2025); Comment of Edith Nagy Attachment at 2 (May 21, 2025).
[234] *See, e.g.*, Comment of Amy Neal Attachment at 1-2 (May 19, 2025); Comment of Michael Michaud Attachment of 1-2 (May 21, 2025); Comment of Todd Titus Attachment at 1-4 (May 21, 2025).
[235] *See, e.g.*, Comment of Latoya Thomas Attachment at 7-8 (Ma 21, 2025); Comment of Adrienne Frederick Attachment at 9 (May 21, 2025); Comment of Aya Iizuka Attachment 1 at 14 (May 21, 2025); Comment of Judah Prero Attachment at 7 (May 21, 2025); Comment of Andrew Bemus Attachment at 3 (May 21, 2025); Comment of Ben Kallen Attachment at 7 (May 21, 2025).
[236] Agency Response to Comments 1 at 88-90.
[237] *Id*. at 88.
[238] Comment of Kiera Callahan at 2 (May 21, 2025).
[239] *Id*.
[240] *See, e.g.*, Comment of Jesse McArdell Attachment at 3 (May 20, 2025); Comment of Robert Denney Attachment at 9-10 (May 20, 2025); Comment of Judah Prero Attachment at 7 (May 21, 2025); Comment of Conor O'Brien Attachment at 2 (May 21, 2025); Comment of Andrew Bemus Attachment at 3-4 (May 21, 2025); Comment of Bruce Nustad Attachment at 3 (May 21, 2025).

multiple jurisdictions.[241] Many commenters expressed a desire for greater protections for trade-secret information.[242] Some commenters requested expansion of protected information, such as chemical subclasses, concentration range of PFAS, and function of PFAS.[243] Multiple commenters proposed that the Agency adopt a joint submission system similar to what is used by federal reporting systems, so suppliers can contact the Agency directly for trade-secret concerns.[244] Manufacturers explained their concerns about confidential information protection stating that release of this information may lead to litigation or disadvantage the reporting entities in business.[245]

156. Several health organizations opposed the classification of PFAS information as confidential or trade secret.[246] One commenter (BP Polymers, LLC) stated that manufacturers have hidden their PFAS production behind trade secret protections, and that although trade secret and confidential business information protection is critical, the PCA should be aware of how companies attempt to utilize them to obfuscate their PFAS generation.[247] This commenter concluded that the Agency should limit trade secret protection to situations in which it is absolutely necessary.[248] One commenter (Leech Lake Band of Ojibwe) stated it would be unreasonable to maintain the secrecy of any PFAS due to legislative intent behind the enabling statute.[249] Another commenter (Clean Water Action Minnesota) proposed that if the presence of PFAS is claimed as a trade secret, the entity should need to demonstrate to the Agency the steps it takes internally to keep this information secret.[250] One manufacturer (AGC Chemicals Americas, Inc.) directly opposed that suggestion, stating that is overly burdensome and inconsistent with the law.[251]

157. One commenter (Sierra Club) requested that the Agency's public-facing reports include the PFAS chemicals and amounts along with product names, descriptions and categories.[252] Another commenter (AGC Chemicals Americas, Inc.) directly opposed

[241] *See, e.g.*, Comment of Judah Prero Attachment at 7 (May 21, 2025); Comment of Andrew Bemus Attachment at 3-4 (May 21, 2025).
[242] *See, e.g.*, Comment of Jesse McArdell Attachment at 3 (May 20, 2025); Robert Denney Attachment at 9-10 (May 20, 2025); Comment of Judah Prero Attachment at 7 (May 21, 2025).
[243] See, e.g., Comment of Bruce Nustad Attachment at 3 (May 21, 2025); Comment of Riaz Zaman Attachment at 5 (May 21, 2025); Comment of Adrienne Frederick Attachment at 10 (May 21, 2025); Comment of Andrew Morley Attachment at 5 (June 19, 2025).
[244] See, e.g., Comment of Aya Iizuka Attachment 1 at 14 (May 21, 2025); Comment of Judah Prero Attachment at 8 (May 21, 2025); Comment of Avonna Starck Attachment at 1-2 (May 21, 2025).
[245] *See, e.g.*, Comment of Elizabeth Emerson Attachment at 1 (May 21, 2025); Comment of Chris Cleet Attachment at 2 (May 21, 2025); Comment of Daniel Moyer at 2 (May 21, 2025).
[246] See, e.g., Comment of Craig Tangren Attachment at 1-2 (May 21, 2025); Comment of Avonna Starck Attachment at 1-2 (May 21, 2025).
[247] Comment of Kiera Callahan at 2 (May 21, 2025).
[248] *Id*.
[249] Comment of Craig Tangren Attachment at 1-2 (May 21, 2025).
[250] Comment of Avonna Starck Attachment at 1-2 (May 21, 2025).
[251] Comment of Julia McGowan Attachment at 3-4 (May 20, 2025).
[252] Comment of Lori Olinger Attachment at 1-2 (May 21, 2025).

this suggestion, stating that such information is beyond the scope of the reporting required by the law and would result in the release of confidential information.[253]

F. Fees

158. Many manufacturers criticized various fees imposed by the proposed rule as being excessive or unreasonable.[254] Commenters noted that in the SONAR, the Agency makes it clear that they do not want to impose unnecessary fees to deter manufacturers from reporting.[255] Some commenters suggested that the fees charged put significant administrative and financial burdens on companies, particularly those with complex products or small businesses and may deter reporting at all.[256] Other commenters suggested that the fees should scale to the size of the business or that fees in general should be capped.[257] Some manufacturers noted that the fees will make the cost of reporting exceed the cost of manufacturing and result in costs that will be passed onto consumers and impact business viability of products.[258]

159. Several manufacturers suggested that the Agency did not appropriately justify the fees in the proposed rule.[259] One commenter (AHRI) stated that it was unclear from the statute whether the Agency has authority to assess fees to manufacturers for submission of filings that do not appear to include the data listed under Minn. Stat. § 116.943, subd. 2.[260] This commenter went on to state that the SONAR does not contain sufficient cost data to demonstrate how the PCA made the determination regarding costs as it relates to the waiver requests and extension requests proposed by the rule and that a mere assertion that the proposed fees are reasonable is not enough to meet the burden under Minnesota statute.[261] Several commenters questioned whether the fees charged for reporting are well-tailored to or truly reflective of the amount of funding needed by the Agency to administer the PFAS program.[262] Some commenters believed the cost to the Agency in receiving confirmations or reports was limited and no

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[253] Comment of Julia McGowan Attachment at 2-4 (May 20, 2025).
[254] *See, e.g.*, Comment of Eric Barnes Attachment at 1-2 (May 21, 2025); Comment of Dawn Friest Attachment at 7 (May 21, 2025); Comment of Erin Herlihy Attachment at 5 (May 21, 2025); Comment of Fredric Andes Attachment at 2-3 (May 21, 2025).
[255] *See, e.g.*, Comment of Miguel Gascon Attachment at 1 (May 12, 2025); Comment of John Keane Attachment at 6 (May 20, 2025); Comment of Jason Sloan Attachment at 4-5 (May 21, 2025).
[256] *See, e.g.*, Comment of Amy Neal Attachment at 4 (May 19, 2025); Comment of Jos Huxley Attachment at 4-5 (May 21, 2025); Comment of Ben Wagner Attachment at 3 (May 21, 2025).
[257] *See, e.g.*, Comment of Jesse McArdell Attachment at 3 (May 20, 2025); Comment of Diana Rondeau Attachment at 1-2 (May 21, 2025); Comment of Erin Herlihy Attachment at 5 (May 21, 2025).
[258] *See, e.g.*, Comment of Amanda Duerr Attachment at 1 (May 20, 2025); Comment of Kristin Emery Attachment at 1 (May 20, 2025); Comment of Eric Barnes Attachment at 1-3 (May 21, 2025); Comment of Jos Huxley Attachment at 4-5 (May 21, 2025).
[259] *See, e.g.*, Comment of Riaz Zaman Attachment at 3 (May 21, 2025); Comment of Hayley Davis Attachment at 3 (May 21, 2025); Comment of Fredric Andes Attachment at 2-3 (May 21, 2025); Comment of Jason Sloan Attachment at 4-5 (May 21, 2025); Comment of Victoria Mwanza Attachment 1 at 2 (May 21, 2025).
[260] Comment of Hayley Davis Attachment at 2 (May 21, 2025).
[261] *Id*. at 3 (May 21, 2025).
[262] *See, e.g.*, Comment of Catherine Palin Attachment at 19 (May 21, 2025); Comment of Riaz Zaman Attachment at 3 (May 21, 2025); Comment of Victoria Mwanza Attachment 1 at 2 (May 21, 2025).

fee was appropriate.[263] One commenter (American Chemistry Council's Center for the Polyurethanes Industry) felt that the annual recertification fee of $500 is inconsistent with the agency's "excessive cost justification" as the fee would be required even if there are no changes to what was submitted the prior year.[264]

160. Several commenters sought clarification about whether the wording of the proposed rule meant the $1,000 fee was meant to be a one-time flat fee per manufacturer or report as the SONAR implied.[265] The agency clarified that it was meant to be a flat fee,[266] and commenters suggested this language be made clearer in the proposed rule.[267]

VII. Rule-by-Rule Analysis

A. Proposed Rule 7026.0010

161. Proposed rule 7026.0010 contains definitions applicable to the proposed rule package in chapter 7026. There are 20 proposed definitions. Most of the proposed definitions do not violate the standards under Minn. R. 1400.2100. Subpart 14, however, does violate Minn. R. 1400.2100 (the analysis is below). The Judge makes a recommendation for the Commissioner to consider regarding subparts 4 and 19 (discussed below).

1) Disapproval of subpart 14.

162. Minn. Stat. § 116.943 includes a list of definitions. In subdivision 1, the legislature defined "manufacturer" as follows:

> [T]he person that creates or produces a product or whose brand name is affixed to the product. In the case of a product imported into the United States, manufacturer includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

163. The Agency, at proposed rule 7026.0010, subp. 14, provided its own definition of "manufacturer" which is similar, but not identical, to the legislature's definition:

> "Manufacturer" means the person that creates or produces a product, that has a product created or produced, or whose brand name is legally affixed

[263] *See, e.g.*, Comment of Clayton Hall at 9 (May 21, 2025); Comment of Jason Sloan Attachment at 4-5 (May 21, 2025); Comment of Edith Nagy Attachment at 3 (May 21, 2025); Comment of Andrew Bemus Attachment at 4 (May 21, 2025).
[264] Comment of Jason Sloan Attachment at 4-5 (May 21, 2025).
[265] See comment of Bruce Nustad Attachment at 3 (May 21, 2025); Commet of Andrew Bemus Attachment at 4 (May 21, 2025); Comment of Jason Sloan Attachment at 4-5 (May 21, 2025); Comment of Chris Cleet Attachment at 7 (May 21, 2025).
[266] Agency Response to Comments 1 at 117.
[267] *See, e.g.*, Comment of Andrew Morley Attachment at 7 (June 19, 2025); Comment of Jason Malcore Attachment at 6-7 (June 23, 2025).

to the product. In the case of a product 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 first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the state.

164. "An agency has the power to issue binding administrative rules only if, and to the extent, the legislature has authorized it to do so."[268] An agency may adopt a rule "to implement or make specific the law enforced or administered by that agency."[269] The agency may not adopt a rule that conflicts with statute.[270] A rule must be disapproved where it "exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law."[271] When the language in a statute is clear and its plain meaning is apparent, amendments to the statute must be made by the legislature, not by agency rulemaking.[272]

165. The Agency created its own definition of "manufacturer" to clarify the definition contained in the statute.[273] The intent, according to the Agency, is to ensure "that companies that do not manufacture their own products are subject to the rule reporting and fee requirements."[274]

166. The statute is clear that a manufacturer, under the regulatory scheme, includes someone "whose brand name is affixed to the product," even though they did not create or produce the product.[275] The statutory language is not ambiguous. Thus, it is improper for the Agency to create its own definition of a word already clearly defined by the legislature. Proposed Minn. R. 7063.0010, subp. 14, must be disapproved because it exceeds the Agency's discretion under the enabling statute and Minnesota law. An agency cannot redefine a word already defined by the legislature and so the agency's proposed definition of "manufacturer" must be removed.

2) Recommendation regarding subpart 4.

167. Proposed rule 7026.0010, subp. 4, defines the phrase "brief description of the product." The phrase is used in the statute, and at Minn. Stat. § 116.943, subd. 2(a)(1), the legislature specifies that when manufacturers of products with intentionally added PFAS report, the information the manufacturers provide must include "a brief description of the product, including a universal product code (UPC), stock keeping unit (SKU), or other numeric code assigned to the product."

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[268] *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 485 (Minn. 1995).
[269] Minn. Stat. § 14.02, subd. 4.
[270] *J.C. Penny Co. Inc.*, 353 N.W.2d at 246.
[271] Minn. R. 1400.2100 (D).
[272] *J.C. Penny Co. Inc.*, 353 N.W.2d at 246.
[273] Ex. D at 26.
[274] *Id.*
[275] Minn. Stat. § 116.943, subd. 1.

168. The Agency's proposed definition states:

> "Brief description of the product" means a character-limited description of a product or grouping of similar products with similar components that includes, whenever applicable, brand name, product model, and other characteristics that distinguish product or grouping of products from similar products made or sold by other manufacturers.[276]

169. While the Agency's definition of "brief description of the product" does not violate the standards under Minn. R. 1400.2100, it may lead to confusion by manufacturers and agency staff because it ignores the statutory requirement that such a description include the numeric code assigned to the product. The statutory requirement will always have to be met by manufacturers, even if it is not mentioned in the Agency's rules. Here, confusion can be avoided by either specifying that a numeric code assigned to the product be included or by making a reference to the applicable statutory provision (Minn. Stat. § 116.943, subd. 2(a)(1)). The Judge recommends such a modification be made to the proposed rule.

3) Recommendation regarding subpart 19.

170. Proposed rule 7026.0010, subp. 19, defines the phrase "substantially equivalent information." The phrase is used, but not defined, in Minn. Stat. § 116.943, subd. 3. The legislature said: "The commissioner may waive all or part of the information requirement under subdivision 2 if the commissioner determines that substantially equivalent information is already publicly available."[277]

171. To operationalize this, the Agency proposes a waiver provision at proposed rule 7026.0050 and uses the defined phrase "substantially equivalent information."

172. The Agency explains that the definition of "substantially equivalent information" is needed and reasonable "because gaining access to complete information should not impose an undue burden in terms of resources required for collection and implementation."[278] The Agency's statement of need and reasonableness for the definition of this phrase does not address the phrase. Rather, it addresses the proposed rule at 7026.0050, subp. 1, concerning waiver eligibility.[279]

173. The definition of "substantially equivalent information," then, is left to speak for itself. While this is not itself violative of the standards under Minn. R. 1400.2100, it raises alarm. In particular, the definition states that substantially equivalent information is "information that the commissioner can identify as conveying the same information required" under Amara's Law and other portions of the proposed rule.[280] It is true that,

[276] Proposed Minn. R. 7026.0010, subp. 4.
[277] Minn. Stat. § 116.943, subd. 3(a).
[278] Ex. D at 27.
[279] That rule is addressed separately, below.
[280] Proposed rule 7026.0010, subp. 19.

when granting a reporting waiver, the Commissioner must determine that substantially equivalent information is already publicly available. But the proposed definition does not assist the Commissioner in accomplishing that and may be merely redundant. If, however, the rule is intended to provide the Commissioner some guidance in making a determination about what is substantially equivalent information, it should include language to do that. For example, if the proposed rule were modified to remove "the commissioner can identify as" and replacing "conveying" with "conveys," then the definition would appear more objective in terms of what the Commissioner's task is. In other words, by including the phrase "that the commissioner can identify," there is an appearance of excess discretion, which could cause issues later when a commissioner emphasizes their discretion over what the information in question objectively demonstrates. As a result, the Judge recommends the Agency consider amending subpart 19 to make it as objective as possible. This will help ensure it is an appropriately useful tool for the Commissioner.

B. Proposed Rule 7026.0020

174. Proposed rule 7026.0020 addresses who must report on intentionally added PFAS in products.

175. There are no portions of proposed Minn. R. 7026.0020 which violate the requirements of Minn. R. 1400.2100.

C. Proposed Rule 7026.0030

176. Proposed rule 7026.0030 prescribes the information manufacturers are required to report to the Agency. The legislature specifically granted the Commissioner authority to determine what information, in addition to that specified in statute, that must be reported "to implement the requirements" of Amara's Law.[281]

177. Proposed Rule 7026.0030 does not violate the requirements of Minn. R. 1400.2100.

178. There is one provision in the proposed rule that the Judge recommends the Commissioner consider modifying. Proposed Minn. R. 7026.0030, subp. 1(A)(1), provides that a product description in a report must include "a brief description of the product or grouping of similar products."

179. The statute states the Commissioner may approve reporting "for a category or type of product rather than for each individual product."[282]

180. "Category" and "type of product" are not specialized or technical terms, and additional definition is not necessary. Nevertheless, the object of the statute and

[281] Minn. Stat. § 116.943, subd. 2(a)(5).
[282] Minn. Stat. § 116.943, subd. 2(b).

regulation remain the same with the proposed rule. The Judge recommends using the statutory language to reduce the chance for confusion based on the differing language.

D. Proposed Rule 7026.0040

181. Proposed rule 7026.0040 prescribes reporting requirements following a manufacturer's initial report. The rule refers to these reports as updates.[283]

182. Minn. Stat. § 116.943, subd. 2(c), authorizes the Commissioner to require information from manufacturers "whenever a new product that contains intentionally added PFAS is sold, offered for sale, or distributed in the state." "[W]henever there is significant change in the information" or when the Commissioner otherwise requests the information required to be reported under the statute, the Commissioner is authorized to require a manufacturer to "update and revise the information" it had previously submitted.[284]

183. Proposed rule 7026.0040, subp. 1, requires the updates prescribed by the statute to be provided by February 1 following the appearance of the new information.

184. The proposed rule also requires annual "recertification." Recertification is required by the rule when there is no information to update.[285] The proposed rule requires a fee to be paid with the recertification.[286]

185. The proposed rule includes a provision on "voluntary updates."[287] Voluntary updates are not required and there is no fee for making a voluntary update. The voluntary update is permissible, under the proposed rule, "whenever a PFAS is reduced or eliminated from a product or component or there is a change in the information required under part 7026.0030, subp. 1, items E to G."[288]

186. With respect to the annual recertification, the Agency explains that it is reasonable to have manufacturers "verify that the information submitted in the initial report…is still correct to ensure that the PCA has the most accurate data available for those products."[289]

187. Because updates are statutorily required, there is no problem with this being repeated in the rule.

188. With respect to the voluntary updates, the Agency explains that it wants information on the reduction or elimination of PFAS "as soon as it is available." According

[283] Proposed Minn. R. 7026.0040.
[284] Minn. Stat. § 116.043, subd. 2(c).
[285] Proposed Minn. R. 7026.0040, subp. 2.
[286] Proposed Minn. R. 7026.0040, subp. 4.
[287] Proposed Minn. R. 7026.0040, subp. 3
[288] *Id.*
[289] Ex. D at 32.

to the PCA, this will "help keep consumers up to date on product information and allow the Agency to monitor trends in PFAS reduction or elimination."[290]

189. Because the provision on voluntary reporting does not, by its own terms, have the force and effect of law it must be disapproved.[291]

190. While the reporting of changes to PFAS in products and the requirement of a fee when reporting are statutorily authorized, the provisions concerning recertification and voluntary updates are in violation of rule-making standards. As a result, proposed Minn. R. 7026.0040 must be disapproved. It may pass muster with the elimination of subparts 2 and 3 with appropriate modifications to the language of other subparts which reference the violative subparts.

E. Proposed Rule 7026.0050

191. Proposed rule 7026.0050 addresses waivers of required information for manufacturers to report. The rule includes provisions on eligibility for a waiver (subpart 1), the process for requesting a waiver (subpart 2), a statement that when a waiver is not granted a manufacturer must report the information required under Minn. R. 7026.0030, the deadline for requesting a waiver (subpart 4), and a statement that a fee is required when a waiver is requested (subpart 5 – the same fee proposed for reports and updates).[292]

192. The authorizing statute permits the Commissioner to "waive all or part of the information [required to be reported] if the commissioner determines that substantially equivalent information is already publicly available."[293] The statute also specifies waivers for certain agricultural products.[294]

193. The proposed rule conflicts with, or does not comply with, Minn. Stat. § 116.943 because it fails to address how the statutory waivers for agricultural products will operate or be obtained.[295] Certain agricultural products (pesticides regulated under Minnesota Statutes chapter 18B, fertilizers, agricultural liming materials, plant amendments, and soil amendments regulated under Minnesota Statutes chapter 18C) are exempted from reporting in proposed rule 7026.0090.[296] But the statute does not exempt the specified agricultural products from reporting. Rather, it permits manufacturers to make the report to the Department of Agriculture (Agriculture) along with other information they are to provide to Agriculture when performing annual registrations or approvals of certain agricultural products, which is why the statute includes these products under its waiver provision.[297] In other words, if a manufacturer

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[290] *Id.*
[291] Minn. R. 1400.2100(G).
[292] Proposed Minn. R. 7026.0050.
[293] Minn. Stat. § 116.943, subd. 3(a).
[294] Minn. Stat. § 116.943, subd. 3(b).
[295] *Id.*
[296] Proposed rule 7026.0090 is addressed below.
[297] Minn. Stat. § 116.943, subd. 3(b).

reports the information on intentionally added PFAS pursuant to Minn. R. 7026.0030 to Agriculture, how is PCA going to be alerted to the availability of that information? It is not necessarily publicly available (as that determination is made jointly by the commissioners of Agriculture and PCA) and both the affected regulated parties and the agencies need direction on this operation. This direction is missing from the proposed rule. As a result, proposed rule 7026.0050 must be disapproved.

194. The proposed rule also exceeds the discretion granted the Agency. Specifically, in subpart 1, the Agency grants itself authority the statute does not by stating that not only does the information to be waived need to be publicly available, but that "[g]aining access to the information must not impose an undue burden [on the Agency] in terms of resources for collection."[298] The rule then gives the Agency unreasonably broad authority to determine what constitutes an "undue burden," which include "fees, the number of locations to be accessed, and other relevant factors."[299] This is in excess of the authority granted in Minn. Stat. § 116.943, which limits the authority for waivers to information which is "substantially equivalent" to that which is already publicly available. The effort required to obtain that information is not raised in the statute and cannot be added here where there is no evidence or law supporting addressing the effort. The rule would be passable if it simply required manufacturers to point the PCA to where the information concerned is publicly available.

195. The Agency explains that "[w]aiver requests are intended to be used if a manufacturer decides to provide their information publicly."[300] This statement of need and reasonableness illustrates the conflict between the rule and statute.

196. The statute is clear that waivers are for when the information that must be reported to the Agency "is already publicly available," not because the manufacturer decided to report the information publicly.[301] For this and the undue burden reason, proposed rule 7026.0050 must be disapproved.

F. Proposed Rule 7026.0060

197. Proposed rule 7026.0060 addresses extensions of time to file reports and updates.

198. Minn. Stat. § 116.943, subd. 3(d), authorizes the Commissioner to grant extensions of the deadline to submit required information based on the Commissioner's determination "that more time is needed by the manufacturer to comply with the submission requirement."

199. There are no portions of proposed Minn. R. 7026.0060 which violate the requirements of Minn. R. 1400.2100.

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[298] Proposed Minn. R. 7026.0050, subp. 1.
[299] *Id.*
[300] Ex. D. at 33.
[301] Minn. Stat. § 116.945, subd. 3(a).

200. There are some aspects of the language of the rule which may benefit from clarification and revision. First, the rule would be clearer if it provided a standard or analysis for the Commissioner to use in making the determination about whether to grant an extension. In other words, when is more time to report justified? Such language would not only help the Commissioner, but it would also help manufacturers better understand when an extension request is reasonable or potentially worthwhile.

201. Second, subpart 2 could be clarified by modifying the opening to a single sentence, such as: "A manufacturer's request for an extension must contain…." The statement "must submit the request in a format specified by the commissioner" appears superfluous as the rule continues to state what must be included with the request, which is the important part for both the regulated and the agency staff.[302] Thus, cutting that portion out may add clarity to the rule on extensions for submitting the required information.

G. Proposed Rule 7026.0070

202. Proposed rule 7026.0070 addresses the procedures for requesting the protection of trade secret data.

203. Minn. Stat. § 13.37 classifies trade secret data obtained by government as nonpublic data.[303]

204. There are no portions of proposed rule 7026.0070 that violate the standards at Minn. R. 1400.2100.

H. Proposed Rule 7026.0080

205. Proposed rule 7026.0080 prescribes standards for manufacturers in relation to their reporting and related record keeping.

206. The proposed rule is designed to aid manufacturers, and ultimately the PCA, in obtaining necessary information from complex supply chains for products.[304]

207. There are no portions of proposed rule 7026.0080 that violate the standards at Minn. R. 1400.2100.

I. Proposed Rule 7026.0090

208. Proposed rule 7026.0090 sets forth the products for which reporting of intentionally added PFAS is not required. The products listed are as follows:

[302] Proposed Minn. R. 7026.0060, subp. 2.
[303] Minn. Stat. § 13.37, subd. 2 (2024).
[304] Ex. D at 37-38.

A. a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority;

B. a product regulated under Minnesota Statutes, section 325F.072 or 325F.075;

C. the sale or resale of a used product;

D. a product reported to the Department of Agriculture as meeting the reporting waiver requirements under Minnesota Statutes, section 116.943, subdivision 3, paragraph (b); and

E. information regarding PFAS-containing products of components that is provided to any federal government agency and that is classified information as defined in United States Code, title 18, section 798.[305]

209. The first three items in the list (A – C) repeat the exemptions from reporting listed in Minn. Stat. § 116.943. There is no violation of the standard under Minn. R. 1400.2100 if the proposed rule was limited to those three items or as to the fifth, concerning products that are classified under federal law.

210. Item D, regarding certain products reported to the Department of Agriculture, conflicts with Minn. Stat. § 116.943. The Agency argues that these exemptions are "applicable only to the component…and not the product it is applied to."[306] The Agency states that the components are "a pesticide regulated under chapter 18B, a fertilizer, an agricultural liming material, a plant amendment, or a soil amendment."[307] The Agency claims an exemption is appropriate because the data regarding intentionally added PFAS in these "components" is already being reported to another state agency.[308]

211. The rule is misleading (and therefore conflicts with the authorizing statute) because the statute requires that the information, including "any additional information requested by the commissioner" (to be prescribed in the rule), still be reported. The statute only changes to whom the data is reported: the Department of Agriculture as opposed to the PCA.[309] That is because chapters 18B and 18C of Minnesota Statutes require registration or approval of those products by the commissioner of Agriculture.[310] Setting aside whether these agricultural products are "products" or "components" under the proposed rules, Minn. Stat. § 116.943, subd. 3, is unambiguous. It requires that when these products contain intentionally added PFAS, the reporting requirements must still be met. Yet the proposed rule gives manufacturers the impression that no reporting

[305] Proposed rule 7026.0090.
[306] Ex. D. at 38.
[307] *Id.*
[308] *Id.* at 38-39.
[309] Minn. Stat. § 116.943, subd 3(b).
[310] Minn. Stat. §§ 18B.01 - .39, 18C.001 - .62 (Supp. 2025).

regarding PFAS is required. This renders the proposed rule in conflict with the statute and it must be disapproved, pending correction.[311]

J. Proposed Rule 7026.0100

212. The last proposed rule in the package, 7026.0100, proscribes the fees to be paid by manufacturers when they provide information to the Agency under Amara's Law.

213. Minn. Stat. § 116.943 expressly authorizes the Commissioner, in their discretion, to "establish by rule a fee payable by a manufacturer to the commissioner upon submission of the information required under subdivision 2 *to cover the agency's reasonable costs to implement this section.*"[312]

214. The proposed fees are $1,000 when filing an initial report, and $500 when filing an update or an annual certification. In either situation, if a group of manufacturers is making the report together, each manufacturer must still pay the applicable fee.[313] There is also a proposed $300 fee for an extension request.[314]

215. The Agency explained its fee structure is designed to avoid under or no reporting by manufacturers.[315]

216. The Agency estimates spending $6.027 million to implement Amara's Law over nine years, beginning in fiscal year 2024[316] The Agency provided reasonable and convincing detail in the SONAR about the implementation costs.

217. The Agency predicts there will be between 5,000 and 10,000 reporters.[317]

218. The Agency argues that its proposed fees will be sufficient to cover the initial implementation and continuing implementation of the program.[318] The Judge agrees.

219. The Agency's numbers, conservatively extrapolated by multiplying the initial reporting fee income (5,000 to 10,000 x $1,000) and the subsequent seven years of income (5,000 to 10,000 x $500 x 7) show the Agency will generate between $22,500,000 and $45,000,000 in reporting and updating fees. This far exceeds the agency's

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[311] The statute anticipates some coordination between the PCA and Department of Agriculture. *See* Minn. Stat. § 116.943, subd. 3(b) (requiring the commissioners of PCA and Agriculture to "jointly determine whether to make the information [on required PFAS reporting in certain agricultural products] publicly available"), subd. 5 (d) (limiting the Commissioner's authority to ban certain agricultural products without approval of the commissioner of Agriculture).
[312] Minn. Stat. § 116.943, subd. 6.
[313] Proposed rule 7026.0100, subps 2, 3.
[314] *Id.* at subp. 5.
[315] Ex. D at 40.
[316] *Id*. at 42-44.
[317] *Id*. at 40, 42.
[318] *Id*. at 40.

reasonable costs of $6.027 million over the same time period. As a result, proposed rule 7026.0100 exceeds, conflicts with, and does not comply with Minn. Stat. § 116.943, subd. 6, and must be disapproved.

220. The Agency is legally entitled to make choices between possible approaches as long as its choice is rational.[319] Given the plain language of the statute, the rational choice will be a fee based on covering the reasonably expected costs to implement Amara's Law.

CONCLUSIONS OF LAW

1. The Agency gave proper notice of the hearing in this matter and has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule, except as noted in findings 95, 98, 112, 166, 189, 190, 193-196, 211, 219 and 220.

2. Minn. Stat. § 116.943, subd. 9, exempts the Commissioner from compliance with Minn. Stat. § 14.125, concerning the time limit on authority to adopt these rules.

3. The Agency has statutory authority to adopt the proposed rules, except as noted.

4. The Agency demonstrated the need and reasonableness of the proposed rules by an affirmative presentation of facts in the record, except as noted at findings 95 and 98 regarding the failure to assess the cumulative effect of the rule with other federal and state regulations related to reporting of PFAS in products in violation of Minn. Stat. § 14.131(8). This failure requires disapproval of the entire proposed rule package pending correction.

5. The Agency did not meet the requirements of Minn. Stat. § 14.14 and Minn. R. 1400.2060 when it failed to comply with its Additional Notice Plan (see finding 112). This failure was harmless error because no person or entity was deprived of an opportunity to participate meaningfully in the rulemaking process (see finding 113).

6. The Agency did not meet the requirements of Minn. R. 1400.2100 in relation to proposed rules 7026.0010, subp. 14, .0040, .0050, .0090, and .0100 (see findings 166, 189, 190, 193-96, 211, 219, and 220). These defects should be corrected or deleted before the rule package is adopted.

7. Due to the findings of defect, this Report has been submitted to the Chief Judge for his approval, pursuant to Minn. Stat. § 14.15, subd. 3.

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[319] *See generally, Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs,* 713 N.W.2d 817, 832 (Minn. 2006) ("Our role when reviewing agency action is to determine whether the agency has taken a 'hard look' at the problems involved, and whether it has 'genuinely engaged in reasoned decision-making'") (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)).

8. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

9. A finding or conclusion of need and reasonableness with regard to any particular rule subsection does not preclude the Agency from modification of the proposed rules based on this Report and an examination of the public comments, provided that the rule finally adopted is based on facts appearing in this hearing record.[320] Any new changes, other than those recommended by the Judge or Chief Judge, must be submitted to the Chief Judge for approval.[321]

Based on the conclusions of law, the Judge makes the following:

RECOMMENDATION

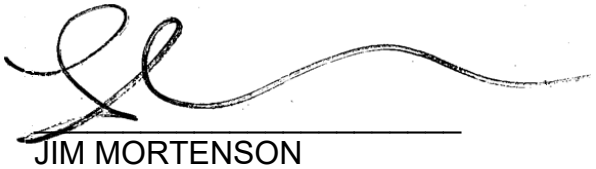
1. The Judge **DISAPPROVES** the proposed rule package due to the failure to assess the cumulative effect of the rule with other federal and state regulations related to reporting of PFAS in products, as required by Minn. Stat. § 14.131(8).

2. The Agency's failure to comply with its Additional Notice Plan is a harmless error which requires no correction.

3. The Judge **DISAPPROVES** the following portions of the Agency's proposed rules for violating the standards of Minn. R. 1400.2100, as specified in this Report:

- 7026.0010, subp. 14
- 7026.0040
- 7026.0050
- 7026.0090
- 7026.0100

Dated: August 28, 2025



JIM MORTENSON
Administrative Law Judge

[320] Minn. R. 1400.2240.
[321] *Id.* at subps. 5, 7.