Progress on PFAS rule development webinar

Questions and answers

On July 18, 2024, the Minnesota Pollution Control Agency (MPCA) held a webinar on rulemaking toward the implementation of Minnesota's PFAS in products law, also known as Amara's Law. These written responses to questions received during the webinar are advisory as of September 12, 2024. Final rules may differ.

Reporting platform

Q: Will MN use a website like Interstate Chemicals Clearinghouse (IC2) to make reporting easier? Or is MN using their own reporting site?

A: As stated in the webinar, MPCA is working with IC2 to modify their HPCDS database as the reporting platform for this requirement.

Q: Will we need to provide a list of all parts/components in our facility, or will we only need to post the components/parts we know the part contains PFAS above the threshold percent?

A: Under Minnesota's PFAS reporting law, you will generally need to report components or parts that contain intentionally added PFAS This means you are not required to provide a comprehensive list of all parts and components in your facility, but rather focus on those that have intentionally added PFAS. The goal is to ensure that products with PFAS content are reported, rather than cataloging every item in your facility.

Q: With reporting not open until late 2025 and deadline of January 1, 2026, will your system be such that it can handle the huge influx of people registering their products without it crashing?

A: Yes, with testing and stress testing, technical support, and a phased rollout these measures will help ensure the system remains functional.

Q: How far in advance of beta test will user documentation on reporting application structure be available?

A: This is to be determined. Look for notification from the MPCA once the program is complete.

Q: If for example we are using PFAS that are considered Organization for Economic Cooperation and Development (OECD) resolution concluding that our PFAS...

A: If it is intentionally added PFAS it will need to be reported.

Q: For example, we are using PFAS that are considered by OECD or accepted by OECD as low-concern PFAS. Will MN authorities follow a similar approach?

A: Minnesota's regulations are driven by their specific criteria. The state will enforce reporting based on their definitions and guidelines, not solely on OECD classifications. Minnesota regulates PFAS broadly as a class in law, so there will not be exceptions for PFAS that are considered low concern by OECD.

Q: Wouldn't it be a better idea to use an OECD database instead of creating your own database? Why don't you use the Substance of Concern in Products (SCIP) database?

A: Updated A: While the OECD and SCIP databases offer valuable resources for managing information on hazardous substances, including PFAS, the decision to create a state-specific database has been made to better align with Minnesota's unique regulatory needs. The state's requirements may differ from those covered by

existing databases, and a customized database allows us to ensure that all relevant data is captured in a way that supports local regulatory objectives. Additionally, the creation of our own database allows for greater control over the data collection process, making it easier to update and tailor the system to meet evolving needs and to accommodate the specific information required under Minnesota's PFAS reporting rule.

However, there are several reasons why a state like Minnesota might choose to develop its own database:

1. **Specific state requirements**: State regulations, like Minnesota's, may have unique reporting requirements or focus areas that are not fully covered by existing databases.

2. **Data accessibility and integration**: State-specific databases can be tailored to ensure that data is collected and reported in a way that aligns with local laws and enforcement practices, which might not always align with international or regional databases.

3. **Regulatory control**: Having a state-managed system allows for more direct oversight and control over how data is collected, managed, and used in enforcement actions.

4. **Updates and customization**: A state database can be more quickly updated to reflect changes in state laws or regulations and can be customized to fit the specific needs of local enforcement agencies and stakeholders.

While leveraging existing databases like SCIP could enhance data sharing and reduce duplication of efforts, states may still opt to maintain their own systems to ensure compliance with local regulations and to provide a more tailored approach to data management and enforcement.

Q: Given the rather fluid state of the rule and the deadline for reporting being less than 1.5 years away, along with not having a beta system until fall 2025, it seems like the reporting deadline will have to be pushed out. Please comment on why you think this timeline is achievable.

A: While there are concerns about meeting the current deadline, these factors suggest that with effective management and adaptation, the timeline might still be achievable or adjusted as necessary to ensure successful implementation.

Q: Will MPCA put out a FAQ or Q&A?

A: Yes. We will do our best to summarize and post the Q&A sections from this webinar. We have started a FAQ section for PFAS prohibitions here: https://www.pca.state.mn.us/air-water-land-climate/pfas-use-prohibitions

Q: When do you plan to issue guidance for reporting?

A: We will issue guidance following the completion of the rule making process.

Q: Will Minnesota be working with other states who have similar regulations to create one reporting system or will Minnesota have their own reporting system?

A: Minnesota may work with other states that have similar PFAS regulations to create a unified reporting system. The law allows for the possibility of entering into agreements with other states to collect and share information through a common system. However, Minnesota can also establish its own reporting system independently if such collaborations are not in place.

Q: What is the link between Minnesota reporting and Central Data Exchange (CDX) website defined in US regulation 40 CFR Part 705?

A: Minnesota's PFAS reporting requirements and the CDX website are linked through federal-state data submission protocols. While Minnesota has specific state laws for PFAS reporting, CDX handles federal submissions under 40 CFR Part 705. Manufacturers may need to use both systems to ensure compliance with both state and federal regulations.

Q: Can reporting be performed by "PFAS chemical" with the SKU(s) that contain that PFAS listed under that particular PFAS chemical? This would be similar to CHCC reporting in certain US States (OR, WA,VT).

A: Yes, reporting can be performed by "PFAS chemical" with the SKU(s) that contain that PFAS listed under that particular PFAS chemical. This approach is similar to the CHCC reporting in certain US states like Oregon, Washington, and Vermont. The MPCA is likely to provide templates and detailed instructions on how to organize and submit this information to ensure compliance with the reporting requirements.

Reporting: General, responsibility

Q: Does "offered for sale" mean an item offered for sale to a Minn. resident (e.g., the resident can view a website offering the product) must be reported before it is ever shipped? As an example, who is responsible for reporting Amazon's products?

A: "Offered for sale" means an item available for purchase by a Minnesota resident, such as through a website. In the example of Amazon, the responsibility for reporting lies with the manufacturer or the entity whose brand name is affixed to the product. If the manufacturer or brand owner does not have a presence in the United States, the importer or first domestic distributor must fulfill the reporting obligations. If Amazon is the manufacturer of a product line, Amazon would be responsible for the PFAS reporting requirements for those products sold, offered for sale, or distributed in Minnesota.

Q: Is PFAS reporting required by the contract manufacturer who produces the product however brand name is not affixed to the product?

A: Yes, PFAS reporting is generally required by the contract manufacturer who produces the product with intentionally added PFAS, even if the brand name is not legally affixed to the product. Information from the contract supplier regarding the supply chain would still be needed to fulfill reporting requirements.

Q: What about products manufactured in Minnesota and sold elsewhere in the US (and other countries)? Will manufacturers be reporting for their state-based manufacturing?

A: The MPCA is currently making a determination on this topic, and it is still under review.

Q: What if a component of a complex product is considered its own product (i.e., supplier of the component won't disclose info to final producer of assembled product). Is the component manufacturer then liable for reporting that component?

A: If a component of a complex product is considered its own product and contains intentionally added PFAS, the component manufacturer is generally responsible for reporting that information. The final producer of the assembled product must obtain the relevant PFAS information from the component manufacturer. However, if the component manufacturer does not disclose this information, the final producer may face challenges in fulfilling their reporting obligations, potentially impacting their compliance. The ultimate responsibility for reporting typically falls on the entity whose product is sold or offered for sale, but the supply chain must work collaboratively to ensure complete and accurate reporting. We are looking into a pathway for suppliers to report on behalf of another entity to meet the requirement as well.

Q: What if a company buys a PFAS-containing component and uses it to assemble a product? Is it mandatory for the company to report the assembled product even if the supplier of the component is reporting the component?

A: Yes, it is mandatory for the company assembling the product to report the assembled product, even if the supplier of the PFAS-containing component is reporting the component. The responsibility for reporting extends to the final product that contains intentionally added PFAS, including any components that are part of that product. Each entity in the supply chain must ensure that all relevant information is reported to comply with the regulations. We are looking into a pathway for suppliers to report on behalf of another entity to meet the requirement as well.

Q: Are you expecting the PFAS manufacturer who supplies their raw material to another manufacturer to make the actual product to report the entire supply chain of that product? I'm trying to understand the meaning of comprehensive PFAS reporting upstream.

A: In the context of comprehensive PFAS reporting, a PFAS manufacturer who supplies raw materials to another manufacturer is generally required to report information about their own products, including details about the PFAS content. However, the responsibility to report the entire supply chain typically falls on the final product manufacturer. The final product manufacturer needs to ensure that they have the necessary information from their suppliers, including any PFAS-containing raw materials, to meet the reporting requirements. Comprehensive PFAS reporting upstream means that manufacturers need to track and report PFAS information throughout the supply chain to ensure all relevant data is included. This can be complex, especially if there are multiple levels of suppliers involved.

Q: Do service parts need to be reported separately if they contain intentionally added PFAS and are already reported as a component of a finished product SKU?

A: If service parts contain intentionally added PFAS and are already reported as part of a finished product SKU, separate reporting for the service parts is generally not required. The key point is that the PFAS content in the service parts is included in the overall reporting of the finished product. While the finished product reporting typically covers the PFAS content of its components, separate reporting for service parts might be necessary if they are sold independently or have specific regulatory requirements.

Q: For a part that is installed in an assembly, who reports? The part manufacturer, the assembly manufacturer, or both?

A: Likely the company responsible or with their brand name on the final product.

Q: Is PFAS reporting required by the Contract Manufacturer who produces the product; however, the brand name is not legally affixed to the product?

A: Yes, PFAS reporting is generally required by the contract manufacturer who produces the product (w/ intentionally added PFAS), even if the brand name is not legally affixed to the product. Information would be needed from the contract supplier regarding the supply chain.

Q: Does the company which is doing the reporting have to be based in the USA? Can a corporate company based in the EU do the reporting?

A: A corporate entity based in the EU can fulfill the reporting requirements

Q: If you purchase packaging for your product, but are not the manufacturer of the packaging, are you required to perform analysis and report on this? Or, alternatively, does the actual manufacturer of the packaging itself have to perform analysis and reporting?

A: Actual manufacturer of the packaging itself would have to perform analysis and reporting.

Updated A: The responsibility for performing analysis and reporting generally falls on the actual manufacturer of the packaging. However, if the packaging is sold or distributed in the state as part of a product, and the original manufacturer does not provide the necessary PFAS information, the responsibility may shift to the entity that sells or distributes the product in the state. The specific requirements will be clarified through the rulemaking process, taking into consideration both scenarios where packaging is sold independently and as part of a product.

Q: Will there be a manufactured by date that will determine which products are in scope of reporting? For example, the reporting requirements go into effect January 1, 2026, but the product was manufactured in January 1, 2025, will the report be required?

A: If the product is being sold in Minnesota as of January 1, 2026, it will need to be reported. Reporting requirements are not for any previously sold products.

Q: How can one know how many people might import a product and who imported it first? E.g., the many companies that might purchase packing material from the same out of state source.

A: It can be challenging to determine how many people might import a product and who imported it first, especially for commonly sourced items like packing material. Typically, tracking this would require supply chain transparency and communication between manufacturers, suppliers, and importers. Importers can use detailed documentation, supply chain audits, and coordination with suppliers to keep track of the origins and initial importers of products. This process may involve requesting detailed import records, utilizing trade databases, and maintaining clear records of purchase and distribution transactions.

Q: Is this a continuing requirement for each year after 2026?

A: Our team is still working on this topic on how the exact reporting mechanisms will work after initial reports are made.

Q: Certain product categories will have "sales prohibitions". Product categories falling outside of these prohibited categories will only have a reporting obligation till January 1, 2032.

A: Yes, certain product categories will face sales prohibitions starting January 1, 2025, if they contain intentionally added PFAS. For product categories not subject to these prohibitions, we are still determining the mechanisms for reporting past the initial reports due in 2026.

Clarifications/Definitions

Q: How is "essential for functioning of society" defined?

A: The term "essential for the functioning of society" refers to uses of PFAS that are critical for health, safety, or essential societal functions and for which no reasonable alternatives are available. This definition includes applications where PFAS are necessary to maintain public health and safety, where their unique properties are irreplaceable for effective performance. The determination is made by evaluating the necessity of PFAS in specific applications and considering whether viable substitutes can achieve the same function without compromising safety or societal needs.

The definition of "essential for the functioning of society" is still under development and will be refined during the rulemaking process.

Q: What is the target date for the final regulation to be published?

A: The target date for the final regulation related to Minnesota's PFAS reporting law is typically set around mid-2025

Q: Will there be greater clarification on the definitions of the categories of products in section 116.943 through the rulemaking process?

A: Clarification on definitions for the 11 categories of products prohibited from having intentionally added PFAS in 2025 will not be included in the rulemaking. However, some clarifications have already been posted to our website: https://www.pca.state.mn.us/air-water-land-climate/2025-pfas-prohibitions.

Q: What information would you require for C0 water repellent for water-resistant fabric?

A: The chemical identity of the C0 water repellent, including its CAS number (if available). The purpose of using C0 in the fabric, such as water resistance. The amount of C0 in the fabric, reported as an exact quantity or within a range approved by the commissioner. The manufacturer's contact details, and any additional information requested by the commissioner.

Q: Is all packaging included in the reporting obligations?

A: Packaging which is integral to the product – necessary to contain, protect, or dispense the product - would be included in reporting and prohibitions if it contains intentionally added PFAS. More at MPCA 2025 PFAS Prohibitions.

Q: Does "importer" fall in the definition of "manufacturer"?

A: Yes, under Minnesota's PFAS reporting law, the definition of "manufacturer" includes the importer or first domestic distributor of a 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. Therefore, importers are considered manufacturers for the purposes of PFAS reporting requirements.

Q: Does the restriction on upholstered furniture only apply to the stuffing or textiles or the entire article including wood and metal parts and coatings?

A: At this point, the entire article. More discussion of this is due January 31 in a report to the Legislature. There will not be enforcement of the PFAS prohibition in electronics and other internal components of furniture until at least July 1, 2025.

Q: Does a vehicle seat count as "upholstered furniture"? Furniture is not defined.

A: No. Furniture is typically defined as a movable article used in readying an area for occupancy or use. We do not interpret vehicle seats to be moveable as they are affixed to the body of the vehicle. Vehicle seats would be subject to reporting and eventual currently unavoidable use determinations.

Q: If there's not intentionally added PFAS, then is no reporting required? If reporting is still required, please provide information on exactly what information is still required. Thanks.

A: No intentional addition, no reporting.

Q: Are PFAS used in manufacturing that do not become part of the final product in scope?

A: Only if the continued presence of PFAS is also "desired in the final product or one of the product's components to perform a specific function."

Q: Will you make your public data available for AI ingestion such as by ChatGPT?

A: The public data will be available on the reporting webpage.

Q: For reporting purposes is it required to declare the number of products sold in Minnesota?

A: No, quantity sold is not required in reporting

Q: Is the prohibition for the 11 categories still in effect for January 1, 2025?

A: Yes.

Q: How far back do we go for products that we have shipped/sold prior to 2026 in Minnesota for the reporting?

A: Reporting is not retroactive on products sold prior to January 1, 2026, only those intended to be sold in Minnesota starting January 1, 2026, and forward.

Q: So, the products listed in Subdivision 5 of Section 116.943 are outright prohibited beginning 2025 (carpets/rugs, cleaning products, cookware, etc.), and the reporting we're talking about in 2026 is for other products, correct?

A: Correct.

Q: Are ALL PFAS problematic according to MPCA?

A: Yes. PFAS are regulated as a class in Minnesota because they are all highly persistent and accumulate in the environment. Additionally, many PFAS that are well studied have shown to bioaccumulate and cause health problems at low levels of exposure.

Q: Are internal, non-food or skin contact electronic components in items like a waffle maker included in the PFAS ban for cookware?

A: For the purposes of the 2025 PFAS prohibitions, the MPCA interprets cookware to include only items that have a food contact surface that has a nonstick PFAS coating. If an item does not have a nonstick PFAS coating on a food contact surface, it is not included in the cookware category. If an item is not included in the cookware category, the additional components are not required to be PFAS free to meet the 1/1/25 regulation but will be required to be PFAS free to meet the 1/1/32 regulation.

Rulemaking

Q: Can you confirm that products sold only for professional uses are not concerned by the reporting?

A: Any product with intentionally added PFAS that is sold, offered for sale, or distributed in Minnesota must be reported. There is no exemption for "professional uses."

Q: Can you please provide a direct link to the PFAS in Products Rule Making webpage mentioned at the beginning of this webinar? Thanks.

A: https://www.pca.state.mn.us/get-engaged/pfas-in-products

Q: Has this law been passed yet or just introduced?

A: The law, referred to as "Amara's Law," has been passed. It is part of the Minnesota Session Law 2023, Chapter 60, H.F. No. 2310 and is now Minnesota Statute 116.943.

Thresholds and concentrations

Q: Will MPCA prescribe a specific TOF (Total Organic Fluorine) analysis test method?

A: We may provide guidance on testing.

Q: Is MPCA aware that total fluorine test analyzes for both inorganic and organic fluorine, more substances than just PFAS?

A: Yes, we are aware of this.

Q: Given toxicity and regulatory thresholds are measured in units below "ppm," it would seem to make sense to include PFAS concentrations in units that reflect the much lower concentrations.

A: In general, we understand intentional additions of PFAS to be around 100 parts per million (ppm) or above; below that might be intentional but is more likely to be contamination (NOT intentional). We are also considering requiring reporting concentrations below 100 ppm.

Q: Is there going to be a level to which reporting starts? Meaning if the level found in a test report is less than your reporting level, then no reporting is required. For instance, CA is eventually going to a level of 50 ppm of TOF.

A: See the previous response, however, the statute does not set an explicit threshold so we're not expecting to in rule.

Q: Can you please go back over the MPCA's interpretation of bulk packaging...the definition and what makes that exempt compared to other packaging?

A: Bulk packaging - prior to containing any product – is consider a product itself and would be required to be reported if sold in Minnesota. Packaging which is not integral to (necessary to contain, protect, or dispense) the product is not considered a product component for reporting. More guidance can be found here: https://www.pca.state.mn.us/air-water-land-climate/2025-pfas-prohibitions#packaging

Q: Will testing be required to determine PFAS content or concentration or will this be based on currently available information?

A: Currently available information, if due diligence standard has been met. We might encourage testing if you expect a component to contain PFAS but are not getting information from its supplier; the final due diligence standard for reporting is still being determined.

Q: ASTM International is in the process of developing a standard for analytical methods to evaluate PFAS. Is MPCA looking into such standards to adopt standardized analytical methods?

A: In the long term, yes.

Q: If contamination (not intentionally added) and under 100 ppm, will this require to be reported?

A: Product reporting is only required for products with intentionally added PFAS.

Q: Will you be publishing an indicative list of PFAS CAS#s subject to the law?

A: We will not be publishing a list of CAS#s as some PFAS chemicals do not have CAS#s. We will provide guidance on certain lists as a starting point that can be used with suppliers.

Q: Al, can you share what studies/research has been performed that shows intentionally added PFAS to be around 100 ppm and above?

A: Erik Kissa in *Fluorinated Surfactants* (Marcel Dekker, 2001) reviews a number of literature sources such as patents for uses of fluor surfactants, and includes information on concentrations used in various applications, ranging down to around 100 ppm.

Q: Will there be a reporting threshold > 1000 ppm? Keep in mind that a threshold below that could prove costly for analytical purposes. The lower the threshold is, the more expensive the lab testing.

A: At this time, there is no plan to have a reporting threshold. If it contains intentionally added PFAS, it must be reported.

Q: Thank you for the response to the mixture question. I expect that many chemicals that are labeled as one kind of PFAS are not 100% of the nominal identity. Because there is no quantity or concentration threshold, in theory those other PFAS molecules must be identified and reported. Is there any accounting for information that is not "known to or reasonably ascertainable by" a reporter? Thanks.

A: The MPCA is still evaluating options for unknown concentration amounts that are below certain thresholds. It will be clarified through the rule-making process, but no official decisions have been made on this as of now.

Q: If reporting is by PFAS molecular identity, what does one do both when the PFAS intentionally used is a mixture of PFAS unique molecules (even if isomers)?

A: The concentration of each PFAS molecule structure should be reported if possible.

Q: For testing- do you have test standards/methods that are acceptable to the MPCA?

A: We are still working on what standards and methods will be acceptable.

Q: Could you kindly state the calculation method, e.g., as per homogeneous material?

A: The concentration basis depends on the type of product you are reporting. For complex products (e.g., a car), the PFAS concentrations should be reported by the individual components' weight within the product. For simpler homogeneous products (e.g., an O-ring), the concentration can be reported based on the overall product weight.

Q: If the reporting is on the component level and the component consists of many materials, would not the calculation per each homogeneous material (as per EU RoHS Directive 2011/65/EU, § 3(20)) be an applicable calculation method?

A: The concentration basis depends on the type of product you are reporting. For complex products (e.g., a car), the PFAS concentrations should be reported by the individual components' weight within the product. For simpler homogeneous products (e.g., an O-ring), the concentration can be reported based on the overall product weight.

Q: Is concentration weight based on homogeneous material, component, or product weight?

A: The concentration basis depends on the type of product you are reporting. For complex products (e.g., a car), the PFAS concentrations should be reported by the individual components' weight within the product. For simpler homogeneous products (e.g., an O-ring), the concentration can be reported based on the overall product weight.

Q: Is reporting limited to intentionally added PFAS?

A: Yes.

Q: What if we know the PFAS is present (put there by upstream supplier and reveal through testing) but cannot determine function(s)? - e.g. it could be one or all of a fire retardant, mechanical flow enhancer, surfactant, etc.

A: This may be an example in which a reporter could select the 'other' option for function. Guidance on how to report this type of situation hopefully will be provided in reporting instructions.

Product components

Q: For the product components, will there be any details regarding accessible and not accessible components?

A: Probably nothing on location in product; function will be required.

Q: Can a manufacturer have a category "electronic equipment" that includes common components that may contain PFAS?

A: If there is enough similarity between the equipment, components, and PFAS profile, that's where we're headed.

Q: For complex products with only a few small components containing PFAS, which would constitute tiny fractions of a percentage of the overall weight, how should that be reported as a quantity?

A: We're planning on concentration within the component, not its fraction of the entire product.

Q: For FDA-regulated products, integral packaging is considered part of the product and is often approved as part of the product so this cannot be treated differently and separated out that easily. Consequently, will MPCA treat packaging for the exempt medical device as also exempt?

A: Yes. Packaging for exempt products is also exempt however medical products are not exempt from reporting.

Q: How far back do we go for products that we have shipped/sold prior to 2026 in Minnesota for the reporting?

A: For products shipped or sold prior to January 1, 2026, the reporting requirements under Minnesota's PFAS law apply from the effective date of the law moving forward. You are not required to retroactively report products sold before this date. However, you must report any new products containing intentionally added PFAS sold or distributed from January 1, 2026, onward.

Q: How would you handle non-saleable replacement components?

A: Non-saleable replacement components that contain intentionally added PFAS will need to be reported if they are used as part of a product sold, offered for sale, or distributed in Minnesota. However, if these components are not sold separately and are only used for internal repairs or replacements, their reporting requirements might differ. Specific guidance from the MPCA would clarify the exact reporting obligations for such components to ensure compliance with Amara's Law.

Q: Would the die embedded in an integrated circuit, embedded in a microcontroller, embedded in the audio PCB (printed circuit board), embedded in a radio, embedded in a pickup truck product be considered a "component," or just the radio as a whole (which is what the truck OEM purchases)?

A: The die embedded in an integrated circuit, which is embedded in a microcontroller, embedded in the audio PCB, embedded in a radio, embedded in a pickup truck, would be considered a "component" under Amara's Law. Each identifiable part within the product can be classified as a component. However, for reporting purposes, MPCA may allow grouping similar components if they have the same PFAS content, simplifying the process. The final guidance from MPCA will provide detailed instructions on handling such nested components.

Q: If a component is also a spare part of a complex product, both sold separately, will separate reporting be required?

A: Yes, separate reporting is required for both the component and the spare part if they are sold separately and contain intentionally added PFAS. Each must be reported as an individual product due to their distinct sales and uses. However, if the components are similar and have the same PFAS content, they can be grouped together in the report to streamline the process.

Q: For a complex product assembled from off-the-shelf components, most of the PFAS functions will be unknown to the assembler.

A: In such cases, the assembler will need to rely on information provided by the suppliers of those components. The assembler is responsible for gathering and reporting the necessary information from suppliers to comply with PFAS reporting requirements.

Q: If you assemble PFAS components into an article, but you do not manufacture the components, are you required to report? i.e., you use PFAS-containing electrical wiring in the final article, but do not manufacture the wire, are we required to report that PFAS?

A: Yes, you would generally be required to report if you assemble PFAS-containing components into a final article.

Q: For a complex product with replaceable components, how do we report? As a total or by component?

A: We're thinking for each component containing one or more intentionally added PFAS.

Q: If PFAS are in components of an item assembled/manufactured, is the amount reported needed to be per component or amount per completed assembly? Should this be as a percentage of the total weight or just the weight of each PFAS in the assembly?

A: The PFAS amount will be by component, not the completed assembly. This is due to different components may have different PFAS concentrations.

Q: Will refurbished products be in scope of reporting? In essence, does the used product exemption extend to refurbishing and remanufactured products?

A: Refurbished products would be out of scope as they would be considered a used product, which is exempt from statute.

Q: Are inaccessible components within a product exempt from the reporting requirements?

A: No, all components of a product with intentionally added PFAS must be reported.

Exemptions and extensions

Q: So medical devices are exempt, but their packaging is not exempt? Clarify.

A: If a product is exempt, what it is packaged in is also, however medical devices are not exempt from reporting.

Q: So medical devices are exempt, but their packaging is not exempt? Clarify.

A: If a product is exempt, what it is packaged in is also, however medical devices are not exempt from reporting.

Q: Is there, or will there be, any report exemptions for medical devices as there is with the EPA/FDA?

A: Medical devices are still required to be reported.

Q: What will the mechanism to apply for an extension of the reporting deadline be?

A: At this time, we are still working on extension requirements

Q: On the earlier point about the "preemption" exemption, please consider interpreting the exemption in 8(a)(1) to cover any products that contain PFAS that are governed by a Mil Spec whether or not PFAS is specifically referenced. The rationale for the exemption does not seem any less compelling simply because the Mil Spec does not expressly require "PFAS". The issue is the hurdles (timing, performance demands, and cost implications) to implementing substitutes where a Mil Spec is involved.

A: We are working through this issue and will be working with the Department of Defense on the matter.

Q: On the reporting side, does the rule cover importation of a used product for which reporting would have been required in the first instance (upon manufacturing) if the product were manufactured in the US?

A: No, used products are exempt from reporting.

Q: Amara's Law exempts sale of used product in MN, how about used materials, e.g., recycled content/materials within a product?

A: A product manufactured with recycled materials would only be subject to the reporting requirement if it also contains intentionally added PFAS. PFAS present in the product as contamination from the recycled materials are not considered intentionally added.

Due diligence

Q: Will there be any upcoming changes to add "reasonable or easily ascertainable" information like EPA and Maine?

A: Not planned at this time. A due diligence standard will be included in the reporting rule.

Q: In evaluating an organization's due diligence, will MPCA adopt a reporting standard similar to the TSCA "known or reasonably ascertainable" standard? Recognizing the unknowns in best testing practices, the unavailability of data from all supplier levels, the disparate cost of information gathering across different organizations with different resources, etc.?

A: In evaluating an organization's due diligence, the MPCA is considering a reporting standard. This acknowledges 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. The aim is to ensure that due diligence efforts are reasonable and feasible for manufacturers, considering these constraints.

Q: In many instances, suppliers may not provide an exact concentration if the presence of PFAS falls below 1000 ppm. If we only know that the concentration in the component falls below 1000 ppm, what range would we select?

A: Our current due diligence concept would require another effort to get more specific information from the supplier and to offer them the opportunity to report on your behalf. If the supplier remains unresponsive or does not reveal more detail, MPCA is still evaluating options for unknown concentration amounts that are below certain thresholds. It will be clarified through the rule-making process, but no official decisions have been made on this as of now.

Q: How is it possible to perform the reporting if the information is not available at the moment? (For example, quantities)

A: Manufacturers should do their best to collect information required in Subdivision 2 (Reporting), 1-5 of Amara's Law from suppliers or test products to determine PFAS content for reporting before January 2026.

Q: If the goal of reporting is to provide data to consumers to make informed choices: does it mean data given in the reporting will be public?

A: Yes, unless requested and approved as a trade secret. Will be clarified during rulemaking.

Industrial; general, trade secret – classified business information

Q: There are numerous mil and industry specs that require fluorine content – at minimum AS3581, AMS 7259, ASTM D1710....

A: Thank you!

Q: The International Aerospace Environmental Group (IAEG) has free resources and a guideline document on calculating substance content in products; however, obtaining this type of information for complex articles is an extremely difficult task in the supply chain.

A: Yes, understood.

Q: What if the supplier tells the product manufacturer that the chemical information is trade secret and does not disclose the information?

A: Potential options may be to select a reporting option such as 'PFAS present but in unknown concentration", have a manufacture report on your behalf for the product, or you can test the product or component to determine PFAS content.

Q: What's the process for seeking trade secret approval? Must this be completed before the 1/1/2026 reporting deadline?

A: This is under consideration.

Q: What about sensitive military/defense product information in this database?

A: We are working through this issue and will be working with the Department of Defense on the matter.

Q: Does waste PFAS that is going to a TSDF (treatment, storage, and disposal facilities) fall under the definition distribution?

A: No, as it would is not being distributed for sale.

Q: How will MPCA address CBI claims and will it be consistent with EPA's CBI protections?

A: Minnesota will treat CBI claims consistent with Minn. Stat. § 116.075, subd. 2 and the procedures set forth in Minn. R. 7000.1300, subp. 1. Not public data will be treated appropriately.

Q: Would development of prototypes in a company's R&D efforts be considered "manufacturing" in the proposed regulation?

A: No since it's not being sold or offered for sale.

Q: Would you expect Intellectual Property rights be an issue with the potential determination of readily accessible if in a competitor's product?

A: Working on developing guidelines for CBI and trade secrets when reporting.

Q: Do you anticipate that information that is approved for trade secrecy submission will be available if requested under Freedom of Information Act requests, or would MPCA be vigilant to protect it?

A: Minnesota will treat CBI claims consistent with Minn. Stat. § 116.075, subd. 2 and the procedures set forth in Minn. R. 7000.1300, subp. 1. Not public data will be treated appropriately.

Q: Do you have more documentation/guidance on the fee structure? Not clear if the fee will be applicable for each report, each SKU, or each single product put on the market?

A: Fee structures are still being determined.

Q: Does "reasonably available" consider whether the alternative can provide the necessary function and durability that the PFAS substance was providing?

A: Yes, "reasonably available" does consider whether the alternative can provide the necessary function and durability that the PFAS substance was providing.

Q: Will you be providing training on what items contain PFAS so that all companies are equally burdened with information? For example, I attended a webinar where it was asserted that nearly all clothes tags have a PFAS coating (to provide waterproofing). All clothes importers should be burdened by this fact, not just the ones who learn about PFAS on their own.

A: Our intent in to have FAQ pages and assistance materials in the future available for reporters.

Q: Are B2B electronics in scope?

A: Yes, Business to Business (B2B) electronics are in scope for reporting under Amara's Law if they contain intentionally added PFAS. Manufacturers or importers of these products will need to comply with the reporting requirements as mandated by the MPCA.

Product grouping and codes

Q: Would reporting under a product family be allowed?

A: Possibly - this is under consideration.

Q: Doesn't the product grouping conflict with the SKU/UPC reporting requirement?

A: "Or other numeric codes" in the statute allows some latitude; we will be seeking a balance between detail and burden on the reporting company.

Q: If products are grouped for reporting and there isn't one commercial code, is it acceptable to provide multiple product numeric codes?

A: We are heading in that direction, so a qualified 'yes'.

Q: If all of our products fall under one HTS code, we would in theory only have one reporting "line item," correct? Assuming concentrations are similar, etc.

A: If the products are similar enough, yes. If the HTS code is "motor vehicle" and you make both cars and trucks, we would look at grouping cars separately from trucks due to the likely variation in components.

Q: If group products, in many instances there will be multiple PFAS in the product category. Can we provide a group of PFAS CAS numbers and total concentration?

A: We are planning on reporting to be required for each PFAS present in the product grouping.

Q: Will vehicle platforms be able to be grouped together?

A: If models on that platform are sufficiently similar, yes.

Q: Grouping - If numeric identifier (e.g., SKU number) is a required item for an item, will the group identity be for the parent only or will all child SKU numbers be required?

A: Product grouping is still under consideration for reporting requirements.

Q: What if you have 100 O-rings in a product that are made from PFAS. Does reporting list each O-ring separately?

A: No, grouping products would be used in this situation.

Q: Companies can have hundreds of SKUs for very similar products - asking for reporting by SKUs will be overburdensome and not provide any additional information value to MPCA - will it consider a more streamlined approach?

A: Grouping like SKUs would be the current streamlining process

Q: If a manufacturer has 1000s of SKUs, can we submit reports through an Excel spreadsheet combining all of the information into one document? Will MPCA have a reporting template available in early 2025 to give manufacturers and reporters an idea of what required information will need to be submitted?

A: MPCA intends to implement a grouping system for like products, which should help simplify reporting for manufacturers with many SKUs. This approach should make it easier to manage and submit information for similar products in a consolidated manner. The reporting system we are working with does allow for spreadsheet template uploads of data, which we hope to utilize with a standard template.

Q: Would service parts need to be reported separately?

A: Yes, service parts would need to be reported separately if they contain intentionally added PFAS, even if they have already been reported as a component of a finished product SKU. However, similar service parts with the same PFAS content can be grouped together for reporting purposes

Q: Using the truck example... would a manufacturer be able to report an entire pickup truck line together (instead of just various trims of a single model in the lineup)? For example, could they report small, medium, large, and heavy-duty trucks together?

A: Yes, unless there is significant PFAS/component variation due to size, powertrain, features, etc. among some trucks in the series.

Q: I am hearing mixed messages about simplifying reporting. We can group, but we need to report at the component level. Complex devices can have thousands of components. That will make the reporting extremely complex.

A: Still trying to find the balance on this question. We have heard this concern from several manufacturers.

Compliance and enforcement

Q: How will this reporting rule be enforced in the state? Which controls are in place for companies that may not respect this reporting rule?

A: The MPCA will look at the specifics of each case to determine entities' roles and liabilities. Subdivision 4 of Amara's law gives the MPCA authority to direct a manufacturer to provide testing results of PFAS content. If

testing demonstrates that the product contains intentionally added PFAS, the manufacturer must report the product.

Q: How will enforcement be handled if a third party offers a company's product(s) for sale into MN without the brand owner's permission or knowledge?

A: The MPCA will look into the specifics of each case to determine entities' roles and liabilities. Keep documentation of any attempts to notify companies that the product is prohibited to be sold in Minnesota

Q: Will the rulemaking include non-compliance or enforcement penalties and timelines for non-compliance?

A: Enforcement authority has been given to MPCA under Amara's law. We do not anticipate further rulemaking on the topic.

Q: Is there an approval by MPCA required prior to bringing products to the market, and if so, what is the expected response time to submissions?

A: If a product is being brought to market after January 1, 2026, a new report must be submitted before it can be sold in the state of Minnesota.

Q: What are the key dates of when reports are due?

A: January 1, 2026, is when reports are due.

Currently unavoidable use

Q: Will currently unavoidable use take into consideration EPA's SNAP program where there may not be approved alternatives for fluorinated gases?

A: The MPCA is aware of the EPA's Significant New Alternatives Policy (SNAP) program and the challenges associated with finding approved alternatives for fluorinated gases. This is one of the factors being considered as we develop the currently unavoidable use determination process. We are carefully evaluating all relevant programs and the availability of alternatives as part of our rulemaking process, but no final decisions have been made at this time.

Q: Testing for PFAS on complex products, like a car, will be extremely challenging. Rather than testing, can't the manufacturer simply report what is known to be added as part of the manufacturing instructions?

A: Yes.

Q: Regarding currently unavoidable use – what if US DOD determined that the PFAS use is mission critical - will this override any determination by MPCA?

A: We are working through this issue and will be working with the Department of Defense on the matter.

Q: If a manufacturer uses an off-the-shelf item, e.g., PCBs (printed circuit boards), that potentially contains PFAS, but the manufacturer of the final product has no control over the use of the PFAS, will such a scenario be used in currently unavoidable use determinations?

A: We are still in early phases of creating currently unavoidable use determination criteria, so this is yet to be determined.

Q: Which is going to be the currently unavoidable use criteria consideration?

A: We are still in early phases of creating currently unavoidable use determination criteria, so this is yet to be determined.

Q: Will currently unavoidable use determinations be public information?

A: Our currently unavoidable use determinations will be public information; certain aspects of the currently unavoidable use applications may not be.

Q: Will currently unavoidable use determinations from ME be acceptable for MN?

A: We do not know the answer to this question yet.

Q: What information must a manufacturer furnish for currently unavoidable use determination?

A: We are still early in rule writing for currently unavoidable use determinations and what information we will require for currently unavoidable use applications.

Q: Will there be an opportunity for public comment/input when currently unavoidable use proposals are submitted? What will the turnaround time be on the submissions? Does MPCA and the relevant statute frame currently unavoidable use as a balance between public benefit from the use of products containing those PFAS chemicals or only for the companies producing or utilizing those chemicals? There is a distinction between the two in the view of many.

A: The currently unavoidable use rule will help to clarify how the MPCA will determine if the use of PFAS in a particular product is currently unavoidable. more details will be coming.

Q: This could be explained earlier, but I just landed here. When will MN authorities implement currently unavoidable use determination rule or more precisely, when is it expected to be developed and defined currently unavoidable use determination legal text in Minnesota?

A: At this time the MPCA is focusing on completing the reporting and fees rules, which are slated to be drafted by fall of 2025. After this time MPCA staff will start drafting the currently unavoidable use rules.

Q: Availability is not the same as whether it will work to specification or not. How does the state plan to address this?

A: Our current focus is on establishing the PFAS reporting requirements. The development of detailed guidelines for currently unavoidable use, including how the MPCA will assess whether PFAS use in a specific product is unavoidable, will be addressed in the next phase of rulemaking. We will provide more information as the process progresses and timelines become clearer.

Fees

Q: Is MPCA looking into a fee structure per PFAS reported?

A: Yes, currently in development.

Q: Is reporting and fee a one-time event?

A: Our team is still working on this topic on how the exact reporting and fees mechanisms will work.

Q: Are the fees one-time or annual?

A: Our team is still working on this topic on how the exact reporting and fees mechanisms will work.

Q: How would the fee structure work for groups of products or families?

A: Our team is still working on this topic on how the exact reporting and fees mechanisms will work.

Q: For the costing, it was unclear if it would be per SKU or per PFAS component. Is a product with 4 different PFAS chemicals $200 or $50? Assuming the reporter has already reported at least 3 other SKUs.

A: Our team is still working on this topic on how the exact reporting and fees mechanisms will work.

Q: Will the reporting fees be in place also for PFAS with currently unavoidable use in products?

A: Yes.

Q: If I understood the earlier comment, we do not need to report the quantity of product sold in MN, how will the fees be assessed to manufacturers that only sold a few units in MN as opposed to manufacturers who sold many more units?

A: The law does not explicitly require reporting the quantity of products sold in Minnesota, focusing instead on the presence and amount of intentionally added PFAS in each product. Fees assessed by the MPCA will be based on the cost of implementing the reporting system rather than the quantity of products sold. The fee structure may include provisions to account for manufacturers with different levels of sales, ensuring fairness in cost distribution, but this would need to be clarified by the MPCA's fee rulemaking process.