

May 20, 2025

Submitted via portal: Office of Administrative Hearings Comments On Rules

Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155-4194

RE: PFAS in products: Reporting and fees rulemaking – Comments

Dear Minnesota Pollution Control Agency,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Minnesota Pollution Control Agency (“MPCA”) to submit written comments regarding the draft rules for the reporting and fees rulemaking under the PFAS in Products law (also known as “Amara’s Law”). AMERIPEN respectfully submits this comment letter for MPCA’s consideration when developing the final reporting and fee rules as part of the law.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several major, brand name, member companies headquartered in Minnesota, many who have a presence in the state, and more many who import packaging materials and products into the state. The packaging industry in Minnesota supports more than 40,000 jobs and accounts for more than \$12.2 billion in total economic output.

The below written comments and clarifying questions from AMERIPEN, organized by draft rule section, speak to the contents of the draft rules MPCA released on April 21, 2025. They are offered after having consulted the accompanying Statement of Need and Reasonableness.

Section 7026.0010 – DEFINITIONS.

Subpart (7) defines “component” to include “packaging only when the packaging is inseparable or integral to the final product’s containment, dispensing, or preservation.” AMERIPEN is extremely concerned with this provision, as it expands the scope of the law beyond its statutory design. Under Amara’s Law, “product” is defined as “an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including but not limited to its product

components, sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products.”¹ Given that definition, a product is an item that can be packaged but is not packaging itself, and can include the subsidiary components intrinsic to that item. While the law also explicitly exempts food packaging,² it does so because there is an existing law that specifically regulates PFAS in food packaging³ and it does not affect the interpretation of “product.” Given the clear definition of the law, AMERIPEN requests that the last sentence in paragraph (7) be stricken and replaced with the following: “Component does not include packaging.”

AMERIPEN appreciates the language in subpart (18) adding clarity as to what qualifies as a “significant change” that would trigger an updated report obligation.

AMERIPEN also appreciates the last sentence in subpart (19), regarding “substantially equivalent information,” which will help limit redundant and unnecessary reporting for products or components offered for sale under multiple brands.

Section 7026.0020 – PARTIES RESPONSIBLE FOR REPORTING.

Clause (A) of subpart 2, which governs reporting agreements between producers, specifies that the condition it contains only pertains to parties to the reporting agreement. However, no such limitation is provided in clauses (B), (C), or (D). AMERIPEN requests a minor amendment to add a phrase to each of these clauses to address this inconsistency, reading as follows: “...all manufacturers **that are a party to a reporting responsibility agreement...**”.

SECTION 7026.0030 – REPORT; REQUIRED INFORMATION.

AMERIPEN appreciates the provisions in subparagraphs (A)(1)(a) and (A)(1)(b) of subpart 1 that allow manufacturers to group together similar products comprised of homogenous materials, as it will help reduce reporting burdens. However, there is not a clear rationale for why grouped products have to have PFAS chemicals that provide the same function, as required in each subunit (iii). AMERIPEN suggests striking this unnecessary condition or else providing justification for it.

It is further unclear why the manufacturer reporting of PFAS concentrations in components is qualified as being for components “made up of homogenous material” in subparagraph (C) of subpart 1. AMERIPEN seeks the rationale for this approach as well.

7026.0040 – REPORTING UPDATES.

AMERIPEN supports the approach in paragraph (A) of subpart 1 to provide up to 12 months for a manufacturer to report significant or certain other changes. However, subparagraph (2) requires

¹ Minnesota Statutes 2024, section 116.943, subdivision 1, paragraph (q).

² Minnesota Statutes 2024, section 116.943, subdivision 8, subparagraph (a)(2).

³ Minnesota Statutes 2024, section 325F.075.

such updated reporting if “new product information was provided to a manufacturer.” This condition is written very broadly and can be readily interpreted to apply to any information whatsoever, even if it bears no relevance to the PFAS content in a product. AMERIPEN requests a minor clarification to this clause to read as follows: “new product information **pertaining to a product’s categorization or PFAS content** was provided to a manufacturer.” Similarly, subparagraph (3) should be constrained to apply only to new products that contain intentionally added PFAS, to read as follows: “a new product **that contains intentionally added PFAS** was sold, offered for sale, or distributed in or into the state.”

Subpart 2 requires manufacturers to annually recertify their reporting, subjecting them to annual recertification fees and requiring MPCA to devote additional resources to the administration of Amara’s Law. AMERIPEN objects to this provision for several reasons. First, it is entirely unnecessary, as manufacturers are already required to report significant changes to MPCA on annually basis when a relevant update occurs. Second, it creates additional costs and personnel demands for the manufacturers and the state alike. Finally, annual recertification is not contemplated or called for in the underlying statute. AMERIPEN requests removal of this subpart and any other provisions related to annual recertification.

Section 7026.0060 – EXTENSIONS.

Paragraph (B) of subpart 3 requires the MPCA Commissioner to grant a 90-day extension of the reporting deadline for justified requests. While AMERIPEN appreciates this provision, it is possible to provide additional flexibility for MPCA and manufacturers alike. Amara’s Law does not specify a default extension time, so AMERIPEN suggests that manufacturers be authorized to request up to 180 days instead. As the law is implemented and manufacturer experience matures, it is likely that this timeframe can be reduced in future rulemakings.

Section 7026.0080 – DUE DILIGENCE.

Subpart 2 requires manufacturers to request their suppliers to provide the information required under the proposed regulations “until all required information is known.” However, a manufacturer cannot guarantee another entity will comply despite its best efforts to obtain the information. As such, and in the spirit of incentivizing due diligence, AMERIPEN requests the addition of a final sentence in subpart 2 stating: “**Notwithstanding the rest of this subpart, a manufacturer that cannot obtain all required information is deemed compliant with this subpart if it demonstrates a good faith effort in attempting to obtain it.**”

Section 7026.0100 – FEES.

The fees provided in the draft rules are flat fees. While those are easier for MPCA to implement, they are not necessarily tied to or reflective of the actual costs of performing regulatory work under Amara’s Law. Moreover, the statute limits any reporting fees to an amount “to cover the

agency's reasonable costs to implement" the law.⁴ AMERIPEN therefore requests language that would cap these fees to the actual and reasonable costs that MPCA incurs in implementing Amara's Law.

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AMERIPEN strives to offer a good-faith and proactive approach. We continue to focus on strategies that develop and/or strengthen policies to progress the "reduce, reuse, recycle" strategies, while at the same time, enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

AMERIPEN thanks MPCA for this opportunity to provide written comments regarding the draft rules and appreciates MPCA staff's efforts during this process. Please feel free to contact me by email (GMelkonian@serlinhaley.com) with any questions on AMERIPEN's positions.

Sincerely,



Gregory Melkonian
Regulatory and Government Affairs Associate

⁴ Minnesota Statutes 2024, section 116.943, subdivision 6.