

May 21, 2025

The Honorable James Mortenson, Administrative Law Judge
Minnesota Office of Administrative Hearings (OAH)
600 North Robert Street
PO Box 64620
St. Paul, Minnesota 55164-0620
Submitted electronically via Office of Administrative Hearings (OAH) Rulemaking eComments
Website

Re: PFAS in Products: Reporting and Fees Rule

OAH Docket Number 5-9003-40410

Dear Judge Mortenson,

The Flexible Packaging Association (FPA) is pleased to offer these comments to the Minnesota Pollution Control Agency (MCPA) in response to the proposed PFAS in Products: Reporting and Fees Rule developed by the Agency.

FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. We are submitting these comments to help the State establish a reporting process for understanding when and where PFAS is added to products and when that addition is intentionally added versus currently unavoidable.

I. Definitional Clarity Around Packaging

In evaluating the proposed regulations, we are unsure how the definition of products with intentionally added PFAS might apply to our member's products—flexible packaging—as there are a few different explanations across the regulations. We suggest some additional clarity is merited as follows:

7026.0010

Subp.7. (“Component”)

Per the regulation a component “*means a distinct and identifiable element or constituent of a product. Component includes packaging **only when the packaging is inseparable or integral to the final products containment, dispensing or preservation.***”

Subp16 (“Packaging)

Refers to Minnesota Statute section 115A.03 which defines packaging as “*a container and any appurtenant material that provides a means of transporting, marketing, protecting or handling a product. “Packaging” includes pallets and packaging such as blocking, bracing, cushioning, weatherproofing, strapping, coating, closures, inks, dyes, pigments and labels.*”

We are interpreting the regulation to require reporting on all packaging formats and components containing intentionally added PFAS , and that we should define them as either components **or** packaging under the description. Further clarity within the regulations to set the boundary of when packaging is considered a product requiring reporting or not would be helpful. If our interpretation is correct, we recommend adding a line to 7026.0020 Subpart1 “Scope” that states: “a manufacturer or group of manufacturers of a product **and its packaging sold...**”

Furthermore, while we believe it is implied in the statutory language that food service packaging would be exempt from this regulation due to the state’s prohibition on intentionally added PFAS in food packaging products (Minnesota State 325F.05), some additional language within the regulations to clarify this would be beneficial.

II. Responsibility for Reporting

7026.0020 Item C

This section requires each manufacturer reporting via a group submission to: “*verify...that data submitted on their behalf is accurate and complete.*” Requiring each individual manufacturer to verify

seems to contradict the intent of group reporting. We suggest the certification process could be better met by including a component within the group submission in which the reporting manufacturer certifies that it has contacted the other manufacturers included in the submission and that those manufacturers have assured the information provided in the report is accurate and complete. This would avoid the need for individual verification by each member of the group and would reduce the administrative workload of this requirement.

III. Group Submission Requirements

7026.0020 Item D

We propose an amendment to Item D so that failure to make payment by an individual manufacturer would not fail the entire group submission, but rather be tied to that specific individual manufacturer. We are concerned with multiple different manufacturers involved in a group submission, each with different payment processing requirements, unfairly penalizes those who are compliant. Furthermore, we do not believe competitors should bear the burden of making sure their fellow peers have made payments, nor be penalized for any oversights their peers may make. Peer companies do not have this type of influence over each other.

IV. Reporting Updates

7026.0040 Subpart 1 Updates Required.

As it currently reads, this section implies reporting is indefinite. We recommend this be amended to indicate that the last date to report is February 1, 2032, as stipulated in Minn Stat. § 116.943, subd 5(c), that all products that have not received a currently unavoidable use designation are prohibited for sale within Minnesota by January 1, 2032.

V. Conclusion and Next Steps

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Thank you for the opportunity to comment, and your consideration of our recommendations on the MPCA's PFAS in Products: Reporting and Fees Rule. If we can provide further information or answer any questions, please do not hesitate to contact me at (602) 540-7544 or kfisher@flexpack.org.

Respectfully,



Kyla Fisher
Director of Regulatory Affairs and Sustainability
Flexible Packaging Association