



Office of Administrative Hearings
Attn: William Moore, OAH
600 North Robert Street
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St. Paul, MN 55164-0620

June 30, 2025

Re: Rebuttal Comments of the Alliance for Automotive Innovation on Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828, OAH docket number 5-9003-40410

To the Office of Administrative Hearings:

The Alliance for Automotive Innovation (Auto Innovators)¹ appreciates the opportunity to provide rebuttal comments regarding the Minnesota Pollution Control Agency's (MPCA's) Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), or the PFAS in Products: Reporting and Fees Rule.² Auto Innovators has been actively engaged with MPCA staff since rule development began and replies here to the MPCA's two Pre-Hearing and Hearing Response to Comments documents.

I. Part One Pre-Hearing and Hearing Response to Comments

On page 15, MPCA responds to Auto Innovators' proposal regarding product reporting with information provided at the vehicle family level and specifying PFAS presence in higher-level vehicle systems. MPCA's response is that "the MPCA has allowed for the grouping of such product and components for the purposes of reporting in the proposed rule under part 7026.0030 subpart 1." Specifically, subpart A.(1)(a) allows for the grouping of similar products of homogenous materials if certain criteria are met, and (b) allows for the grouping of reporting of products that contain multiple PFAS-containing components with the same criteria as (a) but for components. Auto Innovators continues to contend that the major issue is that the grouping allowed for under part 7026.0030 subpart one requires a highly stringent level of PFAS similarity that *will not*, in fact, allow the sort of reporting that we are proposing. MPCA's response does not address the concerns with how complex goods may in actuality be grouped for reporting when not all of the criteria can be met under the proposed rule. With the current language, if a single part (of the thousands) has a different PFAS chemical composition, it could not be grouped in the report. MPCA needs to clarify reporting of homogenous materials and how it relates to product components and reporting at that level. MPCA

¹ Auto Innovators represents the full automotive industry, including the manufacturers producing most vehicles sold in the U.S., equipment suppliers, battery producers, semiconductor makers, technology companies, and autonomous vehicle developers. Our mission is to work with policymakers to realize a cleaner, safer, and smarter transportation future and to ensure a healthy and competitive automotive industry that supports U.S. economic and national security. Representing approximately 5 percent of the country's GDP, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation's largest manufacturing sector. www.autosinnovate.org.

² <https://www.pca.state.mn.us/get-engaged/pfas-in-products-reporting-and-fees>.

would need to loosen the thresholds in part 7026.0030 subpart 1 to enable the type of reporting proposed by Auto Innovators.

On page 24, MPCA responds to Auto Innovators' concerns that the agency is underestimating compliance costs. MPCA notes some reasons why it expects that costs may decrease over time and suggests a few ways to minimize costs. However, we do not see how this response adequately addresses our industry's concerns. Auto manufacturers release a new model of their vehicles each year, so historical information on PFAS in products is less valuable for prospective reporting. The auto industry does not expect that upstream suppliers will report information to MPCA, since some of that information is instead delivered to automakers through the industry's own data collection systems. Automakers have thousands of suppliers and will not be able to enter into agreements with all of them on short notice to cover PFAS reporting on their upstream products. Additionally, Auto Innovators does not find a lot of overlap between TSCA Section 8(a)7 reporting and Minnesota PFAS reporting. The reporting ranges and who is required to report under each rule are completely different. If a producer of a complex durable goods product were to source all of their parts domestically, they would have no required reporting under TSCA Section 8(a)7 versus full reporting of all components of that product under MPCA's proposed regulation.

On page 61, MPCA responds to Auto Innovators' concerns regarding the complexities of reporting on behalf of other manufacturers and for complicated supply chain structures. MPCA essentially notes that its proposed rule attempts to be mindful of and address these issues. However, there is still a lack of clarity regarding how spare parts will be handled for complex durable goods with respect to potential reporting on behalf of other manufacturers. If a component is already reported by the complex durable goods manufacturer, it is not clear whether the component manufacturer still needs to report it separately. Conversely, if the component manufacturer is already reporting the part, it is not clear whether the complex durable goods manufacturer must report that part separately.

On page 71, MPCA responds to Auto Innovators' suggestion to combine the two lowest concentration ranges to meet the commonly utilized concept of 0.1% as a *de minimis* value. MPCA effectively declines the suggestion. Auto Innovators emphasizes here that the 0.1% *de minimis* threshold aligns with TSCA, and that the automotive industry's International Material Data System (IMDS) utilizes a 0.1% *de minimis* threshold for many chemicals, so information <0.1% likely is not readily available. The lower, more exact concentration ranges MPCA is proposing are not reasonable and readily available information to report. Additionally, they are only likely to require additional due diligence and reporting for producers at little value to MPCA and to consumers. This has further implications in that it will result in a requirement to update reports more frequently, since per the proposed section 7026.0040 A.(1), updates to reports are required when a significant change is made to a product. Significant change is defined in 7026.0010 subpart 18 as "a measurable change in the amount of a specific PFAS from the initial amount reported that would move the product into a different concentration range listed under part 7026.0030, subpart 1, item C."

II. Part Two Pre-Hearing and Hearing Response to Comments

On page 5, MPCA responds to Auto Innovators' comment that the draft rule has the potential to stifle innovation. MPCA's response is that identifying the presence of PFAS in products and seeking substitutes for it also can foster innovation. Auto Innovators' major point is that for many critical environmental and safety technologies, such as vehicle electrification or flammability prevention,

PFAS are currently the only class of substances that will work in their particular applications. Identifying and proving out substitutes will take many years at a minimum if they are even possible. Safety and emissions technology innovations are happening at a rapid pace, and most of them require the use of PFAS in some capacity. Overly strict restrictions on PFAS, such as the stringent product reporting requirements proposed here, could stifle innovation regarding safety and emissions systems.

On page 29, MPCA responds to Auto Innovators' concerns over reporting timelines by stating that "The agency has decided outside of the rulemaking process to issue an extension to the initial due date to ensure program success. The MPCA will be providing more information on the extension of the January 1, 2026 reporting deadline in the near future." Auto Innovators briefly states its support for an extension to the initial due date of January 1, 2026; in our May 21 comments, we proposed that MPCA delay the reporting deadline until at least 6 months after the completion of beta testing of the data collection system.

On page 36, MPCA responds to Auto Innovators' concerns about needing to report replacement parts for legacy vehicles that have already been introduced into commerce and are no longer manufactured. MPCA's response is that "[i]f a manufacturer believes the legacy parts or discontinued parts within their inventory contain PFAS, they would be required to report or discontinue the sale of those products as directed by statute." This is not a workable solution for the auto industry or for Minnesotan consumers. It will be difficult if not impossible for OEMs to provide PFAS data for legacy parts. Minnesotans would have to drive (or tow) their vehicles across state lines to have them fixed with legacy parts. Federal law also requires automakers to fix warranty-related problems using legacy replacement parts. This interpretation would force automakers to violate Federal law in order to be in compliance with a new Minnesota law. MPCA should reconsider its position.

On page 48, MPCA responds to Auto Innovators' concerns about component-level reporting, particularly for the auto industry which has around 30,000 parts per vehicle and many different vehicle lines and variations. MPCA again responds that the allowance for grouping of products and components under part 7026.0030 subpart 1 resolves this concern. Auto Innovators continues to contend that the major issue is that the grouping allowed for under part 7026.0030 subpart one requires a highly stringent level of PFAS similarity that *will not*, in fact, allow much if any aggregation of products or components for reporting; in order to do so in a helpful manner for industry, MPCA would need to loosen the thresholds in part 7026.0030 subpart 1.

On page 114, MPCA responds to Auto Innovators' request that MPCA consider a "known or reasonably ascertainable" information standard. MPCA's response is that it "does not find EPA's 'known or reasonably ascertainable' standard enforceable." Auto Innovators strongly recommends MPCA consider a non-absolute threshold for information reporting. If MPCA cannot set reasonable expectations for information reporting, it is going to force companies to not sell products, such as complex durable goods, in the state.

Conclusion

Thank you for your consideration of our comments. Auto Innovators argues strongly that the Office of Administrative Hearings and MPCA carefully listen to the concerns of industry. Some of the MPCA responses seem to expect that the agency and industry will "work things out" as implementation

proceeds; however, if our path to compliance is not clear and is not reasonable, industry may instead choose to cease sales operations in the state rather than risk noncompliance.

Please feel free to reach out to me if you need any further information or would like additional discussion.

Sincerely,



Catherine Palin
Alliance for Automotive Innovation