This document contains the comments the MPCA received during the Request for Comments public comment period September 25, 2023, through November 28, 2023, for the planned new rules governing PFAS in Products Fees, Revisor ID # R-4827.

39506 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule

Closed Nov 28, 2023 · Discussion · 14 Participants · 1 Topics · 14 Answers · 0 Replies · 0 Votes

14	1	14	0	0
PARTICIPANTS	TOPICS	ANSWERS	REPLIES	VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

14 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Steven Kooy · Citizen · (Postal Code: unknown) · Nov 22, 2023 11:49 am

0 Votes

Please see updated comment regarding fees.

Tony Kwilas · Citizen · (Postal Code: unknown) · Nov 27, 2023 12:18 pm

0 Votes

Minnesota Chamber of Commerce comments attached

Erica Corser · Citizen · (Postal Code: unknown) · Nov 27, 2023 5:33 pm

0 Votes

Please see attached comments for the PFAS in Products Fee Rule submitted on behalf of Honeywell. Our comments regarding fees are included in our reporting submission starting on page 20.

Emi Yamamoto · Citizen · (Postal Code: unknown) · Nov 27, 2023 5:36 pm

0 Votes

Please find attached comments on behalf of the Japanese electric and electronic industrial associations (JP4EE) - JEITA, CIAJ, JBMIA and JEMA.

39506 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule

Closed Nov 28, 2023 · Discussion · 14 Participants · 1 Topics · 14 Answers · 0 Replies · 0 Votes

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Avonna Starck · Citizen · (Postal Code: unknown) · Nov 28, 2023 9:29 am
0 Votes

Clean Water Action Minnesota comments are attached.

Mary Schilling · Citizen · (Postal Code: unknown) · Nov 28, 2023 11:50 am
0 Votes

Comments from the Personal Care Products Council are attached. Thank you for this opportunity.

Peggy J Horst · Citizen · (Postal Code: unknown) · Nov 28, 2023 12:18 pm
0 Votes

Please see attached comments for the Fee Rule on behalf of W. L. Gore & Associates, Inc.

Lori Austino · Citizen · (Postal Code: unknown) · Nov 28, 2023 12:38 pm
0 Votes

Please see the attached comments for the Fee Rule on behalf of DuPont de Nemours, Inc.

Kami Thoen · Citizen · (Postal Code: unknown) · Nov 28, 2023 1:07 pm
0 Votes

Please see the attached comments for the PFAS in Products Fee Rule submitted on behalf of Kindeva Drug Delivery L.P. Comments regarding fees are included in our submission beginning on page 4.

Catherine Palin · Citizen · (Postal Code: unknown) · Nov 28, 2023 1:25 pm
0 Votes

Please see the attached comments filed by the Alliance for Automotive Innovation.

Jay West · Citizen · (Postal Code: unknown) · Nov 28, 2023 1:48 pm
0 Votes

Please see the attached comments from the American Chemistry Council's Performance Fluoropolymer Partnership.

Marcus Branstad · Citizen · (Postal Code: unknown) · Nov 28, 2023 3:02 pm
0 Votes

Please see attached comments on PFAS in Products Fee Rule on behalf of the American Chemistry Council, the Performance Fluoropolymer Partnership, the Alliance for Telomer Chemistry Stewardship, and the Center for the Polyurethanes Industry.

39506 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule

Closed Nov 28, 2023 · Discussion · 14 Participants · 1 Topics · 14 Answers · 0 Replies · 0 Votes

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Edith Nagy · Citizen · (Postal Code: unknown) · Nov 28, 2023 3:15 pm

0 Votes

Please see attached comments submitted on behalf of the Coalition of Manufacturers of Complex Products.

Best Technology · Citizen · (Postal Code: unknown) · Nov 28, 2023 4:12 pm

0 Votes

Please see the attached comments from Best Technology

BUSINESS + INSTITUTIONAL FURNITURE MANUFACTURERS ASSOCIATION
678 Front Avenue NW | Suite 150 | Grand Rapids, Michigan 49504-5368

BIFMA

Response to Request for Comments - Fees

To: Minnesota Pollution Control Agency (MPCA)

From: Steve Kooy

Date: November 22nd, 2023

Subject: **PFAS in Products Reporting Rule - Fees**

The Business Institutional Furniture Manufacturers Association (BIFMA) values the opportunity to provide comments on the Products Reporting Rule. BIFMA represents over 150 North American manufacturers and suppliers, many of which are small or midsize companies with limited resources.

The proliferation of state-level legislation on PFAS and other environmental matters is rapidly expanding, imposing additional financial and resource burdens, as well as resulting in duplicated efforts. As of the latest count, 25 states have enacted PFAS legislation. Typically, states seek information and funding pertaining to products sold within their jurisdiction. Consequently, manufacturers are obligated to track additional information to meet reporting requirements and address associated fees.

Given the increased burden already in motion, BIFMA recommends no additional fees. Should a system be put in place, a simple tiered system based on self-reported sales revenue of material containing PFAS sold in the state of Minnesota is recommended. The tiered system could have 3-5 classes of revenue with slight increases in costs based on revenue. Fees remain minimal and relate only to revenue associated with products reported as containing PFAS.

On behalf of the industry members, we welcome the opportunity to work together further on this important issue. Please reach out to Steve Kooy, skooy@bifma.org, with any questions or further information.

Thank you,

Steve Kooy
Director of Health and Sustainability
BIFMA

RECEIVED
By: OAH on 11/27/2023
Tony Kwilas Attachment

MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

November 27, 2023

Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

The Minnesota Chamber of Commerce (Chamber), a statewide organization representing more than 6,300 businesses and more than a half million employees throughout Minnesota, submits this letter in response to Minnesota Pollution Control Agency's (MPCA or Agency) request for comments related to the Agency's planned rulemaking on fees payable by manufacturers upon submission of required information about products containing Per and Polyfluoroalkyl (PFAS).

The Chamber appreciates the opportunity to comment on the proposed rules regarding fees to be paid by manufacturers upon submission of required information on products containing intentionally added PFAS.

Any fee proposed by the MPCA should take into account that the Agency just received the largest budget in the MPCA's history, at $919 million and 144 new full-time employees.

In adopting the fee structure it is crucial that the Agency be transparent on how the fees will be collected and how they will be used, reflecting the true and reasonable costs of implementing the program. With the new budget and the significant addition of employees, it should be anticipated that any Agency costs will be minimal. Other states and federal agencies also will have relevant data and this information should be factored in to any fee structure.

Any fee should be assessed equally among all reporting entities. Tiered fees, the amount of PFAS contained in a product or company size should not be factors in determining the fee. The initial costs should be to process the original reports and then any fee assessed should be reduced in future years given the minimal staff requirements relative to scope and size of subsequent reports. Fees generated from this reporting rule should reflect the Agency's costs to administer the reporting rule and should not be used to subsidize other programs at the MPCA.

Additionally, it should be noted that the PFAS Manufacturers Work Group, composed of the Commissioner of the Department of Revenue, the Commissioner of Management and Budget and the Commissioner of the MPCA also will be reporting back to the legislature with a proposed fee structure in regards to PFAS and this must be factored into any fee equation.

Thank you for the opportunity to comment on the proposed fee structure. Please feel free to contact me with any questions.

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce
tkwilas@mnchamber.com
651-292-4668

Honeywell

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RECEIVED
By: OAH on 11/27/2023

Erica Corser Attachment

November 27, 2023

Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Minnesota Pollution Control Agency regarding PFAS in Products Reporting Rule/PFAS in Products Fee Rule; OAH Docket No. 65-9003-39507 and OAH Docket No. 71-9003-39506; Governor's Revisor's ID Numbers: R-4828 and R-4827

To Whom It May Concern:

Minnesota Pollution Control Agency requests that the Office of Administrative Hearings review comments on its proposed rules governing PFAS in Products under statutory authority of Minnesota Session Law – 2023, chapter 60, article 3, section 21, (***Minnesota Statutes 116.943***) for the following two items:

i. **Fee**; Minnesota Session Law – 2023, chapter 60, article 3, section 21, (*Minnesota Statutes 116.943*) subdivision 6 (**R-4827)**

ii. **Reporting**; Minnesota Session Law – 2023, chapter 60, article 3, section 21, (*Minnesota Statutes 116.943*) subdivision 2 (**R-4828)**

Enclosed for your review are the request for comments required by Office of Administrative Hearings Rules

A. Enclosed: The request for comments as published in the State Register OAH Docket No. 65-9003-39507 and OAH Docket No. 71-9003-39506; on September 25, 2023.

Should you have any questions or concerns with our submission please don't hesitate to get in touch with us.

Sincerely,

Atashi Bell, PhD
Senior Director, Global Government Relations
Atashi.Bell@honeywell.com

Honeywell

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Mr. William Moore
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

RE: Comments to the Minnesota Pollution Control Agency on Planned New Rules Governing Reporting by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS) ("Planned Rules"), Revisor's ID Number R-4828, OAH Docket No. 65-9003-39507

Dear Mr. Moore:

Honeywell appreciates the opportunity to comment on the above-referenced Planned Rules on reporting requirements for Per- and Polyfluoroalkyl Substances ("PFAS") pursuant to Minn. Stat. § 116.943 issued by the Minnesota Pollution Control Agency ("MPCA" or the "Agency").

Honeywell is an integrated operating company serving a broad range of industries and geographies around the world. Our business is aligned with three powerful megatrends - automation, the future of aviation, and energy transition - underpinned by our Honeywell Accelerator operating system and Honeywell Connected Enterprise integrated software platform. As a trusted partner, we help organizations solve the world's toughest, most complex challenges, providing actionable solutions and innovations that help make the world smarter, safer, and more sustainable. The company traces its roots in Minnesota back to 1927 when the Honeywell Heating Specialty Company merged with the Minneapolis Heat Regulator Company to form the Minneapolis-Honeywell Regulator Company.

Today, Honeywell's workforce in Minnesota includes approximately 1,870 employees at five facilities across the State. Three of these sites develop and manufacture various equipment and materials for the aviation, space, and defense sectors ("Aerospace & Defense" or "A&D").[1] Within the A&D sector, fluorinated substances comprise critical components of aircrafts, vessels, satellites, rockets, and missile actuation systems, and enable critical functions including thermal management, life support, avionics, fuel supply, engine operation, auxiliary power, navigation, communication, microelectronics, sensors, radars, insulation, and hydraulics. In addition to A&D, Honeywell operates two additional sites in Minnesota that produce a variety of switches, safety shut-off valves, flow meters, flame detectors, pressure regulators, residential heat, water, gas meters, and other materials in the smart energy and thermal solutions sectors.

Honeywell is also a manufacturer of various fluorinated gases, including hydrofluorocarbons ("HFC"), hydrochlorofluoro-olefins ("HCFO"), hydrofluoroolefins ("HFO") refrigerants and their mixtures ("Blends"), used in refrigeration, heating, ventilation and air conditioning ("RHVAC"), mobile air conditioning ("MAC"), thermal management systems ("TMS") in electric vehicles ("EV"), propellants in medical dose inhalers ("MDI") and insulation foam blowing agent applications, as well as a particular fluoropolymer - polychlorotrifluoroethylene ("PCTFE") - used in the primary and secondary packaging of medicinal products, medical devices, and over-the-counter ("OTC") medications.

[1] Across the United States, the Aerospace and Defense industry supported 2.1 million jobs in 2022. *See* https://www.aia-aerospace.org/industry-impact/.

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Introduction

On May 24, 2023, Minnesota Governor Tim Walz signed into law Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minn. Stat. § 116.943) ("Minnesota Statute"). The Minnesota Statute requires "a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS" to submit certain information to the MPCA "[o]n or before January 1, 2026[.]" Subdivision 9 of the Minnesota Statute allows the MPCA to adopt "rules necessary to implement this section." Accordingly, the MPCA issued a request for comments regarding the Planned Rules on September 11, 2023. These comments address the specific questions posed by MPCA as well as other possible aspects of the Planned Rules that may assist MPCA in its rulemaking.

Honeywell fully supports MPCA's authority to collect information that has a bearing on human health and the environment and to mitigate unreasonable risks with sensible regulations when such risks are presented by specific chemical substances. However, Honeywell is concerned the Planned Rules will impose considerable burdens on the regulated community without achieving commensurate benefit to human health or the environment and would be duplicative of new federal product reporting requirements. Accordingly, Honeywell offers comments on opportunities to improve effectiveness in gathering information which will be critical to MPCA's mission of assessing and mitigating potential risks to human health and the environment.

I. The Planned Rules should more clearly define the following terms in Subdivision 1 of the Minnesota Statute.

"Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" "PFAS" as it is written under the statute is currently defined as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." The proposed PFAS class is unified only by a single chemical feature, which results in an overly broad group of substances with vastly different physico-chemical, toxicological and degradation properties, such that treating the whole class as a "toxic substance" departs from the aim of targeting well-defined groups of substances that have been demonstrated to have actual or potential hazardous effects on the environment or on human health.

Honeywell believes that the scope of any PFAS reporting requirement should be tailored to exclude substances with no established persistent and bioaccumulation characteristics. For instance, molecules with smaller and larger carbon chain lengths (< C4 or > C20) have been systematically shown not to exhibit bioaccumulative properties. Certain PFAS compounds with short carbon chain lengths (shorter than 3-carbons) or alternative chemical structures are known to be non-persistent such as the new generation of F-gases, i.e. HFOs, which were specifically designed to have short lifetimes in the environment (10-26 days) and have been deemed by multiple regulatory authorities across the globe not to have bioaccumulation or toxicity potential.

Honeywell emphasizes and notes that an overly broad definition of PFAS will include chemicals that are non-toxic and non-bioaccumulative. Many are approved for their respective end-use applications by the United States Environmental Protection Agency ("EPA") under Section 612 of the Clean Air Act ("CAA"), as well as

specific Toxic Substances Control Act ("TSCA") significant new use rules and various Section 5(e) Consent Orders, and these substances also are already subject to CAA and TSCA reporting requirements.

According to the most recent United Nations Environment Programme, Environmental Effects Assessment Panel (EEAP) 2022 Assessment Report, "all PFAS should not be grouped together, persistence alone is not sufficient for grouping PFAS for the purposes of assessing human health risk, and that the definition of appropriate subgroups can only be defined on a case-by-case manner" and "it is inappropriate to assume equal toxicity/potency across the diverse class of PFAS."

i. The EPA's approach to "PFAS"

The EPA has taken several key federal actions to regulate PFAS, and Honeywell believes that there is value in Minnesota looking at these approaches in more detail as it decides its policy options. Per the EPA's approach, there are multiple definitions of PFAS, and the choice of definition determines which fluorinated chemicals are subject to regulation based on the agency's goals of addressing and prioritizing those PFAS compounds that have demonstrated persistence, bioaccumulation potential, and toxicity risk.

The EPA introduced its own definition of PFAS in 2021 through the National PFAS Testing Strategy: "chemicals with at least two adjacent carbon atoms, where one carbon is fully fluorinated and the other is at least partially fluorinated." The EPA's narrower definition is based on the agency's goal of identifying and regulating PFAS compounds that have been demonstrated to pose the highest potential risk to the environment and human health. By targeting compounds that EPA considers to be highest risk, the EPA can prioritize its resources and efforts on those PFAS compounds that have a demonstrated persistence, bioaccumulation potential and toxicity risk**.**

The EPA has also continued to propose new structural approaches to defining the scope of PFAS that are better addressed under other regulatory schemes such as the TSCA PFAS reporting rule, the Safe Drinking Water Act Contaminant Candidate List and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Most recently, the EPA announced its planned framework for reviewing new PFAS and new uses of PFAS.[2] This latest framework proposes extensive review of PFAS before they enter the market. Further, the definition of PFAS that has been proposed under this approach is based on chemical structure and is narrower and more appropriate. The framework includes differing levels of PFAS classification based on the potential for exposure and environmental release.

If a new PFAS chemical or one proposed for a new use is determined to be persistent, bioaccumulative, and toxic, the EPA has stated it will qualitatively consider the potential extent of exposure to the general population, consumers, and the environment, throughout the lifecycle of the PFAS. For PFAS designated as persistent, bio-accumulative, and toxic, the EPA said there will be three categories for regulation:

[2] EPA Framework for TSCA New Chemicals Review of PFAS Premanufacture Notices (PMNs) and Significant New Use Notices (SNUNs), dated June 28, 2023.

- **Negligible potential for exposure and environmental release**: if the PFAS will not result in worker, general population or consumer exposure and is not expected to result in releases to the environment, it is likely to be allowed to enter commerce after the agency receives some basic information;
- **Low but greater than negligible potential for exposure and environmental release**: the EPA expects it will require test data on PFAS physical/chemical properties before allowing manufacturing. And if initial test results cause the EPA any concern, the agency said it will require additional testing and risk mitigation; and
- **Higher potential for exposure and environmental release**: for persistent, bio-accumulative, and toxic PFAS that are expected to lead to exposure and environmental releases, and absent a critical or military need for the substance that necessitates limited and restricted manufacture while testing is ongoing, EPA will restrict entrance to commerce while extensive testing is conducted on physical/chemical properties, toxicity, and its behavior in the environment.

If a PFAS chemical is not found to be persistent, bio-accumulative, and toxic, the EPA has stated it will go through a typical new chemical assessment process. The EPA's approach to PFAS regulation specifically targets PFAS compounds that meet its defined criteria, focusing on drinking water contamination and potential health risks associated with those specific substances.

ii. Fluorinated Gases

A number of subclasses of PFAS caught by the overly broad definition in the Minnesota Statute have not been found to be hazardous. There is a robust body of scientific evidence that demonstrates a low or negligible risk profile for fluorinated gases, such that many regulatory agencies, including the EPA in its final rules for PFAS reporting pursuant to TSCA,[3] have deemed these substances out of scope.[4] For example, fluorinated gases such as HFO-1234ze(E), HFO-1336mzz(E), HFO-1336mzz(Z), and HCFO-1233zd(E), have degradation pathways that do not result in "extreme persistence" in the environment.

As part of its most recent Significant New Alternatives Policy (SNAP) Rule 25, published in April 2023, the EPA also states that "in evaluating alternatives using its comparative risk framework, Significant New Alternatives Policy (SNAP) already considers potential risks to human health and the environment. Regardless of what definition of PFAS is used, not all PFAS are the same in terms of toxicity or any other risk. Some PFAS included in the Minnesota Statute's definition have been shown to have extremely low toxicity, for example. If a chemical has been found to present lower overall risk to human health or the environment, it might be found acceptable under SNAP regardless of whether or not it falls under a particular definition of

[3]EPA's reporting rules at 40 CFR § 705.3 define *Per- and polyfluoroalkyl substances* or *PFAS as* any chemical substance or mixture containing a chemical substance that structurally contains at least one of the following three sub-structures: (1) R-(CF2)-CF(R')R", where both the CF2 and CF moieties are saturated carbons; (2) R-CF2OCF2-R', where R and R '□can either be F, O, or saturated carbons; (3) CF3C(CF3)R'R", where R ' and R" can either be F or saturated carbons.

[4] EPA has acknowledged that its definition of PFAS (i.e., "structurally contain the unit R-(CF2)-C(F)(R')R") excludes "fluorinated compounds that contain only one CF3 group, such as some fluorinated gases[.]" *See* EPA, Response to Comments Document on the Draft Fifth Contaminant Candidate List (CCL 5).

PFAS."[5]

iii. Fluoropolymers

Fluoropolymers have unique properties distinct from non-polymeric substances within the PFAS group.[6] They exhibit low reactivity, low water solubility, and a high average molecular weight with low levels of oligomers and residual monomers, and do not degrade under typical conditions of use. They are not subject to long-range transport, and with an average molecular weight well over 100,000 Da, fluoropolymers cannot cross the cell membrane, and thus are not bioavailable or bioaccumulative. Due to these characteristics, fluoropolymers exhibit low human and environmental toxicity concerns.

As previously mentioned, Honeywell operates three A&D sites within the State of Minnesota. Numerous key components of this equipment such as adhesives, seals, batteries, bearings, gaskets, hoses, O-rings, insulation, tubing, cables and wiring, filters, barrier films, refrigerants, fire suppression gases, etc. contain certain PFAS. Due to their unique physicochemical properties, these fluorinated substances exhibit exceptional characteristics for materials and equipment required by the A&D industry and mandated under applicable SAE Aerospace Standards (AMS) as well as European Union Aviation Safety Agency ("EASA") regulations/certificates and competent aviation authorities worldwide (e.g., the U.S. Department of Defense, Federal Aviation Administration, etc.). All technical specifications (*see*, e.g., AMS3255 or AMS3678 standards) need to be complied with simultaneously in all jurisdictions where aircrafts are produced, used, flown, and serviced. Most materials called into question for these uses by the Minnesota Statute are fluoropolymers with unique physicochemical characteristics and exposure, satisfy the OECD criteria for a Polymer of Low Concern (PLC)[7], and are deemed to be environmentally and humanly benign.

b. *"Currently unavoidable use"*

i. "Essential for health, safety, or the functioning of society"

Honeywell recommends clarification of the concept of "essential for health, safety, or the functioning of society" within the definition of "currently unavoidable use." MPCA should identify critical PFAS and certain uses that have undergone federal authorizations for specific uses pursuant to programs such as, but not limited to, the SNAP program under the Clean Air Act, the EPA's new chemical review program under Section 5 of the Toxic Substances Control Act, the Food and Drug Act, and other federal programs whereby either the PFAS, or products containing them, have been deemed acceptable for their intended use by federal government agencies. PFAS-containing products that are subject to, or necessary for, meeting federal

[5] Page 26414, Federal Register, Vol. 88, No. 82, Friday, April 28, 2023, Rules and Regulations, 2023-08663.pdf (govinfo.gov).

[6] A Critical Review of the Application of Polymer of Low Concern and Regulatory Criteria to Fluoropolymers, Integrated Environmental Assessment and Management, Volume 14, Number 3, pp. 316–334 (2018).

[7] See detailed analysis in *A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluoroelastomers*, Stephen H. Korzeniowski *at al.*, Integrated Environmental Assessment and Management — Volume 19, Number 2—pp. 326–354, 2022.

specifications (e.g., military specifications, United States Federal Aviation Administration (FAA)-issued standards, National Aeronautics and Space Administration (NASA) requirements) also should be considered currently unavoidable use. Such an approach will help MPCA concentrate its efforts on non-essential consumer products. Fairness and market stability should be assured to businesses that have successfully completed federal reviews for their PFAS-containing products under these statutes or provide products that must meet military or similar government specifications.

Furthermore, Honeywell recommends the rulemaking also establish both a clear-cut process and criteria whereby any PFAS-containing product producer may seek a "currently unavoidable use" determination. MPCA may want to exercise its authority to issue such determinations carefully and with conditions. For example, exemptions from a prohibition might be granted subject to an appropriate time limitation (with the ability to seek extensions) Periodic reporting by the exemption recipient also could be a condition of the currently unavoidable use designation.

When making a "currently unavoidable use" determination, MPCA should consider the following factors:

- benefits to public health, the environment, community safety, national security, critical infrastructure, or other critical function of society;
- the known effects of the PFAS or PFAS-containing product on human health and the environment including the specific substance's physical-chemical characteristics, its environmental fate, as well as its toxicity, including how such characteristics compare to other substances which provide the same performance characteristics;
- the availability of technically and economically feasible chemical alternatives that can be used for the same purpose and which can be demonstrated to be environmentally preferable to the PFAS under consideration;
- whether the use of the PFAS or PFAS-containing product contributes to achieving environmental objectives, including the mitigation of climate change;
- whether the use of the PFAS or PFAS-containing product is of value to society because it contributes to the safety, efficacy, or accuracy of useful activities and products including those used in scientific research, medical equipment, or treatments, in pharmaceuticals and their packaging and in medical devices, and in the manufacture of components in critical goods; and
- whether the use is beneficial in other applications or commercial uses in important sectors of the economy (such as aerospace, defense, industrial and commercial equipment, and automotive sectors).

Honeywell's Solstice® Hydrofluoroolefin ("HFO") technology is an example of a fluorotechnology that meets important societal needs while providing significant environmental benefit. To date, use of Honeywell HFO technology has helped avoid the potential release of the equivalent of more than 326 million metric tons of carbon dioxide into the atmosphere, equal to the carbon emissions from nearly 70 million gasoline-powered

passenger vehicles per year.[8]

Further, as confirmed in recent analyses from Oak Ridge National Laboratory, HFOs represent greater energy efficiencies across important commercial applications, including in appliances, residential air conditioning, supermarket refrigeration systems, and spray foam insulation. In commercial refrigeration applications, HFO solutions will consume **5% to 21% lower energy as compared to propane systems** over the lifetime of the system (15 years), and **8% to 50% lower energy as compared to CO2 systems** over the lifetime of the system (15 years).[9] When evaluating the performance attributes of HFO blowing agents to evaluate energy efficiency, as well as safety attributes to identify HFOs' flammability characteristics, Oak Ridge National Laboratory researchers concluded that "**HFOs can effectively replace higher GWP solutions, such as HFCs, to reduce emissions and mitigate the use of flammable and explosive materials in high-density, urban areas."**[10]

ii. "alternatives"

Honeywell requests that MPCA provide a detailed definition of "alternatives" as that term is used within the definition of "currently unavoidable use." The definition should include concepts of functional equivalency and reducing potential risk to human health or the environment. The basis for those concepts must be consistent, fair, transparent, and well-defined.

For example, in the Montreal Protocol on Substances that Deplete the Ozone Layer, an international treaty designed to protect the ozone layer by phasing out the production and consumption of ozone-depleting substances (ODS), defines "alternatives" as substances or technologies that:

- Do not deplete the ozone layer: Alternatives must not have ozone-depleting potential or, at the very least, have significantly lower potential compared to the substances they are intended to replace.
- Are more environmentally friendly: Alternatives should have a reduced impact on the environment, including lower global warming potential and lower potential for other environmental impacts.
- Are technically and economically feasible: Alternatives should be practical and viable from both a technical and economic standpoint to ensure that industries can transition smoothly away from ozone-depleting substances.

The definition of alternatives is crucial to the success of the Montreal Protocol, as it guides the efforts to find and adopt substitutes for ODS in various industrial processes and applications. The protocol encourages the development and use of alternatives to accelerate the phase-out of substances like chlorofluorocarbons (CFCs), halons, and other ozone-depleting chemicals.

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[8] Calculations are based on actual sales of Solstice products (in lbs) from Jan 2010 through Jan 2022, and utilize the EPA GHG equivalency calculator for conversion.

[9] Oak Ridge National Laboratory Study "*Technology Options for Low Environmental Impact Air-Conditioning and Refrigeration Systems*"

[10] Oak Ridge National Laboratory Study "*Assessment of the Performance of Hydrofluoroolefins, Hydrochlorofluoroolefins, and Halogen-Free Foam Blowing Agents in Cellular Plastic Foams*"

Another example is the definition of "substitute or alternative" under EPA's SNAP program, which defines the term as "any chemical, product substitute, or alternative manufacturing process, existing or new, that could replace a class I or II substance."[11] EPA also takes into account an alternative that "(1) reduces overall risk to human health and the environment, and (2) is currently or potentially available.

Defining alternatives with respect to A&D companies will be challenging. These alternatives must be qualified (i.e., evaluated and tested) in the context of the aircraft system or sub-systems. These processes must be repeated where the alternatives are found to be unsuitable. Once qualified, the system must be revalidated to maintain certification of the product (e.g., aircraft, vessel, vehicle, etc.). Certification is strictly controlled by regulatory bodies in both the United States and other jurisdictions, in both the civil aerospace and military domains. Examples include the EASA, the FAA, and their military counterparts.

A&D products are subjected to some of the most austere environments around the world. They must operate successfully in extremes, including but not limited to altitude, temperature, pressure, and precipitation, while having to fulfil the highest possible technical reliability and safety requirements. To ensure aircraft safety, comprehensive airworthiness regulations have been in place around the world for decades. These regulations require qualification of all materials and processes according to a systematic and rigorous process to meet stringent safety requirements that are ultimately subject to independent certification and approval. Such rigorous testing and qualification processes are required to assure that any changes do not compromise the integrity of the affected components or the safety of the product as a whole.

iii. "Reasonably Available"

Honeywell requests that the MPCA provide a detailed definition of "reasonably available" as that term is used within the definition of "currently unavoidable use." How the MPCA will determine when alternatives are not reasonably available should also be explained in the regulation and should include the concepts of performance, safety, cost, and supply chain considerations.

For example, due to the specifics of A&D uses, known alternative materials are not available to simultaneously satisfy all required properties, such as low flammability, high service temperature (above ~200 °C), low dielectric constant, electric arc tracking resistance, mechanical strength and elasticity, and chemical resistance/inertness to even the most aggressive chemicals. In many essential A&D applications **only,** fluorinated substances can fulfil all required technical (AMS3255, AMS3678, ASM3659, ASTM D1710, AMS7276, AMS7287, AMS3651, AMS3667) and miliary specifications (MIL-S-46163, MIL-PRF-276717).[12] A&D production also needs to adhere to strict quality standards like ISO AS9100 and Nadcap.

Moreover, the combination of properties required in most A&D applications will be difficult to achieve in a new material. Even after a material with the suitable combination of properties would be discovered or invented, it will take decades to approve its uses by the overall A&D industry (e.g., all major aircraft producers should test and approve) and to certify it under all applicable standards worldwide. It is estimated

[11] 40 CFR § 82.172 "Substitute or alternative"

[12] For example, technical specifications for PTFE/ETFE insulated wire under M22759 (SAE AS22759) standards or requirements for heat transfer fluids, solvent resistance O-rings, etc.

that, in practice, this process would require approximately 30 years (on average) for many critical aircraft components.

The Agency should consider establishing a transparent and well-defined framework in making its determination of the reasonable availability of alternatives. Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act), entitled "Technology Transitions," may serve as a useful example of criteria that a substitute, or alternative, must meet prior to EPA establishing restrictions on the use of a substance being substituted. Specifically, when determining whether to restrict the use of a substance, EPA, under this provision, is required to consider "the availability of substitutes for use taking into account technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors…". Honeywell urges the MPCA to consider adopting a similar approach in assessing substitutes to PFAS, and to identify the criteria that the MPCA intends to use in ascertaining the reasonable availability of alternatives. Honeywell further requests that the MPCA make the information used in conducting an assessment or evaluation of alternatives publicly available for review and comment.

c. "Manufacturer"

The term "Manufacturer" includes the entity that manufactures a product or whose brand name is legally affixed to the product. However, there are numerous circumstances when two different entities meet that definition: one may manufacture the product and the other may legally affix their name to the product. In such circumstances, it is not clear who the "manufacturer" is and therefore which entity has the reporting requirement.

The Planned Rule also does not adequately account for the possibility, and likelihood, that manufacturers whose products are sold by distributors may be unaware that their products are being offered for sale in MN and therefore may, as a practical matter, be unable to report under the rule. The final rule must appropriately account for this type of scenario – for example by requiring the distributor to report instead of the manufacturer.

For products sold directly to distributors outside of MN and not directly to retailers or individuals in MN, it will be virtually impossible for the original product manufacturer to report on sales into MN. For example, if a manufacturer in State #1 sells a product containing intentionally added PFAS to a distributor in State #2, who then sells to retail outlets in MN, the original manufacturer of the product will not have access to the distributor's data for products sold into MN, the manufacturer will only know what it sells to the distributor. This is not an uncommon scenario, particularly for common consumer and household products.

The same is true for sales made through on-line platforms where the original manufacturer is not the entity fulfilling the sale of the product into MN products sold to members of the public through on-line platforms, as those can come from anywhere, and the original manufacturer has little to no control over that sale or the ability to get sales information through such channels. The Department needs to address these realities in the definition of "manufacturer" and in the description of data and information that a "manufacturer" as currently defined will be reasonably expected to provide.

Honeywell recommends that MPCA clarify how the reporting requirements apply to multiple businesses in the supply chain for finished products that will be distributed with multiple PFAS containing components; when sales can be made through online platforms; as well as situations where the manufacturer may sell the good to a distributor outside the state and further transactions bring the product into scope when it crosses state lines.

The proposed regulation must make clear whether the responsibility falls upon the maker of the PFAS-containing components, the brand owner, a brand licensee, an importer, toller, filler or the company that is distributing the finished product for sale within the state when multiple parties fit into the definition of manufacturer. If left undefined, Honeywell predicts significant confusion and a high likelihood of duplicative reporting emerging from the current definition of manufacturer, which will likely result in an overestimation of the amount of PFAS in products in Minnesota and any conclusions about human or environmental exposure will be erroneously based on such estimates.

d. "Product" and "Product Component"

Honeywell requests that the MPCA clarify that the definitions of "product" and "product component" are limited to those products made available to consumers for their personal use. This will permit MPCA to focus its attention and resources first on PFAS-containing consumer products.

The inclusion in the definition of "product" of items made available to consumers for "commercial, or industrial use" or "for use in making other products" unintentionally expands the scope of the products on which focus should remain. MPCA should include language in the proposal to make clear that PFAS-containing products that are used in commercial settings (e.g., office equipment) and in industrial, manufacturing applications (e.g., industrial and commercial devices, such as mechanized systems and robotics) are excluded from the reporting and the prohibitions requirements under the law.

Honeywell also requests that MPCA confirm that its definition of "product" and "product component" exclude manufacturers of chemistries used in these items. Honeywell interprets the Minnesota Statute as requiring the manufacturer who takes its chemistries and uses it in the manufacture or production of a product or product component as the entity ultimately responsible for reporting to the Commissioner.

Inclusion of chemical manufacturers and producers in the definition of products or product components would expand the number of submissions to the Commissioner and potentially lead to double or triple counting of chemistries entering Minnesota. For example, a household refrigerator is a product that contains a refrigeration system—comprised of a compressor, evaporator coils, and other refrigeration components—such as gaskets and foams. Some of these individual elements, which Honeywell interprets as "product components" under the Minnesota Statute would use Honeywell chemistry, defined as PFAS by the Minnesota Statute, to function. In this example, the refrigeration system and its components would contain a refrigerant that circulates through these product components for its heat transfer properties. The foam would be made using a foam blowing agent (also a Honeywell product) for insulation purposes. If Honeywell's regulated chemistries are considered products or product components, then the company would be required to report on chemistries sold to manufacturers of the refrigerator (the OEM). The

refrigerator manufacturer would potentially need to report on the quantity of refrigerant in its system, the quantity of foam blowing agent in its foam, and any other PFAS quantities used in other components such as gaskets and seals. Therefore, MPCA would potentially receive the same information from at least two sources in the aforementioned scenario. The chemical itself does not perform any function until it is deployed in the product or equipment where it will be used. Thus, Honeywell believes that to avoid any double counting and avoid confusion, the chemical manufacture should not be required to report.

This interpretation is consistent with how EPA views containers of chemicals under the American Innovation and Manufacturing Act of 2020 (AIM Act). EPA uses the term "bulk" to make a distinction between a product that would use our chemistry and the chemistry being transported in a container. Consider the description of bulk from the Allocation Framework Rule[13]:

> *EPA defines [bulk] as "a regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance." The examples provided in the definition are not exclusive. This definition serves to distinguish between a regulated substance that is in a container from a regulated substance that is in a product or other type of use system.*

Furthermore, Honeywell sells its chemistries to nationwide distributors, wholesalers, and OEMs, and oftentimes does not have any visibility into which states these products are sold. As explained above, it would be virtually impossible to keep track of this information (i.e., products sold directly to distributors outside of MN and not directly to retailers or individuals in MN).

II. <u>There are key terms and processes in Subdivision 2 where MPCA clarification will help reporting entities determine reporting status and obligations.</u>

a. "amount of each PFAS"

Subdivision 2 of the Minnesota Statute calls for manufacturers to report "the amount of each PFAS, identified by its chemical abstracts service registry number." The MPCA should also allow for alternatives to CAS numbers, such as EPA-assigned Accession numbers, for proprietary chemicals with CAS numbers that are federally protected as confidential and for which the manufacture can substantiate both the need for ongoing protection to sustain a commercial advantage and steps the manufacturer takes to maintain confidentiality.

b. "commercially available analytical methods"

Analytical methods must be appropriate for the PFAS that are the target of the analysis and for the physical

[13] 86 FR 55116

form of the product, e.g., gas, liquid, or solid. Analytical methods differ in which PFAS they are capable of detecting. For example, the analytical method EPA uses to identify PFAS in food contact materials targets 17 different PFAS. In contrast, EPA's Draft Method 1633 is designed to identify 40 different PFAS in aqueous media (i.e., water, wastewater, landfill leachate), soil, biosolids, sediment, and biological tissues.

To ensure clarity, the MPCA should elaborate in proposed regulations its intention regarding baseline criteria or performance standards for "any test methodology." It would be inappropriate in our view for the MPCA to allow the use of any method that any commercial lab says it can perform on any product matrix with no consideration of whether the method is fit for that purpose or has undergone any multi-laboratory validation or otherwise has been assessed for the purpose for which they are being used (i.e., accuracy, precision, specificity, detection limit, and quantification limit). Doing so would be well outside the realm of good regulatory science. Honeywell also recommends that the MPCA incorporate the concept of validation into its regulatory explanation of what "commercially available analytical methods" will be acceptable.

Finally, it is critically important for the MPCA to recognize that a large number of commercial PFAS compounds are proprietary chemicals for which there are no commercially available analytical methods. Moreover, without analytical standards for these proprietary chemicals, commercial laboratories will not be able to develop analytical methods. In addition, determining exact PFAS concentrations for complex articles in robust supply chains like automotive or aerospace; which are wholly dependent on full material supplier disclosure and product knowledge, can be a case where suppliers do not disclose certain information where unintentional omissions could occur. As a result, it will be impossible for manufacturers of products containing these PFAS chemistries to comply with the requirements of subdivision 2 of the statute unless the department establishes clear methods, standards, and approved reporting ranges for known PFAS compounds where identification and quantification is possible.

c. "range approved for reporting purposes"

The ranges approved for reporting purposes should be codified in regulation well in advance of the first reporting deadline so that manufacturers with reporting obligations can prepare accordingly. Honeywell recommends that the MPCA not develop ranges for different types of products. Doing so would create unnecessary confusion about the definition of products falling within each range and further complicate the ability of manufacturers with reporting obligations to report accurately and in a timely manner.

d. "significant Change"

The phrase "significant change" needs to be defined so that a manufacturer does not unknowingly violate the MPCA's expectation when, in the manufacturer's legitimate view, only minor changes have been made to a product.

III. The Planned Rule should treat Confidential Business Information (CBI) consistent with other Minnesota privacy practices.

Like the TSCA PFAS reporting rule, MPCA should similarly clarify what information can be claimed as "Confidential Business Information" and, therefore, not available to the public. *See* 40 CFR § 705.30. MPCA

should also establish an efficient procedure for manufacturers to identify information as CBI or trade secret in its rulemaking.

As a model, the TSCA PFAS reporting rule allows, with certain exceptions, reported information such as specific chemical identities that are not on the public inventory, company identifier information, and production volumes to be treated as CBI confidential business information. *See* 40 CFR § 705.30(b)(2). Certain information likely to be CBI does not require additional substantiation such as production or import volumes or specific chemical identities and molecular structures when the substance has not been introduced into commerce. MPCA should follow a similar approach for categories of requested information likely to be CBI or trade secret.

Under existing Minnesota law, much of the information requested by MPCA is similarly considered trade secret and should not be made publicly available. Minn. Stat. § 13.37, Subd. 2 identifies "trade secret information" as not available to the public pursuant to the Minnesota Data Practices Act. "Trade secret information" is defined under Minnesota law as "government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use." Minn. Stat. § 13.37, Subd. 1(b).

MPCA should apply this standard and pre-identify categories of information provided under the Minnesota Statute as trade secret and not publicly available pursuant to the Minnesota Data Practices Act. Such required information would include non-public numeric codes assigned to products and volumetric PFAS data with respect to each reported product.

IV. The term "substantially equivalent information" in Subdivision 3 should be further defined and federal PFAS and other reporting requirements that meet this definition should be specifically identified by MPCA.

Subdivision 3 of the Minnesota Statute clearly gives the MPCA authority to "waive all or part of the notification requirement under subdivision 2 if the commissioner determines that substantially equivalent information is already publicly available." The MPCA should define in the Planned Rule what it will consider "substantially equivalent information" and identify federal reporting programs for which existing product reporting or agency review processes would meet this definition.

a. Products Subject to TSCA Reporting Requirements Should be Exempt from Reporting Obligations Under the Planned Rule.

Honeywell believes the MPCA Rules should avoid unnecessary or duplicative reporting. Reporting obligations should only be imposed on those entities most likely to have relevant information not otherwise available to the MPCA.

On September 28, 2023, the EPA issued a final rule requiring PFAS manufacturers, including importers of

articles containing certain PFAS, to report certain information to RPA pursuant to Section 8(a)(7) of TSCA. Generally, the TSCA PFAS reporting requirement applies to entities that have manufactured or imported PFAS for a commercial purpose in any year since January 1, 2011, alone or in any type of industrial or consumer product subject to EPA's authority.

There is significant overlap between the TSCA PFAS reporting requirement and the Minnesota Statute PFAS reporting requirement:

	Federal (TSCA, Section 8(a)(7); 40 CFR § 705)	**State (MN Stat. § 116.943)**
Regulatory Agency	Environment Protection Agency	MN Pollution Control Agency
Applicable period of reporting	January 1, 2011 to Present, by May 8, 2025 for most regulated businesses (small businesses that import articles have until November 10, 2025).	No later than January 1, 2026 for regulated products sold, offered for sale, or distributed in Minnesota as of that date.
Who must report?	PFAS manufacturers and processors, including article importers, used in consumer and commercial product (*See* § 8(a)(1)(A))	Manufacturers of products that contain intentionally added PFAS (*See* § 116.943, Subd. 2(a))
What must be reported?	1. The common name and molecular structure of the chemical. 2. Categories of use of the product. 3. Total amount manufactured or processed. 4. Description of byproducts from the manufacturing and/or processing of PFAS 5. All existing information concerning the environmental and health effects. 6. The number of people exposed, potentially exposed, and the length of exposure in their workplace. 7. Manner and method of disposal (*See* § 8(a)(2)(A-G)	1. Product description 2. PFAS purpose in product 3. Volume of PFAS in product 4. Manufacturer contact information and specific person for the manufacturer 5. Any additional information as requested by the commissioner (*See* § 116.943, Subd. 2(a)(1-5)). OR Upon approval by the commissioner report all information (Subd. 2(a)(1-5)) per category or type of product (*See* § 116.943, Subd. 2(b)).
What chemicals are covered?	The PFAS definition relies on a structural definition and includes compounds with at least one of the following three structures: • R-(CF2)-CF(R')R'', where both the CF2 and CF moieties are saturated carbons • R-CF2OCF2-R', where R and	PFAS is defined as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." (Minn. Stat. § 116.943, Subd. 1).

	R' can either be F, O or saturated carbons • CF3C(CF3)R'R'', where R' and R'' can either be F or saturated carbons EPA estimates that at least 1,462 PFAS that are known to have been made or used in the United States since 2011 based on this definition.	

Regulated manufacturers of products containing PFAS will already be under a significant regulatory burden to comply with the TSCA PFAS reporting rule and such information, much of which will be publicly available, should meet the Minnesota statutory desire for this information.

Subdivision 3(a) of the Minnesota Statute authorizes the MPCA to "waive all or part of the information requirement under subdivision 2 if the commissioner determines that substantially equivalent information is already publicly available." Based on this language, MPCA should exempt any manufacturer from reporting to the MPCA any product that is already reported to EPA under the new TSCA reporting rule as detailed above. Given the significant but not identical overlap between the TSCA PFAS reporting requirements and the Minnesota Statute, MPCA should explicitly identify that any products identified in submissions to EPA pursuant to 40 CFR § 705 do not need to be duplicatively reported to MPCA pursuant to the Planned Rule.

Under the TSCA PFAS reporting rule, EPA also eliminated the need to report "duplicative" information if a PFAS manufacturer has previously submitted the requested information to EPA for that same PFAS in that same year through Chemical Data Reporting (CDR), Toxics Release Inventory (TRI), Greenhouse Gas Reporting Program (GHGRP), TSCA Sections 8(d) and 8(e), or is also reporting a PFAS byproduct on its own reporting form. *See* 40 CFR § 705.22. MPCA should similarly limit its reporting requirement if such reporting to Minnesota would be duplicative of reporting through these other federal programs.

b. Federal review programs for products and packaging should also meet this definition and constitute a waiver of Minnesota PFAS reporting obligations.

Products and packaging subject to review by a federal agency prior to commercialization should be exempt from reporting to MPCA. For example, pharmaceutical packaging is a component of a Drug Master File submitted to FDA for review and approval. Thus, state-level reporting related to pharmaceutical packaging is duplicative and does not advance the interest of the state. Likewise, products approved for food contact as codified in 21 CFR § 177, *et seq.* should not be subject to state-level reporting because such reporting would be duplicative, unduly burdensome, and would not advance the interests of the State of Minnesota.

Products reviewed by EPA, such as those approved through the SNAP process should not be subject to state-level reporting after already receiving federal approval as alternative products with enhanced environmental attributes. Duplicative reporting does not improve transparency for consumers, nor does it advance the purpose of this law. Accordingly, the MPCA should allow a reporting waiver for products already subject to federal agency review.

c. MPCA should not develop a multi-state shared system at this time.

Subdivision 3(c) of the Statute allows MPCA to "enter into an agreement with one or more other states or political subdivisions of a state to collect information and may accept information to a shared system as meeting the information requirement under subdivision 2." While the State of Maine is undergoing a similar rule making process to implement Maine Public Law 2023, c. 138, ("An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances") (LD 217, 131st Legislature), Honeywell does not believe a state-based shared system would serve any material utility given the EPA's detailed process to collect product information pursuant to TSCA. Honeywell encourages MPCA to coordinate and share information with the EPA as the primary agency collecting PFAS product information at the federal level.[14]

V. There are specific portions of the reporting process that should not be defined through guidance.

It would be more appropriate to define the reporting process through rulemaking rather than guidance. Though a guidance document to accompany the final rule may be a useful tool for providing illustrative examples for reporting nuances, its value is otherwise limited. Guidance is not binding nor determinative.[15] Thus, reporting obligations, including clear and concise expectations and procedures, should be set forth in regulation. No regulatory obligation dictated by a "shall" statement should be left to guidance. Such requirements must be articulated in regulation.

VI. Other comments relating to the PFAS reporting process

a. MPCA should explicitly identify certain exemptions in the Planned Rule.

i. Certain products should be exempted from reporting due to national security considerations.

Honeywell manufactures certain components of International Traffic in Arms Regulations (ITAR)-controlled Department of Defense programs in Minnesota. Due to the sensitive nature of materials that, if disclosed, could be considered a threat to national security, the MPCA should also expressly provide exclusionary language for any federally classified, controlled unclassified, or export-controlled information from its PFAS reporting requirements. This will ensure compliance with federal statutes and regulations applicable to products having United States Government end use (including but not limited to those in the Federal Acquisition Regulation and Department of Defense Federal Acquisition Regulation Supplement), and to avoid any unnecessary risk to national security.

[14] As detailed below, there are data security reasons why EPA would be the ideal agency to collect and store sensitive and expansive product information related to PFAS.

[15] As aptly stated by the federal Government Accountability Office, "Agencies rely on guidance to clarify regulatory text or statutes, to respond to the questions of affected parties in a timely way, and to inform the public about complex policy implementation topics. Unlike regulations, guidance is not legally binding." GAO-15-368, pub. May 18, 2015.

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ii. MPCA should explicitly identify types of federal reporting that preempt application of the Minnesota Statute.

Subdivision 8(a) of the Minnesota Statute exempts from its requirements "a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority[.]" The MPCA should explicitly identify which products this exemption applies to. Honeywell recommends that MPCA include at least these categories:

- A product for which federal law or regulation requires the authorization or approval of the product's content of performance characteristics, such as, but not limited to, materials subject to Department of Defense (DoD) or similar military specifications, materials required to meet Federal Aviation Administration (FAA) or National Aeronautics and Space Administration (NASA) standards, products regulated as drugs, dietary supplements, and medical devices as well as their packaging, products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, and diagnostics used to treat or administer to animals under the Federal Food, Drug, and Cosmetic Act (FDA) (21 U.S.C. § 301, *et seq.*), the federal Virus-Serum-Toxin Act (21 U.S.C. § 151, *et seq.*), or the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Act (7 U.S.C. § 136, *et seq.*), substances manufactured or imported pursuant to administrative orders issued or exemptions granted pursuant to Section 5 of the Toxic Substances Control Act (TSCA).
- A product which has been approved under the EPA's SNAP program which implements section 612 of the amended Clean Air Act of 1990 and includes evaluation of overall risk to human health and the environment. SNAP already generates lists of acceptable and unacceptable substitutes for major industrial use sectors and provides smooth transitions to safer alternatives.

***b. Definition of* "Medical Application"**

Honeywell requests that the MPCA clarify the meaning of "medical application" in Subdivision 8(b) of the Minnesota Statute. This definition should include medical device and pharmaceutical packaging because both undergo similar scrutiny under the Federal Drug Administration 501k process and Drug Master File process. Packaging materials used in these applications are meant to provide moisture/chemical barrier and clarity properties, that are essential for preserving the quality, safety, and efficiency of drugs and medical devices over a range of temperatures as well as cryogenic conditions.

In other states such as California and Colorado they have exempted articles that met the following criteria:

- A product regulated as a drug, medical device, or dietary supplement by the United States Food and Drug Administration.
- A medical equipment or product used in medical settings that is regulated by the United States Food and Drug Administration.
- A product intended for animals that regulated as animal drugs, biologics, parasiticides, medical devices, and diagnostics used to treat or are administered to animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) , the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

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The MPCA should consider whether an adoption of this language pursuant to Subdivision 8(b) would be a clearer way to define these applications and materials.

c. Prohibition Prioritization in Subdivision 5(b)

Honeywell supports using MPCA's upcoming rulemaking to ensure that the regulated community and MCPA have a common understanding of the processes and criteria that MPCA will be using for purposes of prioritizing for potential prohibitions under Subdivision 5 of the Minnesota statute (products and product categories that, "in the commissioner's judgment, are most likely to contaminate or harm the state's environment and natural resources if they contain intentionally added PFAS.").

Honeywell recommends that a risk-based determination process be structured and applied, taking into consideration factors affecting exposures (e.g., production volumes, nature and conditions of manufacture and use) and hazard (e.g., toxicity, bioaccumulation, persistence). The process established should enable potentially affected entities to apply for and provide technical support for essential use determination. The process for applicants seeking such determination should also establish deadlines for application submission, and definitive points in the application consideration processes. This should include a timeline for when MPCA will reach a determination (e.g., no later than a certain number of days following receipt of the application). Honeywell considers the following risk matrix to be an example of some of the criteria that could be established for applicants.

	Known Low Production/Emissions	Unknown Production/Emissions	Known High Production/Emissions	
Known High PBT Risk				High priority regulatory targets; decreasing priority to the left
Unknown Risk				High priority for risk studies to identify or eliminate additional substances of concern; decreasing priority to the left
Known Low PBT Risk				Lower priority for both regulations and additional research
	Candidates to monitor for change in production/emissions volume; increasing priority toward the top	Candidates for more research on production/emissions; increasing priority toward the top	Candidates for research on emissions profiles & environmental fate; increasing priority toward the top	

d. Reporting database and cyber security concerns

As the MPCA is certainly aware, it will receive notifications for hundreds of thousands of products (if not more) from all sectors of the economy. Honeywell is concerned about the ability of any reporting tool being developed and administered by MPCA or a third-party vendor to manage this task since, as MPCA and common third-party vendors in this space, such as IC2, have not developed a reporting system of this scope and magnitude. Consequently, it will be essential that MPCA take whatever measures are necessary to build in a beta testing phase to ensure that the reporting tool is sufficiently robust to manage and protect the number of users and volume of information anticipated and sufficiently flexible to allow for reporting of information that may not conform to a particular format contemplated by MPCA.

Given the volume and corporate trade secret sensitivity of collected data, it will be essential that comprehensive steps are taken to protect collected information from cyberattack or other malicious efforts to obtain or compromise the data. Coordination with and deference to EPA on data collection and storage given its significant experience in this area and even more expansive data collection and storage efforts related to the TSCA PFAS reporting rule would be advised.

e. Compliance evidence related to enforcement

The MPCA should provide defined examples of information it will accept as proof of compliance to the MPCA pursuant to Subdivision 7(b) of the Minnesota Statute.

f. The Reporting deadline should provide sufficient time for collection of the required information.

Allowing for more time between promulgation of a final rule and the reporting deadline makes it more likely that the data generated will be more complete and accurate, since reporting stakeholders would have more time to gather the required data using already familiar systems. Similar to federal obligations, MPCA should also take into account how long it will take regulated manufacturers to comply with the reporting requirements of the Planned Rule and work to make that burden as minimal as possible.[16] As an example, a manufacturer of a product with many components will have to go to each of the manufacturers of those components to determine whether any of the materials used in those products qualify under the rule. That is a lengthy process, as some products involve hundreds or thousands of components from many different suppliers, some of which will have even more sub-suppliers. Additionally, not all of these suppliers will respond to requests right away, especially if they are outside of the United States and unaware or unconcerned with a U.S. reporting requirement. Adequate time must be allowed for these processes to be conducted, especially if the state decides to vary its requirements from those of EPA where companies are already putting compliance systems in place.

Minnesota PCA should strive to afford companies a reporting timeframe of four years, similar to that established by the Environmental Protection Agency (EPA) for the Chemical Data Reporting (CDR) system, ensuring sufficient time for accurate and comprehensive submissions.

g. Considerations regarding fees

On September 11, 2023, the MPCA also sought comments regarding related planned rulemaking related to fees to implement the reporting requirements of the Minnesota Statute.[17] Subdivision 6 authorizes the MPCA to establish fees payable by reporting manufacturers to cover the MPCA's "reasonable costs to implement" the Minnesota Statute. Honeywell incorporates and provides its comments to that separate but related rulemaking process here.

[16] The Paperwork Reduction Act (PRA) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the federal government. *See* 44 USC §3501, *et seq*.
[17] *See* Minnesota OAH Docket No. 71-9003-39506.

i. MPCA should not consider tiered fees for different sizes of manufacturers.

Honeywell does not support tiered fees based on the size of the manufacturer's business. Manufacturers with a small number of reporting obligations due to limited use of intentionally added PFAS should not (effectively) subsidize the fees of manufacturers with relatively larger reporting obligations that may therefore incur relatively larger agency costs related to program administration. Likewise, manufacturers with relatively larger reporting obligations should not pay less than their equitable share for expenses related to program administration.

Honeywell assumes that the number of reports will be the primary cost driver for the MPCA. Therefore, tiered fees based on the size of business should not be the basis for fees. Said differently, a manufacturer should not be disproportionately burdened or subsidized by virtue of the size of the business.

ii. MPCA should not consider a per-product or per-company fee.

Honeywell does not believe a per-company fee is equitable for the reasons articulated in the response to question 1 above. Honeywell suggests that a more equitable approach could be an initial, relatively higher fee for a manufacturer's first three submissions and a reduced fee for any additional filings. Such an approach would appear to align with what is likely to be the most significant, on-going cost to the MPCA, namely reviewing submissions. Honeywell would expect that a single submission for a group of products in a category-based submission would be treated as a single submission for the purpose of calculating fees.

iii. MPCA should not consider a per-PFAS or PFAS amount fee.

Honeywell does not support a per-PFAS or PFAS amount fee and does not understand how either the number of PFAS in a product or the amount of PFAS in a product would drive program administration costs. Should the MPCA choose to explore these options further, it should clarify that the fee basis would be for intentionally added PFAS only.

iv. MPCA should use caution considering other state program fee structures.

Honeywell does not have a recommendation in response to this question at this time. However, because the product notification requirement is unprecedented in scope and size, Honeywell urges caution in considering the use of other state fee structures as a model for this program.

v. MPCA should not consider a fee to be paid when updates to information on previously reported products are submitted.

Without a more thorough explanation of what costs the MPCA would incur as a result of a manufacturer providing an update, Honeywell would not support the MPCA levying a new fee when a manufacturer provides an update. An update concerning an increased amount of intentionally PFAS in a previously reported product would appear to create marginal, if any, new work. Honeywell does not support an additional fee in either case.

vi. Other issues related to reporting or fees

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The MPCA should not promulgate a fee rule until the cost of administering the program and the size and scope is better understood. The rationale for setting fees should be transparent about revenue generated by fees and how the fees will be used to manage the program. Fees should be calibrated appropriately such that the MPCA is not collecting more in fees than what is needed to administer the program. To this end, Honeywell suggests that the MPCA publish a publicly available annual audit of fees collected and program administration costs that it incurs. Where possible, the MPCA should cap fees.

Conclusion

Honeywell appreciates MPCA's consideration of these suggestions and would be glad to participate in further discussions about these comments. We look forward to reviewing and commenting on the Planned Rule.

Sincerely,

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RECEIVED
By: OAH on 11/27/2023
Emi Yamamoto Attachment

JP4EE comments to the REQUEST FOR COMMENTS
Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

1) Should the Agency consider tiered fees for different sizes of business?

As described in our comments on the Reporting Rule (1)-1, (2)-2, (2)-3, (6)-1, and (6)-2, we believe that the following should be considered first before determining fee rule. The purpose of reporting should be clarified, and complex articles like EEE should not be included if it is concerned about their risk of PFAS exposure to end-users. And simplified reporting, as defined in TSCA PFAS Reporting Rule §705.18, should be accepted if articles should also be included. Also, fee should not set for reporting on articles, even if simplified reporting is required. Detailed PFAS information in complex articles cannot be obtained, and reports per model, substance, or amount cannot be made. Only brief reports based on "reasonably available information" can be made. Therefore, the number of reports is expected to be limited, and the availability of reports depends on the availability of information in the supply chain. We deeply question the legitimacy of costly and resource-intensive actions by authorities and industry to obtain such scarce information. There are no Federal or State, or any other country or region in the world, that require detailed reporting of article content information with charging fees.

2) Should the Agency consider a per-product or per-company fee?

Please refer to (1) above. At least for articles, simplified reporting should be accepted and it is not necessary to set a per-product or per-company fee. EEE is manufactured in the global supply chain, and it is almost impossible to investigate the amount of PFAS used per product model because there are no laws or regulations overseas requiring the transmission of non-hazardous PFAS information, and in most case, such information is confidential in the upstream of the supply chain.

3) Should the Agency consider a per-PFAS or PFAS amount fee?

Please refer to (1) above. At least for articles, simplified reporting should be accepted and

it is not necessary to set a per-product or per-company fee. Although we have previously conducted content surveys throughout the supply chain for fluorinated substances and related substances such as PFOS and PFOA that have been scientifically proven to be hazardous, individual substances and their exact content have never been transmitted to a group of substances for those which CAS has not been identified.

4) Are there other state program fee structures on which the Agency should model the fees?

Article containing PFAS should not be subject to this rule.
In the beginning, the risk of exposure to PFAS from article is considered to be negligible. In addition, PFAS can be present in thousands or millions of articles, resulting in effecting on a huge number of billable manufacturers. Therefore charging fee on article should also avoided.

Article is the one exhibits prescribed performance in shape rather than in chemical composition. Manufacturers of complex articles like EEE generally instruct their suppliers on the necessary specifications of the primary material or finished product, but rarely identify each substance in each article, except for substances legally restricted.
Therefore, it is necessary to conduct investigations throughout the supply chain in order to obtain the chemical content, but as mentioned in our comments to the Reporting rule, such investigations are very difficult. In particular, it is extremely difficult to investigate a large group of substances, such as PFAS, that are not currently classified as hazardous. Furthermore, even if an investigation is carried out, confidential information is not transmitted from upstream suppliers, so the content that can be reported is at most the level of simplified reporting of PFAS under TSCA.

For your information, TSCA Fees Rule promulgated on January 27, 2020 which once required the imposition of risk evaluations fee on article manufactures as well as material manufacturers. However, in response to concerns from stake holders, EPA exempting article importers from the rule by issuing No Action Assurance on March 24.
[No Action Assurance issued on March 24, 2020]
no_action_assurance_regarding_self-identification_requirement_for_certain_manufacturers_subject_to_the_tsca_fees_rule_march_24_2020.pdf.pdf (epa.gov)

EPA states the reason to exempt article in Memorandum from the Office of Chemical

Safety and Pollution Control (OCSPP), which requested the issuance of this no-action assurance, "Article is made up of hundreds or tens of millions of parts, and it is difficult, if not impossible, to determine the amount of chemicals in them." as below.

[Memorandum]
https://www.epa.gov/sites/default/files/2020-03/documents/tsca_fees_-_naa_request_final.pdf

- **Importers of articles such as manufactured components or finished goods, for example, have acknowledged that there may be barriers to identifying with certainty the chemicals that are present in their imported articles and components.** Because import of chemicals in articles has generally been exempted in other regulatory contexts under TSCA (e.g., Chemical Data Reporting rule under section 8, new chemicals program under section 5, import certification under section 13, etc.), many of these companies have not previously been required to know, and would need to undertake significant and expensive product testing efforts to find out, what chemical substances may be present in even very small amounts in the articles they import.

- Additionally, articles importers have noted the compounding challenges of their highly complex and integrated supply chains. Articles containing a high-priority substance may be imported into the United States, exported and re-imported again – perhaps multiple times – and at times by multiple different entities. **A single article like an automobile, aircraft or complex manufacturing equipment can have hundreds or thousands of individual components shipped from multiple suppliers across the globe.**

- The decision to provide no exemptions for these entities in the TSCA Fees Rule has resulted in an overly broad universe of entities subject to self-identification requirements for these EPA initiated risk evaluations. **The overly broad scope creates an undue and unavoidable hardship by imposing burdens on potentially thousands of entities across the country who would be required to collect and report information. Moreover, this scope is wholly unnecessary to properly effectuate the ultimate objective of the TSCA Fees Rule** – to defray a portion of EPA's TSCA implementation costs –because the Agency will be able to collect the full fee amount regardless of the number of identified fee payers. In short, this information is unnecessary for purposes of

the Fees Rule.

- In addition, **we do not anticipate this action will result in any adverse impacts to human health or the environment.**

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5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

To encourage the elimination of PFAS, no report/fee should be associated with the reduction or elimination of PFAS.

Other issues. The PFAS in Products Fee Rule may include other subjects requiring clarification or definition to successfully start up information submittals by the January 1, 2026, deadline. Your comments on issues important to the process of fee payment are welcome, and on reporting issues which relate to fee structures and payment processes.

EOF

RECEIVED
By: OAH on 11/28/2023
Avonna Starck Attachment

CLEAN WATER ACTION
PEOPLE • ACTION • JUSTICE

November 27, 2023

Thank you for the opportunity to comment on the "Possible New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS); Revisor's ID Number R-4827".

Clean Water Action has worked in Minnesota since 1982, focusing on finding solutions to health, consumer, environmental and community problems, developing strong, community-based environmental leadership, and working for policies that improve lives and protect water. Our focus includes supporting environmental justice, protecting and restoring the Great Lakes for Minnesota, ensuring safer chemicals for use in our homes and daily lives, as well as source and toxics reduction in plastics and other forms of waste. All our work culminates in the overarching goal of protecting the water we drink for generations to come.

The use of PFAS in consumer products, from firefighting foam to clothing and cosmetics, has caused extensive contamination of drinking water, wildlife, food, and people. One of the primary reasons this contamination has occurred is that companies have not been required to disclose whether harmful chemicals are put into products. This new law in Minnesota and the resulting rules will help to rectify this problem. It will assist consumers in avoiding PFAS and allow government agencies to know where PFAS are used in products and inform the PFAS ban. A strong rule is urgent and necessary to protect public health, drinking water, and the environment.

1. PFAS definition:

It is vital that the definition of PFAS in the law be protected. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. This definition has now been adopted by twenty-two states. The definition includes polymers and fluorinated gasses like hydrofluoroolefins (HFOs). Consistency across states is important.

Furthermore, polymers and HFOs must continue to be included in the definition because they are PFAS, and they contribute to overall PFAS and other toxic pollution. The production of PFAS polymers results in PFAS pollution during their production, use, and disposal. In addition, a recent investigation showed that one U.S. chemical manufacturing facility released a potent climate pollutant equivalent to one billion pounds of carbon dioxide in one year.

2. Confidential Business Information (CBI):

The use of PFAS in a product should not be considered confidential business information. Other laws in Oregon and Washington have required manufacturers of children's products to report certain toxic chemicals, including PFOS and PFOA, in products for many years. This information is available in a publicly accessible database. There should be nothing secret about toxic chemicals used in products that are having serious adverse impacts on health and the environment.

We urge the Agency to adopt an approach to protect the public's right to know about which products PFAS are present in and prioritize public health and the ability of the agency staff to achieve the goals of this law in the consideration of any such claim.

3. <u>Fees:</u>

Minnesota law requires fees to be reasonable. Therefore, it's logical to argue that a reasonable fee paid by the manufacturer is merely a drop in the bucket related to the price of doing business. Fees should be tiered and based per product. The more PFAS sold in Minnesota, the more fees should be levied because the company is adding to the PFAS crisis in a disproportionate manner.

By assigning fees per business rather than per product, businesses with a lower PFAS impact on our environment are paying the same amount as those who are having a major impact on our environment, which is neither reasonable nor fair. Fees should be tied to the level of pollution produced. The more PFAS in a product, the higher the fee should be.

If the business is able to reduce the amount of PFAS in their product, they should see a reduction in their fee. We want businesses to do the right thing and end the use of toxic PFAS in their products, so we must encourage them with a reward of reduced fees for reduced PFAS use.

The fee paid by the manufacturer related to their use of PFAS is nothing compared to the burden of the cost of illnesses related to PFAS exposure shouldered by Minnesota families. PFAS exposure is linked to a variety of illnesses, including cancer. These illnesses come with high healthcare costs, missed work, missed school, and long lasting financial, physical, and emotional traumas. We must act now to protect future generations from the crisis PFAS has caused.

Sincerely,

Avonna Starck
Clean Water Action
Minnesota State Director

Personal Care Products Council
Committed to Safety, Quality & Innovation

November 28, 2023

Mary H. Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Submitted electronically via Minnesota OAH Portal

Re: Comments regarding Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per- and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

The Personal Care Products Council (PCPC)[1] respectfully submits the following comment to the Minnesota Pollution Control Agency (MPCA) in response to the Request for Comments regarding the PFAS in Products Fee Rule.

PCPC and its member companies have long been supportive of commonsense laws and policies that protect both the consumer and the environment. For this reason, we have supported laws in other states that prohibit certain intentionally added PFAS from use in cosmetics. To that end, and in an effort to promote development of the most efficient and practical rule, we offer the following feedback.

PCPC would recommend that fees are based on the volume or weight of PFAS used or placed in the market. PCPC would not recommend fees or tiered fees based on the size of the business, nor on a per-product or per-company basis, as such calculations would not be related to actual PFAS usage or production.

We urge MPCA to consider a cap for registration fees. Costs could become prohibitive for large companies with multiple products to report. Likewise, many small or midsized companies may

[1] Based in Washington, D.C., the Personal Care Products Council (PCPC) is the leading national trade association representing global cosmetics and personal care products companies. Founded in 1894, PCPC's approximately 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products millions of consumers rely on and trust every day – from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance – personal care products companies are global leaders committed to product safety, quality, and innovation.

not be able to absorb the costs, and it may be appropriate to consider a minimum limit in consideration of both small-volume users and small businesses.

In the alternative, MPCA could offer a second option to companies to pay a single, annual fee rather than a per product fee. This would allow companies to avoid incurring outsized fees.

Thank you for the opportunity to provide these comments. Should you have any questions or wish to discuss any of the above points with us, please do not hesitate to contact me.

Sincerely,

Thomas F. Myers
EVP-Legal & General Counsel

Together, improving life

November 28, 2023

Minnesota Pollution Control Agency
Resource Management and Assistance Division
Office of Administrative Hearings Rulemaking eComments Website
https://minnesotaoah.granicusideas.com/

RE: 39506 Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule (R-4827)

W. L. Gore & Associates, Inc. (Gore) is submitting the following comments with regards to the request for "comments on planned new rules for fees to be paid upon submission of required information about products containing PFAS", Revisor's ID Number R-4827.

About Gore

Gore is a U.S.-based materials science company with more than 13,000 Associates globally, including 8,800 in the United States. Founded in Delaware in 1958, Gore solves complex technical challenges in the most demanding environments – from the inner workings of the human body - to the world's highest peaks - to outer space, the moon, and mars. With a team-oriented culture, our promise is "Together, improving life."

To make our products, Gore uses fluoropolymers which are a sub-category of PFAS with distinct characteristics. We have over six decades of experience leveraging the unique properties of PTFE (polytetrafluoroethylene) and other fluoromaterials to invent valuable products including:

- implantable medical devices such as vascular grafts and stents;
- components for use in aircrafts, automobiles, mobile phones and computers;
- protective apparel for first responders;
- filters, seals and vents that protect consumers from hazardous chemicals;
- environmental controls which reduce emissions from power generation and industrial processes; and,
- products used in the manufacture of pharmaceuticals.

Request for Comments

Gore submits the following comments in response to the questions (in bold) asked in the "Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule" Revisor's ID Number R-4827.

W. L. Gore & Associates, Inc.
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gore.com

Overall, Gore recommends that the Agency consider reporting fees that avoid complexity, and that will not be disproportionately burdensome to the businesses reporting while still supporting the State's program and its ultimate goals to effectively protect public health and the environment. Gore strongly supports the idea of "per-company fees" and supports a per-product fee with an upper limit fee-cap for reporting.

1) Should the Agency consider tiered fees for different sizes of business?

Currently, Gore has no comments to this question.

2) Should the Agency consider a per-product or per-company fee?

Per-Product Fees: Gore supports a per-product fee with the addition of an upper limit fee-threshold (a fee-cap). Without a cap, it is likely that fees would be assessed in a disproportionate and unpredictable manner. Some product types may have a very high number of individual configurations which could lead to a high number of reporting entries and thereby a high reporting fee for a relatively small overall volume of material used. Even with the option to report on product categories, the approval process for such categories is likely to be inconsistent when applied to the hundreds or thousands of end-uses covered by the law. An example for consideration: "A fee will be paid of $XX for each product or product category entered/submitted, not to exceed a total of $XXX.

Per-Company Fees: Gore supports a per-company reporting fee. This approach will simplify the billing and is similar to other states' reporting requirements. See question 4 for information on other State reporting fees.

3) Should the Agency consider a per-PFAS or PFAS-amount fee?

Per-PFAS Fees: Gore does not support a per-chemical (per-PFAS) fee approach. This approach to calculating fees is overly complex, i.e., totaling PFAS chemicals per product reported, then totaling all the chemicals per report. Additionally, companies will not be able to easily plan for the financial impact of reporting, since they may not necessarily know what the final cost is until they have finalized their report. We would also like to share that not all PFAS carry the same risk and thereby are being negatively impacted by an overly broad definition of PFAS.

PFAS-Amount Fees: Gore does not support a PFAS-amount fee, either on the amount of PFAS in each product, or on the amount sold in the state. This approach creates too much complexity in determining fees. For example, these types of fees may likely lead to the testing of all products to determine product content. Product testing could easily lead to exceeding laboratory capacity. Additionally, there are limits on the information available through analytical testing, for example, Total Organic Fluorine (TOF) is often used as an indicator for PFAS, but it does not differentiate between chemical substances which is a reporting requirement.

4) Are there other state program fee structures on which the Agency should model the fees?

Gore supports fees based on the inclusion of risk-of-impact (see Maryland and Delaware), and fees with well-defined caps to avoid excessive fees (see Maryland and Arizona).

EPCRA Tier II Reporting (SARA312)

In Maryland. Application fee of $100 per facility with owners of more than one facility in the state paying no more than $1,000 per reporting period. Application fees cover both TRI and Tier II reporting and fees for each type of hazardous substances and Extremely Hazardous Substance (EHS) exceeding set thresholds https://mde.maryland.gov/programs/businessinfocenter/CommunityRightToKnow/pages/crtk_fund.aspx

In Arizona. $75 for 1st facility and $20 for each additional facility report, up to a maximum limit of $500 per reporting period. https://encamp.com/tier-ii-reporting/arizona/#:~:text=Each%20owner%20of%20a%20facility%20required%20to%20file,should%20be%20submitted%20through%20the%20online%20payment%20portal.

In Delaware. $60 per hazardous chemical, $100 per extremely hazardous chemical, Fees for mixtures; Cap of $5000 per facility per year. https://encamp.com/tier-ii-reporting/delaware/#:~:text=Tier%20II%20Manager%20will%20generate%20an%20invoice%20for,to%20or%20greater%20than%2010%25%20EHS%20%3D%20%24100

5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

Gore does not support additional fees for updates. To keep your system current, it would be ideal to allow access at any time for an evergreen approach.

Thank you for the opportunity to allow us to provide input into the initial phase of the rulemaking process. Please feel free to contact us if you have any questions.

Sincerely,

Michael Altman
Sustainability Leader
maltman@wlgore.com
410-506-8572

SUBMITTED ELECTRONICALLY

November 28, 2023

Minnesota Pollution Control Agency
Resource Management and Assistance Division

RE: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

To Whom It May Concern:
Contained within this submission are responses by **DuPont de Nemours, Inc**, to address the request for comments by the Minnesota Pollution Control Agency on future rulemaking.

In contemplating the implementation of Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6, the MPCA has posed a number of questions to inform the potential fee structure and scale. We respectfully submit the following comments for consideration.

1) Should the Agency consider tiered fees for different sizes of business?

The goal of the fees should be to cover the program costs which are related to the regulation of covered products in commerce in Minnesota and therefore fees should not be based on the "size" of a business. Instead fees should be limited to "manufacturers" of products covered under the information submittal requirements. However, the MPCA should consider setting thresholds for small reporting organizations.

2) Should the Agency consider a per-product or per-company fee?

The Agency should sync its fee structure as closely as possible to the products covered under the information submittal requirements, which focuses fees on products affected not the company at-large. The MPCA should also consider setting thresholds for when a fee is implemented as is done under the European Chemicals Agency's (ECHA) Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) program.

3) Should the Agency consider a per-PFAS or PFAS amount fee?

To enable simplicity of reporting and fee structure, the agency should consider a flat fee by product family with defined caps on the total fees paid by a reporting entity. Further, the Agency should consider setting thresholds for small amounts to enable balance in the program.

4) Are there other state program fee structures on which the Agency should model the fees?

There is not a single program that we would recommend as a model for Minnesota. However, there are elements of other programs that we recommend MPCA adopt. For example, as noted above ECHA has a one-ton threshold under which reporting, and fees, are not required. Additionally, the Massachusetts Toxic Use Reduction Act has a cap on fees paid by reporting entities for the reporting of covered substances. We recommend that both components be included in the MPCA fee structure.

5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

Fees and notifications when updates are made will be challenging for covered manufacturers and may overwhelm the Agency. The Agency should consider requiring updates a regular frequency (only every 2, 3 or 5 years).

Finally, the Agency will need to contemplate what controls should be put in place to ensure that revenues generated from fees align with program costs. Perhaps regular audits should be conducted to confirm that the fee structure does not exceed program costs.

We appreciate the opportunity to provide constructive input into this pre-rulemaking process and look forward to continued dialogue as the rule-making process advances. Should you have any questions about these comments or require additional information, please contact me at: lori.e.austino@dupont.com

Sincerely,

LE Austino

Lori E. Austino
Global Technology Leader – Substances of Concern
lori.e.austino@dupont.com

RECEIVED
By: OAH on 11/28/2023
Kami Thoen Attachment

Kindeva
DRUG DELIVERY
Manufacturing More Tomorrows™

November 27, 2023

Dr. Kami K. Thoen
Global Product Stewardship Senior Manager
Kindeva Drug Delivery L.P.
11200 Hudson Road
Woodbury, MN 55129

Dear Sir/Madam,

This letter is in response to the Minnesota Polluction Control Agency's planned new rules governing reporting of per- and polyfluoroalkyl substances (PFAS) in products. On September 25, 2023, the Minnesota Pollution Control Agency (MPCA) published a Request for Comments in the State Register. As a concerned Minnesota manufacturer of products that will be impacted by the proposed new rules, please see Kindeva's specific comments and questions below. These comments apply to both the "PFAS in Product: Fees" and the "PFAS in Products: Reporting" proposed rules.

Kindeva Drug Delivery is a global contract development manufacturing organization focused on drug-device combination products. Kindeva Drug Delivery develops and manufactures products across a broad range of complex drug-delivery formats, including injectables (autoinjector, intradermal, microneedle), pulmonary & nasal, and transdermal patches. Its service offering spans early-stage feasibility through commercial scale drug product fill-finish, container closure system manufacturing, and drug-device product assembly. Kindeva Drug Delivery serves a global client base from its nine manufacturing and research and development facilities located in the U.S. and U.K.

Comments from Kindeva Drug Delivery L.P, Regarding MPCA's Proposed Rules Regarding PFAS

PFAS in Products: Reporting

In developing the reporting rule, the MPCA would appreciate comments on the following questions:

1. Are there definitions in subdivision 1 for which clarification would be useful to understanding reporting responsibilities?

   In subdivision 1(p), "perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" are defined as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. Kindeva Drug Delivery respectfully suggests that this definition be modified to include only those longer-chain PFAS currently recognized as "forever chemicals", substances known to cause harm to humans and/or the environment due to their slow breakdown over time.

   The primary concern with PFAS is their potential for buildup in humans, animals and/or the environment over time. However, this concern is related to the longer-chain PFAS already known to cause these issues, with perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) being two key examples. In the EU, a number of PFAS are currently restricted by REACH Annex XVII Article 68, which places restrictions on the manufacture,

placing on the market and use of certain dangerous substances, mixtures and articles. This restriction is limited to those PFAS substances containing nine or more carbon atoms, as these are the chemicals known to persist in the environment.

There are numerous shorter-chain PFAS that have been shown to be nontoxic to humans and do not persist in the environment which are useful in many applications that are being needlessly included in the Minnesota Pollution Control Agency's proposed PFAS regulations. Kindeva Drug Delivery manufactures metered dose inhaler pharmaceutical drug products, which have been the subjects of numerous clinical studies and are approved by the FDA. These products use propellants to deliver the drugs into the lungs of patients, where they effectively treat many different acute and chronic respiratory diseases, including asthma and chronic obstructive pulmonary disease. These propellants are hydrofluorocarbons that are technically PFAS according to the proposed MPCA definition, even though they are proven to be nontoxic and do not persist in the environment. The main propellants currently used in metered dose inhalers are HFA-134a (1,1,1,2-tetrafluoroethane) and HFA-227 (1,1,1,2,3,3,3-heptafluoropropane). These two propellants are currently in the process of being phased out globally due to their high global warming potential. The replacements being developed are HFC-152a (1,1-difluoroethane) and HFO-1234ze (1,3,3,3-tetrafluoropropene)due to their significantly lower global warming potential, but HFO-1234ze would also still be considered a PFAS under the MPCA's definition despite the fact that it is both nontoxic and better for the environment in terms of global warming potential.

There are no other alternatives or substitutes being considered or developed that would not fall under the MPCA's definition of PFAS. Metered dose inhalers are complex devices and medical propellants must meet a specific range of technical performance characteristics to be safe and effectively deliver consistent doses of life-saving medicines for patients. A new propellant needs to have certain properties in terms of both human safety and physiochemical attributes and cannot simply be "dropped in", as reformulating existing drug products to use a new propellant requires the conduct of comprehensive preclinical and clinical studies, extensive product development studies inclusive of product stability and product characterisation tests as well as regulatory review and approval by the FDA.

PFAS are also used as coatings for the aluminum cans used in metered dose inhalers. This coating is critical to the proper, consistent function of the inhaler. These coatings, fluorinated ethylene propylene (FEP), are also shorter-chain hydrofluorocarbons that are nontoxic and do not persist in the environment.

These pharmaceutical drug products are necessary and must be accessible to patients for the treatment of their respiratory diseases, and the PFAS restrictions being proposed by MPCA would cause an undue burden on manufacturers working to provide these drugs to patients in need. If the definition of PFAS cannot be restricted to longer-chain hydrofluorocarbons, then at a minimum, an exemption for medical devices and pharmaceutical products should be included in the regulations. Inclusion of HFA-134a, HFA-227, HFO-1234ze and FEP in the MPCA definition of PFAS is inconsistent with the conclusions of the FDA, EMA and other regulatory agencies regarding the safety and benefits of these materials. It should be noted that this issue is being grappled with internationally and is currently being reviewed and discussed by numerous global health and regulatory agencies. Please see the following link for a comprehensive discussion of the scientific and clinical justifications for exempting MDI propellants from PFAS regulations. https://www.ipacinhaler.org/resource-hub

In subdivision 1(n), "manufacturer" is defined as the person that creates or produces a product or whose brand name is affixed to the product. This definition needs to be revised to clarify which party bears responsibility in a contract manufacturing arrangement. Many companies these days use contract manufacturers, such that the company that manufactures the product is not the same as the company whose brand name is affixed to the product. It is typically the company whose brand name is affixed to the product that is generally responsible for the marketing, distribution and sale of the product and, in the case of pharmaceutical products, is often the company that applies to the FDA for and holds the product's marketing authorization (NDA or ANDA). Kindeva Drug Delivery would thus suggest that the reporting and fee requirements proposed by MPCA should apply to the entity whose brand name is affixed to the product and who distributes the product in the state of Minnesota.

2. Are there terms or processes in subdivision 2 for which clarifications will help reporting entities determine reporting status or data-gathering process?

   No.

3. How should the MPCA balance public availability of data and trade secrecy as part of the reporting requirements?

   No.

4. Are there any terms used in subdivision 3 that should be further defined or where examples would be helpful?

No.

5. Are there specific portions of the reporting process that should not be defined through guidance or the development of an application form?

   No.

6. Other questions or comments relating to reporting or the process of reporting.

   None.

PFAS in Products: Fees

In developing the reporting rule, the MPCA would appreciate comments on the following questions:

1. Should the Agency consider tiered fees for different sizes of business?

   No. The amount of PFAS used by a business, and the necessity of using the PFAS substance, may not be related to the size of the business.

2. Should the Agency consider a per-product or per-company fee?

   Please see our comments above. Kindeva Drug Delivery L.P. believes that medical devices and pharmaceutical products should be exempted from all PFAS fees. The use of PFAS, as currently defined by the MPCA, in these products has been approved by the U.S. Food and Drug Administration (FDA) and other global health agencies, and the availability of these products is necessary for the health and safety of patients worldwide.

3. Should the Agency consider a per-PFAS or PFAS amount fee?

   Please see our comments above.

4. Are there other state program fee structures on which the Agency should model the fees?

   A similar program that could be used as a model is the MN Opiate Product Registration (OPR) Fee, administered by the MN Board of Pharmacy. This is a MN state law that establishes a product registration and fee collection program applicable to opiate manufacturers. This program provides funding for various opiate treatment, prevention and recovery programs. The key difference between this program and the PFAS reporting and fees proposed by the MPCA is the clarification that the MN

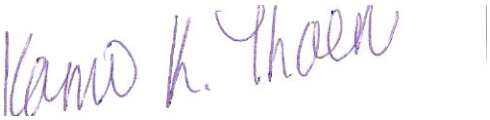
OPR reporting and fees only apply to opiate manufacturers and wholesalers that sell, deliver or distribute opiates to end users within the state of MN. This removes the reporting and fees requirements from contract manufacturers, who are not responsible for the sale, marketing or distribution of the product.

5. Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

   No. Requiring a fee to be paid when reporting decreased amounts or elimination of one or more PFAS would discourage efforts to minimize their use in products. Product development efforts aimed at minimization of PFAS in products should be encouraged.

Thank you for your consideration of these comments, and please feel free to reach out if we can be of any assistance or provide any further information to MPCA.

Sincerely,



Kami K. Thoen, Ph.D.
Global Product Stewardship Senior Manager
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ALLIANCE FOR AUTOMOTIVE INNOVATION

November 28, 2023

Submitted to Office of Administrative Hearings via Rulemaking eComments:
https://minnesotaoah.granicusideas.com/

Ms. Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North,
St. Paul, Minnesota
55155-4194

Re: REQUEST FOR COMMENTS: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

Dear Ms. Lynn:

The Alliance for Automotive Innovation[1] (Auto Innovators) appreciates the opportunity to provide comments on the Minnesota Pollution Control Agency's (MPCA's) Request for Comment on the Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS) (hereinafter "the Notice"). These rules would require that on or before January 1, 2026, a manufacturer of a product sold, offered for sale, or distributed in the state that contains intentionally added PFAS submit certain information to MPCA commissioner information and would establish a fee structure for required reporters.

We appreciate MPCA requesting input prior to the development of a proposed PFAS reporting fees rule. We have been actively engaged in the development of PFAS legislation and regulation at the federal and state levels; we believe that our experience and recommendations will be beneficial to MPCA as it moves forward in drafting implementing regulations. Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell approximately 95% of the new light-duty vehicles in the United States. The auto industry plays an important and critical role in our nation's economy, accounting for 10 million jobs and 5.5% of the annual Gross Domestic Product. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country.

Our comments and recommendations reflect issues that we think will be critical for MPCA to consider prior to initiating any rulemaking that imposes fees on the regulated community. The PFAS law directs that "[t]he commissioner may 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. Fees collected under this subdivision must be deposited

[1] From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future. www.autosinnovate.org.

in an account in the environmental fund." In doing so, MPCA should take into consideration the concerns outlined below.

No Fee Should Be Levied on Reporters

We do not support levying a fee on the regulated community to fund this program. The statutory language in subdivision 6 directs that MPCA *"may"* collect fees "to cover the agency's reasonable costs to implement this section." It does not *require* that fees be collected and limits any fees to those that are "reasonable." Many regulatory programs that collect fees usually collect user fees—fees paid by those that will use the data or derive some benefit from the action being requested. Examples include the U.S. Environmental Agency's Premanufacture Notice (PMN) program where a company is requesting that EPA review and approve a new chemical for commercialization, and a manufacturer-requested risk evaluation of a non-work plan chemical where the requestor will derive a benefit from EPA's review. MPCA should consider fees for users of the data, and should make this query of stakeholders at the next opportunity for public comment. MPCA should similarly solicit input on who the primary users of the data may be.

In the Alternative, MPCA Should Take into Consideration Several Issues

Although we believe reporters should not be charged fees for filing the required information, it is apparent from MPCA's request for comment that it is inclined to levy fees on the regulated entities. MPCA has identified five specific questions for comment. These are:

1. Should the Agency consider tiered fees for different sizes of business?
2. Should the Agency consider a per-product or per-company fee?
3. Should the Agency consider a per-PFAS or PFAS amount fee?
4. Are there other state program fee structures on which the Agency should model the fees?
5. Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

The answers to these questions depend on the reporting requirements and structure ultimately developed by MPCA; therefore, it is somewhat difficult to answer them without a proposed rule for reporting available. Maine, for example, is also considering a fee structure for their PFAS reporting requirements based on similar statutory language in its PFAS law; however, Maine has not undertaken much activity in the fees space because they do not yet have a final set of data requirements and a data collection structure in place. We therefore recommend that MPCA follow a similar approach and ask the above questions again when more essential details are available. These would include required data elements, identification of data collection vehicles such as the Interstate Chemicals Clearing House (IC2), frequency of data collection and identification of anticipated data users in addition to data submitters.

If MPCA intends to require reporters to pay fees, it should be very careful about how it collects them so as not to overburden industry. The regulated community will already have invested significant financial resources in collecting any data required by MPCA. MPCA should be cautioned in considering per-PFAS fees because the class of currently regulated PFAS can be as many as 14,000 substances, and complex consumer goods like automobiles may contain many of those PFAS substances, likely in miniscule amounts, which could result in tremendous fee totals. Clarity as

to what constitutes a singular “product” to report is also essential before determining whether there should be a per-product fee; for the auto industry, if MPCA forces each kind of replacement or service part to be counted as an individual “product,” similarly these reporting fees could quickly become astronomical. It is hard for industry to determine its preferred fee structure without having greater clarity on what reporting will look like.

While MPCA has not identified the database that it will use to collect and store the data, we assume it is considering using the IC2 High Priority Chemical Data System (HPCDS), as are other states developing PFAS data collection programs. If Maine moves forward with developing this data system, we recommend that MPCA also use this system to minimize the costs of data management and ease reporting.

We once again note that the statutory language stipulates “reasonable” costs. MPCA should clearly identify what it finds to be “reasonable” costs, and that those costs should exclude delays in rule promulgation, development of alternative data collection mechanisms, and specialized tools beyond those needed for MPCA to review the data.

We thank you for this opportunity to provide input and are committed to ongoing engagement with MPCA on this and other issues related to PFAS regulation. We would welcome the opportunity to answer any questions that arise and discuss with you in greater detail.

Sincerely,

Catherine Palin
Senior Attorney & Director of Environmental Policy
Alliance for Automotive Innovation
Ph: 202-326-5511
Email: cpalin@autosinnovate.org

PERFORMANCE FLUOROPOLYMER PARTNERSHIP

November 28, 2023

Re: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827[1]

Submitted via https://minnesotaoah.granicusideas.com/

On behalf of the American Chemistry Council's Performance Fluoropolymer Partnership,[2] thank you for the opportunity to submit comments on planned new rules for fees to be paid upon submission of required information about products containing intentionally added per- and polyfluoroalkyl substances (PFAS). The Partnership's members are some of the world's leading manufacturers, processors, and users of fluoropolymers, including fluoroelastomers, and polymeric perfluoropolyethers. The Partnership's mission is to promote the responsible production, use, and management of fluoropolymers, while also advocating for a sound science- and risk-based approach to regulation. We hope the Minnesota Pollution Control Agency (hereafter "MPCA" or "Agency") will find our comments useful in crafting proposed regulations.

General Comments

The Agency's approach to collecting fees should reasonably reflect its actual costs for administering the product notification program, consistent with Minnesota Session Law – 2023, chapter 60, article 3, section 21, (Minnesota Statutes 116.943) subdivision 6, and should result in an equitable fee structure. Without a more detailed forecast of the Agency's costs, it is challenging to evaluate potential approaches to a fee structure. We provide some preliminary thinking below and look forward to a more detailed cost analysis accompanying the proposed rule.

Responses to Specific Questions Raised by MPCA

1. Should the Agency consider tiered fees for different sizes of business?

We do not support tiered fees based on the size of the manufacturer's business. Manufacturers with a small number of reporting obligations due to limited use of intentionally added PFAS should not (effectively) subsidize the fees of manufacturers with relatively larger reporting obligations that may therefore incur relatively larger Agency costs related to program administration. Likewise, manufacturers with relatively larger reporting obligations should not pay less than their equitable share for expenses related to program administration.

[1] https://www.pca.state.mn.us/sites/default/files/c-pfas-rule2-01.pdf
[2] https://fluoropolymerpartnership.com

We assume the number of reports to be the primary cost driver for the Agency. Therefore, we do not support tiered fees for different sizes of businesses. A manufacturer with a limited number of reporting obligations should not pay more than a relatively smaller company with a larger number of reporting obligations. Said differently, a manufacturer should not be disproportionately burdened or subsidized by virtue of the size of the business.

2. Should the Agency consider a per-product or per-company fee?

We do not believe a per-company fee is equitable for the reasons articulated in the response to question 1 above. We suggest that a more equitable approach could be an initial, relatively higher fee for a manufacturer's first three submissions and a reduced fee for any additional filings. Such an approach would appear to align with what we expect to be the most significant, on-going cost to the Agency, namely reviewing submissions. We expect that a single submission for a group of products in a category-based submission would be treated as a single submission for the purpose of calculating fees and any subsequent deliberations by the agency concerning potential risks to human health or the environment.

3. Should the Agency consider a per-PFAS or PFAS amount fee?

We do not support a per-PFAS or PFAS amount fee. We do not understand how either the number of PFAS in a product or the amount of PFAS in a product would drive program administration costs. Should the Agency choose to explore these options further, it should clarify that the fee basis would be for intentionally added PFAS only.

4. Are there other state program fee structures on which the Agency should model the fees?

We do not have a recommendation in response to this question at this time. However, because the product notification requirement is unprecedented in scope and size, we urge caution in considering the use of other state fee structures as a model for this program.

5. Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS).

Without a more thorough explanation of what costs the Agency would incur as a result of a manufacturer providing an update, we would not support the Agency levying a new fee when a manufacturer provides an update. An update concerning an increased amount of intentionally PFAS in a previously reported product would appear to create marginal, if any, new work. An update concerning a decrease or elimination of intentionally added PFAS in a product would appear to reduce the Agency's administrative burden and may create a perverse incentive to not reduce or eliminate PFAS in a product. We do not support an additional fee in either case.

Other issues related to reporting or fees not covered in the questions.

The Agency should not promulgate a fee rule until the cost of administering the program is better understood. The rationale for setting fees should be transparent about revenue generated by fees and how the fees will be used to manage the program. Fees should be calibrated appropriately such that the Agency is not collecting more in fees than what is needed to administer the program. To this end, we request that the Agency publish a publicly available annual audit of fees collected and its program administration costs.

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Thank you for the opportunity to provide these comments. Please contact me if you have any questions.

Jay West
Executive Director
Performance Fluoropolymer Partnership

RECEIVED
By: OAH on 11/28/2023
Marcus Branstad Attachment

November 28, 2023

Mary H. Lynn
Minnesota Pollution Control Agency
520 Lafayette Road
North St. Paul, MN 55155-4194

RE: **Minnesota Pollution Control Agency Request for Comments on PFAS in Products Fee Rule: OAH Docket No. 71-9003-39506**

Dear Ms. Lynn:

The American Chemistry Council (ACC) represents over 190 companies engaged in the business of chemistry—an innovative, $639 billion enterprise that is helping solve the biggest challenges facing our nation and the world. The business of chemistry drives innovations that enable a more sustainable future, creates 555,000 manufacturing and high-tech jobs—plus over four million related jobs—that support families and communities, and enhances safety through the products of chemistry and investment in research.

ACC respectfully submits the following comments from three groups within our association: The Performance Fluoropolymer Partnership, the Alliance for Telomer Chemistry Stewardship, and the Center for the Polyurethanes Industry. All three groups have extensive expertise as it relates to the rulemakings the Minnesota Pollution Control Agency (MPCA) is going to undertake and were all engaged during the legislative process.

Per- and polyfluoroalkyl substances (PFAS), or Fluorotechnology, are a diverse universe of chemistries that makes possible the products that power our lives – the cellphones, tablets and telecommunications we use every day to connect with our friends and family; the aircraft that power the U.S. military; alternative energy sources critical to sustainability goals; and medical devices that help keep us healthy. However, all PFAS are not the same. Individual chemistries have their own unique properties and uses, as well as environmental and health profiles.

ACC strongly supports the use of sound scientific principles during any rulemaking that impacts chemistry in commerce, and we stand ready to work with the MPCA during this process.

Thank you for the opportunity to provide comments during this pre-rulemaking comment period. Should you have any questions or concerns, please do not hesitate to contact me at (515) 471-1960 or by email at Marcus_Branstad@americanchemistry.com.

Sincerely,

Marcus Branstad
Senior Director, State Affairs

Alliance for Telomer Chemistry Stewardship

Re: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827[1]

Submitted via https://minnesotaoah.granicusideas.com/

The Alliance for Telomer Chemistry Stewardship (ATCS) would like to submit the below general comments, specific comments to the Maine Department of Environmental Protection (DEP) Second Concept Draft (Draft) on PFAS in Products.

ATCS is a global organization that advocates on behalf of C6 fluorotelomer-based products. Our members are leading manufacturers of fluorotelomer based products in North America, Europe, and Japan. Our mission is to promote the responsible production, use, and management of fluorotelomer based products, while also advocating for a sound science and risk-based approach to regulation. Fluorotelomer-based products are versatile chemistries with wetting and spreading features, as well as unique properties that repel water, oil, and stains. These unique characteristics make fluorotelomers a critical component of first responder gear, medical garments, paints and coatings, upholstery, class B firefighting foam, among other uses that families and businesses across the world rely on.

ATCS has added responses to the following questions to best respond with the MCPA (Agency) requested information to the MCPA's proposal on fees.

Should the Agency consider tiered fees for different sizes of business?

We do not support tiered fees based on the size of the manufacturer's business. Manufacturers with a small number of reporting obligations due to limited use of intentionally added PFAS should not (effectively) subsidize the fees of manufacturers with relatively larger reporting obligations that may therefore incur relatively larger Agency costs related to program administration. Likewise, manufacturers with relatively larger reporting obligations should not pay less than their equitable share for expenses related to program administration.

We assume the number of reports to be the primary cost driver for the Agency. Therefore, we do not support tiered fees for different sizes of businesses. A manufacturer with a limited number of reporting obligations should not pay more than a relatively smaller company with a larger number of reporting obligations. Said differently, a manufacturer should not be disproportionately burdened or subsidized by virtue of the size of the business.

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We do not believe a per-company fee is equitable for the reasons articulated in the response to question 1 above. We suggest that a more equitable approach could be an initial, relatively higher fee for a manufacturer's first three submissions and a reduced fee for any additional filings. Such an approach would appear to align with that we expect to be the most significant, on-going cost to the Agency, namely reviewing submissions. We would expect that a single submission for a group of products in a category-based submission would be treated as a single submission for the purpose of calculating fees and any subsequent deliberations by the agency concerning potential risks to human health or the environment.

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Other issues related to reporting or fees not covered in the questions.

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request that the Agency publish a publicly available annual audit of fees collected and its program administration costs.

PERFORMANCE FLUOROPOLYMER PARTNERSHIP

November 28, 2023

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Jay West
Executive Director
Performance Fluoropolymer Partnership

November 28, 2023

Mary H. Lynn
MPCA
520 Lafayette Road North
St. Paul, Minnesota, 55155-4194

RE: Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827

Dear Ms. Lynn,

The American Chemistry Council's Center for the Polyurethanes Industry[1] (CPI) thanks the Minnesota Pollution Control Agency (MPCA) for engaging stakeholders during its rulemaking regarding products containing per-and polyfluoroalkyl substances (PFAS).

Polyurethanes manufacturers and chemical producers have been investing in the transition to low-global warming potential (GWP) foam blowing agents for decades. Since the early 2010s, polyurethanes manufacturers have had access to hydrofluoroolefin (HFO) foam blowing agents. HFO blowing agents provide a significant GWP reduction as compared to earlier generations of blowing agents and have a short atmospheric lifetime. The three primary HFO foam blowing agents used in the polyurethanes sector have GWPs < 7, which is approximately 200-1400 times lower than the substances previously used in the industry. In October, the U.S. Environmental Protection Agency (U.S. EPA) published a final rule outlining the federal phaseout of HFC blowing agents with a GWP of over 150 for polyurethane end uses by Jan 1. 2025.

CPI has the following comments on the request for information regarding Planned New Rules Governing Fees Payable by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4827:

Definition

CPI strongly disagrees with the definition of PFAS used in the request for information. There are several federal bodies that have proposed a different definition and the Organisation for Economic Co-operation and Development (OECD), which serves as the basis for the definition used in the regulation, even cautions against using its definition to regulate PFAS as a class. The proposed PFAS class is unified only by a single chemical feature, which results in an overly broad group of substances with vastly different physico-chemical, toxicological and degradation properties, instead of a well-defined group of substances that have been demonstrated to have actual or potential hazardous effects on the environment or on human health. We believe that the scope of any PFAS reporting requirement and related fees should be tailored to substances with recognized persistent and bioaccumulation characteristics. It is well established that persistent and bioaccumulation properties of PFAS depend on carbon chain length. For

[1] The Center for the Polyurethanes Industry's (CPI) mission is to promote the growth of the North American polyurethanes industry through effective advocacy, delivery of compelling benefits messages demonstrating how polyurethanes deliver sustainable outcomes, and creation of robust safety education and product stewardship programs.

instance, smaller and larger molecules (< C4 or > C20) have been shown to not exhibit bioaccumulative properties.

An overly broad definition of PFAS will include chemicals that have been determined as non-toxic and non-bioaccumulative based on U.S. EPA criteria. Many are approved for their respective end-use applications by U.S. EPA under Section 612 of the Clean Air Act (CAA), as well as specific Toxic Substances Control Act (TSCA) significant new use rules and Section 5(e) Consent Orders, and these substances also are already subject to CAA and TSCA reporting requirements. U.S. EPA has taken several key federal actions to regulate PFAS, and MPCA should consider these approaches in more detail as it decides its policy options. Per U.S. EPA's approach, there are multiple definitions of PFAS, and the choice of definition determines which fluorinated chemicals are subject to regulation based on the Agency's goals of addressing and prioritizing those PFAS compounds that have demonstrated persistence, bioaccumulation potential, and toxicity. Most recently, U.S. EPA announced its planned framework for reviewing new PFAS and new uses of PFAS.[2] This latest framework proposes extensive review of PFAS before they enter the market. Further, the definition of PFAS that has been proposed under this approach is based on chemical structure and is narrower and more appropriate. The framework includes differing levels of PFAS classification based on the potential for exposure and environmental release.

HFO blowing agents fall into a broad class of fluorinated chemicals, but they do not possess the properties that have been associated with PFAS. HFO foam blowing agents are not classified as persistent, bioaccumulative, or toxic (PBT).[3] The HFOs used as foam blowing agents have atmospheric lifetimes measured in days and are designed to readily breakdown in the atmosphere if released, forming compounds that occur naturally in the environment.[4,5] Under Section 612 of the CAA, U.S. EPA's Significant New Alternatives Policy (SNAP) program reviewed environmental fate data on the HFO foam blowing agents for acceptability as approved alternatives to previous generation materials. By deeming HFO foam blowing agents "acceptable," U.S. EPA has determined that HFO foam blowing agents "reduce overall risk to human health and the environment compared to other substitutes for the particular end-use." Additionally, on April 28, 2023, U.S. EPA stated in the final rulemaking for SNAP Rule 25 regarding HFOs in refrigerant end uses:

> Regardless of what definition of PFAS is used, not all PFAS are the same in terms of toxicity or any other risk. Some PFAS have been shown to have extremely low toxicity, for example. If a chemical has been found to present lower overall risk to human health or the environment, it might be found acceptable under SNAP regardless of whether or not it falls under a particular definition of PFAS. Likewise, SNAP might not find a potential alternative acceptable if it presented greater overall risk, regardless of whether or not it falls under a particular definition of PFAS. As described in the risk screens for alternatives found in the docket for this rulemaking, potential risk to human health or the

[2] U.S. EPA Framework for TSCA New Chemicals Review of PFAS Premanufacture Notices (PMNs) and Significant New Use Notices (SNUNs), dated June 28, 2023.
[3] ECHA PBT Assessment List. Available at: https://echa.europa.eu/fi/pbt
[4] D.K. Papanastsiou, Atmospheric Chemistry of HFOs and HCFOs, DKV Annual Meeting, November 17-19, 2021, Dresden, Germany.
[5] EFCTC Position Paper: Published evidence supports very low yield of TFA from most HFOs and HCFOs (August 2021). Available at: https://www. fluorocarbons.org/wp-content/uploads/2021/08/2021_08_EFCTC_Position-Paper_Published-evidence-supports-very-lowyields-of-TFA-from-most-HFOs-and-HCFOs_F.pdf

> environment has been considered directly for each chemical, and the risks are not assumed to follow from a chemical falling into any particular category of substances.[6]

HFO foam blowing agents are not considered PFAS by U.S. EPA[7] and should not be classified or regulated as PFAS. It is inappropriate to regulate these chemicals in the same manner as PFAS. Unfortunately, the definition of PFAS used in the Request for Comments is broad enough to improperly include HFO blowing agents as PFAS. HFO blowing agents should be exempt from the fees requirement and ban in any proposed rule.

Additionally, the definition used in the Request for Comments appears to be based on the OECD definition of PFAS. The OECD and U.S. Department of Defense (DOD) caution against the use of the OECD definition as a basis for regulating PFAS chemistries by family. The OECD stated:

> The term "PFAS" is a broad, general, non-specific term, which does not inform whether a compound is harmful or not, but only communicates that the compounds under this term share the same trait for having a fully fluorinated methyl or methylene carbon moiety.[8]

The DOD, citing the OECD, provided the following caution in a recent report on PFAS:

> If future PFAS legal and regulatory frameworks ignore the OECD caution on the use of its PFAS definition and seek to broadly restrict the use of PFAS based on chemical structure, there could be extensive economic, industrial competitiveness, and quality-of-life impacts to U.S. society. The PFAS universe is structurally and physiochemically diverse and subgroups of PFAS may be more or less stable, persistent, and/or bioaccumulative compared to well-studied PFAS such as perfluorooctane sulfonate and perfluorooctanoic acid. Congress and the Federal regulatory agencies should avoid taking a broad, purely "structural" approach to restricting or banning PFAS. It is critical that future laws and regulations consider and balance the range of environmental and health risks associated with different individual PFAS, their essentiality to the U.S. economy and society, and the availability of viable alternatives.[9]

CPI strongly disagrees with the overly broad definition of PFAS in the Request for Comments. MPCA should recognize that HFO foam blowing agents, though structurally classified as PFAS under the OECD definition, do not have the same properties. EPA has listed HFO foam blowing agents as acceptable substitutes for the respective end-use applications under CAA Section 612. Additionally, HFO foam blowing agents are subject to CAA reporting requirements under SNAP Rule 21.

A more appropriate definition of PFAS is:

> PFAS means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gasses and volatile liquids.

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[6] Final Rule, Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression, 88 Fed. Reg. 26382, 26414 (Apr. 28, 2023).

[7] U.S. Environmental Protection Agency, National PFAS Testing Strategy: Identification of Candidate Per- and Polyfluoroalkyl Substances (PFAS) for Testing, US EPA, May 2, 2023

[8] Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance, OECD (July 9, 2021)

[9] Report on Critical Per- and Polyfluoroalkyl Substance Uses, United States Department of Defense (2023)

Fees

CPI strongly opposes any fees related to reporting of PFAS as defined in the Request for Comments. CPI also recommends that products containing fluorinated chemistries that are non-persistent, non-bioaccumulative, and non-toxic be exempt from both reporting and fees.

5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted?

No, CPI believes that there should be no fees associated with updates to information on previously reported products. CPI strongly opposes any fees related to updates to information indicating a decreased amount of PFAS or the removal of PFAS.

Conclusion

The fluorocarbons used in blowing agents break down quickly in the atmosphere, and are non-toxic, non-persistent and non-bioaccumulative, and thus not considered PFAS by U.S. EPA. Additionally, OECD and DOD both caution against broad use of the OECD definition as a basis for regulation of PFAS chemistries. CPI strongly believes that amending the definition of PFAS used in the Request for Comments to a more appropriate definition will alleviate many issues related to fees. CPI opposes fees related to fluorinated chemistries that are non-persistent, non-bioaccumulative, and non-toxic.

If you have any questions or need additional information, please contact me at Ian_Choiniere@americanchemistry.com or (202) 249-6424.

Sincerely,

Ian Choiniere
Director
Center for the Polyurethanes Industry

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By: OAH on 11/28/2023
Edith Nagy Attachment

Coalition of Manufacturers of Complex Products

November 28, 2023

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Rd, St Paul, MN 55155

Via eComment at https://minnesotaoah.granicusideas.com/

Re: Planned New Rules Governing Reporting by Manufacturers on Products Containing Per-and polyfluoroalkyl substances ("PFAS"); Revisor's ID Number R-4828; and Associated Fees; Revisor's ID Number R-4827

Dear Commissioner Kessler:

The Coalition of Manufacturers of Complex Products ("Coalition") respectfully submits the following comments on proposed regulations and fees implementing Minnesota Session Law - 2023, Chapter 60, H.F. No. 2310, An Act to establish reporting requirements and rulemaking for Products containing PFAS. The law establishes a requirement for manufacturers to notify the Minnesota Pollution Control Agency ("MPCA") of any product for sale in the State that contains intentionally added PFAS, and submit certain information, starting on January 1, 2026.

Coalition members manufacture equipment and products by assembling tens to hundreds or thousands of parts, components, and raw materials to provide, in many cases, critical services to society. These include commercial and consumer products such as appliances, vehicles, vessels, motors, heating, ventilation, air conditioning, refrigeration ("HVAC-R") and water heating equipment, electronics, and their replacement parts. Coalition members serve and support nearly every major sector in the nation, providing critical products for government agencies, the US military, law enforcement, first responders, and public safety, food and agriculture (including commercial fishing and sea farming), energy, transportation and logistics (including for commuting and for island residents), public works and infrastructure support services, critical manufacturing, the defense industrial base, conservation, and life-saving climate control and ventilation in homes, hospitals, schools, and eldercare facilities.

For purposes of this proposed rule, the Coalition supports:

- **Reporting for a single list of high priority PFAS.** The grouping of thousands of PFAS chemicals by chemical definition creates regulations that are too complex to comply with or to enforce. Use of a list of reportable Chemical Abstracts Service Registry Numbers ("CASRNs") is needed.

- **Excluding refrigerants and fluoropolymers from reporting.** These are often critical ingredients in complex goods and do not meet the criteria to be classified as persistent, bioaccumulative and toxic substances ("PBT") or "forever chemicals."

- **Permit coordinated supply chain reporting.** In recognition of supply chain complexity, a coordinated supply chain reporting mechanism should be proposed to allow chemical manufacturers to report and exempt complex consumer and durable goods manufacturers from reporting. Manufacturers should be allowed to notify their suppliers that their components are

in products sold in Minnesota, and have the supplier notify directly on that basis. Reported data should be limited to information that is known or reasonably ascertainable and downstream manufacturers should not be penalized if information cannot be obtained. Products should be grouped for reporting and in assessing fees, which should be capped at only what is necessary to carry out the program. A coordinated supply chain reporting mechanism should allow chemical manufacturers to report and exempt complex consumer and durable goods manufacturers from reporting.

- **Regulations that apply a risk-based approach to consider both hazard and exposure.** To best protect human health and the environment, a risk-based approach focuses limited agency resources on the highest priorities based on actual environmental, health, and safety risk of chemistries, not just the mere presence of a substance. Workable and reasonable regulations should exclude *de minimis* levels, replacement parts, large-scale manufacturing equipment, and critical uses.

- **Clear timelines to identify unavoidable uses.** The State should focus any immediate products bans on high emissive uses of high risk PFAS regulated under the Stockholm Convention on Persistent Organic Pollutants and the U.S. Environmental Protection Agency's ("EPA's") contaminants of concern on the ("UCMR 5") list. Up to five years after the rulemaking on unavoidable use regulations should be allowed for complex product and equipment manufacturers to evaluate the availability, cost, safety, and reliability of potential alternatives.

In addition, with respect to MPCA's request for comments, we provide the following responses:

1) **Are there definitions in subdivision 1 for which clarification would be useful to understanding reporting responsibilities?**

   Subd. 1(l) defines "intentionally added" to mean PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function. Subd. 2(a) clarifies that only "intentionally added PFAS" are reportable. MPCA should include in its regulations provisions to exclude the presence of chemicals that do not provide functionality to components or equipment (*e.g.*, contaminants). MPCA may wish to further refine reporting requirements to exempt products which qualify as "articles" containing *de minimis* levels of PFAS. The Coalition suggests that a *de minimis* level could be further clarified as PFAS in quantities of less than 0.1% by weight of the final product.

2) **Are there terms or processes in subdivision 2 for which clarifications will help reporting entities determine reporting status or data-gathering process?**

   To implement the requirement in Subd. 2(a)(1) to describe products with a universal product code, we ask that MPCA allow flexibility to use any variety of internationally used product classification codes such as Harmonized Tariff System ("HTS") code or the European Union Substances of Concern in Products ("SCIP") database, or the Global Product Classification ("GPC") brick code.

   Subd. 2(a)(3) directs reporting only as to the amount of each PFAS "identified by its chemical abstracts service registry number." Regulations should confirm that MPCA interprets that PFAS subject to the reporting requirement of the law are limited to those that have a CASRN. Specifically, the Coalition asks MPCA to establish a list of reportable PFAS chemicals that meet the definition in the legislation, with their specific CASRNs included.

Subd. 2(a)(3) also calls for reporting "the amount of each PFAS . . . in the product, reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes . . ." The Coalition supports being able to provide a concentration range, as this information will be more readily available.

Subd. 2(a)(5) allows MCPA to request additional information beyond that enumerated in the statute. The Coalition thinks the information elements that are listed there are sufficient for MPCA to form an understanding of the presence of PFAS in products in commerce in Minnesota. We urge MPCA to be reasonable and judicious and not require additional information beyond that which is already required to be reported by the statute.

Subd. 2(b) permits MPCA to allow a manufacturer to supply information for a category or type of product rather than for each individual product. The Coalition believes it is more expedient and efficient for MPCA to propose conditions under which such reports will be accepted rather than requiring approvals on an individual company basis. MPCA's regulations also should permit grouping of products for purposes of fees.

3) **How should MPCA balance public availability of data and trade secrecy as part of the reporting requirements?**

MPCA's regulations should ensure that reportable information is protected. It would be helpful to clarify which types of information can be claimed as confidential and to provide a simplified process for substantiating those claims, if necessary.

4) **Are there any terms used in subdivision 3 that should be further defined or where examples would be helpful?**

Subd. 3 allows MPCA to waive all or part of the information requirements if substantially equivalent information is already publicly available. The Coalition asks MPCA to define "substantially equivalent" information and consider formal waivers from the outset for the federal reporting rule elements. MPCA should also explore agreements with other states to reduce duplicative reporting. The Northeast Waste Management Officials' Association, Inc. ("NEWMOA"), which consists of members from state environmental agencies from Maine, Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, released draft model PFAS legislation on May 2, 2023. The draft legislation specifically advances the concept of an interstate clearinghouse. Minnesota should consider this interesting option for structuring reporting.

5) **Are there specific portions of the reporting process that should not be defined through guidance or the development of an application form?**

The Coalition supports providing flexibility in guidance and forms to address the concerns and areas specified above.

The Coalition greatly appreciates the consideration by MPCA of the following comments regarding this involved issue.

1. **Regulations should be consistent with the statutory requirement which only applies to chemicals with a CASRN. The Coalition asks MPCA to provide a single list of PFAS chemicals by CASRN for which reporting is required.**

PFAS is a broad term that refers to the family of perfluoroalkyl and polyfluoroalkyl substances, synthetic organic compounds having carbon and fluorine. The term is defined differently by policymakers. It was coined to address chemicals that may create similar concerns to perfluorooctanoic acid ("PFOA") and perfluorooctanoic sulfonate ("PFOS"), called "forever chemicals" due to their longevity in the environment and the human body (persistence and bioaccumulation).

Subd. 1(p) defines "perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" to mean "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." This is by far the broadest PFAS definition in terms of scope. The grouping of thousands of PFAS chemicals by this chemical definition creates regulations that are too complex to comply with or to enforce.

Recognizing these challenges, Subd. 2(a)(3) directs reporting only as to the amount of each PFAS "identified by its chemical abstracts service registry number." Regulations should confirm that the MPCA interprets that PFAS subject to the reporting requirement of the law are limited to those that have a CASRN. Specifically, the Coalition asks MPCA to establish a list of reportable PFAS chemicals that meet the definition in the legislation, with their specific CASRNs included. This is how manufacturers downstream identify and search for ingredients in their products – by CASRN. Complex product manufacturers are not in the business of understanding or interpreting a complex chemistry definition or recognizing chemical structural diagrams. They make (or merely assemble) equipment, not chemicals. Because the statute only expects reporting for chemicals with CASRNs, having a list will make reporting clear and efficient. MPCA should provide the regulated community with the necessary information to aid in accurate reporting.

We recognize that EPA maintains lists of chemicals considered to be PFAS and direct the regulated community to this website. In association with the federal reporting requirement on PFAS, EPA expects to publish a single list. The current federal webpage contains several links to lists of PFAS, in many cases identified by CASRNs, that have been already compiled by EPA, the Organization for Economic Cooperation and Development ("OECD"), KEMI the Swedish Chemicals Agency, and community efforts. However, EPA's webpage currently lists over 12,000 PFAS chemicals. To survey supply chains for this entire of family of chemicals could take decades. Testing for all those chemicals in hundreds, thousands, or even tens of thousands of parts and components is literally impossible. We recommend that MPCA follow the EUs Global Declarative Substance List ("GADSL") which recently identified a list of around 500 priority PFAS chemicals.

2. **Coordinated reporting to reduce the significant challenges for complex supply chains.**

According to Subd. 2, the new proposed requirements will need to ask manufacturers to report a universal product code ("UPC"), stock keeping unit ("SKU"), or other numeric code assigned to the product, as well as the purpose for which PFAS are used in the product, including in any product components. The amount of each PFAS, identified by its CASRN in the product must also be reported, either as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes by the commissioner. Manufacturers must also provide their name and address, as well as the name, address, and phone number of a contact person for the manufacturer. Finally, any additional information requested by the Commissioner as necessary to implement the requirements of the PFAS reporting provisions must be provided.

Complex goods are sold through several multi-step supply chain pathways including by distribution and through retailers. The quantity and type of equipment sold into specific states is unknown. This complexity is likely to result in over- or under-reporting or simply incorrect information. Complex supply chains make it difficult to know which party will be the "responsible" reporting entity as the company which markets the product and whose name appears on the product label may be different. For products sold directly to distributors and not directly to retailers or individuals, it will be virtually impossible for the original equipment manufacturer ("OEM") to report on sales into Minnesota. International marketing companies further confound responsibilities as to whether the importer or others in the supply chain will have reporting obligations and could lead to over- or under-reporting.

When manufacturers have initiated supply chain inquiries for other regulated chemicals, on average, approximately 30% of suppliers respond to repeated requests for information. Many companies have had lower levels of response. Based on past and current experience, complex product manufacturers require additional time beyond that which is contemplated in the proposed rule to survey their complex, often international, supply chains for the presence of specific chemicals in the components, parts, and raw materials that they purchase. They often face an initial lack of responsiveness from suppliers, as well as claims that the chemical make-up of components is a trade secret.

We ask MPCA to consider if it is possible to avoid the need for these often-protracted negotiations and still obtain the information the rule requires. On the basis of past experience, the Coalition recommends two alternatives. First, the Coalition encourages MPCA to implement accountability and enforcement requirements that ensure suppliers inform downstream manufacturers of components and parts containing PFAS. Suppliers should disclose the use of PFAS to downstream customers well in advance of the reporting deadline, so that companies subject to reporting have the information needed to report on articles containing chemicals of interest. Second and alternatively, we ask MPCA to allow manufacturers of complex products and equipment to notify their suppliers that their components are in products sold in Minnesota, and have the supplier notify MPCA directly on that basis. Manufacturers could report a list of suppliers that have been notified and the response that they have received as to whether that suppliers' components contain PFAS or not and separately report the absence of a response along with contact information for all suppliers. The Coalition suggests that a six-month period would be reasonable to notify suppliers and that another six months to one year should be allowed to report the information to the MPCA. Even in cases where a component manufacturer may not separately sell the component in Minnesota, the component that these companies manufacture is nonetheless in commerce when it is in a final product that is distributed in the State. Companies that sell components to complex product manufacturers do so knowing that the parts are intended to be installed in final products that may be sold throughout the United States, if not the world.

Providing reporting options like this will reduce duplicative reporting or incomplete information due to claims of intellectual property concerns. It would allow for more streamlined reporting and facilitate determinations about quantities and locations of PFAS. Hopefully, MPCA can determine a pathway responsive to these considerations in developing the reporting structure.

3. **Consider exemptions from reporting for fluoropolymers, refrigerants, and *de minimis* quantities in complex products and equipment.**

PFAS have a wide variety of different properties. Due to this variation, it is inappropriate to require reporting for all PFAS as a single group. Risks associated with one member of the class should not be attributed to other members of the PFAS class without clear scientific justification. Furthermore, the grouping of thousands of PFAS chemicals creates regulations that are too complex to comply with or to enforce and thus not reasonable, practical, or achievable. The Coalition urges MPCA to exempt refrigerants and fluoropolymers from reporting altogether. These are often critical ingredients in complex

goods which do not meet the criteria to be classified as PBTs or "forever chemicals." Fluoropolymer coatings and products resist heat, oil, stains, grease, and water, which increases product lifespan and reliability and prevents fires and corrosion. Hydrofluorocarbons ("HFCs") were commercialized to replace ozone depleting substances in the 1990s. Many HFCs, especially those with high global warming potential ("GWP") are regulated under the Kigali Amendment to the Montreal Protocol, as short-lived climate pollutants ("SLCPs"). HFCs are short-lived and do not meet the criteria to be classified as PBTs or "forever chemicals." SLCPs are regulated because they are particularly impactful in addressing climate change because of their relatively short lifetimes of as little as days to as much as decades compared to carbon dioxide which remains in the atmosphere from 300 to 1000 years.

Subd. 1(l) defines "intentionally added" to mean PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function. Subd. 2(a) clarifies that only "intentionally added PFAS" are reportable. MPCA should include in its regulations provisions to exclude the presence of chemicals that do not provide functionality to components (*e.g.*, contaminants). MPCA may wish to further refine reporting requirements to exempt products which qualify as "articles" containing *de minimis* levels of PFAS. The Coalition suggests that a "*de minimis*" level could be further clarified as PFAS in quantities of less than 0.1% by weight of the final product.

Chemicals in plastic parts and electrical components are widely used across a broad range of manufactured articles globally. OEMs have limited visibility and control over complex, multi-tiered, global supply chains. MPCA should confirm in regulations that when components in complex products and equipment are manufactured at the same facilities producing other components for industries that intentionally contain reportable substances, the potential for unintentional, cross-contamination in *de minimis* quantities does not trigger reporting for the component or the final product in which it is installed.

We also would like to point out the balance of considerations which support a *de minimis* exemption for intentionally added PFAS, below which reporting would be exempt for "articles". The Occupational Safety and Health Administration ("OSHA") Hazard Communication Program ("HazCom") exempts businesses from reporting ingredients on safety data sheets ("SDS") in *de minimis* quantities.[1]

Due to the complexities of the international, multi-tiered supply chain, determining a presence below the threshold of 0.1 % by weight is very difficult. Manufacturers must rely on the accuracy of reporting from every supplier throughout the entire supply chain on trace amounts of a chemical, even those that are present unintentionally. There is little, if any, evidence to suggest that the presence of trace amounts of a chemical in an article can contribute to exposure, which must be considered in any risk determination. Furthermore, there has been much scientific debate over whether it is actually possible to achieve 100% confidence in any formulation.

Levels of chemical below a threshold of 0.1% do not tend to appear in global chemical management systems, like the International Material Data System ("IMDS") used by the automotive industry.[2] In the

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[1] OSHA provides a 0.1% cutoff for inclusion of certain hazardous chemicals on safety data sheets ("SDS"). It is difficult for companies to identify a *de minimis* amount of a substance in a product below the OSHA call-out. The difficulties associated with reporting would be lessened if companies were not required to exceed their current responsibilities to self-identify small quantity ingredients.

[2] The IMDS is viewed as the global standard for reporting material content throughout the automotive supply chain and for identifying which chemicals of concern are present in finished materials and components. The automotive industry has made significant investments in this data system in order to track compliance with global regulations impacting their products. The threshold for reporting for this system is 0.1% by weight. The

European Registration, Evaluation, and Authorization of Chemicals ("REACH") Regulation, European Union ("EU") and European Economic Area ("EEA") producers and importers of articles may be subject to notification if their article contains a substance on the EU Candidate List *only* if the listed substance is present above a concentration of 0.1%. Inclusion of a 0.1% *de minimis* threshold has proven to be effective in allowing the EU to focus on chemical manufacturing and use scenarios where the volume of the chemical is significant enough to pose a concern for exposure.

As a result, many downstream companies in complex supply chains do not currently have robust tracking systems for ingredients under this threshold, including certain PFAS chemicals. We are suggesting that MPCA may want to exempt articles that contain only *de minimis* quantities of 0.1% by weight or less to allow for a practicable regulation that is reasonably implementable.

Coalition OEMs have limited visibility and control over complex, multi-tiered, global supply chains and have spent considerable time in attempting to assess the potential presence or absence of chemicals in their supply chains. The intimate knowledge of the chemicals comprising components is with either component manufacturers or their suppliers and often will not be shared due to confidential business information ("CBI") concerns. This lack of transparency hampers the ability of manufacturers to be fully knowledgeable and in control of the chemistry of components. It is unrealistic for OEMs to mandate that their suppliers analyze each of the thousands of components to determine the presence or absence of chemicals in every component.[3] A *de minimis* threshold makes ingredient tracking more manageable. In many cases, *de minimis* quantities serve as a reasonable proxy for low potential exposure.

We ask MPCA to consider additional definitions that recognize the complex supply chains associated with the products and equipment manufactured by Coalition members. The term "article" is a well-understood regulatory term defined by EPA (40 C.F.R. § 720.3(c)) and OSHA (29 C.F.R. § 1910.1200(c)). In addition, there are definitions for the terms "complex consumer goods" and "complex durable goods" in the Toxic Substances Control Act ("TSCA") that largely capture the complexity of the final products our companies manufacture:[4]

> *"The term "complex consumer goods" means electronic or mechanical devices composed of multiple manufactured components, with an intended useful life of 3 or more years, where the product is typically not consumed, destroyed, or discarded after a single use, and the components of which would be impracticable to redesign or replace."*
>
> *"The term "complex durable goods" means manufactured goods composed of 100 or more manufactured components, with an intended useful life of 5 or more years, where the product is typically not consumed, destroyed, or discarded after a single use."*

Potential exposure to chemicals contained in components and final products that meet these definitions is low, given that they are often embedded in a polymer matrix in a component that is enclosed in a final equipment product and the chemicals are not intended for release into the environment.

IMDS now has over 15 years of data compiled relying on a *de minimis* level of 0.1%. The presence of any chemical below this threshold is not required to be reported in IMDS.

[3] For example, EPA's Economic Analysis conservatively estimates that the cost of testing <u>just</u> children's products for the presence of PIP (3:1) would likely exceed $0.5 billion.

[4] See Section 6(c)(2)(D)(ii)(I) and (II) of TSCA.

MPCA should articulate that at least the following options, and potentially others, are acceptable mechanisms to document compliance with the recordkeeping requirement of the regulation. Requirements for record retention should be no greater than five years. Specific guidance regarding recordkeeping will ensure that OEMs and the entire supply chain are well-prepared for compliance with the regulation, such as:

- Documentation sufficient to demonstrate that the finished article does not include more than *de minimis* levels such as a certificate of compliance from suppliers;

- Manufacturing specifications such as specification drawings noting that components cannot include more than *de minimis* levels of controlled substances; or

- Commercial contracts for components or sub-assemblies limiting the presence of PFAS chemicals to less than 0.1% by weight.

The Coalition notes that labeling requirements go beyond the statutes requirements and should not be included. They are not an effective form of communication with consumers or end-users, because Coalition products are often in machine rooms or remote locations generally hidden from view.

4. **The Coalition asks MPCA to exempt replacement parts for complex products with long life spans from product bans.**

Subd. 5(c) of the law provides a ban on products containing PFAS as of January 2032. Subd. 8(3) excludes the sale or resale of a used product. Consistent with this exclusion, we ask MPCA to include in the regulations an exemption for replacement parts for complex final products that are designed prior to the date of the ban, for products that have a lifespan of many years such as refrigeration and heating equipment. These products are found in manufacturing facilities, commercial outlets, retail stores, and residential homes. Again, the risk of release of PFAS to the environment for these products is extremely low. We think an exemption for replacement parts would make the administration of this rule more reasonable without compromising the safety and well-being of the citizens of Minnesota.

5. **Avoiding additional and duplicative reporting.**

Subd. 2(a)(5) allows MCPA to request additional information beyond that enumerated in the statute. The Coalition thinks the information elements that are listed there are sufficient for MPCA to form an understanding of the presence of PFAS in products in commerce in Minnesota. We urge MPCA to be reasonable and judicious and not require additional information beyond that which is already required to be reported by the statute. Moreover, Subd. 3 allows MPCA to waive all or part of the information requirements if substantially equivalent information is already publicly available. The Coalition asks MPCA to consider formal waivers from the outset in the regulations which recognize the federal reporting rule elements and explore agreements with other states to reduce duplicative reporting. NEWMOA's draft model PFAS legislation specifically advances the concept of an interstate clearinghouse. This may be an interesting option for structuring reporting for Minnesota to consider.

6. **The Coalition encourages MPCA to allow flexibility in the use of internationally used product classification codes.**

The Coalition members manufacture thousands of models (and hundreds of thousands of components and parts) with safety and reliability at the forefront of their designs to protect consumers from unreasonable risk. Manufacturers should be able group products in categories to simplify reporting, as there are many similar products that can be grouped together. To implement the requirement in Subd.

2(a)(1) to describe products with a universal product code, we ask that MPCA allow flexibility to use any variety of internationally used product classification codes such as the HTS code or the European Union Substances of Concern or SCIP database, or GPC brick code. To ease this new reporting burden, companies should be required to use an international product classification code but should not be required to use a single option. Without allowing for the range of currently used reporting systems, reporting will be even more challenging.

7. **Reporting should be based on concentration of each PFAS in a product, as an alternative to the total amount of each PFAS, and testing should not be routinely required.**

Subd. 2(a)(3) calls for reporting "the amount of each PFAS . . . in the product, reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes . . ." The Coalition supports being able to provide a concentration range, because this information will be more readily available. The use of range reporting is accepted practice in many reporting programs and reduces the need to identify and protect formulations as CBI. Testing for thousands of product SKUs is prohibitively expensive. Regulations that permit the alternative of providing an estimated concentration range would help to alleviate this burden. Moreover, the best source of this information is the entity that added the chemical to the component, part, or raw material. This requirement further highlights the need to have the option for reporting by knowledgeable suppliers rather than by manufacturers assembling supplied parts.

8. **The Coalition supports regulations to protect CBI and trade secrets.**

MPCA's regulations should ensure that reportable information is protected. It would be helpful to clarify which types of information can be claimed as confidential and to provide a simplified process for substantiating those claims, if necessary. Products that create value are often guarded by companies through alternative means than a patent. It is important for MPCA to strike the right balance between maintaining U.S. competitiveness and public right-to-know, so as not to disclose so much information that the disclosure empowers competitors to plunder technologies without compensation or the same level of investment in time and resources.

9. **The Coalition supports grouping products for reporting and fee administration.**

Subd. 2(b) permits MPCA to allow a manufacturer to supply information for a category or type of product rather than for each individual product. The Coalition believes it is more expedient and efficient for MPCA to propose conditions under which such reports will be accepted rather than requiring approvals on an individual company basis. MPCA's regulations also should permit grouping of products for purposes of fees. A separate fee should not be required for each of the thousands of SKUs that manufacturers of complex products and equipment manage. It would be cost-prohibitive if every component, equipment model, packaging type, and replacement part would require that a fee be paid to MPCA. That level of fees is unlikely to be necessary to administer the reporting requirements. Fees should be capped at a level necessary to administer the program.

10. **MPCA should prioritize proposing reasonable procedures and criteria for unavoidable use determinations.**

The Coalition supports eliminating non-essential uses of PFAS and promoting safer alternatives. At the same time, the Coalition thanks Minnesota for understanding that there are currently essential uses of PFAS chemicals that provide important safety and performance features in complex products in internal components and parts, such as resistance to high temperatures. Ultimately, high performance solutions must be available commercially and in sufficient quantities to meet market demand, at a cost that is

sustainable to consumers and end-users, especially for critical products to society. Companies far downstream in the supply chain from their suppliers and from the information that they need in order to comply will require sufficient time to transition to an alternative chemical—if one exists—which in many cases could take years.

The Coalition is supportive of a process by which MPCA is able to determine by rulemaking that an application of PFAS is "currently unavoidable." For MPCA's consideration, the Coalition urges consideration of the same criteria that EPA must utilize under Section 6(g) of TSCA for considering exemptions for "critical or essential" uses of chemicals. The EPA Administrator may, as part of a rule promulgated under Section 6(a) of TSCA, or in a separate rule, grant an exemption from a requirement of a section 6(a) rule for a specific condition of use of a chemical substance or mixture, if the Administrator finds that—

(A) the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure;

(B) compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or

(C) the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

It would be appropriate for Minnesota to consider aligning with the federal criteria for "critical or essential use." Moreover, the Coalition supports allowing up to five years after the rulemaking on unavoidable use regulations for complex product and equipment manufacturers to evaluate the availability, cost, safety, and reliability of potential alternatives.

Subd. 5(c) allows MPCA to determine by rule that the use of PFAS in the product is a currently unavoidable use, by specifying specific products or product categories. The Coalition urges MPCA to include a list of recognized unavoidable uses up-front in a proposed regulation. This list should include complex consumer goods and complex durable goods as defined above in these comments. Commercial and consumer products such as appliances, electronics, vehicles, vessels, and heating and cooling systems must meet strict performance and safety standards. These products may be engineered in a way that requires inclusion of PFAS, depending on its definition, with lifetimes up to 50 years. When present, the PFAS is often part of an internal part. Being encased in the product interior means that any components that may include PFAS in their design are not accessible to consumers Therefore, these products do not present a known exposure risk to PFAS.

Sufficient notice must be provided to stakeholders to ensure process transparency and the ability to engage in comment opportunities. Even simple, singular chemical phaseouts for complex durable goods requires a minimum of three to seven years, or five years on average, *if* a feasible alternative has already been identified. If alternative analyses must be performed, additional time will be necessary. Due to the difficulties associated with the chemical substitution process (which includes the high socio-economic cost of identifying chemicals in a complex, global, mutli-tiered supply chain, trying to find an alternative (if one is available), and then launching the complicated process of product redesign which includes, research, development, testing, and implementation) there is a great risk of unforeseen disruptions to supply chains and business continuity with all the associated economic impacts. To best protect human health and the environment, a risk-based approach should focus limited agency resources on the highest

priorities based on actual environmental, health, and safety risk of particular chemistries, not just the mere presence of a substance.

11. **The Coalition appreciates MPCA's continuing open dialogue regarding all policy issues associated with this challenging regulation.**

Coalition members support efforts to minimize exposure to hazardous chemicals. However, there are certain aspects of the regulation under consideration that may be unattainable which apply to components or articles with limited potential for exposure. Manufacturers that distribute final products in Minnesota face tremendous difficulty identifying or reporting on the presence of PFAS in components because other parties add them to the product. In addition, without a specific list of CASRNs, or procedures in the rule for assistance from suppliers and exemptions for unavoidable uses, the rule could create confusion for those who must comply. It is also important to allow companies to continue to sell replacement parts and equipment critical for life-saving climate control and ventilation and for cold chains for vaccines into Minnesota.

* * *

The Coalition thanks MPCA for consideration of these comments. We welcome the opportunity to discuss these comments with you and answer any questions from MPCA. Please do not hesitate to reach out to Martha Marrapese, Partner, Wiley LLP at mmarrapese@wiley.law or 202-719-7156.

Respectfully Submitted,

Coalition of Manufacturers of Complex Products

CC:
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To: Minnesota Pollution Control Agency (MPCA)

Subject: Re: MPCA Request for Comments regarding PFAS in Products Fee Rule (Revisor ID No. R-4827)

Best Technology offers the following comments on the PFAS regulations being developed by the Minnesota Pollution Control Agency (MPCA) as authorized in Chapter 60 of H.F. 2310. The MPCA has requested comments on planned new rules for the PFAS in Products Reporting Rule (Revisor ID No. R4828) and the PFAS in Products Fee Rule (Revisor ID No. R-4827). The MPCA also stated that it is interested in comments on the phaseout and ban of intentionally added PFAS in products in 2032.

Best Technology is a distributor of metal finishing equipment and chemicals to many vital industries in the U.S. As a small business, Best Technology has concerns regarding the costs to report and fees associated in reporting chemicals which it distributes. Since starting in the early 1990s, Best Technology has always strived to offer technologically advanced products for use in surface finish manufacturing processes. Our products are used by our customers as in-process manufacturing not as a final consumer product.

For certain manufacturing process applications, regulated industries such as medical device, aerospace, semiconductor, etc. do not have viable technological PFAS-free alternatives. Best Technology looks forward to helping customers transition as soon as alternatives are developed and proven safe and effective.

Please consider the following comments and responses to the questions raised in the request for comments document.

1) Should the Agency consider tiered fees for different sizes of business?

- Considering the U.S. EPA PFAS compliance implementation has been estimated to cost $843 million nationwide and the fact that the MPCA just received the largest budget in the MPCA's history, at $919 million and 144 new full-time employees, any fee proposed by the MPCA should take into account this Minnesota state budget versus nationwide estimated cost. In short, the MPCA resource demand and costs should be front loaded with original initial company reporting and the cost to the MPCA for additional

resources should be covered in the above-mentioned budget. After the initial rollout of reporting requirements, any fee, if necessary, assessed should be reduced in future years given the decreased staff requirements relative to the scope and size of subsequent reports.

- Should a fee system be required to be put in place, a simple tiered system based on sales revenue of material containing PFAS sold in the state of Minnesota is recommended. The tiered system could have various tiers of revenue with slight increases in costs based on revenue. To minimize financial burden on companies, fees remain minimal and relate only to revenue associated with products reported as containing PFAS.
- Small businesses lack the established resources and economies of scale necessary for such administrative and reporting tasks. The cost of hiring employees for this function would be extremely cost prohibitive. Adding additional fees in addition to resources required for reporting could jeopardize the financial viability of the company and products.

2) Should the Agency consider a per-product or per-company fee?

- Fees should be established on a per-report basis, or on a per-company basis not per product. This will allow a company to file a single report for similar products within similar categories of PFAS and avoid paying reporting fees on a per-product basis. This approach would not cost the MPCA any more additional resources. Multiple products produced by a company should be reported within the same report.

3) Should the Agency consider a per-PFAS or PFAS amount fee?

- No, a flat similar product fee or company fee would accomplish the objective of documenting the PFAS used in products. The purpose of the reporting and associated fees is to document which products contain PFAS that could impact human health and/or the environment.

4) Are there other state program fee structures on which the Agency should model the fees?

- At this time, Best Technology does not have a recommendation as to other state program fee structures that the Agency should use to model the fees.

5) Should the Agency consider a fee to be paid when updates to information on previously reported products are submitted? (e.g., decreased amounts or elimination of one or more PFAS)

- A one-time fee is already cost prohibitive for many small businesses. Decreasing or eliminating one or more PFAS in a product would constitute a company restricting PFAS use which is the purpose of the prohibition and charging an additional fee in these instances seems excessive and unnecessary.

Other issues. The PFAS in Products Fee Rule may include other subjects requiring clarification or definition to successfully start up information submittals by the January 1, 2026, deadline.

Your comments on issues important to the process of fee payment are welcome, and on reporting issues which relate to fee structures and payment processes.

If all proposed PFAS reporting are implemented at the same time in January 2026, the initial resource requirement jointly on companies and the MPCA would be significant and possibly crippling economically to both entities. The MCPA should consider imposing the reporting requirements incrementally based on different PFAS product categories risk to human health or the environment in Minnesota. A phased approach will allow both MCPA and the regulated community to adjust the new requirements and address any practical issues which invariably will arise. MCPA can then make any adjustments to reporting requirements if needed.

This phased-in approach will also provide time for reporting under the EPA federal program to be compiled, understood and provide an opportunity for individual states to utilize the EPA federal reported information. Combining reported information from the EPA and initial state reporting could allow for better direction to prioritize products or use applications that may warrant future restrictions. This will ultimately reduce the burdens on both the entities subject to the final reporting regulations and MCPA. It will also allow for more orderly and responsive reporting compliance.

In summary, the goal of MPCA's ruling for PFAS reporting and associated incurred costs is to protect human health and the environment. It can be achieved by scientifically driven and consumer-minded with a phased-in, well-thought-out implementation. The phased-in approach will reduce costs for companies and the MPCA while still focusing on PFAS that are harmful to people and the environment. Such cost savings in the initial reporting requirement will enable companies to invest toward continued technological innovation in chemicals.

Best Technology appreciates the opportunity to provide these comments and looks forward to collaborating with MPCA and other stakeholders to ensure that the residents of Minnesota continue to have access to products that enhance their daily lives safely.