The Honorable Katrina Kessler
Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Re: CPMC Comments Part 2: Additional Concepts for Currently Unavoidable Use Process

Dear Commissioner Kessler:

The Complex Products Manufacturers Coalition (CPMC or Coalition) appreciates the opportunity to submit written comments in response to draft concepts the Minnesota Pollution Control Agency (MPCA) has put forward for new rules governing how the MPCA determines currently unavoidable uses (CUUs) of per- and polyfluoroalkyl substances (PFAS) in products. Minnesota broadly defines this "catch-all" term as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom, will qualify as currently unavoidable uses in products sold, offered for sale, or distributed for sale in Minnesota, as directed by Minn. Stat. § 116.943.[1] There are several different groups of chemicals under this umbrella.

These comments supplement the dedicated comments CPMC is submitting on the alternatives assessment (AA) portion of the CUU determination process. CPMC's comments on AAs are intended to shine a spotlight on the impossible workload envisioned by the proposed CUU framework concept which would require that ALL components of ALL complex durable goods sold in Minnesota undergo an AA if they contain any type of fluorinated organic chemical. In these comments, CPMC urges MPCA to adopt the following measures for the regulation of complex durable goods:

1. Propose and adopt a definition of complex durable goods that aligns with that in other states.

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[1] CPMC brings together individual businesses and trade associations with multi-component consumer and non-consumer products and complex, international supply chains. With 23 members that include trade associations and individual companies, CPMC represents a wide cross-section of products that are essential for health, safety and the functioning of society. These products—including home appliances, on and off-road vehicles, the regulated engines that go into these on- and off-road vehicles and equipment, recreational and commercial vessels, engines and components, outdoor power tools and equipment, lighting, heating, ventilation, cooling, refrigeration, and water heating equipment (HVACR-WH), electronics, and their replacement parts—support vital sectors of the economy, including government, the military, law enforcement, first responders, food and agriculture (including commercial fishing and sea farming), energy, transportation and logistics, public works and infrastructure support, critical manufacturing, the defense industrial base, conservation, and life-saving backup power, climate control and ventilation in homes, hospitals, schools and universities, eldercare facilities, food preservation and processing, and laboratory and life sciences facilities. Fluoropolymers and elastomers are used to ensure safety and durability, particularly in high-performance environments where failure would be costly and also potentially catastrophic. Due to extreme performance requirements, functionally equivalent alternatives may not be available in all cases.

2. Include a provision in the rule, consistent with the statute, stating that a product for which federal law governs in a manner that preempts state authority is exempt from the CUU process and listing specific federal statutes to which this applies.

3. Exempt fluoropolymers.

4. Include a provision for recognition of CUU determinations by other states and exercise the authority provided by statute to propose CUU designations for products that are exempt from the CUU process in Maine and New Mexico.

5. Provide trade secret protection for proprietary information on extreme performance requirements.

As of now, CUU exemption requests will have to be filed for complex durable goods that support nearly every major sector in the nation, providing critical and often life-saving services. These products include appliances, electronics, space and water heating, refrigeration, air conditioning, ventilation, regulated engines, outboard motors, lighting and security, power tools and equipment, electric power generation, communication devices, vehicles, vessels, their components and replacement parts. Relying on the CUU process alone to keep essential products available to Minnesotans will not work given the sheer number and diversity of products, components, and suppliers involved. At the current scale, delay, uncertainty, and disruption to the availability of critical products is unavoidable. The breadth of complex durable goods—spanning nearly every major sector of the economy—means that the administrative and technical demands of the CUU process, without further guardrails, will quickly exceed what MPCA or manufacturers can realistically manage.

I. Minesota Statutes Section 116.943.

To provide context, these comments address concepts published by MPCA for the purpose of developing a proposed rule to implement Subd. 5(d) which states:

> (d) Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state any product that contains intentionally added PFAS, unless the commissioner has determined by rule that the use of PFAS in the product is a currently unavoidable use. The commissioner may specify specific products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use. The commissioner may not determine that the use of PFAS in a product is a currently unavoidable use if the product is listed in paragraph (a).

The provision above make the CUU process unavailable for products that were banned from sale or distribution in Minnesota as of January 1, 2025.

The term “currently unavoidable use” is defined in Subd. 1(j) as:

> (j) "Currently unavoidable use" means a use of PFAS that the commissioner has determined by rule under this section to be essential for health, safety, or the functioning of society and for which alternatives are not reasonably available.

The language of this definition establishes a two part test for a positive CUU determination. A product must qualify as essential and no alternative exists that is reasonably available. The concept draft includes proposed definitions for the terms "alternative", "essential for health, safety or the functioning of society", and "reasonably available".

In addition, Minn. Stat. § 116.943 Subd. 8(a)(1) expressly exempts "a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority" from all of the requirements of Section 116.943, including the 2032 product ban. The proposed rule should be clear that no CUU determination is required for these products.

II. Challenges the CUU process presents for complex durable goods.

CPMC asks MPCA to take the following factors into consideration in preparing this rule. Complex durable goods manufacturers assemble finished goods with 100 components or more. An outboard engine alone has 1,400 components. These components are sourced through global, multi-tier distribution and supply chains. The finished good manufacturer does not have detailed information on the design and construction of every component. That information may be stored (and protected as proprietary information) two to seven commercial distribution agreements away, in another company, and in another country. Not all complex durable goods manufacturers have decision-making authority on the composition of a component or the timing of changes to a component. To avoid supply chain disruptions, alternatives must be readily available in sufficient quantities. Adequate time must be allowed to safely redesign and requalify the component(s) and the finished product(s). Complex durable goods have long-term product development cycles on the order of 7 to 20 years. A CUU framework that does not account for these realities risks incentivizing market withdrawal rather than meaningful progress toward safer alternatives.

III. Request for a definition of complex durable goods.

First, CPMC respectfully asks that MPCA acknowledge that complex durable goods are a unique category of products by adding this term for definition in the CUU rule. <u>The following definition should be used:</u>[2]

> <u>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.</u>

This definition is already used by states. It is incorporated by California into state's green chemistry law, the Safer Consumer Products Regulations.[3] Vermont defines "complex durable good" in the

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2 15 U.S.C. § 2605(6)(c)(2)(D)(ii)(II).

3 22 C.C.R. §69503.5(d).

same way.[4] New Mexico has adopted this definition.[5] Doing likewise will permit MPCA to readily distinguish products that have hundreds of components from those that do not. MPCA could also consider the definition of component from the Federal Acquisition Regulations (FAR) (e.g., 48 C.F.R. § 25.003):

> an article, material, or supply incorporated directly into an end product or construction material. Components may consist of parts, which may be raw materials, ingredients, or assemblies.

IV. Incorporate the statute's federal preemption provision in the rule.

The federal preemption clause in Minnesota's statute in Subd. 8 addresses critical sectors of the economy: on and off-road vehicles, marine vessels, and the use of refrigerants in complex durable goods. Many federal safety and performance regulations do not list specific ingredients, but that is not required for preemption to apply. Where federal law deliberately assigns discretion, the U.S. Supreme Court has held that state laws which attempt to override that balance defeat the regulatory cohesion Congress intended and would convert federally authorized options into *de facto* prohibitions. Preemption is designed not merely to prevent direct contradictions, but also to protect federal regulatory judgments from being second guessed and undermined by state-level reexamination of the same technical or policy questions entrusted to federal authority.

A. Automotive.

Under the National Traffic and Motor Vehicle Safety Act (NTMVSA), the Department of Transportation (DOT) has issued Federal Motor Vehicle Safety Standard (FMVSS) 209 governing seat belt assemblies. FMVSS 209 requires that materials used in seat belts be capable of sustaining minimum restraint forces; be treated to prevent unraveling; and be resistant to abrasion, light, and micro-organisms. 49 C.F.R. § 571.209. Similarly, FMVSS 302 governs flammability of interior materials and requires, among other things, that an interior material "not burn or transmit a flame front across its surface at a rate of more than 102 mm per minute." 49 C.F.R. § 571.302. Fluoropolymers and elastomers are typically used to meet these standards, even though they are not listed in the standard itself.

Additionally, FMVSS No. 106 (Brake Hoses) establishes detailed performance and durability requirements for hydraulic, air, and vacuum brake hoses and brake hose assemblies used in passenger vehicles, trucks, buses, and motorcycles. 49 C.F.R. § 571.106. Compliance with FMVSS 106 requires manufacturers to subject brake hoses and hose assemblies to extensive testing, including pressure and burst strength tests, expansion tests, whip and fatigue testing,

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[4] Vermont Act 54 (H.238) of 2025, amending Act 131 (2024) (See 9 V.S.A. § 2494e – Definitions.

[5] New Mexico Environment Department (NMED), Rebuttal Rule, Title 20, Ch. 13, Part 2, prohibitions on products containing per- or poly-fluoroalkyl substances; currently unavoidable use; reporting; labeling; testing; fees and penalties, adopted by New Mexico Environmental Improvement Board, March 23, 2026.

temperature resistance testing, ozone resistance testing, corrosion resistance testing of end fittings, and compatibility testing with brake fluids. These tests are designed to simulate real-world operating conditions and ensure that brake system components do not fail under stress, as such failures could result in loss of braking capability and serious safety risks. Because brake hoses are safety-critical components, any change in materials—such as substituting an elastomer, coating, or reinforcement layer—would generally require a manufacturer to reestablish compliance with FMVSS 106 through repeat testing and validation. These examples also illustrate that alternatives, if available, will trigger a lengthy process of re-certification. Recertification includes redesigning components and extensive testing and it cannot be accelerated without compromising public safety.

B. Marine vessels and accessories.

In the marine industry, vessels and accessories must withstand the harsh operating conditions that can be encountered during ocean, lake, and river transportation. For marine propulsion systems, for instance, traditional non-fluorinated elastomers cannot meet federal Environmental Protection Agency (EPA) fuel permeation limits (40 C.F.R. § 1060.102) without becoming impractically rigid, nor can they withstand the chemical aggression of mandatory EPA Vessel General Permit (VGP) – Clean Water Act Environmentally Acceptable Lubricant (EAL) testing without suffering rapid structural degradation. Consequently, the forced removal of fluoropolymers without a validated, chemically equivalent replacement would not drive the adoption of "safer" materials, but would instead force a technical regression, necessitating the use of inferior components prone to premature failure, increased evaporative emissions, and compromised vessel safety. To meet the EPA's strict evaporative emission standard of $\leq$ 15g/m^2/day (40 C.F.R. § 1060.102), fuel hoses rely on a thin internal layer of fluoropolymer (PVDF or THV). Traditional rubber hoses without this barrier have permeation rates significantly higher than the EPA limit (often exceeding 100g/m^2/day). While rigid materials like nylon (PA12) can block permeation, they lack the flexibility required to route fuel lines through tight, vibrating engine bilges. Only fluoropolymers offer the necessary combination of flexibility and impermeability.

C. Significant New Alternative Program (SNAP) refrigerants.

Section 612(d) of the Clean Air Act (CAA) provides in relevant part:

> No State or political subdivision thereof may prohibit any person from using a substitute that the Administrator has determined is acceptable under this section.

42 U.S.C. § 7671k(d)). Under SNAP, federal preemption of state regulation is use-specific. Section 612 prevents states from flatly banning a refrigerant substitute that EPA has affirmatively listed as acceptable with respect to the same end-use.

The SNAP refrigerants in use today in the United States have been well-vetted by EPA. As one example, 1,1,1,2-tetrafluoroethane (HFC-134a with CASRN 811-97-2) is a short-lived

chemical, used in meter-dose inhalers (MDIs) used by patients with asthma. HFC-134a breaks down in the atmosphere in the presence of hydroxyl radicals and other atmospheric chemistries to simple chemical building blocks and trifluoroacetic acid (TFA). EPA has excluded TFA from its risk-based definition of PFAS in recognition that TFA is a well-studied, low toxicity substance.[6] The United Nations Environmental Programme's (UNEP) 2022 Assessment Report also found that TFA "does not interact with biological molecules and, due to its high solubility in water, it does not bioaccumulate. It is unlikely to cause adverse effects in terrestrial and aquatic organisms."[7]

D. Precedent for this approach.

Geier v. American Honda Motor Co., 529 U.S. 861 (2000) supports the proposition that allowing states to reassess the necessity of particular federally regulated ingredients or components in preempted fields frustrates the federal objective. The Supreme Court considered whether a state tort claim was preempted by federal motor vehicle safety regulations issued under the NTMVSA. DOT had promulgated FMVSS 208, which deliberately allowed automobile manufacturers a range of compliance options for passive restraint systems during a phased-in regulatory period, including installing seatbelts, airbags, or other technologies. The plaintiff brought a state law claim alleging that Honda was negligent for failing to install a driver-side airbag, even though the vehicle complied with FMVSS 208.

The Court held that the state tort claim was preempted under ordinary conflict, or 'obstacle,' preemption principles. The Court reasoned that the federal regulatory scheme was intentionally structured to preserve manufacturer choice and promote gradual technological development. Allowing a jury to impose liability for the absence of an airbag would effectively eliminate federally permitted compliance options and frustrate the objectives of the federal regulation. Accordingly, the Court concluded that the state claim was preempted.

Fluorinated chemicals are expensive and so they typically are only used when necessary to meet air quality emission requirements, fire and building codes, interconnection requirements, or industry certification standards. The use and reliance on certain fluorine containing chemicals in complex durable goods is driven not by convenience or cost considerations, but by fundamental engineering requirements and federal regulatory obligations. With the foregoing in mind, CPMC requests rule language that identifies specific areas of preemption for which a CUU request is not required. More than general language in the statute is needed for certainty and clarity. Items 2, 4, 6, 7, and 9 in Attachment A meet these criteria and should be part of the proposed rule.

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6 40 C.F.R. § 705.3.

7 EEAP, *2022 Assessment Report of Stratospheric Ozone Depletion, UV Radiation, and Interactions with Climate Change* at 5 (May 2023), available online at: https://ozone.unep.org/system/files/documents/EEAP-2022-Assessment-Report-May2023.pdf.

V. Fluoropolymers.

Minnesota's definition is not a proxy for risk. The organization that developed this definition, the Organization for Economic Cooperation and Development (OECD),[8] specifically cautions against using the definition to reach overarching conclusions about risk:

> It should be noted that the revised definition of PFASs in Section 2.3 refers to a general definition of PFASs that is coherent and consistent across compounds based on chemical structure and is easily implementable for distinguishing between PFASs and non-PFASs, also by non-experts. It does not include any minimal or maximal chain length requirements, or any other considerations beyond chemistry. It also does not conclude that all PFASs have the same properties, uses, exposure and risks (emphasis added).[9]

The OECD further states that: "[a]s PFASs are a chemical class with diverse molecular structures and physical, chemical and biological properties, it is highly recommended that such diversity be properly recognized and communicated in a clear, specific and descriptive manner."[10] Please refer to the Interstate Technology & Regulatory Council (ITRC) 2023 table in Attachment B that distinguishes fluorinated chemicals.

Evidence of potential hazards is in reference almost exclusively to PFOA, PFOS, or other perfluoroalkyl acids (PFAAs) with similar properties (for example, PFHxA or perfluorobutanoic acid (PFBA)). Commercial products which contain Long-Chain Perfluoroalkyl Carboxylates (LCPFACs), a category which includes PFOA, PFOS, PFHxA, and PFBA, are subject to significant restrictions in the United States. These substances have been largely phased out in the United States since 2002 (PFOS[11]) and 2015 (PFOA[12]). For LCPFAC, in addition to a national voluntary phase out program, EPA has addressed potentials for cancer and other associated risks through significant new use rules (SNURs) which ban the resumption of any uses of LCPFAC that have been discontinued in the United States.[13]

Fluoropolymers are not in this group and have different lifecycle considerations. Fluoropolymers are large, highly stable molecules, insoluble in water, and are not bioaccumulative. The use of PFAAs as polymerization aids by the fluoropolymer industry is being phased out

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8 OECD (2021), Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance, OECD Series on Risk Management, No. 61, OECD Publishing, Paris.

9 *Id.* at p. 31 (emphasis added).

10 *Id.* at p. 8.

11 EPA, "EPA and 3M Announce Phase Out of PFOS" (May 16, 2000).

12 EPA, "Fact Sheet: 2010/2015 PFOA Stewardship Program" (Last visited February 12, 2026)

13 See, e.g., EPA, "Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule," 85 Fed. Reg. 45109 (July 27, 2020) codified at 40 C.F.R. § 721.10536.

globally and these facilities are installing on site treatment to prevent releases to water and air. A recent study on the thermal decomposition of fluoropolymers investigated the thermal stability and degradation products of polytetrafluoroethylene (PTFE), polychlorotrifluoroethylene (PCTFE), and polyvinylidene fluoride (PVDF) across temperatures ranging from 200 to 890 °C. Different from previous studies, no short- or long-chain moieties were detected under any tested condition. Among the investigated polymers, PTFE showed high stability, remaining intact until ≥ 550 °C and then mainly depolymerizing to tetrafluoroethylene (C_2F_4). This study demonstrates that these commonly used fluoropolymers are stable at temperatures that almost no products are exposed to during normal use or disposal.[14]

The U.S. Food and Drug Administration (FDA) commissioned an independent review which establishes the importance and safety of PTFE in medical devices.[15] The review, performed by the Emergency Care Research Institute (ECRI), includes data from over 1,800 health care provider organizations around the country. ECRI found no conclusive evidence of patient health issues associated with PTFE as a material, an important finding given that no other materials exist that can perform the critical roles of fluoropolymers in medical devices. As one of the most commonly used polymers in a variety of products and applications, PTFE has been well-studied and shown to be a large, highly stable molecule, with adjustments taking place commercially to identify and use non-fluorinated polymerization aids during manufacture. PTFE is insoluble in water, it does not break down in the environment, and it is not bioaccumulative.

It is not scientifically grounded or feasible to eliminate every type and use of fluorinated chemistry to address life cycle considerations. Not all substances covered by the state's definition are remediation threats and fluoropolymers are but one example. CPMC urges Minnesota to consider how to prioritize CUU reviews of PFAAs that partition to water and bioaccumulate.

VI. MPCA should use its authority to include CUU determinations for complex durable goods in the proposed rule and allow for mutual recognition.

Maine and New Mexico do not require many of the complex durable goods affected by this rule to undergo CUU analysis. CPMC urges MPCA to adopt the same approach. The statute's language allows MPCA to determine by rule a use is a currently unavoidable use.[16] The statute does not require manufacturers of complex durable goods to submit individual applications or product-specific demonstrations as a prerequisite to a CUU determination.

Complex durable goods include commercial and consumer products such as communication devices, electronics, appliances, vehicles, vessels, boats, motors, heating,

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14 Alireza Arhami Dolatabad, Xuejia Zhang, Jiamin Mai, Alena Kubátová, Jiefei Cao, Feng Xiao, "Thermal decomposition of fluoropolymers: Stability, decomposition products, and possible PFAS release", Journal of Hazardous Materials (July 23, 2025).

15 U.S. Food and Drug Administration, PFAS in Medical Devices (August 6, 2025).

16 Minn. Stat. § 116.943, Subds. 5(d) (2023).

ventilation, air conditioning, refrigeration, and water heating equipment (HVACR-WH), electronics, and their replacement parts. These products serve and support nearly every major sector in the nation, providing critical products and services for government agencies, the military, law enforcement, first responders, and public safety, food and agriculture, energy, transportation and logistics, 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 food preservation and processing and for critical health and life sciences. Services dependent on refrigeration include everything from the prevention of dangerous food spoilage to life-giving medicines, vaccines, proteomics, therapeutics, blood plasma, and other temperature-dependent elements in the life sciences and pharmaceutical sectors. Collectively these products and services are vital to public safety and the economy.

Due to the timeframes (on the order of 7 to 20 years) that are necessary required to replace ingredients and components in complex durable goods, we know today that changes cannot be achieved by 2032. The trade-off of not having these essential products available in 2032 meets the proposed criteria in the concept draft of resulting in a "significantly increase negative health outcomes" and a "significant disruption of commercial, public, or ecosystem services on which society relies" including the provision of (1) food, water, shelter, health, hygiene; (2) transportation and utilities such as gas, electricity, data, communications, and sewer; (3) personal, occupational, or public safety particularly for extreme conditions of use; and (4) other services.

A CUU also requires a finding that alternatives are not reasonably available. With respect to complex durable goods, based on the known product development cycle for these products, it is not feasible to have alternatives and redesign products ready by 2032. Many requirements contribute to the extended timeframe necessary for these products to identify and evaluate alternatives, if any. These requirements include federal and state air quality emission requirements, state and local fire and building codes, federal and state interconnection requirements, and industry certification standards. The inability to meet the 2032 ban should be sufficient to make this part of the CUU determination.

For example, a CUU determination by rule, absent a CUU application, is warranted for the electric generation sector. The switch gears in these systems are used in sealed, closed-loop equipment with long lifespans (40+ years). These assets are designed to withstand environmental threats and seldom require intervention or maintenance. Further, they are designed and located to not be accessible to the public. This combination of factors means that there is a much lower risk of human contact/human exposure or environmental contamination. The process of identifying these chemicals in components and supply chains, researching feasible alternatives, and implementing changes will take many years beyond January 1, 2032. Three states already exclude "non-consumer electronics and non-consumer laboratory equipment not ordinarily used for personal, family or household purposes and/or for 'product used for the generation, distribution or storage of electricity": Maine § 1614, New Jersey P.L. 2025, c. 202, and New Mexico, H.B. 212.

The benefits of proposing CUU determinations early on for complex durable goods with known and lengthy product development cycles has been recognized in Europe under the REACH derogation system. The potential costs of proceeding to require hundreds of submissions and accelerated timeframes in disregard of important and competing safety and performance considerations is high. For example, with respect to engines, due to the variety of fuels that may be used, a broad level of compatibility is needed. Fluoroelastomers provide this ubiquitous level of compatibility that cannot be achieved with alternatives. To transition to a substandard material would result in fuel leaks within the first year of the product's life. This would lead to safety and environmental hazards.

In addition, CPMC respectfully requests that Minnesota include a provision in its proposed rule recognizing CUU determinations issued by other states with comparable statutory standards and review processes. Recognition of such determinations promotes regulatory coherence, reduces duplicative administrative proceedings, and provides regulated entities with clearer and more predictable compliance obligations, while preserving Minnesota's authority to deny recognition where another state's determination is inconsistent with Minnesota law or policy objectives.

For the foregoing reasons, CPMC urges MPCA to exercise the statutory authority provided in Minn. Stat. § 116.943, Subd. 5(c) to propose CUU determinations for the products in HF 4257, with slight modifications as listed in Attachment A, in the proposed rule. These are complex durable goods that either do not have to undergo CUU analysis in any other state or which otherwise qualify as a CUU.

VII. Trade secret protection.

CPMC thanks MPCA for recognizing (MPCA question 12) that trade secret information will require protection as part of the CUU determination process. For example, in the last five years the growth of new energy technologies and additional infrastructure has led to investments in componentry in a highly evolving market innovation landscape to meet the growing electro-system needs. CPMC appreciates the clarity MPCA is providing by identifying information that qualifies as trade secret information under Minn. Stat. § 13.37. The eligible data categories include chemical name; chemical identifying number; chemical concentration or formula; reformulation or redesign of the product, technique, or production process that a manufacturer may need to implement an alternative; the physical description that would best identify a non-chemical alternative; and specific supply chain information. CPMC supports these trade secret designations.

CMPC also supports MPCA's list of extreme performance requirements. Fluorinated compounds deliver exceptional thermal stability and chemical resistance, making them the sole practical option for mission critical systems that must withstand the extreme corrosive and high temperature conditions inherent to the use of these products. The refrigerants, fluoropolymers, and elastomers in complex durable goods are used to provide performance and safety attributes that ensure these products can operate in all conditions, including extreme conditions. These conditions

are precisely why these substances are and will continue to be needed in complex durable goods. However, the reasons may be competitively sensitive. CPMC asks MPCA to consider the need for trade secret protection with respect to "extreme conditions of use".[17] Extreme performance rationales are highly relevant to CUU determinations, and the manner in which these substances are used to safety and reliability may be commercially sensitive information.

VIII. Conclusion.

The Coalition sincerely appreciates the opportunity that these proceedings offer to communicate our concerns and suggestions for practicable implementation for complex durable goods, recognizing the substantial benefits of avoiding disrupted access to these products by Minnesotans. These comments supplement the dedicated comments CPMC is submitting on the AA portion of the CUU determination process. Please consider a CUU proposed rule that also:

1. Includes a definition of complex durable goods that aligns EPA and in other states.
2. Propose a list of products for which federal law preempts state authority that do not require a CUU designation.
3. Consider exempting fluoropolymers from the CUU process.
4. Provide mutual recognition of CUU determinations by other states and exercise the statutory authority provided in Minn. Stat. § 116.943, Subd. 5(c) to propose CUU designations, without the need for CUU applications, that the products listed in HF 4257, with slight modifications as outlined in Attachment A.
5. Allow additional trade secret protection for proprietary information on extreme performance requirements.

For further information contact Martha Marrapese, Counsel to CPMC, mmarapese@wiley.law/202-719-7156.

Attachments

[17] These conditions are high or low operating temperatures, or both; High or low material pH, or both; high corrosivity; low reactivity with one or multiple chemicals; high or low operating pressures, or both; high tear, crack, or other stress potential; high or the possibility of high friction or vibration; high or sustained humidity or moisture; high or concentrated voltage requiring dielectric strength; and elevated radiation levels.

Attachment A

Products listed in HF 4257 (with slight modifications) that MPCA should determine by rule—under Minn. Stat. § 116.943—to be currently unavoidable uses without requiring a CUU application.

Key –
Federal Preemption
Exemptions to Product Bans by 2032 in Maine and New Mexico
Exemptions for additional Complex Durable Goods

(1) heating, ventilation, air-conditioning, cooling, refrigeration, and water heating (HVACR-WH) equipment that contains intentionally added PFAS or refrigerants listed as acceptable, acceptable subject to use conditions, or acceptable subject to narrowed use limits by the United States Environmental Protection Agency pursuant to the Significant New Alternatives Policy Program, Code of Federal Regulations, title 40, part 82, subpart G, and sold, offered for sale, or distributed for sale for the use for which the refrigerant is listed pursuant to that program;

(2) a veterinary product for use in or on animals, including diagnostic equipment or test kits and the veterinary product's components, and any product that is a veterinary medical device, drug, biologic, or parasiticide or that is otherwise used in a veterinary medical setting or in veterinary medical applications that are regulated by or under the jurisdiction of:

(i) the United States Food and Drug Administration;

(ii) the United States Department of Agriculture, pursuant to the federal Virus-Serum-Toxin Act; or

(iii) the United States Environmental Protection Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, excluding any products approved by the United States Environmental Protection Agency pursuant to that law for aerial and land application;

(3) a product developed or manufactured for the purpose of public health, environmental, or water-quality testing;

(4) a product required to meet standards or requirements of the United States Department of Transportation, Federal Aviation Administration, the National Aeronautics and Space Administration, the United States Department of Defense, the United States Coast Guard, or the United States Department of Homeland Security;

(5) a motor vehicle or motor vehicle equipment regulated under a federal motor vehicle safety standard, as defined in United States Code, title 49, section 30102(a)(10), and any other motor vehicle, including an off-highway vehicle or a specialty motor vehicle, such as an all-terrain vehicle, a side-by-side vehicle, farm equipment, non-road mobile machinery, or a personal assistive mobility device;

(6) a marine vessel, including marine accessories and marine equipment, regulated by the Federal Boat Safety Act, 46 U.S.C. § 43, an aircraft, a lighter-than air aircraft or a seaplane;

(7) a semiconductor, including semiconductors incorporated in electronic equipment, and materials used in the manufacture of semiconductors;

(8) nonconsumer electronics and laboratory equipment not ordinarily used for personal, family, or household purposes;

(9) a product that contains intentionally added PFAS with uses that are currently listed as acceptable, acceptable subject to use conditions, or acceptable subject to narrowed use limits in the United States Environmental Protection Agency's rules under the Significant New Alternatives Policy Program if the product contains PFAS that are being used as substitutes for ozone-depleting substances under the conditions specified in the federal rules;

(10) a product used for generating, distributing, or storing electricity;

(11) a product that contains fluoropolymers consisting of polymeric substances for which the backbone of the polymer is either a perfluorinated or polyfluorinated carbon-only backbone or a perfluorinated polyether backbone and that are solid at standard temperature and pressure;

(12) a product that contains intentionally added PFAS in electronic components or internal components and enclosures of such components;

(13) a complex durable good composed of 100 or more manufactured components with an intended useful life of five or more years when the product is typically not consumed, destroyed, or discarded after a single use;

(14) an electronic or mechanical device composed of multiple manufactured components with an intended useful life of three or more years when 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;

(15) a product component of an item described in clause (13) or (14); and

(16) equipment, parts, components, or materials directly used in the manufacture, development, servicing, or maintenance of the products described in clauses (1) to (15).

Attachment B - Interstate Technology & Regulatory Council (ITRC) Table

https://pfas-1.itrcweb.org/wp-content/uploads/2023/09/PFAS_figure_2-5_May2024.pdf