



March 15, 2023

Minnesota State Senate
Committee on Commerce and Consumer Protection

Re: SF 450 and SF 834; Oppose

Submitted via email to bill.lunzer@senate.mn

Dear Chair Klein, Vice Chair Seeberger, Ranking Member Dahms, and Members of the Committee:

Thank you for the opportunity to submit written testimony in opposition to SF 450 and SF 834 on behalf of the American Chemistry Council's Performance Fluoropolymer Partnership.¹ 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 their regulation. Our concerns with the two bills are detailed below.

1. PFAS should not be regulated as a single class of chemicals.

Both bills treat all PFAS substances as a single regulatory group, an approach that is both inappropriate and unnecessary. PFAS is a large, diverse group of chemical compounds. All PFAS are not the same, and their properties vary widely. Chemical and structural differences among different types of PFAS result in vast differences in physical-chemical properties. Those properties are related to the commercial utility of certain types of fluoropolymers, but their striking chemical and physical differences should also be considered in any effort to understand and address potential health or environmental risks. Regulating chemical substances arbitrarily as a large class can lead to unjustified consequences that are not based on sound science.

The overly broad definition in the bills is inconsistent with a more specific considerations of PFAS from a variety of sources. For example, Buck et al. (2011) distinguish between polymeric and non-polymeric PFAS and identify several chemically distinct subgroups therein.² The 38-country Organization for Economic Co-operation and Development (OECD) broadens the definition of PFAS used by Buck et al., and recognizes more than 30 chemically distinct

¹ The Partnership's members are 3M, AGC, Inc., The Chemours Company LLC, Daikin America, Inc., ExxonMobil, Gujarat Fluorochemicals Limited, Honeywell, MilliporeSigma, Porex, Shamrock Technologies, Sherwin Williams, T-Lon Products, W.L. Gore, and Zeus.

² Buck et al. Perfluoroalkyl and polyfluoroalkyl substances in the environment: Terminology, classification, and origins. *Integrated Environmental Assessment and Management* 2011, 7(4):513-541. <https://doi.org/10.1002/ieam.258>. [Open access](#).

groups of PFAS.³ In addition, OECD is clear that the term PFAS does not inform whether a compound is harmful and that different PFASs have different properties, uses, exposures and potential risks. Most recently, the current U.S. EPA recognizes the differences among different types of PFAS in both its *PFAS Strategic Roadmap*⁴ and *National PFAS Testing Strategy*.⁵

2. Fluoropolymers should be excluded from the definition of PFAS.

The definition of PFAS in both bills would include fluoropolymers, specialty fluoroplastics that have been shown to be substances of low concern for potential risks to human health and the environment.^{6,7} Such criteria were developed to identify polymers with physical and chemical attributes that would not raise concerns about potential hazard traits and include evaluation of:

- Structure and elemental composition;
- Molecular weight and the consistency of molecule size in a sample;
- Particle size;
- Presence of low molecular weight residuals that might leach from the polymer;
- Electrical charge;
- Presence and nature of reactive functional groups;
- Resistance to physical, chemical, and biological transformation; and
- Resistance to heat and other environmental stressors.

Fluoropolymers are large, stable molecules with chemical and physical properties that would not lead to concerns about potential impacts on humans and the environment. They are large, highly stable molecules. They are insoluble substances and therefore concerns about the mobility of much smaller, highly water soluble PFAS substances do not apply to fluoropolymers. Importantly, fluoropolymers are neither bioavailable nor bioaccumulative and do not transform into long-chain non-polymeric PFAS like PFOA and PFOS in the environment.

We suggest modifying the definition of PFAS to focus on non-polymeric PFAS that contain at least two fully fluorinated sequential carbon atoms, excluding gasses and volatile liquids. This definition of PFAS would focus on smaller, lower molecular weight, soluble PFAS that may move between environmental media, may be more bioavailable and bioaccumulative,

³ Organization for Economic Co-operation and Development, OECD/UNEP Global PFC Group. Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance. Series on Risk Management No. 61. 2021. [Publicly available](#).

⁴ U.S. Environmental Protection Agency. PFAS Strategic Roadmap: EPA's Commitment to Action 2021-2024. EPA-100-K-21-002. October 2021. [Publicly available](#).

⁵ U.S. Environmental Protection Agency. National PFAS Testing Strategy: Identification of Candidate Per- and Polyfluoroalkyl Substances (PFAS) for Testing. October 2021. [Publicly available](#).

⁶ Henry, B.J., Carlin, J.P., Hammerschmidt, J.A., Buck, R.C., Buxton, L.W., Fiedler, H., Seed, J. and Hernandez, O. (2018), A critical review of the application of polymer of low concern and regulatory criteria to fluoropolymers. *Integr Environ Assess Manag*, 14: 316-334. <https://doi.org/10.1002/ieam.4035>. [Open access](#).

⁷ Korzeniowski, S.H., Buck, R.C., Newkold, R.M., El kassmi, A., Leganis, E., Matsuoka, Y., Dinelli, B., Beauchet, S., Adamsky, F., Weilandt, K., Soni, V.K., Kapoor, D., Gunasekar, P., Malvasi, M., Brinati, G. and Musio, S. (2022), A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluoroelastomers. *Integr Environ Assess Manag*, 19: 326-354. <https://doi.org/10.1002/ieam.4646>. [Open access](#).

and should be of higher priority in terms of understanding where and how they are used. A more focused definition of PFAS would allow the PCA to more quickly identify sources of PFAS that may be of potentially of concern to human or environmental health, an intention articulated clearly in SF 450 at Subdivision 4(1) and SF 834 at Subdivision 6(b).⁸

3. Both bills are duplicative of ongoing and forthcoming federal efforts.

The overly broad definition of PFAS in both bills would create an overwhelming task for the State, bringing into play hundreds if not thousands of substances that heretofore have not been considered PFAS. It would put the Pollution Control Agency (PCA) in the position of spending valuable time and resources on the review of information about substances extensively tested and continuously reviewed for safety by federal agencies like the U.S. EPA (e.g., environmentally preferable refrigerants and propellants), FDA (e.g., pharmaceuticals, medical devices, and their packaging), and USDA (e.g., veterinary health products for pets and livestock).

Furthermore, the notification program contemplated in the bills is significantly duplicative of a forthcoming U.S. EPA rule under the Toxic Substances Control Act that would require extensive reporting on production, distribution, and use of PFAS substances in U.S. commerce. We believe Minnesota will incur no benefits, but only costs by creating and managing a notification program mirroring that coming from the U.S. EPA.

4. The legislature must require PCA to protect confidential business information (CBI).

The notification program described in both bills would require manufacturers to disclose extremely sensitive CBI about the types, functions, and amounts of PFAS in their products. Companies have taken steps to protect such information from commercial competitors and foreign governments. Nevertheless, the bills appear to contemplate public release of CBI that is protected against public disclosure under federal law, including, potentially, trade secrets regulated under federal export control regimes, the disclosure of which may compromise national security and infrastructure.⁹

We strongly urge the inclusion of provisions that would require the Commissioner of the PCA to articulate through rulemaking, and prior to the commencement of reporting deadlines, the protection of sensitive CBI so that manufacturers with potential reporting obligations can understand the following:

⁸ SF 450: "The commissioner must adopt rules to implement this section. The rules may prioritize products subject to subdivision 2 based on the products that, in the commissioner's judgement, are most likely to contaminate the states' land or water resources or pose a risk to public health. SF 834: "The commissioner must prioritize the prohibition of the sale of product categories that, in the commissioner's judgment, are most likely to cause contamination of the state's land or water resources if they contain intentionally added PFAS." Emphases added.

⁹ See <https://www.trade.gov/us-export-controls>.

- a. The types of information can qualify as CBI;
- b. The process for manufacturers to assert CBI claims;
- c. Protection of CBI that has been submitted to the federal government and is federally protected against disclosure to the public;
- d. Protection of CBI by entities responsible for managing the notification database and the PFAS reporting program generally, particularly those who are not PCA employees but nevertheless have access to reported data and information;
- e. Systems to monitor the release of CBI and notify manufacturers about potential of breaches of CBI protection; and
- f. Means of redress are available to a manufacturer whose CBI is revealed, either willfully or unintentionally.

5. The legislature must require PCA to provide allowances for the challenges of global supply chain complexity.

The definition of “Manufacturer” in both bills does not demonstrate an understanding of complex, multi-tiered global supply chains and that they can include an array of manufacturers, from small private firms to multinational corporations, providing chemicals, component parts, and assemblies that come together in a final manufactured article. Plumbing such supply chains to identify whether a product or product component contains PFAS, the identities of those PFAS, and the quantities of those PFAS is a complicated and time-consuming process.

For products sold directly to distributors outside of Minnesota and not directly to retailers or individuals in the state, it will be virtually impossible for the original product manufacturer to report on sales into Minnesota. 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 Minnesota, the original manufacturer of the product will not have access to the distributor’s data for products sold into Minnesota. 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 Minnesota. Products sold to members of the public through on-line platforms 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 legislature needs to address these realities in the definition of “manufacturer” and in the description of data and information that a “manufacturer” as currently defined can be reasonably expected to provide.

6. More flexibility is needed for substance identity.

Both bills would require reporting by chemical abstract services registry number (CAS number), which is not possible in all cases. There should be an allowance for alternatives to

CAS numbers, such as EPA-assigned Accession numbers, for proprietary chemicals with CAS numbers that are federally protected CBI.

7. Consistency with other states avoids a patchwork of requirements.

SF 834 departs importantly from cookware-related consumer notification laws passed recently in PFAS-related legislation in California and Colorado. Instead of taking a drastic (and questionable) ban approach, these states have established PFAS disclosure requirements so that consumers can make informed choices for themselves and their families. We recommend adopting language from California Health and Safety Code §§ 109011-109014 and Colorado Revised Statutes §§ 25-15-604.

Similarly, SF 834 departs from laws regarding juvenile products also passed in California and Colorado. Specifically, SF 834 does not exclude inaccessible internal components from the definition of juvenile products. We recommend adopting language from California Health and Safety Code § 108945 and Colorado Revised Statutes § 25-15-603.

Thank you for the opportunity to provide this testimony. Please contact me if you have any questions.

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