

PFAS in products: Currently unavoidable use - Rulemaking

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See: [Draft Rule Concept Summary for PFAS in Products: Currently Unavoidable Use Rule](#)

1. Who is commenting? (choose the best fit)
 - a. Member of the general public
 - b. Representative of an environmental group
 - c. Representative of a product manufacturer(s)
 - d. Representative of another unit of government
 - e. Representative of a public health group
 - f. Academic or research organization
 - g. Other (please specify)
2. If you are commenting as a representative, what is the name of the entity you are commenting on behalf of?

Natural Resources Defense Council
3. If you represent a product manufacturer or industry group, what industry(ies) do you represent?
4. If you represent a product manufacturer, what types of components, products, or product categories do you manufacture that you will be requesting a CUU determination for?
5. Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term "essential for health, safety, or the functioning of society" (Please review the proposed definitions prior to answering)

As we have noted in response to some other definitions, we recommend explicitly including processes in the list of products and components where the need for PFAS is considered. We otherwise support the primary definition of "essential for health, safety, or the functioning of society." Here are our recommended modifications:

Essential for health, safety, or the functioning of society. "Essential for health, safety, or the functioning of society" means a use of a PFAS in a product, ~~or~~ component, **or process** when the function provided by the PFAS is, at the time of a determination by the commissioner, necessary for the product, component, ~~or~~ spare or replacement component, **or process** to perform as intended, such that the unavailability of the PFAS for use in the product **or process** would cause the product's **or process'** service to be unavailable, which would result in:

- A. A significant increase in negative health outcomes;
- B. An inability to mitigate significant risks to human health or the environment; or,

C. A significant disruption of commercial, public, or ecosystem services on which society relies, including:

- (1) Provision of food, water, shelter, health, hygiene, or bare necessities for human survival;*
- (2) Provision of transportation and utilities such as gas, electricity, data, communications, and sewer;*
- (3) Provision of personal, occupational, or public safety particularly for extreme conditions of use; and,*
- (4) Other services not covered under subitems (1) through (3) that serve the basic needs of human beings.*

In addition, while we appreciate the constraints applied to the “extreme conditions of use” in C.(3) above, we think further specificity is important to narrow the requests submitted for a CUU to those that truly need the CUU designation. For instance, “high or low operating temperatures” could lead to applications for products such as aprons for use in regular or commercial kitchens. We believe that the definition of “extreme conditions” should reflect truly extreme conditions.

Additionally, for (B) under the “extreme conditions of use” definition it is unclear what is meant by “material pH” and how that is different from simply “pH.” We suggest removal of “material” or clarification of this term. For (D), low chemical reactivity is generally not considered an extreme condition, however high reactivity could be, and we have suggested a change to reflect this.

We recommend the following modifications:

Extreme conditions of use. “Extreme conditions of use” means an ***specialized*** environment that results in one or more of the following :

- A. ***Very h***High or low operating temperatures, or both;
- B. ***Very h***High or low ~~material~~ pH, or both;
- C. High corrosivity not covered under item B;
- D. ***Very high*** ~~Low~~ reactivity with one or multiple chemicals;
- E. ***Very h***High or low operating pressures, or both;
- F. ***Very h***High tear, crack, or other stress potential;
- G. ***Very h***High or the possibility of high friction or vibration;
- H. ***Very h***High or sustained humidity or moisture;
- I. High or concentrated voltage requiring dielectric strength;
- J. Elevated radiation levels;
- K. ***Very h***High exposure to oxygen with risk of oxidation or fire; or,
- L. Others the commissioner may designate.

6. Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term "alternative"? (Please review the proposed definitions prior to answering)

NRDC generally supports the proposed definition of “alternative.” It appropriately considers all potential alternatives to PFAS in a product or process or to the product or process reliant on PFAS. This is consistent with the concept underlying currently avoidable use which focuses on phasing out PFAS where it is possible to avoid the use in order to reduce health and environmental exposures.

We do recommend a small change for clarity and precision. MPCA already recognizes that in considering a product, the focus should be on the product’s primary function and ancillary or add-on functions should not be determinative. This is reflected in the definition of “product category”:

Product category. *“Product category” means a group of similar products that are used for a similar purpose and that could functionally replace each other for that purpose and does not mean variations within a product that do not affect the product’s primary function.*

We recommend that this important consideration also be reflected in the definition of “alternative” to clarify that this remains the focus and that PFAS use in processes are also explicitly included. We also think it would be helpful to be clear, as it is elsewhere in the Draft Rule Concept in the definition of “reasonably available,” that assessments of alternatives are focused on comparable performance. Please see below for our proposed modification.

Alternative. *“Alternative” means a non-PFAS chemical, substance, material, manufacturing process change, non-chemical change, or other product that, if used in place of a PFAS or PFAS-containing product or process would result in a comparably functionally equivalent product or process, relative to its primary function.*

7. Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term “reasonably available”? (Please review the proposed definitions prior to answering)

NRDC supports MPCA’s definition of “reasonably available,” which addresses the following important considerations:

- 1) that if alternatives are already being used or if PFAS in an application has already been banned in another jurisdiction and that ban is in effect, then that is clear evidence that alternatives are reasonably available;
- 2) that an alternative need only to perform comparably, but not exactly the same as the PFAS or PFAS-containing product or process being considered for replacement;

- 3) that cost is not a determinative factor, because the cost implications can vary dramatically from product to product and may change over time;
- 4) recognizes that reasonable availability is likely to change over time.

For the same reasons, we also support the MPCA's direction that "[t]he applicant must not rely solely on simplicity, convenience, or lower cost of PFAS as justification that there are no reasonably available alternatives. As a reminder, the proposed definition of "reasonably available" is focused on comparable performance and quantity, not cost."

In addition, we support MPCA's comments during the webinar that acknowledged that any costs borne by the manufacturers are in contrast to the very large societal costs of PFAS exposure and clean up. The costs for manufacturers are just one aspect of the costs for PFAS as several analyses have noted.

Please refer to: Safavi, Leila, and Peter Howard. "Evaluating the Full Cost of PFAS." Institute for Policy Integrity, October 14, 2025.

<https://policyintegrity.org/publications/detail/evaluating-the-full-cost-of-pfas>; Pelch, Katie, and Anna Reade. *The Immense Societal Burdens of PFAS "Forever Chemicals."* May 14, 2025.

<https://www.nrdc.org/bio/katie-pelch/immense-societal-burdens-pfas-forever-chemicals>; Ling, Alison L. "Estimated Scale of Costs to Remove PFAS from the Environment at Current Emission Rates." *Science of The Total Environment* 918 (March 2024): 170647. <https://doi.org/10.1016/j.scitotenv.2024.170647>.

Ling, Alison L., Rebecca R. Vermace, Andrew J. McCabe, Kathryn M. Wolohan, and Scott J. Kyser. "Is Removal and Destruction of Perfluoroalkyl and Polyfluoroalkyl Substances from Wastewater Effluent Affordable?" *Water Environment Research* 96, no. 1 (2024): e10975.

<https://doi.org/10.1002/wer.10975>; MN Pollution Control Agency. *Evaluation of Current Alternatives and Estimated Cost Curves for PFAS Removal and Destruction from Municipal Wastewater, Biosolids, Landfill Leachate, and Compost Contact Water.* May 2023.

<https://www.pca.state.mn.us/sites/default/files/c-pfc1-26.pdf>.

That said, we recommend a small modification to the language to clarify that the consideration of reasonably available applies equally to products and processes:

Reasonably available. "Reasonably available" means that one or more alternatives to a PFAS can perform comparably to the PFAS being

considered for replacement in a product, ~~or~~ component, or process and is currently available in sufficient quantity. PFAS alternatives that are in use in equivalent products, ~~or~~ components, or processes are considered “reasonably available.” Conditions of current reasonable availability may change over time as a result of new research or innovation.

8. When considering the proposed definition of “product category”, how broadly should the agency group product categories? (Examples: “vehicles” versus “sedans, SUV’s, vans, trucks, RV’s” or “printers” versus “receipt printers, thermal printers, label printers, residential printers, commercial printers, etc.”)

NRDC supports MPCA’s proposed definition of “product category” because it appropriately focuses on the function of the product or process. However we note that the agency will have to use its discretion on how broad a product category is in light of specific context and use. For example, lubricants may be more interchangeable in a home use scenario, but potentially not as interchangeable in a commercial or industrial setting with more demanding conditions.

The examples provided (vehicles and printers) are not focused on the function and context of PFAS use, which makes them not the most relevant examples for this regulatory decision context. Vehicles are highly complex products that are unlikely to be considered as a whole. Instead the components and parts of a vehicle are much more likely to be a regulatory scenario presented to MPCA. For the printer context, it would be important to focus on the function that PFAS is providing in the printers.

9. Should each request for a CUU determination be limited to a single product category, or should applicants be allowed to submit a request for a CUU determination for multiple product categories?

NRDC supports the most efficient use of MPCA’s resources.

10. What safety or other standards require the use of PFAS in a product? (Please include the specific citation)
11. The agency is seeking feedback on the potential that the initial positive CUU determination duration for existing products will expire eight years from the date of issuance regardless of product category. This is intended to stagger renewal deadlines and ease the administrative burden of processing renewals.

- a. Do you have any concerns about unintended consequences with this proposal?

NRDC supports MPCA's approach to staggering renewals to ease administrative burden. While eight years is on the longer side for the duration of a CUU designation, we support a schedule that allows MPCA to meet its responsibilities effectively and efficiently.

MPCA should also consider whether a shorter duration of CUU designation would be appropriate in the future for renewals and for certain uses where the analysis may be less complex.

Finally, MPCA should develop a process for public petitions to reassess CUU designation durations if new information becomes available and changes the analysis so that the use is no longer a currently unavoidable use. For example, if a safer alternative for a use emerges two years into an eight year CUU designation period, it would be contrary to the goals of the law to allow the use to continue for six more years simply because a CUU designation is in place.

b. Do you have any alternative recommendations to stagger renewal deadlines?

12. The MPCA has developed a preliminary list of potentially eligible data categories that may be considered for trade secret requests. (Please review the list of potentially eligible data prior to answering)

a. Do you have any concerns about unintended consequences with this proposal?

While trade secret protections may be appropriate in some circumstances, the general orientation should be to narrow such exceptions to disclosure as much as possible to meet the statute's objectives of having greater insight into PFAS use and to protect public health and the environment. We urge you to reflect this general orientation in the draft rule concept.

In addition, we note that while the need for trade secret protections for some of the proposed data categories is evident, the rationale for some categories is not as clear. We urge MPCA to explain further the situations in which trade secret protections may be needed for these data categories. These two stood out to us in particular:

- *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.*

Finally, we are pleased to see MPCA clarify that for any data that is granted trade secret protection, the applicant will have to provide alternative information so that the state and the public have the maximum information to go on.

- b. Do you have any alternative recommendations for data that should or should not be eligible for, trade secret requests
13. What are the potential ongoing costs to society if the commissioner issues a positive currently unavoidable use determination for the continued use of PFAS within a product or product category? (For example: environmental, human health, or remediation costs)

We and others have described some of the potential ongoing costs to society due to continued use of PFAS.

Products granted a CUU will continue to lead to:

- Potential exposure to PFAS throughout their lifecycle of production, use, and disposal. Exposure to PFAS is associated with many health harms and the costs in the U.S. to address these health harms are estimated at \$1-60 billion annually.
(<https://policyintegrity.org/publications/detail/evaluating-the-full-cost-of-pfas>)
- The need to treat drinking water in order to reduce exposure and protect public health.
- The need to monitor for PFAS in landfill leachate, collect and treat leachate, improve landfill containment to prevent runoff, and treat landfill gases. It is also possible that there may be an increased need to send PFAS waste to hazardous waste landfills that are more costly than municipal waste landfills.
- The need to treat waste water. Minnesota estimated PFAS cleanup for its wastewater treatment facilities could cost between [\\$14 and \\$28 billion over 20 years](#).
- Potential increased costs to individuals for utilities (for example increased rates for drinking water), a [drop in housing prices](#) in contaminated areas, or the need to purchase and maintain [at-home water filters](#). For certain communities, PFAS contamination could lead to a loss of food sources, such as local fish and game. Continued use of PFAS can also impact businesses that are impacted by PFAS contamination (including farms, dairies and companies that rely on safe water as an ingredient and businesses that rely on fishing, hunting, and recreational tourism.)
- Potential ecological harm and loss of biodiversity. As it would be technologically and financially impossible to clean all contaminated air, water, and soil, every continued use of PFAS adds to the growing global burden of PFAS in the environment.

For more details, see Safavi, Leila, and Peter Howard. "Evaluating the Full Cost of PFAS." Institute for Policy Integrity, October 14, 2025.

<https://policyintegrity.org/publications/detail/evaluating-the-full-cost-of-pfas>; Pelch,

Katie, and Anna Reade. *The Immense Societal Burdens of PFAS “Forever Chemicals.”* May 14, 2025.

<https://www.nrdc.org/bio/katie-pelch/immense-societal-burdens-pfas-forever-chemicals>;

Minnesota Pollution Control Agency. “Groundbreaking Study Shows Unaffordable Costs of PFAS Cleanup from Wastewater.” November 22, 2024.

<https://www.pca.state.mn.us/news-and-stories/groundbreaking-study-shows-unaffordable-costs-of-pfas-cleanup-from-wastewater>.

19. Please provide any additional information or documentation needed to support your answers to any of the questions posed.

We have included a PDF with our suggested changes to the text shown in track-changes so that the changes we recommend are clear.

20. Do you have any additional questions or comments regarding the PFAS in products: Currently unavoidable use rule? (Please note that we may be unable to respond to specific questions regarding rule content in this phase of the rulemaking process)

We support the overall direction of the draft rule concept. We have some specific recommendations outlined above.

In addition, we specifically want to call out our support for the MPCA's proposal to allow sales of products after 2032 *only if* a “positive CUU determination” has been issued by MPCA. This is sound policy and consistent with the law, as the draft concept rule notes. Specifically, the law states that no sales of products with intentionally added PFAS is allowed after 2032 “unless the commissioner has determined by rule that the use of PFAS in the product is a currently unavoidable use.” The law requires an affirmative finding by the commissioner, and the draft concept rule is consistent with that requirement.