

Avinash Kar

Who is commenting? (*choose the best fit*)

Representative of an environmental group

If you are commenting as a representative, what is the name of the entity you are commenting on behalf of?

Natural Resources Defense Council (NRDC)

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 in the rule concept document prior to answering*)

NRDC previously submitted comments recommending the inclusion of processes in addition to products in the definition of “essential for health, safety, or the functioning of society” when PFAS uses are considered. We write to add to our prior comments to recommend an additional change to clarify, as made clear elsewhere in the Draft Rule Concept, that the focus is on the product’s or process’ primary function rather than simply the “intended” purpose, which introduces unhelpful subjectivity into the analysis. Here is the updated language we would recommend, integrating our previous suggestions:

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, 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, spare or replacement component, or process to perform its primary function, 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.

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 in the rule concept document prior to answering*)

NRDC adds to our previous comments on the definition of “reasonably available.” We remain largely supportive of the concepts reflected in the definition, but are recommending additional changes for greater clarity. Specifically, we think it is important to consider both current availability of sufficient quantity of alternatives and the ability to have sufficient quantity in the near future with notice of forthcoming changes in regulation. In addition, we recommend some changes to clarify that the analysis is focused on comparable performance and not the same performance as a PFAS-based product or process, as well as to make even clearer that the definition covers alternatives to the uses of PFAS, not simply the PFAS itself. Here is the updated language we recommend:

“Reasonably available” means that one or more alternatives to a PFAS that result in a product, component or process that can perform comparably to the use of the PFAS being considered for replacement is currently available or may be procured in sufficient quantity. PFAS alternatives that are in use and perform comparably to products, components, or processes that contain or use PFAS are considered “reasonably available.” Conditions of current reasonable availability may change over time as a result of new research or innovation, or increased demand.

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 adds to our previous comments on the definition of “product category.” We remain supportive of the concepts embodied in the current language, but are recommending some textual changes for greater clarity. We recommend the deletion of some extraneous language and the separation of the second clause to make its meaning clearer. We believe the term “product category” is adequately described by the description “products that are used for a similar purpose and that could functionally replace each other for that purpose.” The phrase “group of similar products” has the potential to introduce confusion and does not add additional detail that adds to the description. Therefore, we recommend deleting that language. In addition, the second clause would be clearer if it stood on its own and specified that variations in a product that do not affect the primary function of the product are part of the same product category. Therefore, we recommend the following modified text:

“Product category” means products that are used for a similar purpose and that could functionally replace each other for that purpose. Variations among products that do not affect the product’s primary function shall be considered part of the same product category.

For manufacturers: Administrative cost of requesting a CUU determination (Part 1 of 2). *Please provide your best estimates or rough orders of magnitude (for example “approx. 200 hours”). Precise accounting data is not necessary to answer this question.*

If your company currently possesses information regarding intentionally added PFAS (to

the CAS number level) for all components in your product lines, please estimate the number of technical staff hours that were required to establish this baseline.

Not applicable

For manufacturers: Administrative cost of requesting a CUU determination (Part 2 of 2). *Please provide your best estimates or rough orders of magnitude (for example "approx. 200 hours"). Precise accounting data is not necessary to answer this question.*

If your company does not possess information regarding intentionally added PFAS (to the CAS number level) for all components in your product lines, please estimate the number of technical staff hours needed to obtain this data from your Tier 2 or 3 suppliers for a single product line.

Not applicable

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

NRDC is happy to follow up as needed to help clarify our comments if that might be useful to MPCA.