

Lorene Boudreau

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

Representative of a product manufacturer(s)

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

Rosenbauer America, LLC, submits these comments on behalf of itself and its subsidiaries Rosenbauer Minnesota, LLC, Rosenbauer South Dakota, LLC, Rosenbauer Aerials, LLC, and Rosenbauer Motors, LLC, collectively, “Rosenbauer.”
Rosenbauer appreciates the opportunity to engage with the Minnesota Pollution Control Agency (the “Agency” or “MPCA”) on its Draft Rule Concept Summary for PFAS in Products: Currently Unavoidable use (CUU) rule (“CUU Concepts”).

If you represent a product manufacturer or industry group, what industry(ies) do you represent?

Rosenbauer is a leading manufacturer of fire fighting vehicles including pumpers, aerials, tankers, and rescues in the U.S., providing firefighting apparatus to well over 2,245 municipalities in all 50 states, and 282 airports around the country. Rosenbauer is also a leading provider of electric fire trucks. Rosenbauer employs over 600 people in Minnesota including at its manufacturing facilities in Wyoming, Minnesota, and employs over 1,000 people company-wide.

To prepare for compliance with Minnesota’s PFAS reporting requirements and other federal and state laws requiring reporting of PFAS in products, Rosenbauer is working diligently to develop a comprehensive understanding of PFAS in its fire trucks, which operate in some of the most demanding and hazardous environments of any heavy equipment. They must perform reliably under extreme temperature conditions, exposure to aggressive chemicals, high mechanical pressures, and long operational lifespans measured in decades.

Rosenbauer recognizes the public’s concerns around health risks associated with PFAS and understands the critical role agencies like the MPCA play in protecting communities and the environment. Rosenbauer is committed to aligning its work with these public health goals, including exploring and supporting safer alternatives wherever feasible.

At the same time, Rosenbauer must remain mindful of the essential need to provide reliable, high-performance equipment that saves lives in emergencies, and will work collaboratively to balance product safety and operational effectiveness.

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?

Rosenbauer is in the process of determining exactly which components, products, or product categories it will be requesting a CUU determination for.

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)*

I. MPCA's proposed definition of "essential for health, safety, or the functioning of society" goes beyond what the legislature intended when it defined "CUU."

 Minnesota Statute § 116.943 prohibits the sale, offer for sale, or distribution for sale in Minnesota 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 legislature defined "currently unavoidable use" ("CUU") to mean "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." That definition forms the bedrock for the Agency's CUU Concepts.

 MPCA proposes to define "essential for health, safety, or the functioning of society" to mean "a use of a PFAS in a product or component 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 to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product's service to be unavailable, which would result in: . . ." (emphasis added).

 MPCA's definition appears to require a showing by the applicant that if the PFAS were unavailable then, the product itself would also be unavailable because it could not perform its intended service. The statute does not require that showing. Rather, the statute requires the commissioner to make two determinations: (1) that the use of PFAS is essential for health, safety, or the functioning of society, and (2) for which alternatives are not reasonably available. MPCA is proposing to impose on the applicant, for the first of the commissioner's two determinations, the burden of showing that the entire product would be unavailable if the PFAS could not be used in that product. The legislature did not envision such an onus on employers of this state providing essential emergency equipment. The legislature clearly intended "for which alternatives are not reasonably available" to be a separate criterion for a CUU determination. By adding unavailability also to the first criterion, MPCA is requiring the applicant to demonstrate unavailability twice, which goes beyond what the legislature intended.

 II. Rosenbauer generally supports MPCA's proposed definition for "extreme conditions of use" with a slight modification.

 The MPCA proposes to define "extreme conditions of use" as "an environment that results in one or more of the following: A. High or low operating temperatures, or both;". For clarity and certainty in its application, "extreme conditions of use" should be defined to mean "an environment of one or more of the following: A. High or low temperatures, or both." "That results in" should not be part of the definition, and "operating" should not be part of the "high or low temperatures" environment.

 Firefighting is an environment that necessarily results in extreme conditions of use because fire trucks are exposed to high temperatures when fire trucks are operated to fight fires. Rosenbauer encourages the Agency to adopt the proposed definition, as modified here. This definition would capture the PFAS believed to be in Rosenbauer's trucks which are essential to public safety and which must withstand high heat conditions that occur in the presence of fires.

 Rosenbauer also supports including high

moisture and very wet conditions, high corrosivity, high reactivity, chemical stressors, and extreme pressure in the definition of “extreme conditions of use.” The PFAS in Rosenbauer’s trucks is essential to preserve the durability and function of the vehicle components in the outdoors and while water is used at high pressures and volumes to suppress fires. These chemicals are used because they possess a unique and unmatched combination of thermal stability, chemical resistance, mechanical durability, and low frictional characteristics that no known alternative material can replicate across all required performance dimensions.

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 in the rule concept document prior to answering)*

I. MPCA’s proposal to require applicants to provide certain information for assessment of alternatives is overly burdensome.

The legislature did not clearly intend for applicants of CUU determinations to bear the burden of demonstrating to the commissioner that alternatives to use of PFAS in a product are not reasonably available. However, the CUU Concepts would require an applicant to provide a comprehensive assessment of alternatives not only to obtain a CUU determination but also for the application to be considered complete. The Agency’s demands for the assessment are unreasonable and overly burdensome, especially for relatively small businesses.

Applicants are unlikely to be in the best position to obtain the information requested in the CUU Concepts. The CUU Concepts suggest that an applicant may use outside consultants to support their application, but it is always true that outside consultants could be retained so this suggestion offers no relief. The suggestion does, however, indicate that the Agency has already acknowledged that much of the information proposed to be required for an assessment of alternatives is outside the reach of applicants themselves.

MPCA should not require information that would disadvantage companies that do not retain chemical experts to prepare their applications and conduct their own alternative feasibility studies. The statutory ban on products containing PFAS applies broadly without regard to company size or degree of presence in the state, and without regard to types of products. Many companies may not have the resources necessary to retain chemical experts or otherwise obtain the information that MPCA proposes to require.

Applicants should be required to supply the requested information about alternatives to the PFAS in their products only to the extent it is reasonably known to the applicant or others in the same industry with similar PFAS uses. An application should not be deemed incomplete and should not be denied due to the omission of some of the information desired by MPCA if MPCA is able to determine that alternatives are not reasonably available based on the information that is provided and information that MPCA otherwise is able to access. MPCA – an agency of the state charged with protecting the state’s environment and human health – is much better positioned than applicants are to obtain some of the information about alternatives.

At a minimum, MPCA should offset some of this burden by providing resources such as literature that companies can use to develop the information required for submission.

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)*

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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.")*

I. Rosenbauer supports the proposed definition of "product category."

MPCA proposes to define "product category" as "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." This definition is appropriate because, by focusing on the function and purpose of the products

within a category, it aligns with and will allow the commission to determine whether a PFAS in any product within the product category is essential for the health, safety, and functioning of society.

In the CUU Concepts, MPCA offers “vehicles” versus “sedans, SUVs, vans, trucks, RV’s” as an example of how broad or narrow the definition should be. This very example shows that the proposed definition is appropriate. “Vehicles” does not meet the proposed definition of “product category” because there are many categories of vehicles that serve a range of primary functions. Even “trucks” does not, because the evaluation of whether a pickup truck or the PFAS in it is essential for health, safety, or the functioning of society (part of the CUU criteria) will be very different from the evaluation of whether a fire truck or the PFAS in it is essential for the health, safety, or the functioning of society. “Fire trucks” fit exactly into the proposed definition of “product category.” All fire trucks – whether they are pumpers, aerials, or rescues – are used for the similar purpose of fighting fires. Moreover, an inquiry of whether a PFAS in a fire truck is essential for health, safety, or the functioning of society is not anticipated to vary from one fire truck model to another. The commissioner will be able to apply the CUU criteria to an application for a “product category” based on the proposed definition.

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?

Applicants should be allowed to submit a request for a CUU determination for multiple product categories. This would create efficiencies and reduce the administrative burden on the MPCA.

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.
Other (please specify)
Unknown

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

I. MPCA must accelerate its timeline for the CUU rule so that CUU determinations can be made early.

The CUU Concepts state, “it is unknown how long it will take the MPCA to issue final determinations on requests that are received.” The CUU Concepts propose a January 1, 2030 deadline for applications, because “this will ensure that the agency has at least two years or more to process requests for a CUU determination.”
For Rosenbauer, CUU determinations must be made at least four years ahead of the sale prohibition. Vehicle manufacturers plan and design their vehicles at least four years prior to the model year of the product. Without this lead time, a denial of Rosenbauer’s CUU applications would be economically devastating for Rosenbauer and the essential services it provides to municipalities in Minnesota and around the country.

MPCA’s proposed CUU determinations should not be subject to public comment because it would significantly delay the CUU determinations. A public comment process on individual CUU determinations would add 60 days to the process in addition to time MPCA would need to review the comments and the applicant’s rebuttal. The possibility that public comments could inform MPCA’s determination does not justify this delay.

II. The applicant’s certification must be limited to the applicant’s knowledge.

MPCA proposes that manufacturers must certify that the data they submit is “accurate and complete.” The certification that the data is “accurate and complete” should be based on the manufacturer’s knowledge after reasonable inquiry. Some of the information required – such as whether there is a restriction on the use of the particular PFAS in a foreign jurisdiction – may be virtually impossible to obtain. A certification that the data submitted is accurate and complete based on the manufacturer’s knowledge after reasonable inquiry will ensure that applications include all relevant information in the manufacturer’s possession or control, and is consistent with certifications required in similar contexts such as manufacturer requests for risk evaluations pursuant to 40 C.F.R. § 702.45.

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)*

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