Dan Moyer

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?
The Consumer Technology Association (We are an industry trade association, the option to select "other" under Question 1 was unavailable in the portal)

If you represent a product manufacturer or industry group, what industry(ies) do you represent?
The consumer technology industry including manufacturers of electronic devices such as computers, laptops, televisions, mobile phones, wearable technology, audio products, streaming devices, and other consumer electronics.

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)*
The definition of this term is not in the statute, so must be interpreted according to its ordinary meaning. MPCA's definition in the Draft Rule is incredibly narrow. The inclusion of terms like "bare necessities for human survival" and "basic needs of human beings" reflect an improperly narrow reading of the statutory phrase. There is nothing in the statute that suggests the legislature intended to limit CUU eligibility to products only necessary for bare survival. The statute says CUUs are applied to uses necessary for the "functioning of society" which is commonly understood to include the continued operation and coordination of systems, institutions, and activities that enable a community to carry out civic, social (including recreation and entertainment), and economic life. It is not limited to mere "survival" and "basic needs." A computer or cellphone is not necessary for "human survival," but it is absolutely necessary for the "functioning of society." The same can be said for broadcast equipment, which is necessary to communicate and share information. The overly narrow definition MPCA outlines here could result in the denial of CUUs for countless electronic products that are foundational to modern life, and would significantly impact the quality of life for Minnesota citizens.

Part C of the term in the Draft Rules includes "A significant disruption of commercial, public, or ecosystem services on which society relies…" The use of the term "services" is too restrictive and carries an implication of institutional or commercial provision to the public, which could exclude many critical activities that are central to modern life but not delivered as formal services.

We recommend incorporating Maine's law for this definition. Maine's law defines the term as:
"Essential for health, safety or the functioning of society" means a

use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in:
(1) A significant increase in negative health outcomes;
(2) An inability to mitigate significant risks to human health or the environment; or
(3) A significant disruption of the daily functions on which society relies.

Using the “significant disruption of the daily functions on which society relies” better reflects the intent of the statute and harmonizes Minnesota’s regulations with Maine’s.

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)*
The Draft Rule defines “alternative” as “a non-PFAS chemical, substance, material, manufacturing process change, nonchemical change, or other product that, if used in place of a PFAS or PFAS containing product, would result in a functionally equivalent product.”

CTA appreciates that the definition of “alternative” reflects that in order for a replacement chemical or process change to be considered a viable alternative, it must “result in a functionally equivalent product.”

Alternatives should not only perform to equivalent standards as the PFAS contained in the product, but it should also not compromise the safety of the product. PFAS can serve important functions to enable key performance attributes including ensuring that the product has a reasonable lifespan and that the product is safe for consumers to use. These functions should be explicitly reflected in any definition of “alternative.”

The definition uses the term “functionally equivalent.” PFAS substances have the characteristic of being able to fulfill multiple functions at once. However, while there are substitutes for each individual function, in many cases the functionality of a mixture of these substitutes is not equivalent to that of PFAS. Therefore, we would like to clarify that “functionally equivalent” be limited to products that are actually functionally equivalent when substituted in an actual product. When determining what is “functionally equivalent,” the reliability, durability, and safety of the products should be taken into account.

We recommend the following as a new definition with added text bolded and underlined: “Alternative means a non-PFAS chemical, substance, material, manufacturing process change, nonchemical change, or other product that, if used in place of a PFAS or PFAS-containing product, would result in a functionally equivalent product, taking into account key performance attributes, product lifespan, and consumer safety.”

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*)

The Draft Rule defines “Reasonably available” as “that one or more alternatives to a PFAS can perform comparably to the PFAS being considered for replacement in a product or component and is currently available in sufficient quantity. PFAS alternatives that are in use in equivalent products or components are considered “reasonably available.” Conditions of current reasonable availability may change over time as a result of new research or innovation.”

When defining the term “reasonably available,” MPCA should develop factors to determine how to classify a non-PFAS as being in sufficient quantity. If a limited number of non-PFAS chemicals are available, there may be resource constraints down the line. MPCA should create clear metrics for this element.

We ask that the requirements for “reasonably available” include consideration of economic feasibility and impact. The Draft Rule focuses exclusively on comparable performance and sufficient quantity and expressly excludes cost from the analysis. This does not reflect how availability works in practice. An alternative that technically performs comparably but is not available at a comparable cost is not, in any meaningful sense, reasonably available. A rule that ignores cost will produce CUU denials that are commercially unworkable. If a potential alternative chemical is so expensive that it would raise the cost of a product such that no consumer could afford it or would buy it, that potential alternative cannot be said to be reasonably available.

We recommend that MPCA align with Maine’s language. Maine’s regulations define the term:
“Reasonably available” means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS, to include changes to the manufacturing process, it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component.

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The presumption in the Draft Rule would allow MPCA to deny a CUU request the moment any manufacturer has a PFAS-free version of a broadly similar product, without using the rest of the established criteria outlined in the Draft Rule. MPCA should replace this automatic presumption with a rebuttable inference, requiring consideration of whether the alternative meets the standards and criteria set out by the full CUU rules.

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.")*

The Agency should consider very broad definitions for "product category." For consumer electronics products, the type, location, and functionality of PFAS is likely to be functionally similar. Broad product grouping is necessary to help ensure the workability of the CUU program. MPCA will likely have to review a massive number of CUU requests. Broadly defined product categories will make it simpler for MPCA to process, and it will make it easier for manufacturers to make their requests.

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 permitted to submit a single CUU request covering multiple product categories. Limiting requests to a single product category unnecessarily raises the administrative burdens for both MPCA and manufacturers. Limiting CUU determinations to a single product category would not result in better agency decisions. It would multiply filings without generating any additional substantive information in situations where the same PFAS application appears across multiple product categories and where the alternatives assessment is substantially the same. Restricting submissions to a single product category would also disproportionately burden smaller manufacturers by increasing administrative burden.

What safety or other standards require the use of PFAS in a product? *(Please include the specific citation)*

For a detailed discussion around standards and PFAS in electronics, we encourage MPCA to review the comments submitted by JEITA the Japanese electric and electronic industrial associations.

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.

- Do you have any concerns about unintended consequences with this proposal?
- Do you have any alternative recommendations to stagger renewal deadlines?

The Draft Rule sets CUU renewals at 5 years. This is insufficient. We recommend that CUUs be issued for 10 years. It is very likely that MPCA will receive thousands of CUU submissions, and it will take significant time and resources for the Agency to process these submissions. A longer CUU window will make the process easier for the Agency and manufacturers. We request that MPCA also consider the various laws requiring companies to have replacement parts available for various products. For example, California has a law that requires the availability of replacement parts of certain products for at least 7 years.

The MPCA has developed a preliminary list of potentially eligible data categories that may be considered for trade secret requests. *(Please review the rule concept document for the list of potentially eligible data)*

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Many manufacturers are located downstream in the supply chain, and necessary information may be confidential or a trade secret and therefore unavailable to some manufacturers. We ask that MPCA prepare a joint submission system where upstream parties can communicate directly with the Agency. If a joint submission system is not technically feasible, manufacturers should have the option to provide information from suppliers indicating the uses of PFAS in the form of supplier declarations.

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 <u>does not</u> 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.
Please find additional comments and feedback attached in the uploaded file.

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)*
Please find additional comments and feedback attached in the uploaded file.

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March 29, 2026

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

Re: Comments on MPCA's Draft Rule Concept Summary – PFAS in Products: Currently Unavoidable Use Rule (Revisor ID R-4837)

Dear Commissioner Kessler:

On behalf of the Consumer Technology Association (CTA), we respectfully submit the following comments on the Agency's Draft Rule Concept Summary – PFAS in Products: Currently Unavoidable Use Rule (Draft Rule). CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 17 million American jobs.

Our comments are structured based on the proposed questions outlined by MPCA in the Draft Rule. Below we reproduced the answers submitted in the online form, and then following Question 20 we provide additional comments not covered in the first 19 questions.

1. Who is commenting? (choose the best fit)

- [ ]Member of the general public
- [ ]Representative of an environmental group
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- [ ]Representative of a public health group
- [ ]Academic or research organization
- **[X] Other (please specify)**
  A trade association.

2. If you are commenting as a representative, what is the name of the entity you are commenting on behalf of?
The Consumer Technology Association

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

The consumer technology industry including manufacturers of electronic devices such as computers, laptops, televisions, mobile phones, wearable technology, audio products, streaming devices, and other consumer electronics.

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?
N/A

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)

The definition of this term is not in the statute, so must be interpreted according to its ordinary meaning. MPCA's definition in the Draft Rule is incredibly narrow. The inclusion of terms like "bare necessities for human survival" and "basic needs of human beings" reflect an improperly narrow reading of the statutory phrase. There is nothing in the statute that suggests the legislature intended to limit CUU eligibility to products only necessary for bare survival. The statute says CUUs are applied to uses necessary for the "functioning of society" which is commonly understood to include the continued operation and coordination of systems, institutions, and activities that enable a community to carry out civic, social (including recreation and entertainment), and economic life. It is not limited to mere "survival" and "basic needs." A computer or cellphone is not necessary for "human survival," but it is absolutely necessary for the "functioning of society." The same can be said for broadcast equipment, which is necessary to communicate and share information. The overly narrow definition MPCA outlines here could result in the denial of CUUs for countless electronic products that are foundational to modern life, and would significantly impact the quality of life for Minnesota citizens.

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We recommend the following as a new definition with added text bolded and underlined: "*Alternative means a non-PFAS chemical, substance, material, manufacturing process change, nonchemical change, or other product that, if used in place of a PFAS or PFAS-containing product, would result in a functionally equivalent product,* ***taking into account key performance attributes, product lifespan, and consumer safety.***"

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)

The Draft Rule defines "Reasonably available" as "*that one or more alternatives to a PFAS can perform comparably to the PFAS being considered for replacement in a product or component and is currently available in sufficient quantity. PFAS alternatives that are in use in equivalent products or components are considered "reasonably available." Conditions of current reasonable availability may change over time as a result of new research or innovation.*"

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We ask that the requirements for "reasonably available" include consideration of economic feasibility and impact. The Draft Rule focuses exclusively on comparable performance and sufficient quantity and expressly excludes cost from the analysis. This does not reflect how availability works in practice. An alternative that technically performs comparably but is not available at a comparable cost is not, in any meaningful sense, reasonably available. A rule that ignores cost will produce CUU denials that are commercially unworkable. If a potential alternative chemical is so expensive that it would raise the cost of a product such that no consumer could afford it or would buy it, that potential alternative cannot be said to be reasonably available.

We recommend that MPCA align with Maine's language.[2] Maine's regulations define the term: *"Reasonably available" means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS, to include changes to the manufacturing process, it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component.*

Using Maine's language also removes the language in the Draft Rule that states "PFAS alternatives that are in use in equivalent products or components are considered 'reasonably available.'" This language should be removed from the Draft Rule. The presumption is technically unsound. Whether a non-PFAS alternative performs adequately in one manufacturer's product does not establish that it performs adequately in another's. Products such as electronics contain hundreds, sometimes thousands, of parts and components unique to that product. PFAS alternatives used in one product may not be compatible with another product or additional time might be needed in the product developed and safety testing cycles to redesign the product for compatibility with the non-PFAS alternative. The presumption in the Draft Rule would allow MPCA to deny a CUU request the moment any manufacturer has a PFAS-free version of a broadly similar product, without using the rest of the established criteria outlined in the Draft Rule. MPCA should replace this automatic presumption with a rebuttable inference, requiring consideration of whether the alternative meets the standards and criteria set out by the full CUU rules.

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.")

The Agency should consider very broad definitions for "product category." For consumer electronics products, the type, location, and functionality of PFAS is likely to be functionally similar. Broad product grouping is necessary to help ensure the workability of the CUU program. MPCA will likely have to review a massive number of CUU requests. Broadly defined product categories will make it simpler for MPCA to process, and it will make it easier for manufacturers to make their requests.

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?

[2] https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/096c090-2025-191%20%28AMD%29.docx

Applicants should be permitted to submit a single CUU request covering multiple product categories. Limiting requests to a single product category unnecessarily raises the administrative burdens for both MPCA and manufacturers. Limiting CUU determinations to a single product category would not result in better agency decisions. It would multiply filings without generating any additional substantive information in situations where the same PFAS application appears across multiple product categories and where the alternatives assessment is substantially the same. Restricting submissions to a single product category would also disproportionately burden smaller manufacturers by increasing administrative burden.

10. What safety or other standards require the use of PFAS in a product? (Please include the specific citation)

For a detailed discussion around standards and PFAS in electronics, we encourage MPCA to review the comments submitted by JEITA the Japanese electric and electronic industrial associations.

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.

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations to stagger renewal deadlines?**

The Draft Rule sets CUU renewals at 5 years. This is insufficient. We recommend that CUUs be issued for 10 years. It is very likely that MPCA will receive thousands of CUU submissions, and it will take significant time and resources for the Agency to process these submissions. A longer CUU window will make the process easier for the Agency and manufacturers. We request that MPCA also consider the various laws requiring companies to have replacement parts available for various products. For example, California has a law that requires the availability of replacement parts of certain products for at least 7 years.

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)

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations for data that should or should not be eligible for trade secret requests?**

Many manufacturers are located downstream in the supply chain, and necessary information may be confidential or a trade secret and therefore unavailable to some manufacturers. We ask that MPCA prepare a joint submission system where upstream parties can communicate directly with the Agency. If a joint submission system is not technically feasible, manufacturers should have the option to provide information from suppliers indicating the uses of PFAS in the form of supplier declarations.

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)

N/A

14. For manufacturers: Administrative cost of requesting a CUU determination (Part 1 of 2).
N/A

15. For manufacturers: Administrative cost of requesting a CUU determination (Part 2 of 2).
N/A

16. For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 1 of 2).
N/A

17. For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 2 of 2).
N/A

18. For manufacturers: Research and development safety validation cycles.
N/A

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

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).

Deadline – The Rule Must Impose Deadlines on MPCA to Respond to CUU Proposals
The Draft Rules states that all CUU proposals are due January 1, 2030, but it does not include any deadline for MPCA to respond to such requests. The Draft Rule states, "it is unknown how long it will take the MPCA to issue final determinations on requests that are received." Finally, the document states that if an applicant submits a request for a CUU determination but MPCA has not responded by January 1, 2032, "the applicant will be required to stop selling their product" until MPCA responds.

We're concerned about the unwarranted uncertainty and confusion that this approach would create. Manufacturers should not have to have their products pulled from shelves simply because their CUU request is awaiting approval. We recommend that any CUU rule impose upon MPCA a deadline by which to respond to CUU applications. It is reasonable to require MPCA to respond to completed CUU applications within six months of receipt. In addition, the Rule should allow for a grace period for any CUU denial issued.

MPCA Should Look to California SCPR For Direction
The Draft Rule should specify the standards by which a potential alternative may be eliminated from consideration. Without such standards, manufacturers face uncertainty about what showing is sufficient and MPCA lacks a consistent framework for evaluating submissions. California's Safer

Consumer Products Regulations (SCPR)[3] offer good direction for MPCA. SCPR outlines several situations where a potential alternative is not viable. In each of these cases, we urge MPCA to look at SCPR as situations where an alternative is not available:

- The potential alternative has the potential to pose adverse impacts equal to or greater than those posed by the PFAS it is replacing;[4]
- The potential alternative is not functionally acceptable;[5]
- The potential alternative is not technically feasible;[6]
- The potential alternative is not economically feasible;[7]
- Additional factors and information, as long as the reason for the elimination is explained in the CUU application.[8]

Although SCPR is not specific to PFAS, it can offer instructive guidance to MPCA in its own alternatives assessment process. MPCA should include these standards in their Draft Rules. This would give manufacturers and the Agency a clear, consistent basis for alternatives determinations.

MPCA Should Accept CUUs and Exemptions from Other Jurisdictions

MPCA should take into consideration the exemptions (termed derogations in the EU) approved by the European Union PFAS regulations.[9] It should also accept CUU determinations that are granted by other states with similar laws.

Recordkeeping

The Draft Rule includes a proposed requirement to maintain records for "at least ten years after issuance of a positive CUU determination" and to provide those records to MPCA on request. It is unclear what purpose such a burdensome requirement would serve. The language is also vague and overbroad. We recommend that any CUU rule does not impose such a sweeping and costly recordkeeping obligation, the burdens of which would outweigh any potential environmental or enforcement benefits.

Conclusion

Thank you again for the opportunity to provide these comments on the Draft Rule. If you have any questions about our comments, please do not hesitate to reach out to CTA.

Sincerely,

Dan Moyer
Sr. Manager, Environmental Law & Policy
Consumer Technology Association

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[3] 22 C.C.R. Chapter 55. More program information available at https://dtsc.ca.gov/scp/safer-consumer-products-regulations/

[4] 22 C.C.R. § 69505.5(d)(2))

[5] Id. § 69505.6(a)(2)(C)

[6] Id.

[7] Id.

[8] id. § 69505.5(e)

[9] EU Reach PFAS landing page https://echa.europa.eu/hot-topics/perfluoroalkyl-chemicals-pfas. ECHA supports PFAS restriction with targeted derogations: https://echa.europa.eu/-/echa-supports-pfas-restriction-with-targeted-derogations

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CTA appreciates that the definition of "alternative" reflects that in order for a replacement chemical or process change to be considered a viable alternative, it must "result in a functionally equivalent product."

Alternatives should not only perform to equivalent standards as the PFAS contained in the product, but it should also not compromise the safety of the product. PFAS can serve important functions to enable key performance attributes including ensuring that the product has a reasonable lifespan and that the product is safe for consumers to use. These functions should be explicitly reflected in any definition of "alternative."

The definition uses the term "functionally equivalent." PFAS substances have the characteristic of being able to fulfill multiple functions at once. However, while there are substitutes for each individual function, in many cases the functionality of a mixture of these substitutes is not equivalent to that of PFAS. Therefore, we would like to clarify that "functionally equivalent" be limited to products that are actually functionally equivalent when substituted in an actual product. When determining what is "functionally equivalent," the reliability, durability, and safety of the products should be taken into account.

We recommend the following as a new definition with added text bolded and underlined: "*Alternative means a non-PFAS chemical, substance, material, manufacturing process change, nonchemical change, or other product that, if used in place of a PFAS or PFAS-containing product, would result in a functionally equivalent product,* ***taking into account key performance attributes, product lifespan, and consumer safety.***"

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)

The Draft Rule defines "Reasonably available" as "*that one or more alternatives to a PFAS can perform comparably to the PFAS being considered for replacement in a product or component and is currently available in sufficient quantity. PFAS alternatives that are in use in equivalent products or components are considered "reasonably available." Conditions of current reasonable availability may change over time as a result of new research or innovation.*"

When defining the term "reasonably available," MPCA should develop factors to determine how to classify a non-PFAS as being in sufficient quantity. If a limited number of non-PFAS chemicals are available, there may be resource constraints down the line. MPCA should create clear metrics for this element.

We ask that the requirements for "reasonably available" include consideration of economic feasibility and impact. The Draft Rule focuses exclusively on comparable performance and sufficient quantity and expressly excludes cost from the analysis. This does not reflect how availability works in practice. An alternative that technically performs comparably but is not available at a comparable cost is not, in any meaningful sense, reasonably available. A rule that ignores cost will produce CUU denials that are commercially unworkable. If a potential alternative chemical is so expensive that it would raise the cost of a product such that no consumer could afford it or would buy it, that potential alternative cannot be said to be reasonably available.

We recommend that MPCA align with Maine's language.[2] Maine's regulations define the term: *"Reasonably available" means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS, to include changes to the manufacturing process, it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component.*

Using Maine's language also removes the language in the Draft Rule that states "PFAS alternatives that are in use in equivalent products or components are considered 'reasonably available.'" This language should be removed from the Draft Rule. The presumption is technically unsound. Whether a non-PFAS alternative performs adequately in one manufacturer's product does not establish that it performs adequately in another's. Products such as electronics contain hundreds, sometimes thousands, of parts and components unique to that product. PFAS alternatives used in one product may not be compatible with another product or additional time might be needed in the product developed and safety testing cycles to redesign the product for compatibility with the non-PFAS alternative. The presumption in the Draft Rule would allow MPCA to deny a CUU request the moment any manufacturer has a PFAS-free version of a broadly similar product, without using the rest of the established criteria outlined in the Draft Rule. MPCA should replace this automatic presumption with a rebuttable inference, requiring consideration of whether the alternative meets the standards and criteria set out by the full CUU rules.

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.")

The Agency should consider very broad definitions for "product category." For consumer electronics products, the type, location, and functionality of PFAS is likely to be functionally similar. Broad product grouping is necessary to help ensure the workability of the CUU program. MPCA will likely have to review a massive number of CUU requests. Broadly defined product categories will make it simpler for MPCA to process, and it will make it easier for manufacturers to make their requests.

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?

[2] https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/096c090-2025-191%20%28AMD%29.docx

Applicants should be permitted to submit a single CUU request covering multiple product categories. Limiting requests to a single product category unnecessarily raises the administrative burdens for both MPCA and manufacturers. Limiting CUU determinations to a single product category would not result in better agency decisions. It would multiply filings without generating any additional substantive information in situations where the same PFAS application appears across multiple product categories and where the alternatives assessment is substantially the same. Restricting submissions to a single product category would also disproportionately burden smaller manufacturers by increasing administrative burden.

10. What safety or other standards require the use of PFAS in a product? (Please include the specific citation)

For a detailed discussion around standards and PFAS in electronics, we encourage MPCA to review the comments submitted by JEITA the Japanese electric and electronic industrial associations.

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.

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations to stagger renewal deadlines?**

The Draft Rule sets CUU renewals at 5 years. This is insufficient. We recommend that CUUs be issued for 10 years. It is very likely that MPCA will receive thousands of CUU submissions, and it will take significant time and resources for the Agency to process these submissions. A longer CUU window will make the process easier for the Agency and manufacturers. We request that MPCA also consider the various laws requiring companies to have replacement parts available for various products. For example, California has a law that requires the availability of replacement parts of certain products for at least 7 years.

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)

- **Do you have any concerns about unintended consequences with this proposal?**
- **Do you have any alternative recommendations for data that should or should not be eligible for trade secret requests?**

Many manufacturers are located downstream in the supply chain, and necessary information may be confidential or a trade secret and therefore unavailable to some manufacturers. We ask that MPCA prepare a joint submission system where upstream parties can communicate directly with the Agency. If a joint submission system is not technically feasible, manufacturers should have the option to provide information from suppliers indicating the uses of PFAS in the form of supplier declarations.

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)

N/A

14. For manufacturers: Administrative cost of requesting a CUU determination (Part 1 of 2).
N/A

15. For manufacturers: Administrative cost of requesting a CUU determination (Part 2 of 2).
N/A

16. For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 1 of 2).
N/A

17. For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 2 of 2).
N/A

18. For manufacturers: Research and development safety validation cycles.
N/A

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

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).

Deadline – The Rule Must Impose Deadlines on MPCA to Respond to CUU Proposals
The Draft Rules states that all CUU proposals are due January 1, 2030, but it does not include any deadline for MPCA to respond to such requests. The Draft Rule states, "it is unknown how long it will take the MPCA to issue final determinations on requests that are received." Finally, the document states that if an applicant submits a request for a CUU determination but MPCA has not responded by January 1, 2032, "the applicant will be required to stop selling their product" until MPCA responds.

We're concerned about the unwarranted uncertainty and confusion that this approach would create. Manufacturers should not have to have their products pulled from shelves simply because their CUU request is awaiting approval. We recommend that any CUU rule impose upon MPCA a deadline by which to respond to CUU applications. It is reasonable to require MPCA to respond to completed CUU applications within six months of receipt. In addition, the Rule should allow for a grace period for any CUU denial issued.

MPCA Should Look to California SCPR For Direction
The Draft Rule should specify the standards by which a potential alternative may be eliminated from consideration. Without such standards, manufacturers face uncertainty about what showing is sufficient and MPCA lacks a consistent framework for evaluating submissions. California's Safer

Consumer Products Regulations (SCPR)[3] offer good direction for MPCA. SCPR outlines several situations where a potential alternative is not viable. In each of these cases, we urge MPCA to look at SCPR as situations where an alternative is not available:

- The potential alternative has the potential to pose adverse impacts equal to or greater than those posed by the PFAS it is replacing;[4]
- The potential alternative is not functionally acceptable;[5]
- The potential alternative is not technically feasible;[6]
- The potential alternative is not economically feasible;[7]
- Additional factors and information, as long as the reason for the elimination is explained in the CUU application.[8]

Although SCPR is not specific to PFAS, it can offer instructive guidance to MPCA in its own alternatives assessment process. MPCA should include these standards in their Draft Rules. This would give manufacturers and the Agency a clear, consistent basis for alternatives determinations.

MPCA Should Accept CUUs and Exemptions from Other Jurisdictions

MPCA should take into consideration the exemptions (termed derogations in the EU) approved by the European Union PFAS regulations.[9] It should also accept CUU determinations that are granted by other states with similar laws.

Recordkeeping

The Draft Rule includes a proposed requirement to maintain records for "at least ten years after issuance of a positive CUU determination" and to provide those records to MPCA on request. It is unclear what purpose such a burdensome requirement would serve. The language is also vague and overbroad. We recommend that any CUU rule does not impose such a sweeping and costly recordkeeping obligation, the burdens of which would outweigh any potential environmental or enforcement benefits.

Conclusion

Thank you again for the opportunity to provide these comments on the Draft Rule. If you have any questions about our comments, please do not hesitate to reach out to CTA.

Sincerely,

Dan Moyer
Sr. Manager, Environmental Law & Policy
Consumer Technology Association

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[3] 22 C.C.R. Chapter 55. More program information available at https://dtsc.ca.gov/scp/safer-consumer-products-regulations/

[4] 22 C.C.R. § 69505.5(d)(2))

[5] Id. § 69505.6(a)(2)(C)

[6] Id.

[7] Id.

[8] id. § 69505.5(e)

[9] EU Reach PFAS landing page https://echa.europa.eu/hot-topics/perfluoroalkyl-chemicals-pfas. ECHA supports PFAS restriction with targeted derogations: https://echa.europa.eu/-/echa-supports-pfas-restriction-with-targeted-derogations