

Draft Rule Concept Summary for PFAS in products: Currently unavoidable use (CUU) rule

February 26, 2026

Purpose

The main purpose of this rulemaking is to establish criteria and processes through which the MPCA will make decisions on which uses of intentionally added per- and polyfluoroalkyl substances (PFAS) will qualify as currently unavoidable uses in products sold, offered for sale, or distributed for sale in Minnesota.

Disclaimer

This document is intended to support the information presented during the February 26, 2026, webinar by the MPCA to provide an update to inform those interested in the proposed rule. The rule concepts described in this document are subject to change between now and the agency's Notice of Intent to Adopt Rules. At this time, comprehensive draft rule language is not being provided.

Statutory Authority

[Minn. Stat. § 116.943](#) Products Containing PFAS (Amara's Law) outlines the MPCA's statutory authority for the Currently unavoidable use rule in the following subdivisions:

Subdivision 1. Definitions.

(j) "Currently unavoidable use" means 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.

Subd. 5. Prohibitions.

(d) Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state 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 commissioner may specify specific products or product categories for which the commissioner has determined the use of PFAS is a currently unavoidable use. The commissioner may not determine that the use of PFAS in a product is a currently unavoidable use if the product is listed in paragraph (a).

Subd. 9. Rules. The commissioner may adopt rules necessary to implement this section. Section [14.125](#) does not apply to the commissioner's rulemaking authority under this section.

Rule Concepts

Request for a CUU determination content

Eligibility

In order for an applicant to be eligible to request a CUU determination, the use of PFAS in their product must meet the statutory definition of "currently unavoidable use":

Minn. Stat. § 116.943 subd. 1 (j) "Currently unavoidable use" means 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.

The statute does not define the terms "essential for health, safety, or the functioning of society", "alternatives", or "reasonably available". To aid in the determination of what constitutes a "currently unavoidable use", the agency is seeking feedback on the potential for using the following definitions in the CUU rule:

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 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:

- 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.

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, would result in a functionally equivalent product.

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 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.

Applicant information

An applicant can be a single manufacturer, group of manufacturers, or a person representing a manufacturer or group of manufacturers. The request for a CUU determination must include both the manufacturer's information and the applicant's contact information. The name of the manufacturer(s) listed in the request should match the name submitted for the purposes of reporting under [Minn. R. part 7026.0030](#) or updates in [part 7026.0040](#). This guarantees that the agency can link the request to the correct report information and ensures that the information the applicant is required to submit in a request for a CUU determination is not duplicative of the existing reporting requirements. This is also important because the final CUU determination will apply only to the manufacturers listed in the request.

An applicant may request a similar CUU determination if the commissioner has already issued a positive CUU determination for a product in the same product category. This provision allows the applicant to demonstrate the similarity between their product and the one that has already received a positive CUU determination. The applicant must still submit a request for a CUU determination, and the request will still go through the public comment process proposed in rule.

Product information

For “existing products” that are currently sold, offered for sale, or distributed in the state, manufacturers are already required to report product information to the MPCA under the reporting requirements in Minn. R. part 7026.0030. To reduce duplicative requirements in rule, the request for a CUU determination will not require an applicant to submit North American Industry Classification System (NAICS) or Standard Industrial Classification (SIC) codes for the manufacturer or any numeric product codes. Instead, applicants will be asked to identify what product or product category they are requesting a CUU determination for. The term “product category” will be defined in the CUU rule.

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.*

For “novel products” that are introduced for sale in Minnesota after the deadline to submit a request for a CUU determination, the applicant must include all of the information required under Minn. R. part 7026.0030 in their request for a CUU determination. These applicants will not be required to pay the reporting fee (\$800) until and unless the commissioner issues a positive CUU determination for their product or product category.

CUU information

To support the applicant’s request for a CUU determination, the applicant must include a description of how the use of PFAS in their product or product category meets the definition of a “currently unavoidable use”. To do this, the applicant must describe:

- The use of PFAS in the product that meets the definition of “essential for health, safety, or the functioning of society”, and explain how the lack of PFAS in that product would disrupt the service it provides;
- Reasonably available alternatives to either the product itself or the intentionally added PFAS within the product; and,
- If applicable, the “extreme conditions of use” that require intentionally added PFAS in order for the product to provide its service.

An applicant is required to submit information regarding extreme conditions of use in a request for a CUU determination if it is applicable. This provision is an opportunity for the applicant to explain why PFAS is needed in their product and what extreme conditions of use the product must withstand. The agency is seeking feedback on the potential for using the following definition for “extreme conditions of use”:

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

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

The applicant must also provide information regarding any safety or other standard that requires the use of PFAS in their product. They must include the applicable citation to the standard and describe why PFAS is needed to meet that requirement. It is important to distinguish whether PFAS is actually required to meet that

standard, or if the manufacturer is choosing to use PFAS to meet the standard. The applicant will also be asked to assess whether any alternatives could be used to meet the standard instead of the intentionally added PFAS.

Assessment of alternatives

The applicant must complete and submit an assessment of alternatives in order for the request for a CUU determination to be considered complete. If the applicant does not submit an assessment, or states that there are no alternatives without further explanation, the commissioner will consider the request incomplete and will notify the applicant in writing of this deficiency.

An applicant may use assessment services provided by a qualified third-party provider. The 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.

The assessment of alternatives must include:

- Identification of potential alternatives, including any chemical, substance, material, manufacturing process change, non-chemical change, or other product that could be used in place of either the product itself or the intentionally added PFAS in the product;
- If the alternative is a chemical, the applicant must include the chemical name and chemical identifying number;
- An assessment of how each alternative meets the function that PFAS is meeting that is needed for the product or component to provide its service;
- If applicable, the concentration of the alternative that would be needed for the product or component to provide its service;
- An assessment of whether each alternative is available in sufficient quantities without regard to cost, and if they are not, a forecast of how availability is expected to change;
- An assessment of the cost difference between using PFAS in a product versus using each alternative identified;
- An indication of whether an alternative is listed on any regulatory chemical of concern list, including what list it is included on and a description of the chemical traits that make it a concern;
- An estimated timeline needed for transition to an alternative; and,
- Any other information that the applicant believes is relevant to the feasibility of implementing the identified alternatives.

Additional information required

The applicant must provide information about any finalized CUU determination made by other jurisdictions in the United States.

The applicant must provide information on restrictions on the sale or use of PFAS in the same product or product category in other jurisdictions, not limited to the United States.

All manufacturers represented in a request for a CUU determination must certify that the data they submit or that the applicant submits on their behalf is accurate and complete.

CUU determination process

Process

The process for an applicant to submit a request for a CUU determination and the commissioner to make a determination on that request is proposed as follows:

1. An applicant submits a request for a CUU determination;
2. The MPCA conducts a completeness review of the request;

3. If the request is incomplete, the MPCA will notify the applicant in writing, and the applicant has 30 days to correct any cited deficiencies;
4. Once the request is complete, the MPCA evaluates the request for a CUU determination;
5. The MPCA issues a draft determination and notifies the applicant in writing;
6. The issuance of a draft determination triggers a 30-day public comment period;
7. The applicant has 30 days after the public comment period to provide a rebuttal to the comments received; and,
8. The MPCA issues a final CUU determination.

Deadline

The MPCA does not have statutory authority to allow “sell through” provisions past January 1, 2032 without a positive CUU determination issued by the commissioner. If an applicant submits a request for a CUU determination, but the commissioner has not yet issued a final CUU determination before January 1, 2032, the applicant will be required to stop selling their product in Minnesota until and unless the commissioner issues a positive CUU determination. This may be a concern for manufacturers that do not want to risk a lapse in sales and need to ensure the commissioner has issued a CUU determination prior to January 1, 2032. In order to address this issue, the MPCA is proposing to establish a deadline for applicants representing “existing products” to submit a request for a CUU determination. The MPCA is seeking feedback on a January 1, 2030 deadline for requests for a CUU determination for existing products. Review of these requests will be prioritized over requests for a CUU determination for “novel products”, which includes products that are not yet sold, offered for sale, or distributed for sale in the state as of January 1, 2030. The term “novel products” will also include products for which the applicant misses the January 1, 2030 deadline to request a CUU determination. Because this proposed rule and process for making CUU determinations is new, it is unknown how long it will take the MPCA to issue final determinations on requests that are received. This proposal will ensure that the agency has at least two years or more to process requests for a CUU determination.

Timeline

Once the commissioner notifies the applicant of an incomplete request, the applicant has 30 days to submit revisions to correct any deficiencies. If no revisions are submitted within 30 days, the applicant will have to submit a new request. If the request is submitted after the January 1, 2030 deadline, the new request would be for a “novel product”, whereas determinations will be prioritized for requests for a CUU determination for existing products. As a result, the applicant may risk not receiving a CUU determination before the prohibition date goes into effect. This provision requiring the applicant to correct any deficiencies in their request within 30 days of notification ensures that the applicant will make continued progress towards a complete application.

The other important timeline components in the CUU determination process include the 30-day public comment period and 30-day applicant rebuttal period. During the rebuttal period, the information that the applicant provides must be relevant to the comments received during the public comment period. The MPCA will likely use an online comment platform to receive comments during this period to ensure that all comments can be reviewed by anyone following the CUU determination process.

Duration

The initial positive CUU determination for existing products will expire eight years from the date of issuance. Note that with a January 1, 2030 request deadline, the date of issuance for a CUU determination may pre-date the January 1, 2032 statutory prohibition. Although the CUU determination is not technically needed by the applicant until after the prohibition goes into effect, this proposal will allow the MPCA to stagger renewal deadlines and ease the administrative burden of processing those future renewals.

The initial positive CUU determination for novel products will expire five years from the date of issuance.

Renewal

After the initial determination, each renewal of a positive CUU determination will expire five years from the expiration of the positive CUU determination. An applicant must apply for a renewal of a positive CUU determination at least one year before the expiration of the positive CUU determination. This ensures that the applicant does not risk a lapse in a positive CUU determination. This deadline is important because after January 1, 2032, if the commissioner has not issued a positive CUU determination on a product or product category, or a renewal of that positive CUU determination, the use of PFAS in that product or product category will be subject to the statutory prohibition under Minn. Stat. § 116.943.

Trade secrets

Similar to the PFAS in products: Reporting and fees rule, the MPCA is providing potentially eligible data categories that may be considered for trade secret requests that qualify under [Minn. Stat. § 13.37](#). The potentially eligible data categories that the agency is seeking feedback on include:

- Chemical name;
- Chemical identifying number;
- Chemical concentration or formula;
- 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; and,
- Specific supply chain information.

For any data that is deemed not public by the commissioner, the applicant will have to provide alternative information that will be designated as public data.

Due diligence

An applicant must maintain records for any request for a CUU determination for at least ten years after the issuance of a positive CUU determination and provided to the commissioner upon request. These records may include communications, findings, and justifications for the request for a CUU determination and the research of alternatives to PFAS and ongoing assessments. For a group of manufacturers, the applicant must maintain record of an agreement that the manufacturers have entered into that states the data submitted on their behalf is accurate and complete.

Feedback period questions

The MPCA is seeking feedback on the draft rule concepts that are summarized in this document and were presented during the February 26, 2026, webinar. The agency is asking that parties interested in the proposed rule please provide responses to the following questions:

1. Who is commenting? (*choose the best fit*)
 - Member of the general public
 - Representative of an environmental group
 - Representative of a product manufacturer(s)
 - Representative of another unit of government
 - Representative of a public health group
 - Academic or research organization
 - Other (please specify)
2. If you are commenting as a representative, what is the name of the entity you are commenting on behalf of?
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)*
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)*
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)*
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.")
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?
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.
 - Do you have any concerns about unintended consequences with this proposal?
 - 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)*
 - 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?
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)*
14. **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
- Less than 40 hours
- 40 to 100 hours
- 101 to 500 hours
- More than 500 hours
- Other (please specify)

15. **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
- Less than 40 hours
- 40 to 100 hours
- 101 to 500 hours
- More than 500 hours
- Other (please specify)

16. **For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 1 of 2).** Please provide your best estimates or rough orders of magnitude (for example "primary cost is CapEx"). Precise accounting data is not necessary to answer this question.

If you have identified a technically viable non-PFAS alternative for one of your products that contains intentionally added PFAS, does implementing this alternative require Capital Expenditure (such as purchasing new molds, retooling machinery) or primarily Operational Expenditure (such as purchasing more expensive raw materials)?

- Please estimate the ratio of Capital Expenditure to Operational Expenditure (or indicate which category is the dominant cost driver).

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

If you have not identified a technically viable non-PFAS alternative for one of your products that contains intentionally added PFAS, have you conducted a Research & Development (R&D) feasibility study?

- If so, what was the cost of that study?

18. **For manufacturers: Research and development safety validation cycles.**

- What is the typical duration of the R&D and safety validation cycle for a reformulated product in your sector (from concept to market entry)?
- Does this cycle align with the 5-year renewal period typically associated with regulatory exemptions?
 - If not, please explain the specific technical barriers that would require a longer validation period.

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

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).*