INTERSTATE CHEMICALS CLEARINGHOUSE

NEWMOA
NORTHEAST WASTE MANAGEMENT OFFICIALS' ASSOCIATION

ESSENTIAL USE & CURRENTLY UNAVOIDABLE USE

LIVING DOCUMENT

JANUARY 2026

This IC2 guidance document includes an articulation of the foundational concepts of the essential use/currently unavoidable use (CUU) approach; resources to learn more about the concept; brief discussion and analysis about pros & cons of the approach for chemical regulation; comparison of existing laws, definitions; and criteria for implementing CUU determinations.

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II. The Essential Use Framework

A. Origins of the Essential Use Framework

The Essential Use framework is based on the Montreal Protocol**,** which phased out the use of ozone-depleting substances except for specific essential uses**.** The framework defines essential use as:

1. Necessary for health, safety, or critical for the functioning of society.
2. Lacking available, technically, and economically feasible alternatives.

B. Updated Essential Use Framework

The Essential Use concept has since been expanded in recent years to the application of chemical management, focusing on eliminating non-essential uses of hazardous substances. A useful framework from Balan et al. (2023) attempted to streamline the process and avoid lengthy timelines with a particular focus on facilitating policy application. In their application, a use of a chemical should be deemed temporarily essential only if all of the following are true:

1. There are no safer alternatives to the chemical available; **and**
2. The function of the chemical is necessary for the product to work; **and**
3. The chemical is being used in a product that is critical for health, safety, or the functioning of society.

C. Advantages of CUU/Essential Use Approach to Regulating Chemicals

The essential use framework offers several advantages over traditional risk-based approaches to chemical regulation:

Essential Use Framework	Traditional Risk-Based Regulation
Proactive: bans unless necessary	Reactive: bans only after proven harm
Class-based approach	Typically chemical-by-chemical
Focus on hazard, function, and alternatives	Focus on exposure/risk thresholds
Encourages *rapid* innovation	Encourages safer substitution, but slowly

Potentially reduces regulatory burden by avoiding the need for comprehensive risk assessments for each chemical	High data and resource requirements

D. Existing and Proposed CUU Policies

Several states in the U.S. have adopted or proposed CUU laws:

Passed legislation:

- Maine: PFAS in Products, Maine Department of Environmental Protection
  - Final rule (as of April 2025): Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances
- Minnesota: PFAS in products: Currently unavoidable use | Minnesota Pollution Control Agency (state.mn.us)
- New Mexico: PER- & POLY-FLOUROALKYL PROTECTION ACT - New Mexico Legislature

Proposed legislation:

- California: Bill Text: CA SB903 | 2023-2024 | Regular Session | Amended | LegiScan
  - Bill Text - SB-682 Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances.
  - Industry bill: Bill Text: CA AB872 | 2025-2026 | Regular Session | Introduced | LegiScan
- Massachusetts: Bill H.2450
- Iowa: Bill HF 588
- Illinois: Bill HB1295
- Maryland: Bill HB 1112

Basic comparison of existing state PFAS CUU laws:

State	Ban Dates	Reporting Requirement	Key Exemptions
Maine	- **Jan 1, 2023**: Ban on carpets, fabric treatments - **Jan 1, 2026**: Ban expands to cookware, cosmetics, dental floss, juvenile products, etc. - **Jan 1, 2029**: Ban on artificial turf and some apparel - **Jan 1, 2032**: Ban on all unless CUU - **Jan 1, 2040**: Ban on HVAC/refrigerants, foams	- **Reporting only for CUU-approved products** (amended in 2024)	Extensive list including: - Used products - Medical/veterinary/FDA products - HVAC & refrigerants (banned 2040) - Vehicles, watercraft - Semiconductors - Non-consumer electronics

Minnesota	- **Jan 1, 2025**: Ban on intentionally added PFAS in carpets, cleaning products, cookware, cosmetics, dental floss, juvenile products, menstruation products, ski wax, etc. - **Jan 1, 2032**: All other products banned unless CUU.	- **Due Jan 1, 2026** for all products with intentionally added PFAS.	- Used products - Medical devices (reporting still required) - products regulated by federal law (preemption)
New Mexico	- **Jan 1, 2027**: Ban on cookware, food packaging, dental floss, juvenile products, firefighting foam - **Jan 1, 2028**: Ban on additional products including carpets, cosmetics, textiles, furniture, etc. - **Jan 1, 2032**: Ban on all unless CUU	- **Due Jan 1, 2027** for non-exempt products with intentionally added PFAS	- Fluoropolymers (e.g., PTFE) - Used products - Medical/veterinary products - products with acceptable SNAP-listed PFAS - Electricity generation products - Semiconductors

E. Defining Critical for Health, Safety, or the Functioning of Society

The European Commission recently published guiding criteria and principles for implementing essential use to regulate chemicals. This guidance included some initial structure to operationalize the criterion related to whether a use is critical for health, safety, or the functioning of society, including the following non-exhaustive lists.

Uses of harmful chemicals are **necessary for health and safety** if they are used in order to:

- Prevent, monitor or treat illness and similar health conditions
- Sustain basic conditions for human or animal life and health
- Manage health crises and emergencies
- Ensure personal safety
- Ensure public safety

Uses of harmful chemicals are **critical for the functioning of society** if they are used in order to:

- Provide resources or services that must remain in service for society to function (e.g. ensure the supply of energy and critical raw materials or resilience to supply disruption)
- Manage societal risks and impacts from natural crises and disasters
- Protect and restore the natural environment
- Perform scientific research and development
- Protect cultural heritage

F. Key References and Resources for Essential Use Concept

<u>Research papers/Briefs</u>

- NRDC: The Essential-Use Approach - A Policy Tool for Reducing Exposures to Toxic Chemicals (PDF)
- The concept of essential use for determining when uses of PFASs can be phased out - PubMed
- Finding essentiality feasible: common questions and misinterpretations concerning the "essential-use" concept - Environmental Science: Processes & Impacts (RSC Publishing) DOI:10.1039/D1EM00180A
- Combined Application of the Essential-Use and Functional Substitution Concepts: Accelerating Safer Alternatives | Environmental Science & Technology
- Department Reports, Maine Department of Environmental Protection

Video/Webinars

- An introduction to the "essential use" concept and its application to PFAS — Collaborative for Health & Environment
- ZeroPM pieces #4: Essential use with Ian Cousins
- ZeroPM pieces #17: Expert and Non-Expert Perceptions on PFAS & essentiality in everyday products
- ZeroPM pieces #20: Essential-use concept and functional substitution
- Webinar#5 The implementation of the essential use concept from a chemical & psychological standpoint - YouTube

III. Challenges

A. Aligning Definitions/Rules/CUU Criteria Across States

Comprehensive Product Bans

In the first three months of 2025, multiple states introduced comprehensive prohibitions on the sale or distribution of consumer products containing intentionally added PFAS: (1) California; (2) Illinois; (3) Iowa; (4) Maryland; and (5) New Mexico. Similar to the laws previously established in Maine (Me. Rev. Stat. Ann. tit. 38, § 1614) and Minnesota (Minn. Stat. § 116.943), these bills introduce bans on specific product categories to start, but then impose sweeping prohibitions on all products sold or offered for sale in their states, unless exempted by law or rulemaking. Although only New Mexico enacted CUU-based restrictions on PFAS, the 2025 state legislative session suggests there is significant interest among state lawmakers for comprehensive PFAS restrictions in consumer products.

Although laws in the ME, MN, and NM are similar, there are some differences, including with respect to timelines, reporting requirements, exemptions, and CUU petition processes. All three laws include a comprehensive ban on all products containing intentionally added PFAS in 2032 unless a CUU exemption is granted; however, each law has a different schedule for intermediate bans of specific products. Reporting requirements also differ across the three

states: Maine now requires reporting only for products with a CUU determination, Minnesota requires reporting for all products (including those otherwise exempt, such as medical devices), and New Mexico requires reporting only for non-exempt products, excluding those with a CUU determination or medical devices. Regarding exemptions, one key difference is that the New Mexico law is unique in that it distinguishes fluoropolymers from other PFAS: products that contain only intentionally added fluoropolymers are exempt from both the reporting requirements and prohibition.

The approach to how CUU exemptions are granted could vary across states. The CUU process in MN is still being established through rulemaking. In ME, requests for CUU determinations are reviewed by Maine Department of Environmental Protection (MDEP) staff but are approved through routine technical rulemaking by the ME Board of Environmental Protection. As of Nov 2025, only ME has granted CUU exemptions for any products. The MDEP approved two CUU exemptions out of eleven CUU requests for the first phase of the ban (which was effective Jan 2026 and included cleaning products; cookware; cosmetic products; dental floss; juvenile products; certain textile articles; ski wax; upholstered furniture; and fluorinated containers, or containers from any of these categories of products). As part of its review, MDEP compared the information provided by each submitter to the statutory definition of "essential for health, safety, and the functioning of society," considering the product's impact on society and the function of PFAS chemicals within the product, compared to existing, reasonably available alternatives. Where removing products from the marketplace would create a risk to the population and no reasonable available alternatives were identified, MDEP found that a time-limited CUU designation is consistent with statutory intent. The approved CUU determinations were two specific cases where PFAS-containing container components were deemed necessary for safe product use and no adequate alternatives existed. The nine rejected applications were denied because Maine DEP found that reasonable PFAS-free alternatives were available, even if they were claimed to be less effective. These early decisions suggest MDEP is unlikely to treat reduced performance alone as justification for continued PFAS use.

As states advance broad PFAS phaseouts, differences in definitions, timelines, and CUU processes provide valuable experimentation to test what works and what doesn’t; however, tracking how each law is implemented will be essential to ensuring CUU policies are feasible, scalable, and capable of delivering meaningful reductions in PFAS use.

B. Other General Challenges

- Defining “essential” across sectors, product categories, states/nations, time, and other contexts (e.g., ability to clearly define implementable criteria, likely requires value judgments)
- Data gaps/lack of transparency needed to make CUU determinations
- Up front costs/administrative burden on regulators
- Risk of regrettable substitutions
- Enforcement challenges
- Political feasibility (e.g., industry pushback, customer pushback from loss of product performance)

C. Business Model Justifications

- Companies often argue that a function is essential because it supports their business model.
- The CUU framework shifts this narrative by allowing government and regulatory bodies to challenge and evaluate these claims objectively.

Example: Color Shades

- Some product features, like variations in color shades, do not directly contribute to health, safety, or environmental well-being.
- This raises the question:
    - Does the presence or absence of a specific feature impact societal well-being?
    - Is it truly necessary, or is it simply a market preference?
- Distinguishing between aesthetic appeal and critical function is key to evaluating necessity.

IV. Application

A. Identifying Assumptions About Necessity

To assess necessity, we must first identify *(examples)*:

1. The function's primary purpose.
2. How companies justify its necessity
3. Whether those justifications rely on economic arguments rather than societal benefits

B. Developing Strategic Questions

To critically examine necessity, we should ask *(examples)*:

1. Does this function directly contribute to human health and safety?
2. Are there existing safter alternatives?
3. What would be the broader societal impact of removing or modifying this function?
4. Is there historical or regulatory precedent to suggest this function is non-essential?
5. What concrete evidence supports the claim of necessity beyond economic justification?

V. Implementation

A. Understanding the Role of Government and Regulatory Bodies

- Ensure an independent assessment of function necessity

- Establish clear criteria for defining what is “essential”
- Prevent companies from using business interests as the sole justification

B. Collaboration with Stakeholders and Advocacy Groups

- Work with scientific experts, public health officials, and consumer advocacy groups
- Encourage transparent discussions with manufacturers
- Establish consistent methodologies for evaluating necessity

C. Learning from Case Studies

- Review passed and proposed legislations for guidance
- Identify trends and common justifications that could improve the CUU application.
- Establish best practices to ensure consistency

VI. Maintaining This Living Document

- This document will be updated continuously