



## Implementation of Maine PFAS Notification Requirement

As an introductory matter, we note certain terms are defined in Maine law, thus the notification requirements must be applied consistent with these definitions. These terms include the definitions of PFAS, manufacturer, product, product component, and intentionally added.

We are also mindful of the varied purposes for using the data to be generated through the notification process. While DEP will clearly be a principal user of the data for phase out program implementation purposes, there will be other important consumers of the information as well. State and federal agencies will be relying upon these data to complement other existing sources of information to develop a more complete understanding of USA PFAS production and uses. And the public will access the data to better understand the situation in Maine and nationally, and to inform their purchasing choices as they seek products with little or no potential for PFAS exposure.

Accordingly, when developing the notification regulations and the associated data base, DEP must bear in mind all the potential users of the data, and visualize a data base that is publicly accessible, comprehensive, user friendly, and searchable for a variety of different purposes.<sup>1</sup> We are pleased to hear that DEP will be working with NEWMOA in this regard, given NEWMOA's experience with mercury product reporting and the IC2 clearinghouse.

### Element 1 – “A brief description of the product”

- Virtually identical wording appears in the Maine mercury product notification requirement, at 38 MRSA 1661-A.1.A. DEP guidance on the mercury product notification links to the IMERC reporting form. See <https://www.maine.gov/dep/mercury/hgrequire.html>. Under the mercury notification requirements, information on each individual product must be provided, unless the products meet “category” reporting eligibility (all of the products in the category are similar and have the same use, the mercury serves the same purpose and is in similar components, and all of the products fall within

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<sup>1</sup> Further support for these attributes can be found in the Principles for Chemical Ingredient Disclosure endorsed by a wide array of businesses, government agencies, and civil society. See <https://www.bizngo.org/public-policies/principles-for-chemical-ingredient-disclosure>.



the designated mercury ranges allowed by Maine DEP/IMERC).<sup>2</sup> For each product, the manufacturer must provide what the product is (i.e., truck), which component parts of the product contain the mercury (i.e., headlights), and the number of these components in a typical unit of the product.<sup>3</sup>

- The State of Washington’s Children’s Safe Products Reporting Rule requires that the manufacturer provide information on the “product category or categories in which it occurs”.<sup>4</sup> Thus, the Washington reporting requirement applies to the product category, not to the product, and thus differs from Maine law in that important respect. Based upon the statutory definition of children’s products, the Department of Ecology identified 15 children’s product types (i.e., arts/crafts/needlework, beauty/personal care/hygiene), and within each of these product types, utilizes the GS1 Global Product Classification System (GPC) to provide the product description. Manufacturers are provided a drop-down menu for each of the product types, and they must select the applicable GPC Brick Code within the product type.<sup>5</sup> The manufacturer must also identify the product component in which it occurs. The Department of Ecology has identified eight component choices for children’s products (bio-based materials, synthetic polymers), and the manufacturer must select all of the relevant component parts (there may be more than one).<sup>6</sup>
- Under EPA’s proposed PFAS reporting rule, the reporting obligation falls upon the PFAS manufacturers, not the manufacturers of products using PFAS. This is a critical difference with the Maine reporting requirement. However, PFAS manufacturers are required to provide information on the categories of use for the PFAS manufactured.<sup>7</sup> This information includes how the PFAS are used in product manufacturing (choose one of five processing types, such as “processing – incorporated into article”), and the industrial sector codes applicable to the type of processing (i.e., IS 22 – plastics material and resins manufacturing). And most importantly for the Maine requirement, PFAS manufacturers must provide the

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<sup>2</sup> The Maine PFAS law defines “product” as “an item”, meaning each product should be considered separately unless it meets Maine DEP’s approval for a category or type of product grouping under 38 MRSA 1612.2.B.

<sup>3</sup> Note that for lamps, due to the uniformity of lamp descriptions and applications, a lamp-specific form was created with a uniform set of descriptions and applications provided, from which the manufacturer chooses the relevant identifiers. This is something the Department may wish to consider for certain product types after the initial round of PFAS notifications are submitted, when more is known about specific product components and functions within product types.

<sup>4</sup> See <https://app.leg.wa.gov/WAC/default.aspx?cite=173-334-080&pdf=true>.

<sup>5</sup> See the Manufacturer Reporting Guidance, available at <https://apps.ecology.wa.gov/publications/documents/1704040.pdf>, pp. 6-16.

<sup>6</sup> *Id.* at 17.

<sup>7</sup> See proposed 40 CFR 705.15(c), at 86 Fed. Reg. 33958 (June 28, 2021).



relevant consumer/commercial category codes for the products ultimately produced (i.e., CC111 – All-purpose waxes and finishes).

Recommendation: The Maine mercury product notification is the most relevant and instructive model for the PFAS notification requirement. To facilitate data comparisons and exchange with EPA, DEP should also require submission of the industrial sector and consumer/commercial codes to be used by EPA.

### Element 2 – The purpose for which PFAS are used, including in product components

- Virtually identical wording appears in Maine’s mercury product notification requirement. See 38 MRSA 1661-A.1.B. This wording is repeated in the notification requirement itself.
- Under the State of Washington reporting requirement, a “brief description of the toxic chemical function in each product component is required.” The Department of Ecology provides a list of functions for the reporter to choose from.<sup>8</sup>
- EPA’s proposed PFAS reporting rule uses a similar approach to Washington, but a larger set of function codes (see Table 4 at 86 Fed. Reg. 33959-60 (June 28, 2021)).

Recommendation: Use the EPA function codes to facilitate data comparisons and make it easier to report (manufacturer would choose the code(s) from a dropdown menu).

### Element 3 – The amount of PFAS in the product, reported as an exact quantity, or with a department approved range

- The Maine mercury product notification requirement contains virtually identical language. See 38 MRSA 1661-A.1.C. As implemented, product manufacturers report either the exact amount, or within ranges established for formulated or fabricated products.<sup>9</sup> For fabricated products, the authorized ranges per component are 0-5 mg, 5-10 mg, 10-50 mg, 50-100 mg, 100-1,000 mg, and greater than 1000 mg. For formulated products, the

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<sup>8</sup> See the Manufacturer Reporting Guidance, available at <https://apps.ecology.wa.gov/publications/documents/1704040.pdf>, p. 30.

<sup>9</sup> A fabricated mercury-added product is a combination of individual components, one or more of which has mercury added, that combine to make a single unit. A formulated mercury-added product is a chemical product, including but not limited to laboratory chemicals, cleaning products, cosmetics, pharmaceuticals, and coating materials that are sold as a consistent mixture of chemicals.



- authorized ranges per component are 0-10 ppm, 10-50 ppm, 50-250 ppm, and greater than 250 ppm.
- The State of Washington requires reporting of the exact amount, or within one of 6 ranges: less than 100 ppm, 100-499 ppm, 500-999 ppm, 1,000-4,999 ppm, 5,000-9,999 ppm, 10,000 ppm or greater.<sup>10</sup> Note the Washington reporting regulations only require reporting above 100 ppm, and thus differs significantly from Maine law.
  - EPA’s proposed PFAS reporting rule requests data on “the typical maximum concentration”, reported in one of five ranges (by weight): less than 1%, 1-30%, 30-60%, 60-90%, and at least 90%.<sup>11</sup> One reason these ranges are so large is the reporting requirement applies to the PFAS manufacturers, not the product manufacturers, so precise information on the PFAS concentrations in products may be unavailable to the entities reporting. In contrast, Maine’s reporting obligation applies to companies in the best position to know more precise concentrations.

Recommendation: PFAS are toxic at very low concentrations. Greater precision at lower concentrations will complement other PFAS reporting programs with ranges targeting higher concentrations, and will enable DEP to provide a stronger assessment of potential contamination of Maine’s land and water resources, as contemplated by Maine law..

In the case of both fabricated and formulated products, consistent with the mercury notification program, the recommended ranges apply to the PFAS-added component of the product, not the entire product.<sup>12</sup> For formulated products, we additionally recommend that companies provide either the PFAS concentration in the entire product or the proportion of the PFAS-added component to the entire product. These additional data on PFAS concentrations in formulated products as a whole will facilitate DEP’s understanding of potential wastewater discharges to Maine’s waterbodies and/or POTWs.

The ranges are a simplified numeric sequence, recognizing the widely varying product categories covered by the reporting requirement. The proposed ranges are as follows:

Less than 1 ppb

1 ppb to less than 10 ppb

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<sup>10</sup> See the Manufacturer Reporting Guidance, available at <https://apps.ecology.wa.gov/publications/documents/1704040.pdf>, p. 21.

<sup>11</sup> See Table 6 at 86 Fed. Reg. 33963 (June 28, 2021).

<sup>12</sup> For example, the ranges apply to the fabric treatment on a car seat, not the car seat or the car.



10 ppb to less than 100 ppb

100 ppb to less than 1 ppm

1 ppm to less than 10 ppm

10 ppm to less than 100 ppm

100 ppm to less than 1,000 ppm

Equal to or more than 1000 ppm

Element 4 – The name and address of the manufacturer, and information on the applicable contact person

- See <http://www.newmoa.org/prevention/mercury/imerc/FormSingle.pdf> for the applicable mercury product notification requirements.
- See WAC 173-334-080(f) for the applicable State of Washington reporting requirements.
- See proposed 40 CFR 705.15(a) at 86 Fed. Reg. 33957 (June 28, 2021) for the applicable information required under the PFAS reporting rule.

Recommendation: This is very straightforward, so no specific recommendation is needed.

Element 5 – “any additional information established by the Department by rule as necessary to implement the requirements of this section”

Recommendations:

- Under the Maine mercury product notification requirement, the manufacturers must provide “the total amount of mercury in all units of the product or product components sold in the United States during the most recent calendar year for which sales figures are available, reported either for the units or components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the product or components made by the industry”. See 38 MRSA 1661-A.1.D. Similarly, quantity data is sought by EPA for each of the PFAS production and processing activities. Total quantity data is critical to know for priority setting purposes under the Maine law, since it provides an indication of the potential for products to contaminate Maine’s land and water resources,



through use and/or waste management. National data must be requested since state-specific data will not be available.

- When determining a product category's potential to contaminate Maine's land water, DEP must also consider Maine-specific data where available. Accordingly, if the product manufacturer is located in Maine, DEP should request data on the presence and concentration of PFAS in wastewaters and other wastes, as well as basic information on how the wastes are managed. Wastes destined for management in Maine originating from another state must similarly be reported.
- DEP should request available PFAS environmental monitoring data related to the product manufacturing activities reported. If the data apply to a Maine location, they are certainly relevant to the prioritization activities Maine DEP must perform. However, even data from outside Maine may be relevant as well, because the information will inform DEP about the potential land and water resources contamination scenarios associated with a particular product category. Where the data are already in the public domain, companies can simply provide a link to where the data can be found.
- Lastly, DEP should request that UPC codes be provided for the products reported. Inclusion of UPC codes would provide a simple way for consumers to know which products to favor and which to avoid, based upon the PFAS data provided. It would also facilitate product comparisons.