

Chemical Disclosure Elements and State Examples of Implementation
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Element	Policy/Note	Example	Reference and Selected Language
Data to be disclosed	See full lists from noted sources. Operators should not be required to aggregate chemicals listings with additive listings; it decreases the likelihood of a trade secret claim without sacrificing health/safety considerations	CO, PA, MRF	COGCC 205(b)(2)(A) generally, MRF at 2. See PA 3222.1(b)(2) for disaggregation (“in a format that does not link chemicals to their respective hydraulic fracturing additive.”)
Format for disclosure	Both state agency and FracFocus	MRF	MRF at 2 (“Contemporaneously with the submittal of the post-treatment report to [STATE REGULATOR], operator shall post the hydraulic fracturing fluid information described in this Paragraph 2 on the Chemical Disclosure Registry or other publicly accessible website” Other states retrieve some information by way of well completion reports.
Timing of disclosure	Post-frac, soon after completion; also time-limited after commencement to capture half-finished frac jobs	CO, MRF	MRF at 4 (“As soon as practicable within the thirty (30) day period following the completion of each hydraulic fracturing treatment and in no case later than sixty (60) days after the commencement of a hydraulic fracturing treatment...”)
Master Lists	Allows for a survey of the chemicals used state-wide, which improves regulatory accuracy and capacity	MRF, AR	AR B-19(I): “Any person performing Hydraulic Fracturing Treatments within the State of Arkansas shall: 3) Disclose to the Director, or his designee, and maintain separate master lists of: A) All Hydraulic Fracturing Fluids to be utilized during any Hydraulic Fracturing Treatment within the State of

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			<p>Arkansas; and B) All Additives to be utilized during any Hydraulic Fracturing Treatment within the State of Arkansas; and C) All Chemical Constituents and associated CAS numbers to be utilized in any Hydraulic Fracturing Treatment within the State of Arkansas..." (http://www.aogc.state.ar.us/PDF/B-19%20Final%201-15-11.pdf)</p> <p>See MRF 5.5(c) for a fully conceived master list program that includes certification of HF service companies</p>
Trade secret eligibility	ID of a chemical, concentration of a chemical, or both. Must disclose at least chemical family for each trade secret chemical.	CO, MRF, NY	COGCC 205a(b)(2)(B), MRF at 7(A).
Trade secret substantiation	Operator must substantiate and certify this claim in order to withhold information.	AR, WY, CO, MRF, EPA, NY	<p>COGCC 205a(b)(2)(B-C)</p> <p>AR B-19(k)(8) ("submit to the Director a claim of entitlement to have the identity of such Chemical Constituent withheld as a trade secret")</p> <p>WY Ch. 3 Sec. 45(f)</p> <p>MRF at 7(A)(ii-iii)</p> <p>See also EPCRA trade secret disclosure policy at 40 CFR 350.7, http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol29/pdf/CFR-2012-title40-vol29-sec350-7.pdf. Requires operator to substantiate trade secret claims when reporting about hazardous and toxic chemicals used at facilities under the Emergency Planning and Community Right to Know Act of 1986, using the following form: http://www.epa.gov/oem/docs/chem/ts-form.pdf , including</p>

			<p>certification of truthfulness from an owner, operator, or senior official with management authority.</p> <p>New York proposes to have the agency determine whether or not requested information is exempt from disclosure as trade secret, at 6 NYCRR 560.5(h)(2), http://www.dec.ny.gov/regulations/87420.html</p>
Trade secret possession	State agency should take possession of trade secret possession and hold it confidential to facilitate challenges and rapid dissemination to healthcare and emergency professionals. ²	MRF, AR, PA	<p>MRF at 7(A)</p> <p>AR B-19(k)(8) and (l)(3)(C) (the former for well site submissions, and the latter for master list submissions)</p> <p>PA 3222.1(B)(3) (“the vendor, service provider or operator shall submit a signed written statement that the record contains a trade secret or confidential proprietary information”)</p>
Trade secret challenges/ determination	Laws/regulations should allow state agency and interested citizens to challenge trade secrecy claims. Necessary accountability to incentivize operators to not make spurious trade secrecy claims	CO, MRF, TX, PA	<p>COGCC describes two avenues: Section 114 of the Oil and Gas Conservation Act, which allows a person to lodge a complaint of a violation that prompts the COGCC to investigate, with an appeal to judicial review. COGCC Rule 522(a)(1) provides a similar mechanism.</p> <p>In TX, trade secret challenges are routed to the state AG, which has more expertise in evaluating these claims – though standing is limited to landowners and adjacent landowners,</p>

² Note that NC 113-191(a)(5)(h) calls for “Disclosure of chemicals and constituents ... to State regulatory agencies and to local government emergency response officials, and, with the exception of those items constituting trade secrets, as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2, requirements for disclosure of those chemicals and constituents to the public.” This language implies that all information, TS and non-proprietary, should be disclosed to state agency

			<p>TX RRC 3.29(f)</p> <p>Other states have similar roundabout methods for challenging trade secrecy, often through a state’s Open Record Law (in PA’s case, the Right to Know Act).</p> <p>The MRF has a framework for trade secrecy challenges at MRF 7(C-G)</p>
Trade secret exceptions	<p>Health professionals, under confidentiality agreements. During non-emergency situations, health professionals will provide statement of need.</p> <p>Accredited laboratory, other state agencies as necessary for conducting investigations, emergency response to a spill, release or complaint, or otherwise necessary to protect public health and the environment.</p> <p>Nothing precludes a medical professional from making any report required by law or professional ethical standards</p>	MRF, CO OH	<p>MRF at 5, 7(G).</p> <p>COGCC 205a(b)(5) uses the same health professional language as the MRF</p> <p>OH 1509.10(H)(2), preclusion language</p>
Chemical disclosure beyond HF	Spud to plug, especially drilling fluids. ³	OH	OH 1509.10(9)(a), “If applicable, the trade name and the total amount of all products, fluids, and substances, and the supplier of each product, fluid, or substance, not including

³ Note that NC 113-191(a)(5)(h) calls for “Disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production, including hydraulic fracturing fluids....,” so disclosure beyond HF chemicals would be in line with legislative intent.

			<p>cement and its constituents and lost circulation materials, intentionally added to facilitate the drilling of any portion of the well until the surface casing is set and properly sealed. The owner shall identify each additive used and provide a brief description of the purpose for which the additive is used. In addition, the owner shall include a list of all chemicals, not including any information that is designated as a trade secret pursuant to division (I)(1) of this section, intentionally added to all products, fluids, or substances and include each chemical's corresponding chemical abstracts service number and the maximum concentration of each chemical."</p> <p>However, this should not be seen as model language. Here, disclosure requirements terminates when surface casing is set, even though arguably more problematic chemicals are used in later phases of the drilling process. Instead, please see bill as filed, at SB 315 Sec. 1509.10(A)(9) ("If applicable, the type and volume of the fluid, not including cement and its constituents, used to drill the well. For each proprietary component in the fluid, the owner shall identify the chemical class to which the component belongs and provide the proportion of the component to the amount of the fluid in which it was used,</p> <p>http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315_I)</p>
Data Quality	Information on chemicals flows from supplier to operator to service company to agency/FF. It is critical that actors have responsibility for ensuring the data's accuracy and completeness	NY	<p>NY proposes to require that each involved well owner, operator, service company and/or chemical supplier supplies accurate information to the entity submitting information, at NY 560.3(d)(4)</p> <p>http://www.dec.ny.gov/regulations/87420.html)</p>

