

Interstate Chemicals Clearinghouse (IC2) Chemical Use Reporting White Paper

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Introduction

Several states have recently enacted laws that require manufacturers of products that contain certain chemicals to provide reports on their uses. To support the state efforts to implement these requirements, the Interstate Chemicals Clearinghouse (IC2) has formed a Chemical Use Reporting Subcommittee under its Database Workgroup. The Subcommittee has developed two documents – a research paper that examines existing programs requiring chemical use reporting and this White Paper – to provide a framework for coordinating the state reporting efforts.

The “Existing Chemical Use Reporting Programs” research paper analyzes the reporting forms and collection methods of various chemical use reporting programs to identify tools and strategies that could be employed in a coordinated IC2 reporting system. The research paper is available at: www.newmoa.org/prevention/ic2/pubs/.

This “IC2 Chemical Use Reporting White Paper”:

- Discusses the purposes of chemical use disclosure
- Outlines the benefits of interstate collaboration on chemical use reporting
- Examines the IC2-member programs and their reporting requirements to identify common elements and differences
- Describes state Confidential Business Information (CBI) policies and procedures
- Identifies key questions and issues regarding data fields and coordination of the proposed reporting processes of the participating states
- Presents a draft straw IC2 Chemical Use Reporting Form for discussion and possible use

Appendix A of this paper presents a matrix outlining the member states’ reporting requirements. The straw IC2 Chemical Use Reporting Form, presented in Appendix B, includes an explanation of each section and data field included in the form.

Purposes of Chemical Use Disclosure

Identifying common and clear purposes and data uses for chemical use reporting are important. Understanding what the IC2-member states and other data users intend to do with the reported

data, including how they plan to analyze and share it, is a critical aspect of designing the states' system/s. The universe of possible chemical use data users, in addition to state and local government agencies, includes:

- Policy-makers
- Non-governmental organizations (NGOs)
- Researchers
- Businesses
- Recyclers, waste managers, wastewater treatment facilities, and others that manage wastes and associated releases
- General public/consumers

Understanding the interests of these possible data stakeholders could be valuable as the IC2-member programs develop their reporting forms and data system/s. Examples of how these data stakeholders could use the data include the following:

- Analysis of chemical use trends
- Support for public education on chemical use
- Facilitation of informed purchasing decisions
- Assessment of safer alternatives
- Identification of products for green chemistry research and development
- Development of future chemical use compliance and enforcement efforts
- Development of occupational health and safety measures
- Support for and data needed to conduct safer alternatives assessments
- Initiation of possible product labeling programs
- Initiation of research on exposures and substitutes for products and chemicals of concern
- Development of improved and safer product use, pollution prevention initiatives, and end-of-life management strategies, including reuse, recycling, and treatment
- Support for policy development and additional legislative action

As the IC2 Chemical Use Reporting Subcommittee advances its efforts and discussions, clarifying the interests of the data users and the goals of the chemical use data collection and analysis could be beneficial for the design and implementation of any database. Understanding what the IC2-member states and other data users intend to do with the reported data, including how they plan to analyze and share it, is a critical aspect of designing the states' system/s. Developing a clear understanding of the ultimate use of the database and associated reports and presentations should inform what data is collected and in what format. Modifying the database/system can be challenging and time consuming if and when the IC2 develops a coordinated form, the reporting system/s is finalized, and data collection and input is implemented.

Benefits of Collaboration

There are a vast number of products containing many chemicals of concern in commerce. The significant scale of the task of collecting data and information on these materials makes interstate collaboration on chemical use reporting critical, particularly in the face of recent reductions in state program budgets and staff. Some of the other benefits of multi-state coordination include:

- Greater efficiency and cost effectiveness for state agencies
- Increased opportunities for multi-state involvement in data analysis and presentation
- Improved access to robust data
- Decreased reporting burden and better services for industry
- Coordinated distribution of information and data to the public

The Interstate Mercury Education and Reduction Clearinghouse (IMERC) provides an example of interstate collaboration on chemical use reporting and illustrates the associated benefits for the participating states and the regulated community. The IMERC-member states have found that coordinating on various aspects of their mercury-added product legislation, including notification of products containing mercury or mercury-added components, has enabled them to meet regulatory requirements while minimizing the financial impact on the state agencies and providing a “one-stop shop” for industry submission. Having focused on the creation of a reporting form that meets all of the participating state agency needs, IMERC receives standardized data reviewable by multiple agencies that has led to the creation of the only national database on mercury-added products. The IMERC system is the only multi-jurisdictional coordinated and harmonized chemical use reporting system in the U.S. and elsewhere. However, there are examples of other reporting systems that have interesting and useful similarities.

The “[Existing Chemical Use Reporting Programs](#)” research paper presents a review of the IMERC and other existing chemical use reporting systems, including the California Safe Cosmetics Program, California Pesticide Use Reporting, New York Pesticide Use Reporting, The Weracs, Norwegian Product Register, and Swedish Products Register. The paper describes various lesson learned from these systems, including the challenges they have faced related to technology, information, harmonization across jurisdictions, and resources. This review of these existing systems provides useful background information to consider in the development of any new chemical use reporting system.

IC2-member State Authorities to Collect Data

Understanding the reporting requirements of the participating IC2-member states is necessary in the development of a coordinated chemical use reporting form. To identify the similarities and differences regarding the covered products and chemicals, reporting thresholds, and timelines, the Subcommittee prepared the “State Chemical Reporting Requirements” matrix (Appendix A). The matrix summarizes the reporting requirements under development for the safer chemicals programs in California, Maine, New York, and Washington, as well as the existing reporting

programs of IMERC and the California Safe Cosmetics Program. Additional information regarding the four IC2-member states currently implementing chemical use reporting requirements, with a focus on the legal language for state authority found in the relevant laws and regulations, is included below.

California

California Health and Safety Code §§ 25251-25257.1 requires the Department of Toxic Substances Control (DTSC) to develop regulations that create a process for identifying chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern. The statute defines “consumer product” as a product or part of the product that is used, bought, or leased for use by a person for any purpose. The statute also requires DTSC to establish a Toxics Information Clearinghouse to provide a web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data. DTSC is currently in the process of developing draft regulations to implement this law.

Maine

Maine’s Toxic Chemicals in Children’s Products law (*see* Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B¹) requires manufacturers² or distributors³ of a children’s product for sale that contains a priority chemical to disclose certain information to the Department of Environmental Protection (DEP). To date, two chemicals have been designated as priority chemicals: Bisphenol A and the chemical class Nonylphenol and Nonylphenol Ethoxylates.⁴ The law defines “children’s product” as a consumer product intended for use by children, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child⁵ or a fetus being exposed to that chemical.

ME DEP expects to begin collecting information by the summer of 2011. The required disclosures are determined by rule on a chemical-by-chemical basis.

For more information on Maine’s implementation of the Toxic Chemicals in Children’s Products Law, see: www.maine.gov/dep/oc/safechem/index.htm

¹ <http://www.mainelegislature.org/legis/Statutes/38/title38ch16-Dsec0.html>

² Under the Maine law, "manufacturer" means any person who manufactures a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that is imported into the United States, "manufacturer" includes the importer or first domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

³ Under the Maine law, “distributor” means a person who sells consumer products to retail establishments on a wholesale basis.

⁴ <http://www.maine.gov/dep/oc/safechem/rules.htm>

⁵ Maine DEP rules 06-096 CMR chapter 880 defines a child as younger than 18 years old.

Washington

Washington's Children's Safe Product Act⁶ (see RCW 70.240) requires manufacturers⁷ of children's products or trade organizations on behalf of its member manufacturers to notify the Department of Ecology (DoE) when a chemical of high concern to children (CHCC) is present in their products or product components. Fifty-nine chemicals have been identified as CHCCs in the DoE's proposed regulation.⁸ The law defines "children's products" as (1) toys (products designed or intended by the manufacturer to be used by a child at play); (2) children's cosmetics (cosmetics made for, marketed for use by, or marketed to children under the age of twelve); (3) children's jewelry (i.e., jewelry made for, marketed for use by, or marketed to children under the age of twelve); (4) a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or (5) child car seats.

DoE expects to begin collecting information by Spring 2012. At that time, annual reporting for products or product components containing CHCCs is required. The reporting requirements will be phased in, with reporting first by larger manufacturers and manufacturers of product types that involve prolonged exposure to children.

For more information on Washington's implementation of the Children's Safe Product Act, see: www.ecy.wa.gov/programs/swfa/cspa/

New York

New York's Household Cleansing Products regulation⁹, effective since October 1, 1976, requires manufacturers of household cleansing products distributed, sold, or offered for sale, to report each ingredient contained in the product by weight. The regulation defines "household cleansing product" as any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils, and household and commercial premises.

On October 6, 2010, the New York Department of Environmental Conservation (NYS DEC) held a stakeholder discussion with impacted manufacturers, trade associations, and NGOs to initiate a dialogue about how to implement product disclosure. The agenda focused on enabling the Agency to better understand the product information sought by the public and any CBI issues

⁶ <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.240>

⁷ Under the Washington law, "manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of the law, "importer" means the owner of the children's product.

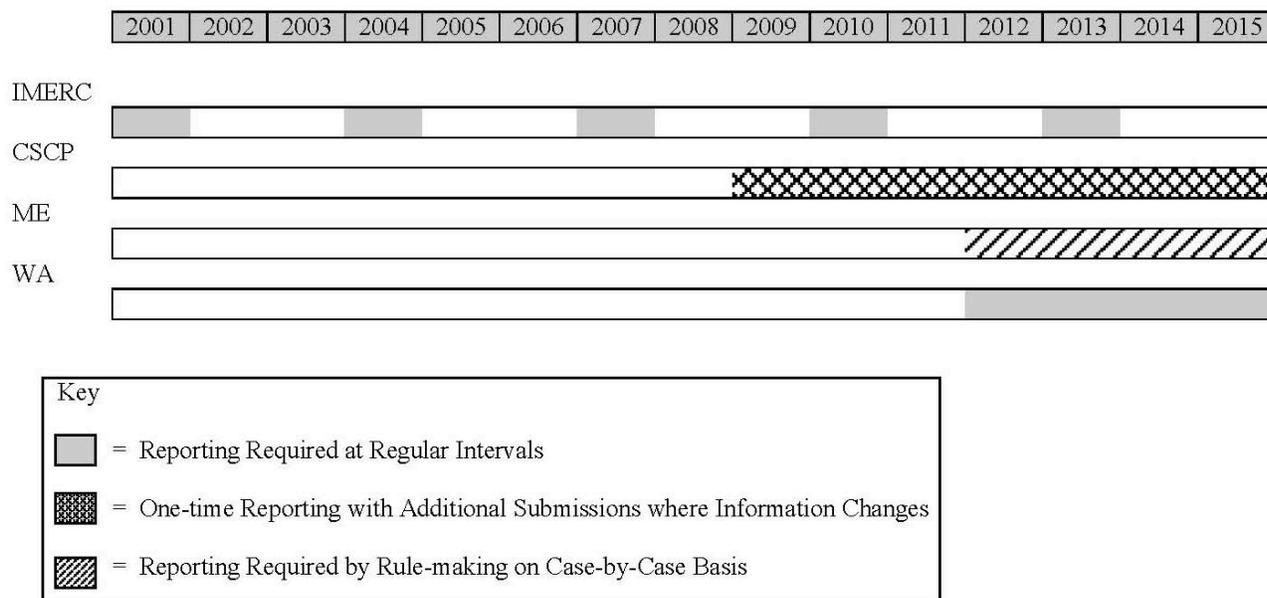
⁸ <http://www.ecy.wa.gov/laws-rules/wac173334/p0904a.pdf>

⁹ <http://www.dec.ny.gov/regs/4617.html>

related to disclosure that may impact the types of information that manufacturers must report. In December 2010, NYS DEC released a draft proposal on cleansing product disclosure to participants in the stakeholder discussion. The proposal addresses what type of information would be required from manufacturers while leaving the mechanisms of disclosure, timing, and format for a future discussion. Comments were due on March 1, 2011.

IC2-member State Timelines for Data Collection

The following graph compares Maine and Washington timelines for initiating their data collection requirements. The reporting requirements of the Interstate Mercury Education and Reduction Clearinghouse (IMERC) and the California Safe Cosmetics Program (CSCP) are included as examples of existing chemical use reporting program requirements.



Confidential Business Information

Manufacturers of products that fall under existing chemical use reporting programs spend significant resources on research and development and closely guard their ingredient recipes and formulations. During various hearings and testimony on the various state legislation, companies have stated that they would probably classify some of information the IC2-member state programs are asking for as sensitive and would object if that information is shared with other agencies or made public. Addressing these kinds of Confidential Business Information (CBI) claims must be considered when developing a chemical use reporting process. This section describes the IC2-member states' CBI policies and processes. The Existing Chemical Use Reporting Programs research paper includes a description of the CBI procedures for the existing chemical use reporting systems, including mercury-added product and cosmetic ingredient reporting.

California

California Health and Safety Code §§ 25257 permits the designation of information submitted pursuant to the law as a trade secret at the time of submission. When the CA DTSC receives a request for release of confidential information under the California Public Records Act, they must immediately notify the submitter. DTSC must make a determination as to whether or not the information claimed to be confidential is to be released to the public within 60 days of the request, but not before 30 days following the notification of the submitter. If DTSC decides the information should be made public, DTSC must provide the submitter 30 days' notice prior to public disclosure.

Under the California Safe Cosmetics Program, submitters may claim the chemical ingredient and chemical concentration information as a trade secret. Non-confidential information is currently available to the public only through FOIA requests, although an online resource for the public is under development. The program is also in the process of developing a trade secret justification guidance document for submitters.

Maine

A rule (06-096 Me. Code R. Ch. 880) promulgated under the Maine's Toxic Chemicals in Children's Products law (*see* Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B) provides for the protection of proprietary information collected under the law's chemical use reporting requirements.

Chemical use information collected under the law is deemed presumptively public records under Maine's Freedom of Access Act (FOAA, at 1 MRSA §401 et seq.). However, Department policy provides a process for submitters to claim any information disclosed to the Maine Department of Environmental Protection (DEP) as confidential (per 38 MRSA §1310-B). If a submitter believes that the information is not subject to disclosure under FOAA, the submitter must clearly mark the word "confidential" prominently on each page of the document at the time of submission. There is no requirement for substantiation or departmental review at the time of submission. Where information is designated as confidential by the submitter, the information must be segregated from other related records and may only be used by the Department of Environmental Protection, the Department of Agriculture, Food and Rural Resources, the Department of Health and Human Services, other agencies of Maine State Government, as authorized by the Governor, the U.S. Environmental Protection Agency, and the Attorney General.

When DEP receives a written FOAA request that encompasses information claimed confidential, the commissioner notifies the submitter. Within 15 days, the submitter must demonstrate to the satisfaction of DEP that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of

which would impair the competitive position of the submitter and would make available information not otherwise publicly available. If the demonstration is not made, the information becomes a public record. DEP may grant or deny disclosure for the designated information and is required, within 15 days, to give written notice of the decision to the submitter and the person requesting the designated information.

Washington

The Children's Safe Product Act draft reporting rule permits submitters to request that information be treated as CBI. Ecology has a procedure in place that is used each time a confidential business information request is made. DoE sends a letter to the submitter requiring that they demonstrate the reason they believe their documents are confidential and state how long they want this information to remain confidential. The submitter then has 30 days to respond. If Ecology does not receive a response, the documents are treated as public records. If the Agency receives a response, the appropriate program staff, in consultation with the Attorneys General if necessary, make a preliminary determination as to whether the request meets the criteria for confidentiality under RCW 43.21A.160. If Ecology determines that the information does not fit the criteria, Ecology sends a letter to the submitter denying the request. The information is then considered a public record.

If the criteria of the law are met, the request, along with all the documentation and an information memorandum, is sent to the Director. If the Director determines that keeping the information confidential would not be detrimental to the public interest and is otherwise in accord with the policies and purpose of RCW 43.21A.160, the Director may grant the request. If the request is granted, the Director signs a letter of approval and sends it to the submitter requesting confidentiality. The Public Disclosure Coordinator maintains documents certified as confidential. Access to confidential information is restricted to appropriate Ecology employees and the Attorneys General.

New York

Information submitted under the Household Cleansing Products regulation may be claimed confidential where the manufacturer determines the information would be, if disclosed, seriously prejudicial to the manufacturer's legitimate interest in trade secrets and economics of operation. However, this claim is subject to the approval of the Commissioner of the New York State Department of Environmental Conservation (DEC).

Under current confidential business information procedures, the DEC may make a determination to grant or continue the exception from disclosure at any time or at the time of a public request for information claimed confidential. At the time of review, the Department informs the person that requested the exception of the Department's review and permits the person that requested the exemption to submit a written statement, within 10 business days, of the necessity for

granting or continuing the exemption. The Department must then issue a written determination granting, continuing, or terminating such exception stating the reasons for the decision within seven business days of the receipt of the written statement or the expiration of the deadline for the submission of such a statement (*see* 6 NY Comp Codes R & Regs 616.7).

IC2 Reporting Form Options

A key consideration for any reporting coordination among the IC2-member states is Washington DoE's implementation schedule. The Agency is working with a contractor to build their electronic reporting system and anticipates full development by summer 2011. The IC2 Chemical Use Reporting Subcommittee has identified the following reporting form options to meet the states' requirements.

State-specific Form

Under this approach, state agencies would develop forms and reporting systems governed by their implementation schedules. IC2 may assist in coordinating form field definitions to allow for possible centralized data sharing. However, each state would be responsible for system maintenance and program support. The following are some pros and cons for this approach:

Pros:

- States retain flexibility to develop on their own schedules, as resources allow.
- Manufacturers know exactly what information will meet a single state's requirement.
- System provides most flexibility to implement changes to reporting based on updates to state regulations.

Cons:

- States are unable to share program implementation and support costs.
- Data sharing is more complicated.
- Regulated community must monitor and comply with each individual state's requirements, increasing the complexity and burdens of compliance.

CBI Considerations:

- State CBI process governs all submissions. Confidential information is not shared among states.

Form Incorporating States' Most Stringent Requirements

Under this approach, state agencies would develop a single form based on the most stringent reporting requirements among all participants. Manufacturers would submit a single form to satisfy all state requirements. This type of reporting process was implemented for IMERC Notification.

Pros:

- Development and implementation costs shared among the states.
- "One stop shop" for manufacturers to report information.

- Transition to public availability of data is easier.

Cons:

- Changes to form must be approved by all members.
- Some state requirements include state-specific data that may be incompatible with such a reporting system (e.g., state-specific sales information).
- Manufacturers may not wish to provide information to states where the information is not required by those states' laws.

CBI Considerations:

- Different state CBI process may complicate review. One state may consider information confidential while another does not.

Universal Form with State-specific Supplements

Under this approach, state agencies would develop a single form based on the most stringent reporting requirements among all participants with supplemental form/s to address state specific requirements. Manufacturers would submit a basic form to satisfy all state requirements.

Pros:

- Development and implementation costs shared among the states.
- “One stop shop” for manufacturers to report information relevant to all applicable state requirements.
- Transition to public availability of data may be easier.

Cons:

- Changes to core or common form must be approved by all members.
- Manufacturers may not wish to provide information to states where the information is not required by those states' laws.

CBI Considerations:

- Different state CBI process may complicate review. One state may consider information confidential while another does not.

The IC2 Subcommittee has determined that a universal form with state-specific supplements is the best option for coordinating among the states while providing each IC2-member the flexibility to obtain information needed to satisfy their reporting requirements. This option is described in more detail in the straw IC2 Chemical Use Reporting Form in Appendix B.

Centralized Database for Reporting & Data Sharing

The Subcommittee has determined that development of a centralized database for manufacturer reporting and data sharing with the public is not possible due to the short-term implementation schedules of Maine and Washington. Washington DoE will begin to post all data collected under their system that is not determined to be CBI as resources allow.

If IC2-member states collaborate as they develop their collection systems and ensure that data fields are defined similarly, a centralized database could be phased-in as a way to provide data from different states through one single portal. State agencies could retain confidential business information but could meet requirements to share the data through a system that provides the most robust product information. A centralized system managed by IC2 could provide greater cost effectiveness for the states.

Future Considerations & Collaboration Options

As the IC2 members work towards developing a coordinated reporting form, a number of additional issues and possibilities for collaboration outside of the scope of this White Paper may arise. These are briefly discussed below.

Lab Analysis Protocols

If the state agencies want to confirm the claims by manufacturers on the use of chemicals in products, they may need to conduct laboratory testing. If this occurs, there are a number of key questions that could arise. Will the state agencies dictate lab protocols for measuring chemical content within products to verify manufacturer claims? Is there a common existing standard for this purpose, or will the state agencies develop such standards? Can companies choose their own method of analysis? Would the state agencies then require documentation of the analysis?

Washington law does not require testing but the Department of Ecology intends to make public the methods that the Agency will use when testing for compliance assurance.

Maine will state their Data Quality Objectives (DQO) and provide guidance as to what methods meet those DQOs. However, companies may select an alternate method and document how that method meets the DQOs.

Verifying Manufacturing Information

State agencies may have to verify the claims that manufacturers make on their reports on the chemical content of products. The IC2 Subcommittee identified verification of manufacturer information as an area where they would like to utilize the IC2 to help facilitate collaboration among the states.

Outreach to Manufacturers

Due to differences in implementation schedules and the products and chemicals target by the states' legislation, individual state agencies will take the lead on the initial outreach to manufacturers. However, the IC2 can serve a valuable role by helping to develop lists of possible companies and disseminating information through IC2 e-bulletins and the IC2 website. IC2 can also develop a centralized mailing list, combining the state lists, to disseminate information to a larger audience. Other issues the states may need to consider include:

- Are mailing lists available that can be used for an initial mailing to companies to inform them of the reporting requirements?
- What is the cost of an initial outreach program (i.e, postage, labor to research companies, and conducting internet searches)?
- Are trade associations a possible partner in outreach?

“Customer” Service

Due to differences in implementation and the regulated community, states will likely need to provide initial customer service and compliance assistance for manufacturers. However, the IC2 may serve as a centralized point for manufacturers to contact once state programs mature. For example, the IMERC-member states have delegated this task to the IMERC Coordinator, which has reduced the burden on them of answering manufacturer questions about multiple aspects of their mercury-added product legislation. Should IC2 develop a role similar to assist manufacturers with compliance?

Reciprocity

For certain requirements, developing a system of reciprocity on submission approval – whereby if one state approves data, another state approves the same data without the need for review – could save state agencies considerable time and effort. The IC2 Subcommittee identified this as a topic for consideration in the future.

Industry Collaboration

The IC2 Subcommittee has determined that working with industry early in the implementation process is important to system design and, ultimately, compliance. The IC2-member states plan to work with companies to define product categories and help test reporting systems. This early collaboration may eliminate unforeseen issues that would arise if the agencies developed these systems without outside consultation.

Conclusion

This White Paper provides the basis for discussion of a coordinated system for chemical use reporting among the IC2-member states. As outlined, a number of challenges exist, including differences in product focus, data requirements, and CBI. However, the state programs are uniquely positioned to bring together government agencies, NGOs, businesses, and academics to help think about data use and the development of a coordinated reporting system that reduces burdens on industry and state agencies while also meeting the states’ legislative requirements. The overview of the experiences of the existing chemical reporting systems presented in Appendix A identifies lessons learned about the challenges and successes that can help the IC2-member state programs move forward in their efforts to develop a coordinated IC2 Chemical Use Reporting System.

Appendix A – State Chemical Reporting Requirements for Products

Data	Maine*	Washington	New York**	IMERC	California Safe Cosmetics Program
Product Information					
Chemical Identity	●	●			●
<ul style="list-style-type: none"> • Priority Chemical(s) Contained in Children’s Product 	●				
<ul style="list-style-type: none"> • Reportable Chemical Contained in Product and CAS# 		●			●
Description of Product	●	●		●	●
<ul style="list-style-type: none"> • Description of Product or Products Containing the Priority Chemical 	●				
<ul style="list-style-type: none"> • Brief Description of the Product or Product Component Containing the Chemical 		●		●	
<ul style="list-style-type: none"> • Description of the Types, Categories, and Classes of Products that Contain Chemicals of Concern 		●			
<ul style="list-style-type: none"> • Type, Brand Name of Priority Product or Pertinent Product Component 					
<ul style="list-style-type: none"> • Information Concerning the Presence of the Chemical in Products Commonly Found in Households 					
<ul style="list-style-type: none"> • Name of Product, Intended Application Area, Form of Product, Product Category 					●
<ul style="list-style-type: none"> • Product Components Supplied by Another Company 					●
Product Market Data	●			●	
<ul style="list-style-type: none"> • Number of Product Units Sold or Distributed in State or Nationally 	●				
<ul style="list-style-type: none"> • Market Presence Information (statewide sales by volume in the past calendar year, etc.) 					
<ul style="list-style-type: none"> • Total Amount of Chemical in All Units Sold in the U.S. per Calendar Year 				●	
Function of the Chemical(s) in the Product	●	●		●	
Amount of Chemical in Product	●	●		●	○
<ul style="list-style-type: none"> • Amount of Chemical in Each Unit of Product 	●				○

Data	Maine*	Washington	New York**	IMERC	California Safe Cosmetics Program
• Amount of Chemical(s) in Each Unit of Product or Product Component (●		●	
Any Other Information Relevant to Appropriate Use of Product		●			
Manufacturer Information		●		●	●
Ingredient Information					
Ingredients of Household Cleaning Products			●		
Intentionally Added Ingredients in Consumer Products					
Chemical Information					
Chemical Information Submitted to REACH, TSCA, CEPA					
Chemical and Physical Properties					
Adverse Public Health Impacts					
Adverse Ecological Impacts					
Adverse Air Quality Impacts					
Adverse Water Quality Impacts					
Adverse Soil Quality Impacts					
Exposure Information					
Likelihood of Chemical Release During Use	○				
Likelihood of Child Exposure to Chemical from Use	○				
Pathways of Exposure	○				
Predicted Magnitude of Exposure	○				
Extent to which Chemical is Present in Environment and Humans	○				
Potential for Consumers of Environmental Receptors to be Exposed to the Chemical					
Volume of Chemical in Commerce					

Data	Maine*	Washington	New York**	IMERC	California Safe Cosmetics Program
Type and Extent of Consumer Uses that Could Result in Public Exposure to Chemicals of Concern					
Product Uses or Management Practices that Could Lead to Releases to the Environment					
Alternatives Information					
Alternatives Assessment with criteria on what that might include	○	□ [†]			
Known Alternatives to Identified Priority Chemical	○				

*In Maine, reporting requirements will be determined by rule at the time a priority chemical is designated. The amount and type of data required may vary depending on the chemical designated and the purpose for designation.

** In New York, the scope and form of data that will be collected under this authority is under development.

† Washington is proposing that companies that *voluntarily* complete an alternatives assessment would receive a one-year extension on required reporting for product and product components containing chemicals of high concern to children.

Key:

- = Required Data
- ◐ = Required Data, but May be Waived
- = Data that May be Required
- = Voluntary Data

Appendix B – Straw IC2 Chemical Use Reporting Form

The safer chemicals laws of Maine, Washington, and New York stipulate some of the key data elements that companies must provide about their chemicals use in products. All three states have the authority to collect company information and product information. Individual states also have unique authority to collect additional data. For example, Maine has the authority to collect exposure information and New York has the authority to collect full ingredient information for products. In order to capture the commonalities and differences among the states, the draft IC2 Chemical Use Reporting Form brings together these data elements into a single reporting form with supplemental state-specific sections. The first two sections, encompassing company information and product information, present the data elements that may be collected by multiple states. The last three sections present the data elements that are unique to New York, Maine, and Washington respectively. Each of these sections and the data fields included within those sections are described below. Ultimately, IC2 members want the form to be able to facilitate phased-in centralized reporting that is customizable.

Interstate Chemicals Clearinghouse Chemical Use Reporting Form

I. Company Information

Notification Submitted By: Manufacturer Distributor Importer Retailer Trade Association

Submitter Information

Company's Name

Company's Mailing Address

City State Zip Code

Country

Company's Phone Number

Company's Web Address

Contact Person

Contact Person's Title

Contact Person's Mailing Address

City State Zip Code

Country

Contact Person's Phone Number

Contact Person's Email Address

Manufacturer Information

[Notifications Submitted on Behalf of One or Multiple Manufacturers Must Complete This Information for Each Manufacturer Represented]

Manufacturer's Name

Manufacturer's Mailing Address

City State Zip Code

Country

Manufacturer's Phone Number

Manufacturer's Web Address

Manufacturer's NAICS Code

Manufacturer's ID

Contact Person

Contact Person's Title

Contact Person's Mailing Address

City State Zip Code

Country

Contact Person's Phone Number

Contact Person's Email Address

II. Product Information

[Notifications Submitted on Behalf of One or Multiple Manufacturers Must Complete This Information for Each Manufacturer and Each Product Represented]

Description of the Product

Brand Name

Product
Category

Unique Product Identifier

Product
Component

Chemical Information

Reportable Chemical Name

Function of
Reportable Chemical

Reportable Chemical CAS#

Reportable Chemical EC#

Amount of chemical may be reported either by range or exact amount.

Amount of Reportable
Chemical Per Unit (Range)

Exact Amount of Reportable Chemical Per Unit

III. Supplemental Information--New York

Description of the Product

Brand Name

Product
Category

Unique Product Identifier

Product
Component

Ingredient Information

CAS #	Chemical Name	Weight %

IV. Supplemental Information--Maine

Chemical Information

Exact Amount of Reportable Chemical Per Unit

Product Market Data

Number of Units Sold or Distributed in the State or Nationally (last calendar year)

Exposure Information

Chemical's Propensity to be Released from Product During Use

Likelihood of Exposure to Children

Pathways of Exposure

Predicted Magnitude of Exposure

Chemical's Presence in Humans and the Environment

V. Supplemental Information--Washington

Manufacturer Information

Annual Aggregate Gross Sales

Description of the Product

Intended Age
Category

Product
Tier

Any Additional Information
Relevant to the Appropriate
Use of the Product

Confidential Business Information

Supporting Documentation
for Confidential Business
Information Claims

1. Company Information

A core element of all of the states' requirements is manufacturer information. A manufacturer may choose to supply information directly, in which case it serves as the "submitting" company. In other cases, entities other than the manufacturer, such as distributors, importers, retailers, or trade associations may submit information on behalf of a manufacturer. IC2 member states want other entities to be able to be "submitters" to address cases where the manufacturer is unwilling or unable to provide the information, but also want to collect the same information on the manufacturer that would otherwise be submitted if reported directly by the manufacturer.

a. Submitter Information¹⁰

In addition to the fields that capture basic contact information for the company, which should serve all of the states' needs, the draft Chemical Use Reporting Form provides a section for the designation of the submitting entity, which defines five different types of entities that may serve as the reporting company – manufacturer, distributor, importer, retailer, and trade association. In order to ensure that information on the manufacturer is collected in cases where the "submitter" is an entity other than the manufacturer, the draft form specifies that where a notification is submitted on behalf of one or multiple manufacturers, the submitter must complete the manufacturer information section for each manufacturer represented. For example, trade associations would be permitted to submit information on behalf of its member manufacturers, but would be required to disclose data on each individual manufacturer's reportable products or contribution.

b. Manufacturer Information

The IC2-member laws define manufacturer as follows:

ME - Any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor¹¹ of the consumer product if the person that manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

WA - Any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer¹² or domestic distributor of a children's product.

¹⁰ *Maine* and *New York* laws do not specifically require the submission of information about a reporting company. *Washington* requires the name and address of the reporting manufacturer or trade organization and the name, address, and phone number of the contact person for the reporting manufacturer or trade organization. When a trade organization is the reporting party, the report must include the same information for each manufacturer on whose behalf it is reporting.

¹¹ Under Maine law, "distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

¹² Under WA law, "importer" means the 1st owner of the children's product in the US.

NY – “Manufacturer” is undefined.

In order to overcome barriers presented by multiple definitions for the same terms, IC2 members are interested in working toward standardizing definitions using the most stringent definition, provided that these efforts are reviewed and accepted by each member states’ legal department.

The data fields required under “Manufacturer Information” in the draft IC2 Chemical Use Reporting Form are identical to the fields under “Submitter Information”, with the addition of the manufacturers’ North American Industry Classification System (NAICS) code and the manufacturers’ ID. The NAICS code allows state programs to analyze product use by industry type to help learn more about usage and where to focus outreach efforts. The manufacturers’ ID would provide a way of linking multiple reports from the same manufacturer and provide other opportunities to compile, share, and analyze data. Some existing systems for identifying manufacturers include the company’s federal tax ID number or the Duns and Bradstreet number (which is currently used in EPA’s Inventory Update Rule reporting). Washington has decided not to include a field for manufacturer ID in its reporting system. Instead, a manufacturer will receive a unique number when it registers, which can be shared with others that plan to report on its behalf, thus ensuring that data will not be double-entered and multiple submissions can be linked back to the individual manufacturer.

2. Product Information

The information required in this section of the draft IC2 Chemical Use Reporting Form focuses on products or product components that contain chemicals of concern, as defined by the state agencies. There is agreement that this is the centerpiece of all the chemical use reporting efforts and should be standardized as much as possible. Maine, New York, and Washington have authority to collect product information, although the nature and scope of the information to be collected differs. Product and chemical information that may be collected by multiple states is detailed in this section. Additional state-specific product and chemical information is included in the supplemental sections that follow.

a. Description of the Product

The IC2-member laws define the scope of regulated products as follows:

ME – “Children’s product” means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child or a fetus being exposed to that chemical.

WA – “Children’s product” means (1) toys (products designed or intended by the manufacturer to be used by a child at play); (2) children’s cosmetics (cosmetics made for, marketed for use by, or marketed to children under the age of twelve); (3) children’s jewelry (jewelry made for, marketed for use by, or marketed to children under the age of twelve); (4) a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or (5) child car seats.

NY – “Household cleansing product” means any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household and commercial premises.

Although the scope of the definitions do not necessarily affect the inclusion of particular data fields on the draft IC2 Chemical Use Reporting Form, these differences may have an impact on the categories and terms that would be included in any drop-down menus that define particular data fields, such as “product category.” Because of the variation in scope, different states may need to provide different drop-down selections for submitters.

The draft IC2 Chemical Use Reporting Form contains four data fields in the product description section, including: brand name; unique product identifier; product category; and product component.

In order to support effective analysis of product data, member states have agreed that developing consistent drop-down selections for many of these data fields is necessary and that “free text” fields should be avoided. Since companies already employ a variety of different systems to identify their products, including model numbers and Global Trade Identification Numbers, such as Universal Product Code (UPC) and European Article Number (EAN), IC2 member states have also agreed that utilizing an existing system is preferable to creating a new IC2 system, wherever possible. Washington has decided to use the GS1 Global Product Classification (GPC) system to define the product identifier field and as the basis for its product category drop-down selections. The foundation of the GPC is called a “brick,” which defines categories of similar products. Each product can only be assigned to one brick and each brick has a unique 8-digit code.¹³ Washington plans to use GPC bricks as the basis for developing the product category drop-down menu and the brick codes as the product identifiers. Although multiple products can be assigned the same brick code (i.e. there is not a one-to-one relationship between the brick code and a unique product), Washington has deemed this level of detail appropriate for the planned analysis of the data.

¹³ For more information on the GS1 Global Product Classification system, see <http://www.gs1.org/gdsn/gpc> and <http://www.gs1.org/1/productssolutions/gdsn/gpc/browser/index.html>.

For the product component data field, a list of possible components also needs to be developed. The GS1 GPC and other existing systems do not provide this type of information. For the purposes of its law, Washington has decided to develop its own high-level list of components, which includes selections like surface coatings/finishings, inks/dyes, and textiles. In total, the list contains 11 different product component selections.

b. Chemical Use Information

The IC2-member states' laws require reporting on the names and amount of chemicals that occur in targeted products as follows:

ME

- The priority chemical or chemicals contained in the children's product
- The function of the chemical in the product
- The amount of the chemical in each unit of product

WA

- The name of the chemical of high concern to children and its CAS number
- A brief description of the function, if any, of the chemical of high concern to children in each product component within each product category
- The total amount of the chemical by weight contained in each product component within each product category

The draft IC2 Chemical Use Reporting Form contains five data fields in the product description section, including: chemical name; chemical CAS#; chemical EC#; function of the chemical; and amount of chemical.

In order to identify the chemical, IC2 member states have agreed that chemical name, chemical CAS#, and chemical EC# are appropriate fields that will allow for linkages to additional chemical information collected under REACH and other data sets. These data fields should include drop-down menus for the reportable chemicals under the applicable state laws.

For the data field that describes the function of the chemical, a list of possible functions needs to be developed. The GS1 GPC and other existing systems do not provide this type of information. For the purposes of its law, Washington has decided to develop its own high-level list of functions, which includes selections like preservative, adhesive, and solvent. In total, the list contains 35 different chemical function selections.

IC2 member state laws have different requirements for reporting the amount of the chemical in the product or product component. For example, Washington's law permits submitters to report

either the exact amount of the chemical or select the range within which the exact amount falls.¹⁴ Dissimilarly, the Maine law requires the submitter to report the exact amount. IC2 member states agreed that both of these options should be available to submitters. The draft IC2 Chemical Use Reporting Form provides a data field for submitters to select a range from a drop-down menu (populated by the Washington draft reporting ranges) and a data field to report the exact amount of the chemical, instructing submitters that the amount of the chemical may be reported by either method. Where there are additional state-specific requirements, as in the case of Maine, the required data fields are also included in the state-specific supplemental sections of the draft form.

3. New York Supplemental Information

This section, which includes a data field for reporting full ingredient information, is specific to the reporting requirement of New York. NYS DEC requires all ingredients of a product to be listed, with content by weight required for any ingredient exceeding five percent of the product by weight. As stated above, NYS DEC is currently engaging cleansing product manufacturers, trade associations, NGOs, and other stakeholders to determine how best to implement the reporting requirement. Based on NYS DEC's implementation decisions, the draft IC2 Chemical Use Reporting Form may or may not serve its reporting needs.

Although there is likely to be some overlap between products that must be reported under all of the IC2 member requirements, New York's requirement for the inclusion of ingredients in cleansing products other than those "of concern" greatly changes the scope of data that must be reported. While it may be possible to build a coordinated reporting system that can parse information that is necessary for one state but not another, the universe of products and scope of data that NY will require may warrant a separate reporting system. The draft IC2 Chemical Use Reporting Form attempts to solve this problem by including the full-ingredient data field in a supplemental section of a single reporting form. In practice, where a manufacturer wanted to submit data to fulfill its requirements under New York law, the manufacturer/submitter could fill out the first section of the draft form, as well as the supplemental section for New York.

4. Maine Supplemental Information

The fourth section of the draft IC2 Chemical Use Reporting Form highlights three additional state-specific requirements for Maine. In practice, where a manufacturer wanted to fulfill its reporting requirements under Maine law, the manufacturer/submitter could fill out the first two sections of the draft form, as well as the supplemental section for Maine.

In addition to the chemical information data fields contained in the second section of the draft form, Maine law requires the submission of the exact amount of the reportable chemical per unit.

¹⁴ WA draft reporting ranges are ≥ 40 ppm - 100 ppm; ≥ 100 ppm - 1,000 ppm; $\geq 1,000$ ppm - 10,000 ppm; $\geq 10,000$ ppm - 100,000 ppm; $\geq 100,000$ ppm

Where a submitter does not include this information in section two of the draft form, it would be required to do so if intended to submit data to fulfill its requirements under Maine law.

The Maine law also requires manufacturers/submitters to report the number of units sold or distributed in the state or nationally. This data field, along with the exact amount of the reportable chemical, is likely to trigger CBI claims. IC2 member states have agreed that all fields should be able to be claimed as CBI and will be subject to different state CBI laws, policies, and procedures. When a manufacturer/submitter makes a CBI claim, they would have to deal with each state individually. However, even data claimed as CBI may be able to be aggregated and shared among the states.

Maine's law also provides the unique authority to collect exposure information. Maine is permitted to collect information on:

- Propensity for the chemical to be released from the product during use
- Likelihood of child exposure to the chemical as a result of its use
- Pathways (e.g. inhalation, ingestion) by which exposure could occur
- Predicted magnitude of exposure
- Extent to which the chemical is present in the environment and humans.

Maine DEP would be responsible for deciding what data fields are necessary to collect this information and how they should be structured. The draft IC2 Chemical Use Reporting Form attempts to incorporate Maine-specific exposure information requirements by including the exposure information data field in a supplemental section of the single reporting form.

5. Washington Supplemental Information

The fifth section of the draft IC2 Chemical Use Reporting Form highlights three additional state-specific requirements for Washington. In practice, where a manufacturer wanted to fulfill its reporting requirements under Washington law, the manufacturer/submitter could fill out the first two sections of the draft form, as well as the supplemental section for Washington.

Under Washington's regulations implementing the Children's Safe Products Act, chemical use reporting is phased-in based on a combination of manufacturer size and product tier. As a result, manufacturers/submitters must provide information on the manufacturer's annual aggregate gross sales, intended age group, and product tier. For annual aggregate gross sales, Washington has developed six categories for selection as a drop-down. These categories include: largest manufacturer (>\$1 billion); larger manufacturer (>\$250 million ≤ \$1 billion); medium size manufacturer (>\$100 million ≤ \$250 million); small manufacturer (>\$5 million ≤ \$100 million); smaller manufacturer (>\$100,000 ≤ \$5 million); and tiny manufacturer (< \$100,000).

Washington has also defined four product tiers, which include: Tier 1 (children's products intended to be put into a child's mouth or applied to the child's body, or any children's product

intended for children who are age 3 or under); Tier 2 (children's products intended to be in prolonged contact with a child's skin); Tier 3 (children's products intended for short (less than 1 hour) periods of direct contact with child's skin); and Tier 4 (children's product components not intended for direct contact with the child's skin or mouth).

In addition, Washington intends to allow manufacturers/submitters to provide any additional information relevant to the use of the product as well as supporting documentation for CBI claims, once that information is requested by WA DoE. As a result, these data fields are included in the Washington state-specific supplemental section.