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New York Launches Disclosure Program Intended to Protect Consumers from Chemicals in Household Cleaning Products

Article By:

Government Regulation

In somewhat of a surprise announcement, the New York State Department of Environmental Conservation (NYSDEC) on June 6, 2018, released its final policy and form for manufacturer disclosures under the Household Cleansing Product Information Disclosure Program. The Disclosure Program is similar to the recently enacted California Cleaning Product Right to Know Act of 2017 which requires the disclosure of cleaning product ingredients by way of website or product label. The Household Cleansing Product Information Disclosure Program requires manufacturers of cleaning products sold in New York to disclose chemical ingredients and identify any ingredients that appear on authoritative lists of chemicals of concern on their websites. New York states that it "will be the first state in the nation to require such disclosure and the State's program goes beyond initiatives in other states by requiring the robust disclosure of byproducts and contaminants, as well as chemicals with the potential to trigger asthma in adults and children." NYSDEC has posted the Household Cleansing Product Information Disclosure Program Certification Form and Program Policy and a response to comments.

DISCLOSURE CERTIFICATION FORM

The Disclosure Certification Form states that "[i?]n brief, information to be disclosed should be posted on a manufacturer's website in a manner that is obvious, noticeable and readily accessible, via the internet, to the public." In cases where information is withheld from the public as confidential business information (CBI), "the nature and degree of the information withheld should be disclosed, but such information should not be submitted to the Department or posted on the web." Manufacturers must submit the Disclosure Certification Form to NYSDEC and it must be signed by a senior management official certifying that the disclosed information is true, accurate, and complete to the best of their knowledge.

HOUSEHOLD CLEANSING PRODUCT INFORMATION DISCLOSURE PROGRAM POLICY

Covered Products and Definitions

The Program Policy states that cleansing products covered by the Program "include but are 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.'" The Program does not cover "foods, drugs and cosmetics, including personal care items such as toothpaste, shampoo and hand soap"; "products labeled, advertised, marketed and distributed for use primarily as pesticides, as defined in Article 33 of the Environmental Conservation Law"; or "cleansing products used primarily in industrial manufacturing, production and assembling processes." Other definitions include:

- Distributed, sold, or offered for sale in New York State -- Products offered for sale at retail and wholesale or distributed for promotional purposes, including products offered for sale via the telephone, a catalog, or the internet from the manufacturer, its authorized distributors or representatives, or authorized third parties. It does not include products offered for re-sale at second hand stores, thrift shops, or garage sales;

- Fragrance ingredient -- Any intentionally added substance or complex mixture of aroma chemicals, natural essential oils, or any other functional ingredient or ingredients for which the sole purpose is to impart an odor or scent, or to counteract an odor;

- Industrial manufacturing, production, and assembling processes -- Includes oil and gas production, steel production, heavy industry manufacturing, industrial water treatment, industrial textile maintenance and processing other than industrial laundering, and food and beverage processing and packaging;

- Intentionally added ingredient -- A chemical that a manufacturer has intentionally added to a covered product and that has a functional or technical effect in the finished product, including the components of intentionally added fragrance ingredients and colorants, and the intentional breakdown products of an added chemical that also have a functional or technical effect on the finished product;

- Nonfunctional ingredient -- An ingredient, impurity, or contaminant present in a covered product as an unintentional consequence of manufacturing and that has no functional or technical effect on the finished product. The term includes two mutually exclusive subcategories:

    - Nonfunctional byproduct -- A chemical that: (a) was added during the manufacturing process at any point in a product, a raw material, or an ingredient's supply chain, but which has no functional or technical effect in the finished product; or (b) was created or formed during the manufacturing process at any point in a product, a raw material, or an ingredient's supply chain, but which has no functional or technical effect in the finished product. It includes, but is not limited to an unreacted raw material, a breakdown product of an intentionally added ingredient or a byproduct of the manufacturing process; or

    - Nonfunctional contaminant -- A chemical present in the environment as a contaminant that was introduced into a product, a raw material, or a product ingredient at any point in a product, a raw material, or an ingredient's supply chain, as a result of the use of an environmental medium, such as a naturally occurring mineral, air, soil, or water, in the manufacturing process.

CBI and Extent of Disclosure

For purposes of the Program Policy, CBI is any record(s) that would be exempt from disclosure as either a trade secret or confidential commercial information pursuant to Title 6 of the New York Code of Rules and Regulations (NYCRR) 616.7. Where information is withheld from the public as CBI, the extent of disclosure must be displayed, but the manufacturer should not submit the information being withheld to NYSDEC or post the information being withheld on its website. A manufacturer that withholds information as CBI should maintain the justification for withholding consistent with 6 NYCRR 616.7, and provide that justification upon request to NYSDEC.

According to the Program Policy, suppliers to manufacturers may also raise a CBI claim. A supplier to a manufacturer that protects an intentionally added ingredient or nonfunctional ingredient as CBI should maintain justification for withholding consistent with 6 NYCRR 616.7, and provide that justification upon request to NYSDEC. The manufacturer should use the generic name provided by the supplier and provide the supplier's contact information to NYSDEC upon request.

Information to be Disclosed

The Program Policy states that each category of information disclosed should be posted in close proximity to all other required categories on one web page, including but not limited to the manufacturer's name and contact information. "Pop ups" or one-click links to a separate web page are acceptable as long as they conform with all of the requirements regarding accessibility and machine readability listed in the Program Policy. According to the Program Policy, manufacturers may post marketing language on the same web page, but may not insert the language between the statement regarding "Extent of Disclosure" and the list of product ingredients, and should not interfere with any required information entries. Manufacturers should prove a link to the Program Policy to provide more information on the meaning of commonly used terms, such as "Chemical Abstracts Service (CAS) number" or "nanoscale material."

The Program Policy notes that the information required to be disclosed "may be disclosed in a hazard communication safety data sheet for a product as long as it is posted on the manufacturer's website and meets all the requirements described in this document, including but not limited to being fully accessible and machine readable."

Extent of Disclosure

The extent of disclosure provided for a product's ingredients must be prominently and clearly displayed. The extent of disclosure should be indicated by providing the number and title, indicated in bold in the hierarchy below, of the level achieved:

- Hierarchy of Non-Fragrance Ingredients Disclosure Levels:
    - **Level 1: Full Disclosure of All Intentionally Added and Nonfunctional Ingredients**. All known intentionally added ingredients are disclosed, including those present in trace quantities. All known nonfunctional ingredients are disclosed, including any present in trace quantities that appear on one or more of the lists of chemicals of concern named in Appendix B of the Program Policy;
    - **Level 2: Full Disclosure of All Intentionally Added Ingredients**. All intentionally added ingredients are disclosed, including those present in trace quantities. One or

more nonfunctional ingredients are withheld as CBI; and

- **Level 3: Partial Disclosure of Intentionally Added Ingredients**. One or more intentionally added ingredients are withheld as CBI. All nonfunctional ingredients are disclosed, or one or more are withheld as confidential business information.

- Hierarchy of Fragrance Ingredients Disclosure Levels:

  - **Level 1: Full Disclosure of All Fragrances**. All fragrance ingredients are disclosed, including those present in trace quantities;

  - **Level 2: Partial Disclosure of Fragrances; Master List Provided**. One or more fragrance ingredients are withheld as CBI, but a master list of either all fragrance ingredients used by the manufacturer, or of all fragrance ingredients used in a category of the manufacturer's designated consumer products is provided that includes all ingredients withheld;

  - **Level 3: Partial Disclosure of Fragrances; No Master List Provided**. One or more fragrance ingredients are withheld as CBI, and no master list of fragrance ingredients used by the manufacturer is provided;

  - **Level 4: No Disclosure of Fragrances; Master List Provided**. All fragrance ingredients are withheld as CBI, but a master list of either all fragrance ingredients used by the manufacturer, or of all fragrance ingredients used in a category of the manufacturer's designated consumer products is provided that includes all ingredients withheld; and

  - **Level 5: No Disclosure of Fragrances; No Master List Provided**. All fragrance ingredients are withheld as CBI, and no master list of fragrance ingredients used by the manufacturer is provided.

The Program Policy states that a link to the Policy should also be provided "for the public to learn more about what each level of disclosure means."

Ingredients

All Information disclosed under this category should be posted in close proximity to each other. The Program Policy encourages displaying the information in some type of table, but does not require it. "Pop ups" or one-click links to a separate web page are acceptable as long as they conform with all of the requirements described in the Program Policy regarding accessibility and machine readability. A manufacturer may group ingredients separately in the following categories, so long as all ingredients are included in one list, or may intermingle the categories as appropriate: intentionally added ingredients; fragrance ingredients; nonfunctional byproducts; and nonfunctional contaminants.

In all cases where an ingredient has a CAS number, it should be disclosed, unless it is being withheld as CBI. If multiple CAS numbers are associated with an ingredient, all known CAS numbers should be listed. Prior to **July 1, 2020**, a name from any one of the nomenclature systems listed below may be used for disclosure. After **July 1, 2020**, in all cases where a CAS number or chemical name is not being withheld as CBI, the name of an ingredient must be disclosed pursuant to the following

hierarchy of nomenclature systems. If a name is available in the highest ranked system, that name should be used. If a name is not available in a higher ranked system, a name should be used from the next highest ranked system.

- Consumer Specialty Products Association Consumer Product Ingredients Dictionary, or the International Nomenclature of Cosmetic Ingredients;
- International Union of Pure and Applied Chemistry nomenclature;
- Chemical Abstracts Index; and
- Common chemical name, or genus and species for biobased ingredients.

Intentionally added ingredients and nonfunctional ingredients should be listed in descending order of predominance by weight in the product, except that intentionally added ingredients or nonfunctional ingredients present at a weight below one percent may be listed following the other ingredients without respect to the order of predominance by weight. The actual weight percentages of any ingredient need not be disclosed.

Presence on a List of Chemicals of Concern

If an ingredient in a product is present on one or more of the lists of chemicals of concern named in Appendix B of the Program Policy, such information must be disclosed, even if the specific name or other information about the ingredient is being withheld as CBI. The Program Policy states that the fact that an ingredient appears on such a list "must be clearly and unequivocally indicated where the ingredient appears on the list of ingredients," using one of the following approaches, terms, or phrases:

- Presentation of ingredients and any lists they appear on in table form, with the short name of the list provided in a column next to the ingredient column with the heading "Lists of Chemicals of Concern," "Chemicals of Concern," or "COC";
- "Present on [provide short name] list";
- "Present on list of chemicals of concern";
- "Chemical of concern"; or
- "COC."

According to the Program Policy, a symbol, such as an asterisk (*), may not be used as a substitute for one of these approaches, terms, or phrases, nor can font appearance or color be used. If the manufacturer uses the abbreviation "COC," it must provide a key with the definition of what "COC" means between the heading and the start of such ingredient list, so that the meaning of the term is apparent to a reader prior to list review. The Program Policy notes that "[n]othing here precludes a manufacturer from providing a disclaimer regarding the potential impact on human health and the environment of an ingredient which appears on a list of chemicals of concern."

The fact that an ingredient appears on the California Proposition 65 list need not be disclosed until **January 1, 2023**. The Program Policy states that this "in no way affects any other requirements contained in this document regarding the disclosure of ingredients."

Each list of chemicals of concern on which an ingredient appears should be listed together in a single location for each ingredient in close proximity to the ingredient as it appears on the list of ingredients provided pursuant to the Program Policy. Manufacturers should use the short name provided and highlighted in bold, and a link to the list should be provided. "Pop ups" or one-click links to a separate web page are acceptable as long as they conform with all of the requirements regarding accessibility and machine readability in the Program Policy.

The Program lists the following lists of chemicals of concern:

- CA Prop 65. Chemicals known to the State of California to cause cancer or reproductive toxicity (including developmental, female, and male toxicity) that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Code of Regulations, Title 22, Division 2, Subdivision 1, Chapter 3, Sections 1200 *et seq*., also known as Proposition 65).

- EU CMRs. Chemicals classified by the European Union (EU) as carcinogens, mutagens, and/or reproductive toxicants in Category 1A and 1B in Annex VI to Regulation (EC) 1272/2008;

- EU Endocrine Disruptors. Chemicals included in the EU candidate list of Substances of Very High Concern (SVHC) in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(f) for endocrine disrupting properties;

- IRIS Neurotoxicants. Chemicals for which a reference dose or reference concentration has been developed based on neurotoxicity in the U.S. Environmental Protection Agency's (EPA) Integrated Risk Information System (IRIS);

- IRIS Carcinogens. Chemicals that are identified as "carcinogenic to humans," "likely to be carcinogenic to humans," or Group A, B1, or B2 carcinogens in EPA's IRIS;

- EU PBTs. Chemicals included in the EU candidate list of SVHC in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(d), Article 57(e), or Article 57(f) for persistent, bioaccumulative, and toxic (PBT), or very persistent and very bioaccumulative properties;

- Canada PBTs. Chemicals that are identified as Persistent, Bioaccumulative, and Inherently Toxic to the environment by the Canadian Environmental Protection Act Environmental Registry Domestic Substances List. We note that as of June 7, 2018, the hyperlink provided to this list by the Program Policy results in a 404 page not found error;

- EU Respiratory Sensitizers. Chemicals classified by the EU as respiratory sensitizers Category 1 in Annex VI to Regulation (EC) 1272/2008;

- IARC Carcinogens. Group 1, 2a, or 2b carcinogens identified by the International Agency for Research on Cancer (IARC), World Health Organization, in Monographs on the Evaluation of Carcinogenic Risks to Humans;

- ATSDR Neurotoxicants. Neurotoxicants that are identified in the U.S. Department of Health and Human Services' (HHS) Agency for Toxic Substances and Disease Registry's (ATSDR) Toxic Substances Portal under "Health Effects of Toxic Substances and Carcinogens, Nervous System";

- US EPA Priority Chemicals List. PBT Priority Chemicals that are identified by EPA's National Waste Minimization Program;

- US NTP Reproductive or Developmental Toxicants. Reproductive or developmental toxicants identified in "Monograph on the Potential Human Reproductive and Developmental Effects" published by HHS's National Toxicology Program (NTP), Office of Health Assessment and Translation. We note that as of June 7, 2018, the hyperlink provided to this list by the Program Policy results in a "page not found" message;

- US EPA PBTs. Chemicals identified by EPA's Toxics Release Inventory program as PBTs that are subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986;

- WA PBTs. The Washington Department of Ecology's PBT Chemicals identified in the Washington Administrative Code, Title 173, Chapter 173-333. We note that as of June 7, 2018, the hyperlink provided to this list by the Program Policy results in a 404 page not found error;

- US NTP Carcinogens. Chemicals that are identified as "known to be" or "reasonably anticipated to be" human carcinogens in the 13th *Report on Carcinogens* and any subsequent revisions prepared by NTP;

- CA NLs. Chemicals for which Notification Levels (NL), as defined in Health and Safety Code Section 116455, have been established by the California Department of Public Health or the State Water Resources Control Board;

- CA MCLs. Chemicals for which primary Maximum Contaminant Levels (MCL) have been established and adopted under Sections 64431 or 64444 of Chapter 15 of Title 22 of the California Code of Regulations (CCR);

- CA TACs. Chemicals identified as Toxic Air Contaminants (TAC) under Sections 93000 or 93001 of CCR Title 17;

- CA Priority Pollutants. Chemicals that are identified as priority pollutants in the California Water Quality Control Plans under Section 303(c) of the federal Clean Water Act (CWA) and in Section 131.38 of Title 40 of the Code of Federal Regulations (C.F.R.), or identified as pollutants by California or EPA for one or more water bodies in California under CWA Section 303(d) and Section 130.7 of C.F.R. Title 40.

- CA Non-Cancer Hazards. Chemicals that are identified with non-cancer endpoints and listed with an inhalation or oral Reference Exposure Level by the California Office of Environmental Health Hazard Assessment (OEHHA) under Health and Safety Code Section 44360(b)(2);

- CA Priority Chemicals. Chemicals identified as priority chemicals by the California Environmental Contaminant Biomonitoring program pursuant to Section 105449;

- Marine Priority Action Chemicals. Chemicals that are identified on Part A of the list of Chemicals for Priority Action prepared by the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic;

- EU Fragrance Allergens. Chemicals identified as fragrance allergens in Annex III of the EU Cosmetics Regulation 1223/2009, as required to be labeled by the European Detergents Regulation No. 648/2004;

- AOEC Asthmagens. Chemicals designated as asthmagens by the Association of Occupational and Environmental Clinics;

- US EPA TSCA Chemicals of Concern. Chemicals for which EPA has issued a Chemical of Concern Action Plan pursuant to the federal Toxic Substances Control Act (TSCA);

- US EPA Ozone Depletors. Chemicals identified as a Class I or Class II ozone-depleting substance by EPA;

- NY DOH MCLs. Chemicals for which MCLs have been established and adopted in Tables 1, 3, 3A, and 7 of Subpart 5-1.52 of 10 NYCRR Subpart 5-1.52;

- GLWQA Chemicals of Mutual Concern. Chemicals identified as Chemicals of Mutual Concern developed under the 2012 U.S./Canada Great Lakes Water Quality Agreement (GLWQA) Annex 3; and

- NY Air Toxics. Chemicals identified as high toxicity air contaminants in Part 212 of 6 NYCRR Subpart 212-2.2, as defined in Subpart 212-1.2 (b)(9).

The Program Policy states that NYSDEC reserves the right to edit, add, or subtract items from these lists. NYSDEC will provide public notice and an opportunity to comment on any changes it makes to such lists. Manufacturers should update their disclosures against any newly added lists on the two-year anniversary of their last full biennial disclosure review.

Nanoscale Materials

For each ingredient that is a nanoscale material, a term describing the nanoscale material should be disclosed. For example, according to the Program Policy, if the nanoscale material is carbon, the disclosure should use the term “nanoscale” carbon. The Program Policy states that a nanoscale material “is a chemical substance that meets the TSCA definition of a reportable chemical substance manufactured or processed at the nanoscale. That definition provides, in part, that a ‘reportable chemical substance is a chemical substance as defined in Section 3 of TSCA that is solid at 25° C and standard atmospheric pressure, that is manufactured or processed in a form where any particles, including aggregates and agglomerates, are in the size range of 1-100 nanometers in at least one dimension, and that is manufactured or processed to exhibit unique and novel properties because of its size.’” The Program Policy notes that a reportable chemical substance does not include a chemical substance that is manufactured or processed in a form where less than one percent of any particles, including aggregates, and agglomerates, measured by weight are in the size range of 1-100 nanometers. The definition referenced by the Program Policy, 40 C.F.R. Section 704.20(a), is the one promulgated by EPA for the TSCA Section 8(a) reporting rule for chemical substances manufactured or processed at the nanoscale.

Role

For each intentionally added ingredient, a term describing its functional purpose should be disclosed. Such terms include, but are not limited to, “surfactant,” “colorant,” “fragrance,” and “preservative.” Nonfunctional ingredients should be labeled as “nonfunctional ingredient” or may be labeled as “nonfunctional byproduct” or “nonfunctional contaminant,” as appropriate.

Effects on Human Health and the Environment

Under the Household Cleansing Product Information Disclosure Program, manufacturers must post information on their websites regarding the nature and extent of investigations and research performed directly by or at the direction of the manufacturer concerning the effects on human health and the environment of covered products or the chemical ingredients of such products. According to the Program Policy, the posting of such information is exempt from the requirements for machine readability and Web Content Accessibility as described in the Program Policy, but “manufacturers should strive to satisfy those requirements to the maximum extent practicable.”

Such information should be provided under the phrase “Effects on Human Health and the Environment” and be posted in close proximity to all other categories of information required for a covered product. Such Information should be grouped by ingredient where applicable, and must include, but is not limited to:

- Any health and safety study, as defined under TSCA Section 3(8) (15 U.S.C. 2602(8)), performed by or for the manufacturer and submitted to EPA pursuant to TSCA, unless EPA has determined that a study or portion of a study may be withheld as CBI, in which case any portion of a study not withheld as CBI should be posted, including documents that have specific information redacted (for example the name of a chemical or the type of manufacturing process in which a chemical or chemicals is used). Where the manufacturer or distributor’s name has been redacted as CBI, posting of the study is not required;

- Any investigations or research performed by or for the manufacturer submitted to the European Chemicals Agency (ECHA) pursuant to the EU’s Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation, unless ECHA has determined that a document or portion of a document may be withheld as CBI, in which case any portion of a document not withheld as CBI should be posted, including documents that have specific information redacted (for example, the name of a chemical or the type of manufacturing process in which a chemical or chemicals is used). Where the manufacturer or distributor’s name has been redacted as CBI, posting of the study is not required;

- For any investigations or research not required to be submitted under TSCA or REACH, or which are withheld as CBI under TSCA or REACH, the following information should be provided: a list of the number and types of studies (for example, animal tests, epidemiological studies, computational models, or alternatives assessments) done on a product or any of its ingredients; the entity who conducted the study; the entity who financed the study; the year in which the study was commenced; and the year it was completed. Where the CAS number and specific name of an ingredient is being withheld as CBI, or the name of the manufacturer has been withheld in relation to studies done on such an ingredient under TSCA or REACH, the information described in this paragraph should be listed in association with the generic name of the ingredient disclosed by the manufacturer, for example “fragrance,” “surfactant,” or “nonfunctional ingredient”;

- If a study has been published on the web and is available for review by the public without charge, the provision of a link to the study can substitute for posting;

- A link to the hazard communication safety data sheet (SDS) for the covered product;

- A list of any of the Globally Harmonized System's (GHS) hazard characteristics that apply to the covered product and are named in Appendix C of the Program Policy. Each characteristic that a product meets should be listed together in a single location, using the short name provided and highlighted in bold in Appendix C, and a link to a description of the characteristic should be provided; and

- A link to the American Cleaning Institute's Ingredient Safety Initiative, if applicable. The provision of such a link may be used to satisfy any of the requirements to post information regarding the nature and extent of investigations or research performed by or for the manufacturer, to the extent that the content provided in the Safety Initiative meets such requirements.

Date of Disclosure

The most recent date on which information was posted or updated should be provided.

Effective Date and Updates

Manufacturers must post all required information for the following ingredients by **July 1, 2019**, provided, however, that manufacturers that are independently owned and operated and employ 100 or less people are not required to post such information until **July 1, 2020**:

a. Intentionally added ingredients other than fragrance ingredients; and

b. Nonfunctional ingredients present above trace quantities.

Manufacturers must post all required information for the following ingredients by **July 1, 2020**:

a. Fragrance ingredients;

b. Nonfunctional byproducts listed in Appendix D present at or above 100 parts per million (ppm), except for 1,4 dioxane, which should be reported at or above 350 parts per trillion (ppt), and perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), which should be reported at a combined level of at or above 70 ppt.

Manufacturers must post all required information for the following ingredients by **January 1, 2023**:

a. Nonfunctional byproducts that appear on one or more of the lists of chemicals of concern named in Appendix B and are present at or above the practical quantitation limit; and

b. Nonfunctional contaminants that appear on one or more of the lists of chemicals of concern named in Appendix B and are present at or above the thresholds described in the Program

Policy.

All other required information should be posted by **July 1, 2019**, with the following exceptions:

a. Information regarding investigations and research concerning effects on human health and the environment should be posted by **July 1, 2020**; and

b. Information regarding Category 3 GHS Skin Irritants and GHS Aquatic Toxins should be posted by **July 1, 2020**.

According to the Program Policy, manufacturers should update their disclosures each time they change the ingredients in a product, introduce a new product to the market, or a list of chemicals of concern is changed to include an ingredient present in any of their products. Disclosure updates related to a change in a list of chemicals of concern should be made no later than six months after the adoption of the revised list by its authoritative body. Legacy data for discontinued products should be posted for two years after the product is discontinued. All other disclosed information, including information regarding investigations and research concerning effects on human health and the environment, should be reviewed, at a minimum, once every two years, and disclosures updated as necessary.

The Disclosure Certification Form must be submitted to NYSDEC online, in machine-readable format, upon the effective dates of the Program Policy and every two years thereafter. It must include a complete list of all the manufacturers' current (and applicable discontinued) products covered by this disclosure. In addition, an updated Disclosure Certification Form must be submitted online in machine-readable format to NYSDEC within two months of a new product entering the market, or a URL change for a current disclosure. In these instances, the Form may be an update and only needs to include information on the new product or revised URL.

COMMENTARY

The New York Cleansing Products Disclosure Program is a big deal for several reasons. First, the compliance dates are not far off, unlike the California program. Second, the scope of the Program may be just the beginning of many more product lines to be subject to disclosure. Third, the Program is quite robust and compels a level of specificity and assessment that may make those subject to it displeased. The requirements specific to nanomaterials in particular are likely to cause heartburn. Finally, that these "ingredient disclosure" programs are beginning to populate the commercial landscape is likely to be cause for concern by product manufacturers. In general, these programs seek to achieve a key goal -- ingredient disclosure, but they do so in ways that are considerably different on a state-by-state basis. The New York Program and the California law are actually quite different, aside from the lists of chemicals of concern, and there is every reason to expect other states will enact similar (but different) laws in the years ahead. Aligning these programs could well become a commercial nightmare. The use of state, federal, and international lists of chemicals of concern increases the significance of being added to one of these lists, and product manufacturers should be aware of the implications of being added to these lists. Whether consumers will be the beneficiaries of what promises to be a heroic effort and relentless disclosure is unclear.

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