

Cleaning Product Manufacturers Gear Up for Compliance with State Ingredient Disclosure Laws



Over the next year, California and New York will begin phasing in requirements for manufacturers of cleaning products – including household cleaners, as well as and clothes and dish detergents – to make extensive ingredient disclosures. This will eventually require disclosures on both product labels and manufacturer websites. Both laws involve complex questions regarding which ingredients must be disclosed, whether certain chemical identities may be withheld to protect confidential business information (CBI), and what else must be publicly disclosed (e.g., certain manufacturer studies). Manufacturers of in-scope products should gear up for compliance now.

Scope of Cleaning Products Covered

The [California Cleaning Products Right to Know Act](#) applies to general cleaning products (e.g., soaps and detergents for fabric, dishes, counters, and appliances); polish or floor maintenance products; certain air care products (e.g., indoor air fresheners); certain automotive products (e.g., cleaning, polishing, or waxing products for the exterior or interior of automobiles). The law does not apply to food; drugs; cosmetics (including personal care items such as shampoo, hand soap, and toothpaste); or industrial products specifically manufactured for, and exclusively used in, certain industries.

The [New York law](#) applies to products “containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or

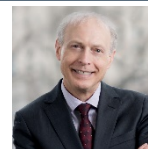
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commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils, and household and commercial premises.” The definition contains exclusions for food; drugs; cosmetics; and pesticides.

California Disclosure Requirements

The California law will impose separate disclosure requirements applicable to product labels (effective January 1, 2021) and manufacturer websites (effective January 1, 2020).

Label Requirements

The product labeling requirements go into effect on January 1, 2021. Determining whether the chemical identity of an ingredient needs to be disclosed on the label can be a complicated process necessitating answers to the following questions.

Is the Ingredient on a Designated List?

The law requires disclosure of certain ingredients that appear on one or more lists maintained by environmental agencies worldwide, including California’s Proposition 65 list; the European Union list of Substances of Very High Concern (SVHCs); chemicals for which neurotoxicity is indicated by EPA’s Integrated Risk Information System; chemicals with certain EU classification (carcinogens, mutagens, or reproductive toxicants); chemicals identified as persistent, bioaccumulative, and toxic under the Canadian Environmental Protection Act; etc.

Has the Ingredient Been Intentionally Added to the Product?

The law defines “intentionally added ingredient” as: “a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect in the designated product, including, but not limited to, the components of intentionally added fragrance ingredients and colorants and intentional breakdown products of an added chemical that also have a functional or technical effect in the designated product.”

Is the Ingredient a Listed Fragrance Allergen?

The law requires disclosure of certain fragrance allergens included on Annex III of the EU Cosmetics Regulation No. 1226/2009, as required by be labeled by the EU Detergents Regulation No. 648/2004.

Is the Ingredient Eligible for CBI Protection?

The law provides certain disclosure protections for ingredients that appear on the Toxic Substances Control Act Confidential Inventory or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act. CBI claims are not available for certain ingredients, including intentionally added ingredients that appear on a designated list.

The law also requires that a product label include the manufacturer’s phone number and website. If the list does not disclose all intentionally added ingredients in the product, the label must contain a statement similar to “For more ingredient information, visit [manufacturer’s website].”

Website Requirements

The website disclosure requirements go into effect on January 1, 2020. These are broader than the product label requirements, *i.e.*, there may be some ingredients that must be disclosed on a website but need not be disclosed on the product label. Generally, all intentionally added ingredients must be disclosed

on the manufacturer's website (with certain exceptions, e.g., for CBI ingredients), as must any of 34 substances listed in the law if they are present at or above 100 parts per million, whether intentionally or not. Manufacturers' websites also must contain additional information, for example, Chemical Abstract Service numbers, the purpose of certain ingredients (e.g., fragrance, color, etc.), certain regulatory information, and links to safety data sheets.

New York Disclosure Requirements

New York law has long empowered the Department of Environmental Conservation (DEC) to require manufacturers of household cleaning products to disclose certain information. N.Y. Env'tl. Conserv. Law § 35-0103. Until recently, DEC's disclosure requirements were largely limited to phosphorous-containing ingredients and to other ingredients above 5% concentration. In 2017, DEC proposed expanded disclosure requirements and solicited stakeholder input on the proposal. Future reporting requirements, to be phased in starting this year, will significantly expand the scope of disclosures manufacturers must make.

DEC originally announced the deadline for initial disclosures to be July 1, 2019. DEC recently announced, however, that it would not begin enforcing any violations until October 2, 2019, making the new de facto compliance deadline October 1, 2019. By that date, manufacturers of in-scope products should complete and submit DEC's [Certification Form](#), as well as make the required disclosures on its website. The Certification Form must be re-submitted at a minimum every two years thereafter, and additionally when a triggering event occurs (e.g., change in formulation).

The first round of disclosure will require the identification of all intentionally added ingredients other than fragrance ingredients, as well as all nonfunctional ingredients present above trace quantities. The law allows manufacturers to assert CBI claims to protect the identity of certain chemicals. Disclosure requirements for additional ingredients will be phased in on July 1, 2020, and January 1, 2023.

Manufacturers must also disclose additional information, including:

- ◆ Whether ingredients are present on one or more lists of concern (e.g., certain substances regarded by the EU as SVHCs, etc.), regardless of whether the identity of the chemical is withheld due to a CBI claim.
- ◆ Whether ingredients are nanoscale materials.
- ◆ The function of ingredients (e.g., fragrance, color, etc.).
- ◆ Information regarding investigations and research the manufacturer has conducted or directed regarding environmental or health effects of ingredients.

Due to the complexity of the questions surrounding these disclosures, manufacturers would be wise to begin gathering the relevant information now.

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