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**TOXIC CHEMICALS****CONSUMER PRODUCTS**

Spurred in part by laws like the Consumer Product Safety Improvement Act, the patchwork of state chemical reporting regulations legislation, though well meaning, creates potential traps for companies trying to comply with the rules while balancing legitimate concerns about the cost and confusion these new laws will likely engender for customers, says attorney Dennis Raglin in this BNA Insight. The author discusses and contrasts key state initiatives in California, Maine, and Washington state.

**States Move Forward With ‘Green Chemistry’ Chemical Reporting Laws And Incur Confusion, Potentially Significant Costs in Their Wake**

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**A**s part of the “Green Chemistry” craze over the last few years, numerous states across the country have considered or enacted laws mandating companies selling products, predominantly children’s products, report to state government agencies data about the chemicals contained in their products. Two big pushes have spurred this movement. One is Congress’s inability to achieve consensus on amending and modernizing the Toxic Substances Control Act (TSCA), the primary federal law regulating chemicals in consumer products, last overhauled in 1976.<sup>1</sup> The other is the passage in 2008 of the Consumer Product Safety Improvement Act (CPSIA),<sup>2</sup> which was a reaction to imported products for children containing excessive amounts of lead and heavy metals from China.

While the various states that have enacted, or are considering, these chemical reporting regulations certainly have laudable goals in encouraging manufacturers to phase out harmful chemicals and identify safer alternatives, what does that really mean in practice? On what scientific basis is a chemical harmful? What ability does a manufacturer have to resist a state agency’s intention to phase out chemicals? Can the agency list

<sup>1</sup> 15 U.S.C. Section 2601, et seq. (1976).

<sup>2</sup> Public Law 110-314 (August 14, 2008).

chemicals as dangerous without an exposure assessment or sufficient qualitative data? And what is the cost to the company—both tangible and intangible—if customers are not able to discern what is truly a risk? In 2012, at least 28 state legislatures considered varying bills to address chemicals in consumer products. There are states that already require reporting and impose penalties for noncompliance, while some have deadlines approaching. The patchwork of legislation, though well meaning, creates potential traps for companies trying to do the right thing and comply with the various regulations while balancing legitimate concerns about the cost and confusion these new laws will likely create for customers.

## Washington State and Maine: Two Examples of Comprehensive, Complex Reporting Laws

### Washington's 'Children's Safe Products Act'

The two most ambitious laws currently in effect for chemical reporting are those enacted by Washington state and Maine addressing children's products. Both laws have several similarities but are not identical. Each of these laws applies to all manufacturers who sell such products into those respective states. In Washington, the "Children's Safe Products Act," which took effect on January 1, 2009, required the creation by the state Department of Ecology, in consultation with the Department of Health, of a list of "high priority chemicals" used in children's products.<sup>3</sup> Such a chemical is defined as being of "high concern for children after considering a child's or developing fetus's potential for exposure to each chemical."

The good-sounding professed reason behind the law was so that "information reported under the CSPA will be used by policy makers to determine what, if any, further actions might be required to assure consumers that children's products on the shelves are safe."<sup>4</sup> What creates significant gray area, however, is that a chemical can be listed by the state in a variety of ways where stringent exposure assessment or qualitative proof are not required. Specifically, a chemical can be listed in Washington if it is identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following: (a) harm the normal development of a fetus or child or cause other developmental toxicity; (b) cause cancer, genetic damage, or reproductive harm; (c) disrupt the endocrine system; (d) damage the nervous system, immune system, or organs or cause other systemic toxicity; (e) be persistent, bioaccumulative, and toxic; or (f) be very

persistent and very bioaccumulative.<sup>5</sup> In short, the state can decide on its own to list a chemical, regardless of whether the FDA or any other scientific body has taken such a position if the agency "deems" the evidence sufficient.<sup>6</sup>

Reporting deadlines under the law began in August 2012 for manufacturers (but not retailers) of toys, children's cosmetics and jewelry and baby products, mandating that they report through a state website whether such children's products contain any of 66 chemicals currently listed on Washington's "Chemicals of High Concern" list in amounts exceeding 100 parts per million (ppm).<sup>7</sup> This is another area fraught with confusion and that could easily create unnecessary alarm by the public. The Washington scheme mandates that if the chemical is simply present in the product, even at low levels, it must be reported by the manufacturer. The state claims that "it is important to note that mere presence of chemicals of concern in a children's product does not mean that exposure to those chemicals is occurring, nor does it mean that the product is unsafe."<sup>8</sup> While that may be true, what are the odds a concerned parent, fearful of the thought of her child playing with a toy that she learns from the state website contains foreign and scary-sounding chemicals (even in safe amounts) will appreciate this distinction? The implementing regulations also mandate that the state will turn over the reported information to the public on a website.<sup>9</sup>

Manufacturers must wade through a somewhat complicated phased-in reporting system for the Washington law. The reporting that began in August of this year is based on categories of products (those that touch the mouth, for example are "tier one" under the law) for manufacturers with more than \$1 billion in gross sales, and the reporting requirement applies to progressively smaller manufacturers with less sales volume annually until all manufacturers are covered and required to report tier one products by 2016, followed by further deadlines for other tiers of products (tier two products come in prolonged contact with the child's skin, tier three comes in less contact, and tier four products do not come in contact).

The chemical data must be filed annually in a "notice" with the Washington State Department of Ecology and contain the following information: (1) the name of the chemical used or produced and its chemical abstracts service registry number; (2) a brief description of the product or product component containing the

<sup>5</sup> RCW Ch. 70.240.101(6).

<sup>6</sup> To that end, the following scientific sources are acceptable to get chemicals placed on the list and add further opportunity for confusion given there is no quantification: (1) the chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids; (2) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or (3) the chemical has been added to or is present in a consumer product used or present in the home. (RCW Ch. 70.240.030). Whether the substance is shown in human tissue or blood makes it easy to list any number of chemicals.

<sup>7</sup> RCW Ch. 70.240.030.

<sup>8</sup> Executive Summary, *supra*.

<sup>9</sup> "Children's Safe Products Reporting Rule." Washington Administrative Code, Ch. 173-334-080. July 21, 2011.

<sup>3</sup> Revised Code of Washington (RCW) Ch. 70.240.010, *et seq.* The law originally contained a second provision requiring manufacturers to report whether their children's products contained certain chemicals such as lead, cadmium and phthalates, but this provision of the law is not enforced given the passage in 2008 of the CPSIA that imposes federal requirements on these substances in children's products. The second provision of the law, and the one manufacturers must now comply with, is reporting.

<sup>4</sup> "Executive Summary," Washington Dept. of Ecology, accessed October 21, 2012, <http://www.ecy.wa.gov/programs/swfa/rules/pdf/CSPAexsum.pdf>.

substance; (3) a description of the function of the chemical in the product; (4) the amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount; (5) the name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and (6) any other information the manufacturer deems relevant to the appropriate use of the product.<sup>10</sup> In essence, this could morph into a “data dump” on the public with no quantification, no “reasonable use” data or any established “safe use” levels. The state can impose monetary penalties for failure to submit the information by the various compliance deadlines.<sup>11</sup>

One potential silver lining for manufacturers is that the law allows a manufacturing trade association to report on behalf of manufacturers, meaning if a business can “jump on the train” of an industry association reporting on a type of product that is universal to all manufacturers in the association, such as a nursing nipple, costs could be pooled and reduced in reporting and individual companies get to perhaps blend into the crowd.<sup>12</sup>

### Maine’s ‘Kid Safe Product Act’

Maine enacted its “Toxic Chemicals in Children’s Products” law (Kid Safe Product Act) in 2008 as part of its broader “Green Chemistry” framework of laws. The Maine law is similar in effect to Washington’s in that there is a listing mechanism for chemicals of concern and then a further mechanism to establish priority chemicals for phasing out, but has some distinct differences. The law requires both manufacturers and distributors to report the existence of certain chemicals in their products, and requires them to submit “alternative assessments” to the use of such chemicals. The law required Maine’s Department of Environmental Protection, in concurrence with the Maine Department of Health and Human Services, to publish a list of no more than 70 “Chemicals of High Concern for Children” (CHCC) by January 1, 2010. The DEP has now published a list of 49 chemicals on this list.<sup>13</sup> Similar to Washington’s chemical listing mechanism, a substance can be listed as a CHCC in Maine if it is identified by an authoritative body on the basis of credible scientific evidence as being: (1) a carcinogen, reproductive/developmental toxicant, or endocrine disrupter; (2) persistent, bioaccumulative, and toxic; or (3) very persistent and very bioaccumulative.<sup>14</sup>

The Maine statute further bestows on the commissioner of the Department of Environmental Protection the authority to designate a chemical on the CHCC list as a “priority chemical.” As with Washington, the Maine priority chemical mechanism means added burden for manufacturers and distributors of children’s

products in the form of reporting. First, the DEP commissioner can designate a CHCC as a priority chemical if—in addition to there being “credible scientific evidence” for its listing—it meets any of the following three criteria: (1) it has been found through biomonitoring to be present in the human body tissues and fluids; (2) it has been found through sampling analysis to be present in the home environment (including household dust, indoor air, or drinking water or elsewhere in the home; or (3) it has been added to or is present in a consumer product used or present in the home.<sup>15</sup> The law was amended to provide reporting of levels of the chemicals only if higher than 100 ppm (the same as Washington’s law), and specifies that it applies only for accessible components of children’s products, defined as those intended for children younger than 12 years of age.<sup>16</sup>

Thus far, Maine has designated three priority chemicals—nonylphenol, nonylphenol ethoxylates A, and bisphenol A.<sup>17</sup> Under the law, if any of these substances was intentionally added to children’s products sold in the state, the manufacturer is required to report their presence in the products at levels above the practical quantification threshold. Priority chemicals present only as contaminants must be reported if present in amounts above 100 ppm unless the company can show that a system of manufacturing controls were in place to minimize the contamination. Once a priority chemical has been listed in Maine, any manufacturer or distributor of a children’s product containing the priority chemical must notify the state DEP with certain information about the product, but must also include information on the chemical’s use and alternatives available instead of the chemical substance.<sup>18</sup>

And, most troubling, the DEP has the authority to ban the sale of a product containing a priority chemical if distribution of the children’s product directly or indirectly exposes children and vulnerable populations to the chemical, and at least one safer alternative to the priority chemical exists at a comparable cost.<sup>19</sup> This provision is fraught with peril to companies caught in a situation where the state lists a chemical on perhaps less than solid scientific evidence, forces an alternatives analysis be submitted, and then moves to ban the chemical altogether if it determines that the alternative exists at a “comparable cost.” How that process will actually work has yet to be determined in practice.

The Maine law further underscores two potential challenges for industry. First, the state may designate CHCC, and then a priority chemical that is itself considered safe by the FDA. For example, FDA, though prohibiting the use of BPA in baby bottles and sippy cups, continues to maintain the chemical is safe for other uses.<sup>20</sup> What happens when states list certain chemicals

<sup>15</sup> Me. Rev. Stat. Ann., Title 38, Section 1693-A(1).

<sup>16</sup> “Summary of Legislation,” State of Maine Legislature, accessed October 21, 2012, <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040644>.

<sup>17</sup> “Safer Chemicals in Children’s Products Rules, Chapters 880-883,” Maine Dept. of Environmental Protection, accessed October 21, 2012, <http://www.maine.gov/dep/safechem/rules.html>.

<sup>18</sup> Me. Rev. Stat. Ann., Title 38, Section 1695.

<sup>19</sup> Me. Rev. Stat. Ann., Title 38, Section 1695.

<sup>20</sup> FDA “Bisphenol A (BPA),” accessed, October 21, 2012, <http://www.fda.gov/food/foodingredientspackaging/ucm166145.htm>.

<sup>10</sup> RCW Ch. 70.240.040.

<sup>11</sup> “Children’s Safe Products Reporting Rule.” Washington Administrative Code, Ch. 173-334-110, 120. July 21, 2011.

<sup>12</sup> Washington Administrative Code, Ch. 173-334-090. July 21, 2011.

<sup>13</sup> “Chemicals of High Concern” listing,” Maine Dept. of Environmental Protection, accessed October 21, 2012, <http://www.maine.gov/dep/safechem/highconcern/index.html>.

<sup>14</sup> “Deriving Chemicals of High Concern Process Documentation.” July 1, 2012. Maine Department of Health and Human Services, Center for Disease Control and Prevention.

as priority chemicals, or targeted for phasing out under a law like Maine's, requiring potentially expensive alternative uses, when the federal government does not consider the chemical unsafe? This sets up a conflict with federal law, and the problem could multiply with more and more states joining the chemical listing scheme like those of Washington and Maine, where state bureaucrats, unlike FDA, have more leeway on determining what is sufficient evidence to support their decisions to target chemicals. One state can target one when another state can decide against listing that same chemical. This, at a minimum, creates the potential for enormous confusion for consumers and still more costs for the companies affected. Second, with these laws still in the embryonic stage, we can certainly expect an increasing number of chemicals on these priority lists. That in turn will mean more and more industry members, from children's clothing makers to jewelry manufacturers and beyond, will be entangled and subject to compliance rules, penalties and potential imposition of alternative assessments.

### Other State Children's Product Chemical Reporting Laws in Existence or on the Horizon

In addition to Washington and Maine, 2012 has seen at least a dozen other states enact or propose legislation requiring some form of disclosure for chemicals, predominantly in children's products. These states include Alaska, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New York, New Jersey, Oregon and Vermont.<sup>21</sup> A detailed sampling of all of them is beyond the scope of this article, but it is worth understanding that this movement is gaining increasing strength, particularly the concept of state agencies listing chemicals of concern and then having the ability to target and phase them out or penalize manufacturers.

One example is Minnesota. In 2009, Minnesota's governor signed into law the "Toxic Free Kids Act" passed by the state Legislature.<sup>22</sup> As with Washington and Maine, this legislation requires the Minnesota Department of Health (MDH) to create two lists of chemicals: one list called "Chemicals of High Concern" and one called "Priority Chemicals." In addition, the Minnesota Pollution Control Agency (MPCA) is required to make recommendations about mechanisms to reduce and phase out the use of priority chemicals in children's products and to promote the use of safer alternatives. Again we see the hand of a state agency making important and complicated scientific decisions that can significantly affect national and international corporations' ability to do business. Currently, Minnesota lists the following chemicals as priority chemicals: Bisphe-nol A; cadmium; decabromodiphenyl; formaldehyde; hexabromocyclododecane; lead; and three phthalates (DEHP, DBP and BBP).<sup>23</sup>

Another example, and one that could cost the children's product industry more than the laws of Washington, Maine and Minnesota combined, is New York. Legislation remains pending in the state Senate there (AB

3141-2011), which already passed the state Assembly that—like Washington, Maine and Minnesota—would establish a priority chemical scheme for children's products. The legislation would require the state Department of Conservation to identify chemicals of high concern and then determine priority chemicals from that list. As proposed, the legislation listed 10 priority chemicals, including lead, benzene, cadmium, mercury and arsenic. The legislation, if enacted, would require that manufacturers report information about the chemical content of their products within 12 months of a priority chemical's listing, and the state could require that the manufacturer conduct an assessment to identify safety alternatives to the priority chemical. Additionally, this legislation would require that the manufacturer or distributor of a children's product containing a priority chemical would have to notify persons that sell or distribute the product that it contains a priority chemical. Finally, the legislation proposes a complete ban on the sale of products that contain a priority chemical one year after the priority chemical is listed by the state.<sup>24</sup>

### California's Different Approach—Phase Out Harmful Chemicals in Most Consumer Products

California, the same state that brought industry the infamous Proposition 65 toxic labeling and warning law, is on the cusp of implementing enforcement rules on its landmark "Green Chemistry Initiative" law passed in 2009 applying to all consumer products. This law will go far and above the children's products chemical reporting schemes of Washington, Maine and the other states proposing or enacting similar children's legislation. The California law is the product of two separate bills. Then-Governor Arnold Schwarzenegger declared the law was unique because "[i]t also puts an end to the less effective 'chemical-by-chemical' bans of the past. . . . [W]ith these two bills, we will stop looking at toxics as an inevitable bi-product of industrial production. Instead they will be something that can be removed from every product in the design stage—protecting people's health and our environment."<sup>25</sup>

AB 1879 established authority for the state Department of Toxic Substances Control (DTSC) to develop regulations that create a process for identifying and prioritizing "chemicals of concern" and to create methods for analyzing alternatives. It also allows DTSC to impose "restrictions or bans" on chemicals of concern and set up an Internet database of research on toxins. SB 509 created an online "Toxics Information Clearinghouse," a database to ostensibly increase consumer knowledge about the toxicity and hazards of thousands of chemicals used in California, and which is to include information regarding the hazard traits, toxicological and environmental endpoints, and other vital data is available to the public, to businesses, and to regulators.

Though other states have passed green chemistry initiatives that seek to encompass more than just children's products, and encourage research and development of safer and less toxic alternatives in certain in-

<sup>21</sup> "States Considering Toxics Legislation in 2012," SaferStates.com, accessed October 21, 2012, [www.saferstates.com/2012/01/safer-states-2012-legislation.html](http://www.saferstates.com/2012/01/safer-states-2012-legislation.html).

<sup>22</sup> Minn. Stat. 2010 116.9401—116.9407.

<sup>23</sup> "Priority Chemicals," Minnesota Department of Health, accessed on October 21, 2012, <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/priority.html>.

<sup>24</sup> New York State Senate website, accessed October 21, 2012, <http://open.nysenate.gov/legislation/bill/A3141-2011>.

<sup>25</sup> "California First in Nation to Enact Green Chemistry Program," accessed October 21, 2012, [http://www.nbcnewyork.com/news/green/California\\_First\\_in\\_Nation\\_to\\_Enact\\_Green\\_Chemistry\\_Program.html](http://www.nbcnewyork.com/news/green/California_First_in_Nation_to_Enact_Green_Chemistry_Program.html).

dustries, California's proposed regulations currently are the most ambitious and potentially expensive, and will likely serve as the template for adoption by other states nationwide in the future. The state is still in the draft regulation stage, though the intent of the regulations is that they shall "apply to all consumer products that contain a Chemical of Concern," and are sold, offered for sale, distributed, supplied, or manufactured in California. The only exemption is for food or prescription drugs and devices, pesticides, dental materials and to products made or transported in California for use outside the state.<sup>26</sup>

The simple-sounding goal of the law is to create a comprehensive list of toxic chemicals used in all consumer products and then eventually replace them with "safer" and "greener" alternatives. The bills were scheduled to go into regulatory effect January 1, 2011, but this was postponed due to concerns raised by stakeholders and changes in the final draft, including a reasonable change to require the state to prove that a chemical is harmful *before* being regulated, mirroring what is currently required at the federal level by TSCA.<sup>27</sup> The proposed regulations are in the comment stage and the DTSC hopes to have them finalized and implemented by the end of this year. The business community continues to raise several objections to these latest proposed regulations, and some have called on the governor to intervene. The objections include the sheer number of chemicals (more than 1,000) being proposed for inclusion under the regulations, the DTSC removing provisions that would exempt products already regulated by other laws, the proposed removal of the de minimus threshold for reporting the presence of chemicals, and the extremely complex alternative assessment provision.<sup>28</sup>

The proposed regulations envision a complicated compliance scheme for companies with an aggressive, comprehensive (and likely expensive) process for companies to follow. The first piece of this puzzle will be a "Chemicals of Concern" list, which shall be published with the effective date of the regulations. Then, a "Priority Products" list is to be published 180 days from the Chemicals of Concern list. Deadlines then phase in for manufacturers to report to the DTSC whether their products contain priority products, and if they do, to submit a plan proposing an alternatives assessment. Further deadlines are imposed for manufacturers to provide product information to consumers and phase out products if a suitable alternative exists.<sup>29</sup>

Setting aside the objections of stakeholders to the proposed regulations, the devil remains in the unresolved details. The initial challenges regarding compli-

ance are twofold. First, how will there be the proper context for understanding the chemicals at issue, and how to ensure the law is not, in effect, simply a ban on listed chemicals regardless of whether they exist in products in amounts even remotely a threat to consumer's health?

These regulations seem to portend the same problems Proposition 65 in California has revealed where science often takes a backseat to privately negotiated settlements by plaintiffs' attorneys who demand as a condition for settlement certain arbitrary limits on chemicals in various products be imposed, but not necessarily be based on any scientific exposure assessments of reasonable use and exposure. Companies, looking at both the risk of costly litigation to defend such actions to develop and reasonable use chemical levels, and worried about customers' reaction to such litigation, often simply settle and enter into these agreements. The chemical regulations present similar risks where science and analysis give way to what's more cost effective and practical for those being regulated.

Second, what is the potential cost of California's proposed regulations? They could be staggering. A study commissioned by the California Foundation for Commerce and Education, affiliated with the California Chamber of Commerce, projects that over the next 25 years the potential net costs of compliance with the regulations could reach \$150 billion and could lead to more than 100,000 direct lost jobs at the peak of implementation. The study was based in part on a number of analyses of a similar—though less stringent—regulation recently adopted by the European Union. The study also criticizes the DTSC for failing to adequately analyze the potential adverse impacts of the regulations and for failing to conduct a qualitative cost-benefit analysis.<sup>30</sup>

For its part, the DTSC, shows no signs of going back to the drawing board and is pressing ahead with the regulation approval process, however flawed. And there will be no criticism from the federal government of California's effort. In fact, in an endorsement of the California law, the U.S. EPA specifically applauded California and entered a memorandum of understanding with the DTSC to cooperate in the field of green chemistry. The EPA stated that "[t]his agreement will allow DTSC and U.S. EPA to minimize duplication of effort and promote consistency in our methodology, which will ultimately improve environmental protection. The agreement also creates a partnership between the two agencies and sets up a framework to collaborate on Green Chemistry issues so that California's innovative 'Green Chemistry' program can grow."<sup>31</sup>

## What's Next and How to Manage Inevitable Tide of Green Chemistry Regs

No one can argue with the reasons behind green chemistry and protecting consumers and particularly their children. But, as so often is the case with well

<sup>26</sup> "Text of Proposed Regulations, July, 2012," California Dept. of Toxics Substances Control, Safer Consumer Products Summary of Proposed Regulations, R-2011-02, accessed October 21, 2012, <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/SCP-Proposed-Text-underlined-7-23-2012.pdf>.

<sup>27</sup> "California Postpones Adoption of Proposed Green Chemistry Initiative," January 2011, Thompson Hine Environmental Law Group, accessed October 21, 2012, <http://www.thompsonhine.com/publications/pdf/2011/01/greenproductsupdate2224.pdf>.

<sup>28</sup> Prop.65Clearinghouse.com. "Pressure Builds on DTSC to Delay or Revamp Safer Product Regulations," accessed October 21, 2012, <http://www.prop65clearinghouse.com/?page+ViewNews&IDArticle=903>.

<sup>29</sup> Proposed regulations, supra.

<sup>30</sup> California Foundation for Commerce and Education. "The Consumer Impact of California's Green Chemistry Initiative." October 8, 2012.

<sup>31</sup> California DTSC and United States EPA Joint Press Release, "U.S. Environmental Protection Agency and DTSC Broaden California's Push for Safer Consumer Products through Key Alliance." January 12, 2012.

meaning legislation—most notably the enactment in 2008 of the CPSIA with its vague definitions and unrealistic compliance deadlines in reaction to tainted children’s goods from China—it is the manufacturers and distributors of the covered products that bear the brunt of laws that seek to clean up toxics but that allow bureaucratic leeway, potentially inconsistent results between states and questionable scientific reasoning rule the day. As these laws pick up speed and multiply across the country, retailers, distributors and manufacturers of more and more products will be affected.

The costs will multiply and are both tangible and intangible. First, the real cost to be incurred will be paid by companies trying to make sense of the myriad of different state laws, enacted with a minimum of real qualitative analysis of the cost burden the regulations present and enacted in the absence of clear direction from the federal government. Companies have to contend with different deadlines and different penalties for dif-

ferent states, and will need people to monitor and track the laws’ amendments and to keep track of the specific chemicals on the various lists of states upon which the companies must then report. And if necessary, companies will need to prepare assessments and alternative chemical analyses for the particular states that may require them and invest in the expense of producing products with alternative chemicals. None of this will be easy or inexpensive. Second is the intangible cost to a company in consumer goodwill if customers do not understand that just because a chemical is present in a product and added to some state’s list does not mean that the product is unsafe or dangerous to them or their children. This uncertainty is compounded because these chemical listings do not necessarily need to contain quantification data or exposure analysis when provided to consumers, raising the risk of data being provided without the proper context.