



April 21, 2023

Ms. Magdalena Jurkiewicz
Consumer & Hazardous Products Safety Directorate
Healthy Environments & Consumer Safety Branch
Health Canada
269 Laurier Avenue West
Ottawa, Ontario
K1A 0K9

VIA Email: cosmetics@hc-sc.gc.ca

Dear, Ms. Jurkiewicz:

Re: Consultation – CG1 Notice - Regulations Amending Certain Regulations Concerning the Disclosure of Cosmetic Ingredients

On behalf of the Canadian Toy Association and the U.S. Toy Association we are writing in response to Health Canada's consultation notice on its proposed intent to amend the *Cosmetic Regulations* related to the disclosure of certain fragrance allergens as published in *Canada Gazette I* (CG1) on February 11, 2023.

Please note, the new CG1 online commenting platform does not enable a joint submission to be registered to two organizations. Due to this limitation in the platform, we have chosen to file our joint submission via email which was identified in the notice as an alternative option. We would suggest Treasury Board considers amending its online platform to allow for multiple organizations to be identified with a single consultation submission.

In support of Health Canada's consultation notice, we have provided comments on where the proposal aligns and areas that may require further clarification. For ease of reference, we have prepared our submission by following the structure of the online commenting platform.

Comments on General Comment Section

Comment: The Canadian Toy Association (CTA) and the U.S. Toy Association support the government's effort to update its *Cosmetic Regulations* in pursuit of greater disclosure of certain fragrance allergens on labels for consumers. We agree with its overall intended objective to incorporate by reference the fragrance allergens as listed in Annex III of the European Commission's *Cosmetic Products Regulations*.

Comment: The CTA has over 100 members consisting of manufacturers, importers and distributors of toys generating over CAN \$2 billion in Canadian toy sales. Many CTA members are small and medium enterprises operating across Canada; however, the bulk of Canadian sales comes from larger multinational toy companies, most of which are based in the U.S. The CTA works very closely with The Toy Association, a not-for-profit trade association for producers and importers of toys and youth entertainment products sold in North America. It represents more than 800+ companies who account for approximately 90% of the US\$25 billion domestic U.S. toy market. The mission of our members is to bring fun and joy to children's lives and in that mission the safety of young consumers is paramount – it is our industry's number-one priority.

Comment: As part of a very broad range of toy products, several of our member companies either produce, import, or sell products that incorporate makeup and fragrance; this can include face paints, play cosmetics and other similar makeup-style play experiences for children. Our member companies remain committed to working with the Government of Canada to ensure that Canada's product safety regime delivers the intended health and safety benefits to consumers. Our industry continues to uphold and comply with Canada's toy safety regulations.

Comments on Executive Summary Section:

Comment: As an industry that creates fun and entertaining products for children, toy companies are held to a higher standard of care. In turn, our member companies work year-round to ensure that toy safety regulations and other supporting product safety requirements are diligently applied. For the toy industry, product labelling is already a major part of its safety protocols. Our industry very much believes in transparency and ensuring consumers and parents are informed about the products they are purchasing. This involves providing meaningful and useful information to help parents make informed choices on toys, such as general safety warnings on use, appropriate age, recyclability, and other related information.

Comment: The toy industry supports the government's commitment to amend the *Cosmetic Regulations* to enhance the labelling practices and disclosure requirements of certain fragrance allergens. The toy industry operates in a global regulatory environment. This proposal from Health Canada follows several leading regulatory requirements which our industry has been applying already in other jurisdictions, such as the EU and UK. The toy industry has always been committed to the development of robust consumer product safety standards and practices through scientific risk-based approaches.

Comment: As an industry, we remain highly focused on encouraging greater alignment of Canadian toy standards/regulations with leading international standards/regulations. Our industry has long advocated for coordinated safety standards globally that are based on sound science. Avoiding unnecessary divergences is a very important objective to ensuring product safety. It improves compliance and coordinates enforcement amongst regulators, a goal already recognized by Health Canada and the U.S. Consumer Product Safety Commission (CPSC) through their commitment to collaborate on toy safety. This is in addition to the obvious economic benefits conferred by reducing technical trade barriers, especially those which do not significantly enhance safety or health.

Comments on Issue Section

Comment: The toy industry supports the direction which Health Canada is proposing. We welcome the analysis provided in terms of detailing the size constraints for product packaging and the global approach to product labelling of fragrances.

Comment: It is understood that as part of the proposed new notification requirements, companies would be required to notify Health Canada of any discontinuation of a specific product. Health Canada states: "*The proposed amendments to the Regulations would clarify that the discontinuation of sale in Canada is a change requiring notification.*" We note this proposed provision is unique and goes beyond similar notification regimes applied internationally. It is unclear what purpose this notification would serve. Further, the proposed measure does not consider the difference between a manufacturer's cessation of production versus the end of sale, which is traditionally a retailer determination and may not be replicated across every retailer that carries the product. In the overwhelming majority of cases the manufacturer does not determine when a product is no longer available for sale in a market; this is determined by the supply status and is dependent on retailer availability, including that of secondary markets. Additionally,

products may be manufactured to be compliant with Canadian requirements, but the actual determinant of availability for sale in that market will be dependent on the retailers themselves. We recommend removing this proposed notification requirement as it is not workable as currently presented.

Comment: We support amendments clarifying the definition of “importer” and “manufacturer” so long as they maintain the same defined scope as applied under the *Canada Consumer Product Safety Act* (CCPSA).

Comments on Background Section

No Comment

Comments on Objective Section

Comment: The toy industry supports the government’s commitment to amend the *Cosmetic Regulations* to enhance the labelling practices and disclosure requirements of certain fragrance allergens. The toy industry operates in a global regulatory environment. The proposal from Health Canada follows several leading regulatory requirements which our industry has been applying already in other jurisdictions. Our industry has always been committed to developing robust consumer product safety standards and practices through scientific risk-based approaches.

Comments on Description Section

Comment: We support Health Canada’s proposed approach to incorporate by reference the fragrance allergens as listed in Annex III of the European Commission’s *Cosmetic Products Regulations* as well as several of the administrating factors.

Comment: We welcome Health Canada’s acknowledgment as to the benefits of the use of QR codes and/or websites as part of industry’s approach to provide additional disclosure mechanisms for consumers.

Comment: As noted earlier, we support amendments clarifying the definition of “importer” and “manufacturer” so long as they maintain the same defined scope as applied under the *Canada Consumer Product Safety Act* (CCPSA). Health Canada has acknowledged the intent to ensure its definition would be “consistent with modern definitions for the same term that appear in other regulations administered by Health Canada”; however, it has not provided references in support.

Comment: In support of its definitions of “importer” and “manufacturer” it is recommended that Health Canada also develops supporting industry guidance that details the hierarchy between these two definitions and the corresponding roles and responsibilities as applied under the amended regulations. It may also be helpful to distinguish “brand owner” from “manufacturer” as contract manufacturing is common in the cosmetics industry.

Comment: We are pleased to see Health Canada use the same “leave-on” and “rinse-off” reporting thresholds as applied in Europe; however, due to the proposed amendments to include notification of whether a product is “leave-on” or “rinse-off”, the existing referenced definitions are not sufficient as-presented to provide manufacturers clear information on what does or does not fall into these categories. For example, it is not clear what would or would not constitute ‘prolonged’ contact for a “leave-on” cosmetic. It would also be useful for Health Canada to clarify whether a product that falls under both definitions for “leave-on” and “rinse-off” would be categorized as one over the other or not.

Comments on Regulatory Development Section

Comment: We support Health Canada’s decision to align its proposed requirements with the EU and other jurisdictions which have regulations modelled after the EU *Cosmetic Products*

Regulations. As outlined in the consultation notice, we agree with the benefits of incorporating by reference the fragrance allergens in Annex III of the EC *Cosmetic Products Regulation*.

Comment: We are pleased to see Health Canada recognize the challenges to meeting certain labelling requirements for small packages and its willingness to allow for greater flexibility for industry; however, its interpretation between small and larger sized packages does not consider the space restrictions that can emerge from the dual language requirement on packaging. We recommend that Health Canada allows for greater discretion to the sizing conditions to permit additional flexibility on the disclosure of ingredients for mid-sized packages, rather than for small sized packages only.

Comments on the Regulatory Analysis Section

Comment: No new comments - observations captured under earlier sections.

Comment on the Implementation, Compliance & Enforcement Section

Comment: We support the proposed implementation timing of two years following the date of registration for the regulation.

Comment on the Proposed Regulatory Text Section

No Comment

The toy industry appreciates this opportunity to comment on this initiative. If you have any questions about our position, please do not hesitate to contact us.

Yours sincerely,



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