ctfa
COSMETIC TOILETRY & FRAGRANCE ASSOCIATION OF SOUTH AFRICA

news

MAY 2021

IN THIS ISSUE:

FROM THE ED'S DESK

Dear CTFA Members

Welcome to the May issue of CTFA News, where we have an in-depth look at the Extended Producer Responsibility legislation (GG 44539) that came into effect on the 5 May 2021. South Africa is now developing a circular economy, where the value of waste is never lost, but is kept within the economy by ensuring that materials are reused and recycled into new and useful materials. Registration with the Department of Environment Forestry and Fisheries (DEFF) is mandatory, and all Producers must be registered no later than 5 November 2021.

Please do take note of the Consumer Goods and Services Ombud's (CGSO) press release on a judgement by the high court regarding company participation in CGSO. We have also included the CGSO's new pricing model for companies.

If you are an exporter to the United Kingdom (UK) the article on the regulatory requirements companies will need to comply with post Brexit will be of interest.

We would like to extend a warm welcome to Carina Dewar, the new Regulatory Affairs Officer at CTFA.

Thank you to all members for your ongoing support. Do keep safe and healthy.

Adelia Pimentel
Executive Director

EXTENDED PRODUCER RESPONSIBILITY (EPR)

According to analysts at Research and Markets, South Africa sends around 95 million tonnes of waste to its 826 landfill sites and less than 40% of the materials are recycled. Additionally, the nation produces upwards of 65 million tonnes of hazardous waste, of which only 6% is recycled.

Growth in South Africa's population and increased urbanisation has led to an increase in per capita waste generation. This places stress on current landfills and results in litter in the environment. As a pro-active response to the growing national concern around waste and its impact on society and the environment, South Africa has recently published the Section 18 Regulations to the National Environmental Management: Waste Act, which refers to the Extended Producer Responsibility (EPR) aspect of the National Environmental Management Waste Act (NEMWA).

The regulations came into effect on 5 May 2021 (GG 44539), which effectively means that Extended Producer Responsibility (EPR) regulations are now effective in South Africa. All Producers and Producer Responsibility Organisations (PROs) must be registered by 5 November 2021.

Producers can register on the SAWIC website at www.sawic.environment.gov.za. The site is active, click on EPR on the homepage to register.

This new legislation makes EPR mandatory for all producers and importers of packaging. It changes how producers, brand owners, retailers and importers, design, make, sell and keep their products in the recycling loop as far as practically possible.

IMPORTANT POINTS TO TAKE INTO CONSIDERATION:

- Any company or brand that makes or imports any form of packaging for distribution is required to pay an EPR fee.
- Strict targets have been set by Government for yearly collection and recycling that need to be met over the next five years.
- EPR will see an investment in collection infrastructure. Not only will this provide consumers with more convenient recycling facilities, but also a concerted recovery effort at the pre-consumer or

post-industrial phase.

- All companies involved in the value chain must work together to ensure that less waste goes to landfill.

The following are required for 'Producers' :

- Existing producers must register with the Department of Environment Forestry and Fisheries (DEFF), from 5 May and no later than 5 November 2021
- Join or form an EPR scheme that includes the entire value chain.
- Be accountable for the operation and performance of an EPR scheme.
- Pay the appropriate fees to the EPR scheme.
- Fulfil monitoring and reporting obligations – to begin Q1 2022

WHO IS THE PRODUCER?

The producer means the entity, person or category of persons identified by the regulations as being responsible for extended producer responsibility in terms of Section 18.

PRODUCER - Brand Owner:

- Branded goods produced locally by Brand Owner
- Branded items produced locally by local SA business
- Produced or filled by brand owner or third party
- Using locally produced or imported packaging
- Brand owner is domiciled in SA (or has SA subsidiary)

PRODUCER - Retailer:

- Retail items sold under brand / sub-brand owned by the retailer
- Can be locally produced or imported
- Can use local or imported packaging
- Retailer has a SA domiciled entity

What about intermediate packaging?

- Includes intermediate packaging both retail & B2B items
- Includes secondary, tertiary packaging & shelf-ready packaging
- Outer corrugates
- Shrink wrap (branded & unbranded)
- Stretch wrap
- Includes secondary packaging used to transport primary packaging
- Includes branded & unbranded items

In the above context the PRODUCER is the VENDOR of the item in the packaging

What about IMPORTED goods without local representation?
International brands imported into SA fall into two categories:

- Imports under license or agency agreement
- Imports outside of any formal / informal agreement

Extended Producer Responsibility regulations will apply to both:

- items or "controlled products" covered by Section 18
- packaging for items not controlled by Section 18

The PRODUCER in these instances will be the local AGENT for the items imported under an agreement /license and/or the IMPORTER for direct/parallel/grey imports.

Why should the producer be the brand owner or retailer?

In line with global best practice, the PRODUCER is the organisation that has the greatest control in selecting materials and designing.

The entity that chooses to make/sell an item in a given format is the PRODUCER. This entity therefore has the power to change / improve the product and or packaging design to :

- Reduce unnecessary consumption or use of undesirable materials
- Improve recyclability and therefore increase likelihood of being recycled
- Reduce cost of EPR fees charged to that PRODUCER.

What are the responsibilities of the PRODUCER?

- Register with Department of Environment Fisheries & Forestries as a PRODUCER
- Join or form a PRO for all controlled products
- Measure and declare consumption to PRO's
- Finance the PRO/PRO's either directly or indirectly

What does this mean practically?

- Start by understanding your "controlled product" portfolio
- Register as a Producer as set out in the regulations
- Review existing PROs and understand which could represent each product
- Develop systems to measure your "packaging footprint"
- Consider impact of EPR fees in your 2021 budget process
- Make changes that could reduce your EPR fees or improve recyclability
- Declare your consumption of relevant products to relevant PROs
- Pay your EPR fees to PROs either directly or indirectly as agreed

What is a controlled product ?

A controlled product is ANY product or class of products identified by government as being subject to section 18 EPR regulations. These include :

- Packaging (plastic, paper, metal & glass)
- Non packaging paper
- Single use items (disposable cutlery, crockery & straws etc.)
- Lighting equipment
- Electronic equipment

EXTENDED PRODUCER RESPONSIBILITY

Extended Producer Responsibility (EPR) is a resource management tool whereby producers have to take over an individual "producer's" responsibility for the end of life management of their used products/ packaging. This can include financial and/or operational responsibility for the collection, sorting and treating these products/packaging for their recycling and recovery.

This individual responsibility can be partly transferred to a collective entity, the so called "Producer Responsibility Organisation" (PRO). This PRO should fulfil the obligations of their members in the most efficient and effective way, so usually fulfil inter alia the recycling targets set by the national government and any additional targets set by the owners of the PRO.

Higher costs for non-recyclable or difficult to recycle packaging should motivate industry to eco-design their packaging

The new section 18 regulations are a welcome step forward towards a more collaborative approach between government and industry.

Luckily, South Africa's industry is well positioned for this next stage of environmental legislation. We have seven voluntary, industry-led PROs that have been running for many years and have impressive track-records of collection and recycling successes. Each of these PROs collect

voluntary EPR fees from their members and use the revenue they generate to support the collection, sorting and recycling of recyclable materials by informal waste pickers, small and medium-sized collectors and large-scale mechanical recyclers.

We urge you to start the process by engaging with the relevant industry Producer Responsibility Organizations (PROs) or to form your own, independent EPR scheme as soon as possible. Reporting against the gazette targets starts in January 2022. For more information or guidance in this process, please contact the relevant industry PROs directly or contact adelia@ctfa.co.za at CTFA.

Current Producer Responsibility Organizations (PROs):

The Polyolefin Responsibility Organisation (POLYCO)
www.polyco.co.za
Materials: Polyolefin, HD, PP, LD, LLD and multilayer packaging

The PET Recycling Company (PETCO)
www.petco.co.za
Materials: PET

The Glass Recycling Company (TGRC)
www.theglassrecyclingcompany.co.za
Materials: Glass containers (Bottles and jars)

Fibre Circle
www.fibrecircle.co.za
Materials: paper (newspaper, magazines, corrugated cases, kraft paper, paper labels

Metal Packaging Association of SA (METPAC-SA)
www.metpacsa.org.za
Materials: metal (aluminium and steel) and cans

SA Vinyls Association (SAVA)
www.savinyls.co.za
Materials: Vinyl products

Polystyrene Association of SA
www.polystyrenesa.co.za
Materials: Polystyrene packaging (expanded and high impact)

Ewaste Recycling Authority (ERA)
www.eranpc.co.za
Materials: Electronic waste - electrical or electronic devices

Instead of supporting the outdated, linear approach of producing, using and discarding packaging waste that continues to hold value after it has been used, the focus is now on developing a true circular economy within South Africa – where the value of waste is never lost, but is kept within the economy by ensuring that these materials are reused and recycled into many new and useful materials.

CONSUMER GOODS AND SERVICES OMBUD (CGSO)

ABOUT THE CGSO
Established in 2013, the CGSO is an independent and accredited alternative dispute resolution scheme as defined in the Consumer Protection Act (CPA). Its accreditation derives from section 82 of the CPA and its dispute resolution mandate from section 70 of the CPA. The services of the CGSO are free to consumers.

In addition to providing for a scheme of alternative dispute resolution as described in section 70 of the CPA, the CGSO's mandate includes raising the standards of good conduct in the industry; offering guidance to participants around the implementation of and compliance with the CPA; and educating consumers as to their rights and redress available to them should an industry member breach the CPA or the Code.

Since inception the CGSO has received more than 130 000 calls, opened more than 51 000 complaints, and closed more than 47 000. As of the end of February 2021, 979 organisations had signed up with the CGSO and paid their participation fees. This includes most of the major retailers, manufacturers, wholesalers, and distributors. Companies only register at group level thus the number of registered entities reported does not include subsidiaries and number of stores as these are deemed compliant if the head office has registered.

Below is a press release from the CGSO to be noted by CTFA members on judgement by the high court

The Consumer Goods and Services Ombud (CGSO) has welcomed the ruling by the High Court of South Africa, Gauteng Division, in the matter between the Consumer Goods and Services Ombud NPC VS Voltex (Pty) LTD and Astral Operations limited, (Case number 18096/2017). The ruling confirmed the lawfulness of the Consumer Goods and Services Industry Code of Conduct (the Code) as well as the powers vested on the CGSO to levy annual participation fees based on the parameters set out in the Code to determine the fee.

"Section 82(8) of the CPA provides that suppliers must not contravene an applicable industry Code. Furthermore, the CGSO is empowered by the Code to proceed with legal action against individual companies who refuse to subscribe to the Code and pay participation fees. Instead of pursuing legal action against those companies that refused to comply with the Code, the Board of the CGSO considered it prudent to instead seek a declarator to confirm that the provisions of the Code are lawful and enforceable" Said Ms Magauta Mphahlele, the Ombudsman.

Voltex (PTY)(LTD) sought an order from the Court to force the CGSO to repay a participation fee of R285 000 and Astral Operations Limited had challenged the constitutional validity of the Code as well as the powers of the Minister of Trade and Industry to promulgate the Code. They had further advanced that it is not compulsory for qualifying businesses to subscribe to the Code and pay the annual participation fees.

"Regardless of whether a business subscribes to the Code or paid its participation fees or not, the CGSO is obliged to deal with any complaints received against that business. The refusal of some qualifying businesses to comply with the Code, created an untenable situation as those businesses that comply with the law are cross-subsidising those that do not. By seeking this order, we hoped to strengthen our position when it comes to fulfilling our mandate and those purposes of the CPA that speaks to alternative dispute resolution and fair access to redress for consumers ," said Ms Mphahlele.

The CGSO had asked the Court to rule on the following issues:

1) That the CGSO Code of Conduct has been lawfully established in accordance with the requirements of the Constitution of the Republic of South Africa, Act No. 108 of 1996 ("the Constitution") and the provisions of the law, and in particular, the Consumer Protection Act 68 of 2008 ("CPA")

2) It is competent for the Code to make participation in the CGSO mandatory for all eligible businesses as defined in the Code.

3) It is lawful and competent for the Code to require all eligible businesses to pay fees and/or levies as a contribution towards the costs of operating the CGSO.

4) It is competent for the CGSO Board to declare a fee structure with eligible businesses and that it lawfully did so.

5) It is competent for the CGSO to compel Participants to disclose their annual turnover figures to the CGSO for purposes of determining the annual fees and/or levies payable to the CGSO, failing which the CGSO is authorised to make a fee determination payable by such Participant, which amount shall be regarded as final and binding.

6) It is competent for the CGSO to initiate legal proceedings to recover any outstanding fees or levies owed by a Participant as defined in Regulation 3.1.29 of the Code.

7) It is competent for the CGSO, acting in terms of Section 4(1)(d) of the CPA, to approach a Court, the National Consumer Tribunal established in terms of Section 26 of the National Credit Act, No. 35 of 2005 ("NCA") or the National Consumer Commission established under Section 85 of the CPA, alleging that prohibited conduct has occurred in that the Code has been contravened either by a Participant-

7.1. having failed to register with the CGSO in accordance with the procedures provided on the CGSO's website from time to time; or

7.2. having failed to contribute toward the funding of the CGSO in accordance with the funding model as set out in clause 4.2 read together with clause 6.2 of the Code.

8) Costs of suit only in the event of opposition.

9) Further and/or alternative relief.

The Court granted a declaratory order in favour of the CGSO for all the above prayers that had been made, except for the 9th one, which was not necessary under the circumstances.

"The ruling means that all qualifying businesses in South Africa, must subscribe to the Code by registering with the CGSO, declaring their annual turnover, and paying the annual participation fees. This will allow the CGSO to spread the burden of funding the scheme while at the same time broadening access to redress for South African consumers", said Ms Mphahlele.

Ms Queen Munyai, the CEO, also expressed her delight with the ruling, saying that "the outcome of the court case is also a victory for those businesses that continued to do the right thing by subscribing to the Code and funding the operations of the CGSO. This outcome will now free up the CGSO to focus its time and resources on its primary mandate, namely the provision of a free, independent, accessible and fair industry dispute resolution scheme".

Ms Munyai further said that "The Board and Management of the CGSO wishes to thank the Department of Trade, Industry and Competition, who were cited as the second respondent, for the efforts and resources it put in defending the case. Ms Evelyn Masotja, the Deputy Director General in the Corporate Regulation Division, was instrumental in driving the process to ensure a positive outcome. This indicates that the DTIC is serious about consumer protection and we are grateful for that".

The full judgment can be accessed on the CGSO website *https://www.cgso.org.za/wp-content/uploads/2021/03/212F-0001-18096.2017-consumer-goods-vs-voltex-judgment-2021-03-25.pdf*.

CONSUMER GOODS AND SERVICES OMBUD (CGSO) - A ROBUST, SUSTAINABLE OMBUDS PRICING MODEL

**The article below was copied with permission, from the Consumer Goods Services Ombud September 2020 Newsletter*

In the six years that the CGSO has been in operation, we have spent a great deal of time engaging with stakeholders around the merits of belonging to the Ombud Scheme. Even though the scheme is compulsory, our approach has been to educate and show the value of a customer-centric approach to running a successful and sustainable business. Our engagement revealed that some players in the market undervalue the advantages of having industry operate and manage its own dispute resolution mechanism.

The CGSO is a hybrid model in that it is a self-regulatory industry body backed by legislation (the Consumer Protection Act). This gives the industry a high degree of flexibility and control over how the scheme is administered, as opposed to a formalised statutory model in which industry players have little to no control over governance matters and no say in determining the fee structure. As a case in point, under the current regime, industry - through its representatives on the Board - appoints the Ombudsman, provides strategic direction and determines the fee model. If the CGSO was a statutory scheme, the Ombud would be appointed by the Minister and the fees would become a tax collected through the fiscus.

Industry ombuds schemes work exceptionally well, provided they get support from industry. A well-subscribed scheme allows the cost of offering the service to be spread among all players, thus creating a sustainable, efficient industry-wide safety net for customers who have been failed by internal complaints' handling processes. Being a mediation body also allows us to go beyond the law in terms of the redress offered and consider fairness, which is a luxury not always available to Regulators who are obliged to stick to the letter of the law.

To ensure consistent outcomes, however, all entities must be required to belong to the scheme. Failure to do so places an unfair burden on those members who comply with the Code, and creates an inconsistent consumer experience, as complaints against non-members often have to be referred to the Regulator who may or may not have the capacity to deal with them.

The alternative is for government to compel entities to contribute to a statutory scheme, placing additional auditing and reporting burdens on all industry players. It is, therefore, critical that entities sign up and play an active role in ensuring ethical, compliant standards of customer care.

This is a timely debate as the National Consumer Commission (NCC) is conducting its five-year review of the two Industry Codes, and the Department of Trade, Industry and Competition (the dtic) is in the process of conducting a Regulatory Impact Assessment (RIA) Project with the objective of "determining and assessing whether regulatory interventions are needed in respect of selected provisions of the CPA". The CGSO is taking part in the RIA, as the ministerial power to mandate an industry Code of Conduct and establish an Ombud scheme to oversee it, is vested in the CPA.

The same assessments are happening in the financial services sector where the World Bank has been appointed to conduct an assessment of the Financial Services Ombud Schemes. To this end, three alternative Ombud system models are being reviewed: Model 1 - A hybrid model building on current FSR Act provisions that make use of both industry and statutory ombud schemes but encourages greater consolidation among the schemes; Model 2 - A centralised model, establishing a single statutory ombud scheme, established by law, with jurisdiction over all complaints in the financial sector; and Model 3 - Industry ombuds with strong oversight by the Ombud Council. In terms of this model, all financial institutions serving the retail market are obligated to belong to an ombud scheme, either as a direct statutory obligation or as a condition of licensing. Such schemes are established through industry initiatives and must be recognised by the Ombud Council, and are subject to oversight by the Council, including minimum standards for resolving disputes.

These regulatory activities are a clear indicator that consumer protection is taken seriously in South Africa and that Industry Codes and Ombud Schemes are here to stay. If we fail to get the requisite support from the industry, the current model would be up for review.

Companies who have thus far resisted the call to action would therefore do well to consider the merits of supporting a self-regulating, industry-affiliated scheme, or risk being forced to join through legislative reforms.

Stay safe
Magauta Mphahlele
Ombudsman

CGSO Group	Current Categories	Current Fees	New Approved Categories		New Revised Fees	Variance	% Basis of Calculation (Average)
			Group 1+ / Super Group	R5 bil +	180 000	(20 000)	0,004%
Group 1	R3 bil and Above	200 000	Group 1	R3 bil to R5 bil	160 000	(40 000)	0,004%
Group 2	Above R1 bil to R3 bil	120 000	Group 2	Above R1 bil to R3 bil	90 000	(30 000)	0,004%
Group 3	Above R500 mil to R1 bil	40 000	Group 3	Above R500 mil to R1 bil	35 000	(5 000)	0,005%
Group 4	Above R100 mil to R500 mil	3 360	Group 4	Above R100 mil to R500 mil	5 500	2 140	0,004%
Group 5	Above R50 mil to R100 mil	1 680	Group 5	Above R50 mil to R100 mil	3 500	140	0,005%
Group 6	Above R1 mil to R50 mil	-	Group 6	Above R1 mil to R50 mil	1 680	-	0,005%
			Group 7	R1 to R1 mil	-	-	

SOME OF THE KEY AMENDMENTS INCLUDE:

- The introduction of a new Super Group covering all entities generating annual revenues above R5 billion. In the past, the highest group category included all entities generating annual revenue above R3 billion. The annual fee for this group has dropped from R200 000 to R180 000;
- The second level is Group 1, covering all entities generating annual revenues of between R3 billion and R5 billion, with a revised annual fee of R 160 000;
- Group 2 and Group 3's parameters are maintained as entities whose annual revenue fall between R1 billion and R3 billion, and between R500 million and R1 billion with annual fees of R90 000 (previously R120 000) and R35 000 (previously R40 000) respectively;
- We also took the opportunity to address the unwieldy parameters in the former Group 4, which saw SMEs with a turnover of R5 million lumped in the same category as much larger organisations with annual revenues of up to R500 million. This group has now been split into two, forming Groups 4 and 5.
- Group 4's new fee is R5 500 per annum, and their annual revenue collection falls between R100 million and R500 million

Queen Munyai - CEO - CGSO

BREXIT UPDATE

Brexit, or the exit/ withdrawal of the United Kingdom (UK) from the European Union (EU) was in the making for some time with the UK officially leaving the EU on the 31st of January 2020 with a Withdrawal Agreement (WA) (deal). For companies exporting into the EU and the UK, many concerns have been raised, with the free movement of goods between the regions officially coming to an end. CTFA reached out to the UK's Cosmetic, Toiletry and Perfumery Association (CTPA) to shed some light on the regulatory impact of Brexit. Mr Nicholas Shaw Núñez, Head of International Growth & Regulatory Services and Francesca Rapolla, Regulatory Affairs Manager delivered an informative and interesting webinar to members of the South African cosmetic industry on Thursday, 28 January 2021. The below provides a highlight of the regulatory requirements you will need to comply with if you are planning to export to the region.

Beginning with the longer than expected timeline for the Brexit deal, CTPA's experts explained that the 1st of February 2021 marked the beginning of the implementation period, followed by a request to extend it to June 2021. Negotiations were completed on the 24th of December 2020 and the Introduction of the European Union (Future Relationship) Bill was made official on the 29th of December 2020. The EU Commission approved the provisional application on 29 December 2020, with views on formal consent in March 2021.

Article 41 of the EU Withdrawal Agreement states that "goods placed on the EU27 or UK markets before the end of the transition period (1 January 2021) may be further made available and circulated between the two markets until they reach the end consumer. Proof of when the goods were placed on the market will be required".

While the transition period allows for a gradual withdrawal, as with any regulatory change it is important for companies to prepare themselves for the upcoming legislation, and how it will apply. In the UK, the legislation applicable will depend on the country in which the products are sold. In particular,

1. Goods sold only in Northern Ireland; or in Northern Ireland and Republic of Ireland should apply EU Cosmetics Regulation (Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on Cosmetic Products and well as EU REACH (Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals).
2. Products sold in Northern Ireland and Great Britain must apply to EU Cosmetics Regulation, EU REACH, UK Cosmetics Regulation, and UK REACH.
3. Products sold only in Great Britain should apply UK Cosmetics Regulation and UK REACH as legislation.

REACH in the UK came into force on the 1st of January 2021. EU REACH will continue to apply to EU27 Member States. According to UK REACH, as retained EU law, new substances (that are not currently registered under EU REACH) manufactured or imported into the UK must be registered. The following table provided by CTPA pertains to existing products:

UK Cosmetics Regulation

What does UK Cosmetics Regulation say about safety assessments?

In terms of safety and safety assessments, Article 10 of the UK Cosmetic regulation suggests that:

- The cosmetic product must have undergone a safety assessment and a Cosmetic Product Safety Report (CPSR) must be set up in accordance with Annex I.
- The person who performs the safety assessment (i.e. the safety assessor) must be qualified to perform this task.

What are the responsibilities of the responsible person (RP)?

Any company placing a cosmetic product on the market in the UK (unless exclusively in Northern Ireland), must have an established responsible person in the UK. This can be a manufacturer, or an importer (in the case of imported goods).

As per Article 11, a Product Information File must be adequately prepared and made available by the RP for any product placed on the UK market. The information in the file must include the following:

- a description of the cosmetic product
- the Cosmetic Product Safety Report (CPSR)
- a description of the method of manufacturing
- statement on compliance with good manufacturing practice
- proof of the effect claimed for the cosmetic product
- data on any animal testing performed by the manufacturer

Products placed on the market in the UK must

'EXISTING' SUBSTANCES (CURRENTLY REGISTERED UNDER EU REACH) MANUFACTURED OR IMPORTED INTO THE UK

UK Registration Holder (Article 127B UK REACH)	UK Downstream Users (article 127E UK REACH) - ONLY IF SUPPLIER DOESN'T REGISTER
Submission of preliminary information within 120 days from 1 January 2021 (identity of the manufacturer/importer; identity of the substance; information on the manufacture and use of the substance; an indication that the information has been reviewed by an assessor having appropriate experience, registration number and registration date under EU REACH; any existing ECHA decision related to the registration.	Submission of Downstream User Import Notification (DUIN) within 300 days from 1 January 2021 (Identity of the manufacturer/importer; identity of the substance; classification and labelling of the substance, only if known; registration number under EU REACH, only if it is known; any substance authorisation if applicable; details of any restrictions; any other available and relevant information necessary for proper risk management measures)
EU companies can use a UK-based OR	
Full registration obligation from 28 October 2021 within: - 2 years for substances >1000 tonnes/year, CMRs, very toxic to aquatic organisms, candidate list substances (as of 31 December 2020) - 4 years for substances >100 tonnes/year, candidate list substances (as of 27 October 2023) - 6 years for substance > tonne/year	

be notified via the UK notification database. This is the responsibility of the RP, and as per Article 13 the following information must be included:

- the category of cosmetic product and its name or names
- the name and address of the RP
- details of contact person to contact in the case of urgency
- where applicable, the following information: presence of substances in the form of nanomaterials; the identification including the chemical name (IUPAC) and other descriptors as specified in point 2 of the Preamble to Annexes 2 to 6 to this Regulation; and the reasonably foreseeable exposure conditions;
- the name and the CAS or EC number of substances classified as CMR substances of category 1A or 1B under Regulation (EC) No 1272/2008;
- the frame formulation allowing for prompt and appropriate medical treatment in the event of difficulties;
- the original labelling and, where reasonably legible, a photograph of the corresponding packaging.

UK Cosmetics Regulation on Animal Testing

Article 18 confirmed that the animal testing ban is maintained under the UK Cosmetics Regulation, and it should be noted that this applied to both cosmetic ingredients used in the formulation, and the finished product. The ban does not pertain to the use of history animal testing data.

What information should be present on the label?

Certain information must be present on the label of cosmetic products, and the UK Cosmetic Regulations (Article 19) provide a reference for this information. In particular, this includes:

- The name and address of the RP
- country of origin for imported products
- nominal content
- expiry date or period after opening
- warnings and precautions
- batch number
- function of the product
- ingredients list

Some companies may choose to make claims on the label of the cosmetic product. Although both the EU and the UK utilize a self-regulated system for claims, it remains mandatory to comply with Commission Regulation (EU) No 655/2013 on the "Common Criteria for Cosmetic Claims".

With regards to ingredients used in the formulation, according to Article 14 of the UK Cosmetic Regulation, restrictions for substances are laid out in the Annexes of the EU Cosmetics Regulation, EC 1223/2009, and must still be complied with in the UK.

How are claims regulated?

Article 20 states that "in the labelling, making available on the market and advertising of cosmetic products, text, names, trade marks, pictures and figurative or other signs shall not be used to imply that these products have characteristics or functions which they do not have". Compliance with Commission Regulation (EU) No 655/2013 on the Common Criteria for Cosmetic Claims is mandatory, while UK advertising rules remain unchanged.

Labelling of Aerosols

Schedule 13 of the Product Safety and Metrology SI gives the provisions for the UK Aerosols Regulations while Amendment No 7 gives the requirement of the UKCA mark for aerosols. After 31 December 2020 aerosols sold in Great Britain can carry either the reverse epsilon or the UKCA mark until 31st December 2021. However, exporters of aerosols should note that after 31 December 2021 all aerosols sold in Great Britain must carry the UKCA mark, which can be applied as a sticker until 31st December 2022. Exporters to Northern Ireland must however continue to carry the reverse epsilon, therefore after 31st December 2021 aerosols sold in both Great Britain and Northern Ireland must carry both the UKCA and reverse epsilon.

What are the implications for e-commerce?

Given the fact that e-commerce has risen rapidly due to the COVID-19 pandemic, many brand owners and manufacturers may want to know what the relevance of these changes is on e-commerce. It should be noted that compliance with the regulations is required for all products sold online for both the EU and the UK.

CTFA will continue to keep members updated on regulatory changes.

CRUELTY-FREE COSMETICS: ARE WE GETTING CLOSER TO A GLOBAL ANIMAL TESTING BAN?

The list of countries with animal testing bans in place for cosmetics is growing, but how close is industry to reaching the EU Parliament's goal of a blanket global ban by 2023?

Almost two years after the article "*Global ban on animal testing: where are we in 2019*"? was published, we take a look at how the situation around animal testing in the cosmetics industry has evolved.

The past year alone has provided many changes and challenges for the cosmetics industry, from Brexit to the Covid-19 pandemic, but the question remains: are we getting closer to a worldwide ban?

In 2018, the EU Parliament urged for a global ban on testing cosmetics on animals by 2023. We are approaching the deadline, and there is still much left to do, but with new countries enforcing animal testing bans for cosmetics every year, we are moving in the right direction. Even countries such as China, with a well-known history of mandatory animal testing, are making significant steps towards a cruelty-free future.

Cruelty-free cosmetics: Recent animal testing bans

At the beginning of 2020, three states in the USA - California, Illinois, and Nevada - officially banned the sale of cosmetics and ingredients that have been tested on animals.

Colombia also approved the bill implementing an animal testing ban last year. Furthermore, on July 1 2020, an animal testing ban took effect in Australia, which applies to new ingredients used exclusively in cosmetics.

Many more countries are in the process of phasing out animal testing, including Japan, USA, Canada, Russia, Mexico and South Africa. In the USA, Maryland and Virginia may be the next two states to adopt the cruelty-free cosmetics law as they are both considering a bill that would prohibit the sale of newly animal-tested cosmetics.

China cosmetic regulation reform, animal testing exemptions

China's mandatory animal testing requirements have long been a major obstacle for cruelty-free cosmetics brands. But as many more countries have introduced animal testing bans, China has also started to align its cosmetics regulation with global cruelty-free practices.

It started with the removal of mandatory animal testing for domestic non-special use cosmetics, which was then also applied to cosmetics sold via CBEC (cross-border e-commerce). However, the biggest change was announced last year, when the competent authority for cosmetics, the National Medical Product Administration (NMPA), released a draft regulation introducing an animal testing exemption for all general cosmetics. This means that all cosmetic products, with the exception of hair dyes, hair perming products, whitening products, sunscreen products, anti-hair loss products and cosmetics claiming new efficacy, can avoid animal testing.

Nonetheless, many challenges still lay ahead for many companies, as not all general cosmetics will be able to avoid animal testing in China. In order for general cosmetics to be exempted from animal testing, the companies need to provide Good Manufacturing Practices (GMP) certification, which has to be issued by the cosmetic regulatory authority of the local government. This requirement is difficult to obtain since not many countries issue this kind of GMP certification.

In the EU, France has become the first country to allow French beauty companies to get a GMP certificate, which is issued by French governmental regulatory department and as such complies with China's requirements for animal testing exemption.

In addition to GMP certification, companies also have to provide the

product safety risk assessment, showing that the product is safe.

EU cosmetics regulation - animal testing under REACH

In the 2019 article, the issue around animal testing required under the EU Chemical regulations (REACH) was pointed out and how that affects the animal testing ban under Cosmetics Regulation. The situation around this issue has since escalated with many organizations and beauty companies urging the EU to stop the undermining of the animal testing ban by REACH.

Following two ECHA Board of Appeal decisions, which requested animal data for two sunscreen ingredients, Cruelty Free International started a petition against all animal testing in the EU. They argued that REACH must not be an excuse to test cosmetics ingredients on animals.

At the end of 2020, EU's animal protection groups, Cruelty Free International, PETA and over 450 cosmetics companies have joined together to urge EU officials to uphold the cosmetic animal testing ban. In the open letter addressed to the European Commission, Parliament and Council, they called for new animal testing to be stopped and for ECHA to accept non-animal testing methods.

In the letter, it was emphasized that the EU animal testing ban had been used as a gold standard around the world. Furthermore, it was pointed out that the recent approach of ECHA is at odds with the EU Parliament's call in 2018 for a worldwide ban on testing cosmetics on animals by 2023.

Recently, the European Court confirmed that under REACH legislation, animal testing must only be used as the last resort. The case was brought to the EU Court after ECHA requested a company called Esso Raffinage conduct a developmental toxicity study on animals to provide more data. The company argued that animal testing could be avoided, and the evidence can be derived from other sources. ECHA denied this opinion. However, the Court has ruled that ECHA has a duty to consider alternatives and that animal testing must only ever be carried out as a last resort.

The UK post-Brexit animal testing position

On January 1 2021, the Brexit transition period ended and the UK officially left the EU. As part of this, the UK has adopted a new cosmetics regulation (Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, Schedule 34), which greatly mirrors the EU cosmetics regulation and the animal testing ban is no exception.

Article by Tjaša Grum, CE.way Regulatory Consultants

AFRICA STRATEGY UPDATE:

National Agency of Food and Drug Administration and Control (NAFDAC)

The National Agency for Food and Drug Administration and Control (NAFDAC) is a federal agency under the Federal Ministry of Health that is responsible for regulating and controlling the manufacture, importation, exportation, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, chemicals and packaged water in Nigeria.

In 2019, CTFA started talks with NAFDAC on the premise of learning more about the agency's structure and function as well as their plans for the cosmetic industry especially since the publishing of an update of the cosmetic regulations in December 2019. Since the close of the commentary period by the end of March 2020, there had been no indication on the way forward. CTFA's objective was to develop a technical partnership where there can be a sharing of information from both parties. This was well received by the Nigerian authorities and CTFA held the first formal session in November 2020, where the South African regulatory framework was the topic of discussion. We explained the success story behind self-regulation over the past 26 years and the impending regulatory reform. We impressed upon the content and objective of the reform as one that will ensure a level playing field and encourage product efficacy and consumer safety but also be cognisant of SME's and has thus taken a reasonable and graded approach in rolling out compliance requirements. CTFA also highlighted the various cogs of the regulatory wheel, so to speak, that is the role of the national standards and the advertising code of practice that complement the regulations and which aid the regulatory wheel in turning to ensure compliance.

In the following sessions planned with NAFDAC, the agency will provide an outline of their regulations and the updates they are considering to better regulate the local industry. It will be the objective of CTFA to ascertain how best we can support the local market in Nigeria as well as enable trade between the two countries with the least amount of disruption and barriers to trade. We are looking forward to a long and successful partnership with NAFDAC with the aim to provide our members international trade support from a regulatory harmonisation perspective.

SNIPPETS

COSCHEM: HAIR CARE SEMINAR

On 25 February 2021, CTFA's Regulatory Officer, Yashmay Gordhon presented at Cochem's Hair Care Seminar on the regulatory aspects of hair care products and the impending updates of the SANS 10398: 2014 Hair care products – General requirements. Being a participating member of SABS/TC217 Cosmetics CTFA remains in the forefront in ensuring that the national standards continue to remain updated and aligned with regulatory requirements to promote product efficacy and ensure consumer safety.

P&C REVIEW ARTICLES: PRESERVATIVES AND HAIR CARE

In January 2021, CTFA kicked-off the new year with regulatory articles that were published in the February 2021 edition of the Pharmaceutical & Cosmetic Review. The Head of Policy & Regulatory Affairs, Dershana Jackison, provided regulatory insight into hair care product design, testing, claims and placing on the market. The second article explains the use of preservatives and the restrictions and responsible product claims related to this ingredient type. If you missed these article you may access them on CTFA's LinkedIn page.

MEMBER MORNING

On the 24th February 2021, CTFA hosted a successful Member Morning primarily to acknowledge members' ongoing support. The CTFA team included Adelia Pimentel, Dershana Jackison, Yashmay Gordhon and Samantha Lotkin.

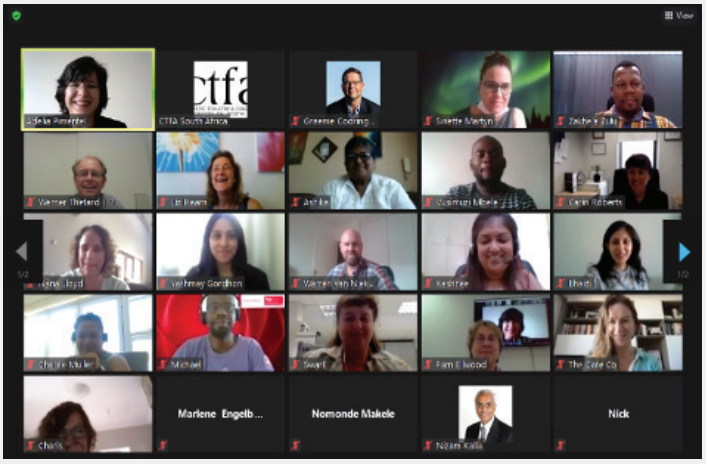
A review of 2020 milestones was presented and an overview of what to expect from CTFA in 2021 was explored. Some of the more focused areas for CTFA in 2021 include stakeholder engagement with government, private sector and international stakeholders and ongoing training and engagement with the National Department of Health regarding the pending promulgation of the draft regulations.

Further areas for 2021, included the animal testing ban, where the bill seeks to amend two acts, namely, the Animals Protection Act of 1962 and the Foodstuffs, Cosmetics and Disinfectants Act of 1972, the Environmental waste management regulations, specifically on Extended Producer Responsibility and the CTFA Africa strategy which explores the legislative environment in various African countries.

The Executive Director confirmed that the sustainability of CTFA as an association, continues to depend on member support to ensure that CTFA delivers on their mandate of keeping the industry informed through lobbying, stakeholder engagement and overall co-ordination of alleviating the barriers to trade for the cosmetic industry both locally and internationally.

The guest speaker was Mr Graeme Codrington – Co-Founder and International Director of "Tomorrow Today", a global firm of futurists and business strategists.

Graeme presented a thought provoking and interactive presentation,



entitled "Same planet, different world", where he discussed helping organisations to not merely survive the Covid crisis but to use the crisis to their advantage.

He postulated that companies who have been successful over the last year, and those that will be successful through 2021, are not just trying to respond to the crisis they are actually using the Covid disruption as an opportunity to build adaptability into their systems.

The different world we live in dictates that companies need to take advantage of being in a crisis and must learn how to deal with more disruptions because there is no doubt that more disruptions are coming our way.

The morning was well attended and enjoyed by all.

CTFA WEBSITE LOGIN

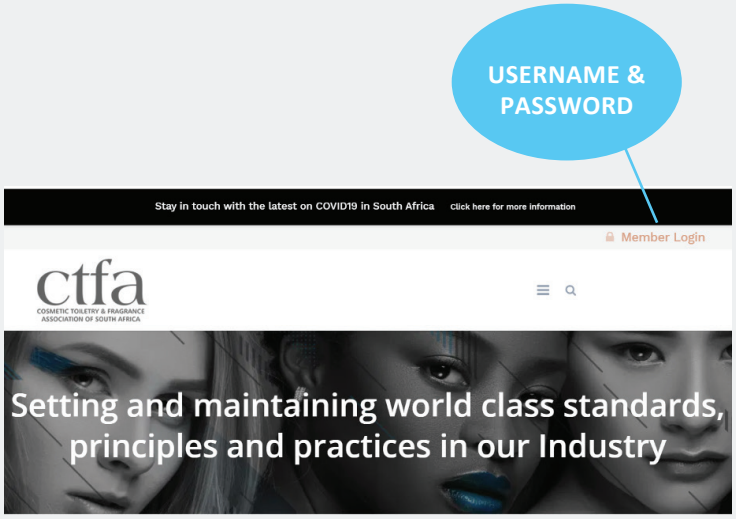
When last did you visit the CTFA Website?

The CTFA website is built to be compatible with today's browsers and mobile devices. We endeavor to provide an easy access, user-friendly, functionality and worthwhile navigation experience. The website has effective and interactive pages for both members and non-members.

Our goal is to enable our visitors and members to learn about our services, and browse relevant information.

For assistance with access to, and navigation through the website, please contact samantha@ctfa.co.za.

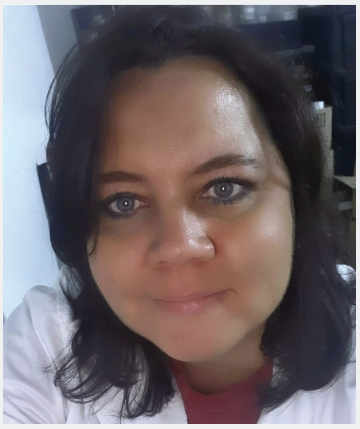
If you have any suggestions or comments on improving the CTFA website, please send us an email.



CTFA TRAINING CALENDAR 2021

13/05/2021 - Responsible Person & Product Information File Training
11/06/2021 – Indian Regulations Update
25/06/2021 - AfCTFA Seminar
08/07/2021 – Regulatory Framework Training
22/07/2021 – Labeling and product Composition Training
27/07/2021 - GMP Part 1
28/07/2021 – GMP Part 2
05/08/2021 – Product Preservation Training
12/08/2021 – Labeling and Product Composition Training
08/09/2021 – Claims and Substantiation Training
30/09/2021 – New Member Induction
13/10/2021 – Post Marketing Surveillance Training
***Dates are subject to change**

WELCOME TO CTFA



CTFA would like to extend a warm welcome to **Carina Dewar** as she begins her journey at the Association. Carina started at the CTFA on the 1 May 2021 as the Regulatory Affairs Officer.

Carina has a B.Sc (Agric) Microbiology degree from the University of Pretoria, she has also completed the COSCHEM Cosmetics diploma. Her experience in the industry includes an excess of 20 years. Her career started with Quality Control of cosmetic products and then extended into Research and Development of skincare, personal care and colour cosmetics.

Carina also has extensive experience in the implementation of cosmetic Good Manufacturing Practice (GMP), claim substantiation and regulatory compliance.

Welcome to the team Carina, we wish you much success at CTFA.

news

MAY 2021

T: +27 11 795 4272 | **E:** info@ctfa.co.za
www.ctfa.co.za

POSTAL ADDRESS
P.O. Box 721, Randpark Ridge, 2056

PHYSICAL ADDRESS
59 Woodlands Avenue, Hurlingham Office Park, Block B, Ground Floor, Suite 2 & 3, Hurlingham, Sandton