



31 May 2023

Cosmetic Product Group Standard Amendment
Environmental Protection Authority
Private Bag 63002
Wellington 6140

Email: Reassessments@epa.govt.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Proposal to amend the Cosmetic Products Group Standard 2020: APP204297*.

Yours sincerely

A handwritten signature in blue ink, appearing to be "Raewyn Bleakley".

Raewyn Bleakley
Chief Executive



Proposal to amend the Cosmetic Products Group Standard 2020: APP204297

**Submission by the New Zealand Food & Grocery
Council**

31 May 2023

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (**NZFGC**) welcomes the opportunity to comment on the *Proposal to amend the Cosmetic Products Group Standard 2020: APP204297*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. NZFGC is generally supportive of the raft of proposed changes, especially those that promote alignment with global standards and European regulations.
4. The first key area of concern is **Phase out PFAS (perfluoroalkyl and polyfluoroalkyl substances (Proposal 2))**. NZFGC supports the phase out of PFAS but not the proposed timing. Cosmetics are at the fringe of the risk area because of the very small source of PFAS in cosmetic products. Close alignment with EU phase outs and the timeframe proposed is far too short for alignment. We expect the EU will take a far longer time to prohibit all remaining PFAS ingredients (around 2-3 years) and it would therefore be prudent of New Zealand to align with that timetable rather than risk the non-availability or withdrawal of products.
5. As well, it would be important to align the definition of the PFAS substances in Schedule 3 (perfluoroalkyl and polyfluoroalkyl substances) with the definition used by the OECD.
6. In relation to updating IFRA obligations (Proposal 4) NZFGC is strongly supportive of full alignment with the EU cosmetic regulations but it is important that changes in New Zealand do not pre-empt changes in the EU for banned or restricted ingredients such as PFAS and the fluorides.
7. The second key area of concern is in relation to **Nanomaterial records requirements (Proposal 5)**. NZFGC considers the duplication in this proposal to be unnecessary and costly. We are of the view that the data sheets and labelling, together with existing notification requirements, provide an adequate level of information for enforcement purposes. It is best practice in industry to hold necessary information about the nature of nanomaterials used and to make it available for enforcement as necessary. To now require that information to be held in a separate documented form in addition to the notification already provided to the EPA is highly duplicative and unnecessary red-tape.
8. The third key area of concern is **Transition**. NZFGC supports a transition provision but one that has a practical application in light of slow-moving products in the New Zealand market. Twelve months from the amended Group Standard coming into force is simply not long enough and will result in products being withdrawn, wasted and added to landfill. A period of at least 24 months is required.
9. In addition, and in line with our comments above on PFAS, we recommend at least one more year to the transition period for PFAS compounds be provided, to 31 December 2026. It is hoped this will better align with developments in the EU.

DETAILED COMMENTS

Proposal 1: Increase scope to include some non-hazardous products

10. NZFGC is generally supportive of increasing the scope to include some non-hazardous products which is somewhat unusual for an industry association but in this case, if companies assume that everything is covered by the Cosmetic Products Group Standard, then correct labelling, safety data sheets and any other compliance requirements are more efficiently assured.
11. NZFGC considers the limit on 1,000mL water capacity in the current environmental context where packaging should be reduced where possible reduces consumer options for bulk purchasing and use. It may be important to limit pressurised containers for safety purposes but other containers should not be restricted.

Proposal 2: Phase out PFAS (perfluoroalkyl and polyfluoroalkyl substances)

12. NZFGC supports the phase out of PFAS. This is more pressing in some other industry sectors but nonetheless, it is a sensible direction to take. Our problem is timing.
13. Cosmetics are at the fringe of the risk area because of the very small source of PFAS in cosmetic products. In this case, close alignment with international phase outs. We understand New Zealand manufacturers do not use ingredients likely to carry PFAS. The main concern is for imported products which makeup around 90% of the New Zealand cosmetic sales.
14. Where PFAS ingredients have already been prohibited in the European Union (EU) we support aligning the phase out with those. However, for those PFAS ingredients not yet prohibited in the EU, we would argue strongly against implementing a prohibition any earlier than the EU. The prohibition has to be a segmented process to ensure that an unintended consequence is preventing the import of a range of products does not occur.
15. The timeframe proposed is far too short for alignment. We expect the EU will take a far longer time to prohibit all remaining PFAS ingredients (around 2-3 years) and it would therefore be prudent of New Zealand to align with that timetable rather than risk the non-availability or withdrawal of products.
16. In terms of specifics, it would be important to align the definition of the PFAS substances in Schedule 3 S (perfluoroalkyl and polyfluoroalkyl substances) with the definition used by the OECD:
PFASs are defined as fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it), i.e., with a few noted exceptions, any chemical with at least a perfluorinated methyl group (-CF₃) or a perfluorinated methylene group (-CF₂-) is a PFAS.¹
17. The PFAS restriction should also only be applicable above the thresholds proposed by the European Chemicals Agency (ECHA).
18. Prohibiting all PFAS from cosmetics sold in New Zealand without following the above areas for harmonisation could result in some products being removed from the shelves or just not appearing on the shelves in the first place. The proposal as presented is not aligned with our major trading partners and could therefore be seen as a technical barrier to trade.

Proposal 3: Restore exemption to 24-hour emergency labelling

¹ OECD (2021), *Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance*, OECD Series on Risk Management, No. 61, OECD Publishing, Paris.

19. NZFGC wholeheartedly supports the reinstatement of the exemption to the 24-hour emergency labelling requirement. Cost savings will be realised immediately it has effect.

Proposal 4: Update IFRA obligations

20. NZFGC is strongly supportive of full alignment with the EU cosmetic regulations but it is critical that changes in New Zealand do not pre-empt changes in the EU for banned or restricted ingredients such as PFAS and the fluorides.

Proposal 5: Nanomaterial records requirements

21. NZFGC considers the duplication in this proposal to be unnecessary and costly. We are of the view that the data sheets and labelling coupled with notifications to EPA provide an adequate level of information for enforcement purposes.

22. The EPA acknowledges in the discussion that industry best practice is to hold necessary information about the nature of nanomaterials used and to make it available for enforcement as necessary. To now require that to be held in a separate documented form in addition to the notification already provided to the EPA is highly duplicative and unnecessary red-tape. The EPA would be expected to have technical solutions to track such notifications for enforcement officers to cross check with company products.

Proposal 6: Add UK to alternative compliance list

23. NZFGC supports the inclusion of the UK in the alternative compliance list (in addition to Australia, USA, Canada and the EU) and we concur that this is a good faith move to take in light of the New Zealand-UK Free Trade Agreement.

Proposal 7: Consolidate Group Standard main text and table schedules

24. NZFGC supports the consolidation of the schedules 4 to 8 in the main text of the Cosmetic Products Group Standard for readability and completeness of the Standard.

Proposal 8: Simplify fragrance allergens

25. NZFGC supports the removal of the specific references to the fragrance allergen label exemptions as these are adequately covered in Schedule 5.

Proposal 9: Update reference to Australian Therapeutic Goods Order

26. Currency of references is important and we support the removal of references no longer in force and replacement with current references.

Proposal 10: Remove reference to column sub-headings

27. NZFGC supports the consequential change to remove references to alphabetical column subheadings (a, b, c and so on) in Schedule 5 and refer to column names instead.

Proposal 11: Add transitional provisions

28. NZFGC supports a transition provision but one that has a practical application in light of slow-moving products in the New Zealand market. Twelve months from the amended Group Standard coming into force is simply not long enough and will result in products being withdrawn, wasted and adding to landfill. A period of at least 24 months is required.

29. In addition, and in line with our comments above on PFAS, we recommend at least one more year to the transition period for PFAS compounds be provided, to 31 December 2026. This will likely better align with developments in the EU

30. Schedule 2 (1)(a) might then read “(1) For a period of 24 months from the date the Cosmetic Products Group Standard (Amendment) Notice 2023 is notified...” And Schedule 2(a), the third line would read “For this amendment, until 31 December 2026...”

Proposal 12: Clarify multiple entries

31. NZFGC supports removing ambiguity in the Standard and therefore supports the clarification about multiple entries in schedules.

Proposal 13: Clarify finished product meaning

32. NZFGC supports making it clear that finished products refers to products placed on the market not as might be used by consumer.

Proposal 14: Explanatory note: sunscreens

33. NZFGC supports the replacement of 'sunbathing products' with 'sunscreen products' to assist with clarity and searchability.

Proposed changes to Schedules 4 to 8

34. We note that the changes to Schedules 4 to 8 (Proposals 15 to 25) are largely to align with the EU Cosmetics Regulation (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law 15 September 2022). Alignment with the EU is a critical factor in the industry's continued operation in New Zealand.

Proposal 15: Column changes to tables

35. Several changes to column headings are proposed for Schedules 4-8. NZFGC supports these amendments.

Proposal 16: Changes to column names

36. Four column name changes are proposed for Schedules 5 and 6, all of which are supported by NZFGC.

Proposal 17: Remove obsolete table

37. NZFGC supports the removal of Table 3 in Schedule 5 (Components Cosmetics Products may Contain with Restrictions).

Proposal 18: Remove references to previous amendments

38. NZFGC considers it important for previous amendments to be searchable. We therefore recommend the amendments be retained. These could be collocated in a list at the end of the Standard. That way they will be preserved but will not impact on readability.

Proposal 19: Add extra synonyms

39. NZFGC strongly supports the addition of extra synonyms eg [4-(4-Hydroxy-3-iodophenoxy)-3,5-diiodophenyl]acetic acid (Tiratricol (INN))] and its salts.

Proposal 20: Correct a reference error

40. NZFGC supports amending the references in Schedule 5 from "list of ingredients referred to in Part 2 (2A) of Schedule 1" to refer to "Schedule 1, condition 1(2)".

Proposal 21: Changes to Schedule 4

41. NZFGC supports maintaining the currency and safety of consumers with the addition of new lines and changes to existing lines to reflect Annex II: List of Substances Prohibited in Cosmetic Products of the EU (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law 15 September 2022). We support the comments made on this Schedule by Cosmetics New Zealand.

Proposal 22: Changes to Schedule 5

42. As with amendments to Schedule 4 above, Schedule 5 is to have new lines added and changes to existing lines made to align with Annex III: List of Substances which Cosmetic Products Must Not Contain Except Subject to the Restrictions Laid Down of EU (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law

15 September 2022). We support the comments made on this Schedule by Cosmetics New Zealand particularly in relation to the conditions for age range made for substances with reference numbers 32-47 and 56.

Proposal 23: Changes to Schedule 6

43. Similarly to Schedules 4 and 5, NZFGC supports amendments to Schedule 6 to align with Annex IV: List of Colorants Allowed in Cosmetic Products of EU (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law 15 September 2022).

Proposal 24: Changes to Schedule 7

44. As with Schedules 4, 5 and 6, NZFGC supports amendments to Schedule 7 to align with Annex V: List of Preservatives Allowed in Cosmetic Products of EU (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law 15 September 2022).

Proposal 25: Changes to Schedule 8

45. Finally, as with Schedules 4, 5, 6 and 7, NZFGC supports amendments to Schedule 8 to align with Annex VI: List of UV Filters Allowed in Cosmetic Products of EU (Regulation (EC) No 1223/2009) up to and including Amendment 46 (passed into law 15 September 2022). We support the comments made by Cosmetics New Zealand in relation to these changes and note the omission of lines 33 and 34 in the EU regulations that have not been inserted for Bis-(Diethylaminohydroxybenzoyl Benzoyl) Piperazine and the nano version respectively. We agree these should be added to Schedule 8 to avoid products containing them as UV Filters being outside the coverage of the Cosmetic Products Group Standard.

Proposal 26: Minor amendments

46. NZFGC supports the minor changes intended for clarity and fixing errors.