Regulatory Essentials – June 27, 2018

Health Updates

NNHPD's Post License Issue Request for Certain Licensed Topical NHPs Containing Dimethicone

FOR CIRCULATION TO COSMETICS ALLIANCE CANADA MEMBERS ONLY – NOT INTENDED FOR EXTERNAL DISTRIBUTION

It has come to Cosmetics Alliance's attention that NNHPD has recently issued to certain NHP License Holders a **Post-Licensing Notice** regarding DIMETHICONE in medicated skin care and diaper rash products presently licensed as NHPs.

ISSUE SUMMARY

If your company has registered a NHP under the **MEDICATED SKIN CARE PRODUCT** or **DIAPER RASH PRODUCT** monographs containing **DIMETHICONE** as a non-medicinal ingredient, you may have received (or should soon be receiving) a Post-Licensing Notice seeking clarification regarding the concentration of dimethicone in these products. Specifically, NNHPD appears to be following up on some concerns regarding the classification of these products, in that:

*"…if the concentration of dimethicone is greater than or equal to 1% and contributes to the product's claim…, the **product is considered a drug**"*

In the Appendix accompanying this notice, NNHPD elaborates on the underlying policy determinants behind this Notice, effectively citing that DIMETHICONE at concentrations greater than 1% in a NHP would not fall under Schedule 1 of the NHPR, as at this concentration, *"if dimethicone is declared as a medicinal ingredient in a product, the product is a drug, not an NHP; and a DIN Application should be submitted to Health Canada"*.

ACTION REQUEST

Companies receiving this Post-Licensing Notice would have registered a Medicated Skin Care Product or Diaper Rash Product as an NHP. The specific registrations in question will be clearly identified in the Notice (as these Notices are issued on an individual registrant basis).

We have received word from NNHPD that there are two versions of the Notice that have been issued:

1. One, where the concentration of dimethicone as an NMI in the registered NHP is NOT on file with NNHPD; OR

2. Another, where the concentration of dimethicone as an NMI in the registered NHP has been provided to NNHPD and is greater than or equal to 1%

Irrespective of the above circumstances, in receiving this Post-Licensing Notice, sponsors are requested to provide the following information/clarifications within a VERY SHORT response window (2 weeks).

NOTE: <u>Response to this Notice is VOLUNTARY</u>:

A. If the concentration is less than 1%, submit a REVISED PLA and LABEL indicating the concentration of dimethicone in the product; OR

B. If the concentration is greater than or equal to 1%:
   - Reformulate to remove the dimethicone from the product or reduce it to a concentration less than 1% and submit a REIVSED PLA and LABEL indicating the concentration of dimethicone in the product; OR
   - Indicate intent to keep the formulation as-is and register the product as a drug AND submit a request to DISCONTINUE the product license, accordingly

COSMETICS ALLIANCE ACTIVITIES

Unfortunately, Cosmetics Alliance was not notified of these actions in advance. We are pursuing discussions with NNHPD to understand why this action appears to have 'come out of the blue' and therefore better understand any changing circumstances that have necessitated these actions being pursued at this point in time. Based on some preliminary discussions with NNHPD, we can confirm that there are NO underlying safety, efficacy or quality concerns behind these actions; rather, this is simply an exercise intended to clarify the classification of these products for administrative purposes.

Furthermore, we have also clarified that NNHPD's underlying concern appears to be with their interpretation that dimethicone when present in NHP products at concentrations greater than or equal to 1% may contribute to the overall medicinal purpose of the monograph product (e.g. Table 2 – Drug Medicinal Ingredients; Diaper Rash Monograph). Correspondingly, they are looking to clarify that the dimethicone in a product be correspondingly declared as a medicinal ingredient when it is intended adds to the therapeutic benefit of the product. Bottom line, NNHPD is mainly interested in ensuring the re-classification of products (as drugs) under circumstances when the dimethicone in any such product is contributing to the therapeutic profile of the product.

Unfortunately, the course of action as outlined in this Post-Licensing Notice appears to overstep the specific rationale as outlined in the supporting Appendix – in that it DOES NOT discriminate between whether or not the dimethicone in the product is <u>declared</u> as a medicinal ingredient. If this were the case, the suggested course of action should ONLY be required under circumstances where dimethicone in these products are declared as intentionally contributing to the pre-cleared therapeutic indication as identified under these monographs.

Furthermore, to suggest the need to reformulate a product simply because it contains greater or equal to 1% dimethicone (irrespective of whether or not the product is considered a drug or NHP) in the absence of any corresponding SAFETY/EFFICACY OR QUALITY SIGNAL of concern, is absolutely nonsensical. This would represent an unjustified market disruption with

little benefit to the health and safety of Canadian Consumers. The regulatory resources that would be required to update all registrations according to the proposed course of action as outlined in the Notice would be significant, and the proposed transitional schedule of 1 year may be insufficient, given all the required compliance adjustments that would be needed to bring these on-market products in line with the present requirements for drugs (i.e. stability and additional testing, API requirements, re-labelling, etc.). Finally, to mandate this change, at a time, whereby all of these products will ultimately be moving to be registered in the relative short-term under a regulatory model that is based on risk rather than product classification, where like-products are treated similarly, seems completely out of step with the 'risk-based' approach that NNHPD has recognized is needed to deliver effective and efficient regulatory compliance, moving forward.

Based on our preliminary follow-up with NNHPD officials, we are pleased to report that they will be taking back some of these concerns for further discussions and considerations.

RECOMMENDATION(S) FOR ACTION

This is not a mandatory Notice. Although response is voluntary, engagement with these notices are intended to be cooperative, and Cosmetics Alliance has always supported voluntary engagement with such initiatives.

If you are in receipt of such a Post-License Notice, on the basis of the above activities, we would recommend members to consider the following in responding to the Notice:

1. If the dimethicone in the cited products is declared as a **Medicinal Ingredient**, suggest requesting a meeting with officials on how best to resolve the classification of these product(s), particularly in light of the self-care framework, where like products are treated similarly (irrespective of formal classification)

2. If the dimethicone in the cited products is **intended as a NMI (even at concentrations in excess of 1%)**, suggest following-up with an e-mail or formal response letter with the following:
    - Statement that outlines that the dimethicone in the product is intended as an NMI
    - Rationale as to why the dimethicone in these products are NOT contributing or intending to contribute to the medicinal activity of the product (suggest referencing the details outlined in the respective monographs)
    - Seek further clarity as to what (if any) safety or efficacy issue are driving this specific course of action
    - Articulate the significant burden that this course of action represents and why these changes would be so significant
    - Reinforce the need to consider the risk-based approach ultimately being developed under the Self Care Framework, before requiring such significant action, for little perceived benefit

3. If the dimethicone in the cited product **is intended as a NMI (at concentrations LESS THAN 1%)**, suggest following-up with an e-mail or formal responses letter that outlines the following:
    - Confirmation that the dimethicone in the product is intended as an NMI

- Affirmation that the concentration of dimethicone in product is less than 1%
- Although the Notice clearly indicates that you should submit a REVISED PLA and label; we have received reassurances from NNHPD that such a formality is now **NOT necessary** (rather an e-mail/letter outlining these specifics should suffice, given discussions with Cosmetics Alliance)

4. Of course, if you **do not market a product implicated by the Notice**, we would strongly recommend that you notify NNHPD that you appear to be in receipt of this Notice in error (note: suggest that you look into the NPN reference in question, perhaps this may be a product that your company has acquired through an acquisition; and follow-up if in fact you are not the license holder).
    - If this is indeed the case, we would kindly ask that you notify us of any such circumstances as soon as possible, as this would signal/trigger a far greater concern regarding inadvertent disclosure of confidential information to a stakeholder.

Cosmetics Alliance Canada will continue to follow-up with officials looking to clarify the scope and intent behind this Notice and look to have these actions re-considered within the context of the Self-Care Framework.

Please stay tuned for any updates that we may have, based on the follow-up conversations we are pursuing with NNHPD.

In the interim, if you would like to discuss this Notice or this Update in further detail, please do not hesitate to touch base with your CA Regulatory Team.

NNHPD's Multi-Lateral Meeting

On June 22, 2018, Cosmetics Alliance attended Natural and Non-prescription Health Products Directorate's (NNHPD) Multi-Lateral Meeting in Ottawa. Richard Parcels from Cosmetics Alliance along with CA's Product Compliance and Market Access (PCMA) Committee's Vice-chair, Francois Roberge and CA's Facility Compliance and Manufacturing (FCM) Committee's Chair, Manon Hebert attended the Multi-Lateral. Overall, the Multi-Lateral was informative covering key topics and updates such as the Self-Care Framework, Plain Language Labelling and Pause the Clock. It is crucial for CA to attend the Multi-Lateral to discuss key topics with senior officials and other associations. CA would like to thank Francois and Manon for their participation in the Multi-Lateral. Please see below for material accompanying the Multi-Lateral Meeting.

NNHPD'S Site Licensing

NNHPD's Engagement and Priorities

e-CDFT/WET Webinar Update

Health Canada hosted a Technical Session on the e-CDFT / WET package on June 26th. This session resulted from our May 23rd PLL Lessons Learned session with NNHPD. Thank you to those members who attended and provided advance questions / concerns to Health Canada ahead of time. If you have any additional technical questions on implementation of the eCDFT / WET, please send them to hc.nnhpd.consultation-dpsnso.sc@canada.ca and copy CA at

regulatory@cosmeticsalliance.ca.The eCDFT / WET will be updated and published by August 31, 2018.

FDALO Reconsideration Process for Drug Submissions and NHP Applications

Health Canada is inviting you to provide your comments on the revisions to the guidance document Reconsideration of Decisions Issued for Human Drug Submissions (2015). Revisions have been made to apply the human drug reconsideration process implemented in 2015, which enhanced the transparency and impartiality of the process, to natural health product (NHP) applications. The Food and Drugs Act Liaison Office (FDALO) will manage the reconsideration process for drug submissions and NHP applications. The revised guidance now entitled Reconsideration of Decisions Issued for Human Drug and Natural Health Product Submissions (2018) outlines the steps of the reconsideration process for pre-market licensing decisions made by the Natural and Non-prescription Health Products Directorate (NNHPD), the Therapeutic Products Directorate (TPD) and the Biologics and Genetic Therapies Directorate (BGTD). It is noteworthy that the reconsideration process in this guidance falls under two different regulatory frameworks: drug submissions under the *Food and Drug Regulations,* and NHP applications under the *Natural Health Product Regulations*. The steps in the process are uniform for both product categories, with a few exceptions as highlighted in the guidance.

Guidance Document Changes

- The 2015 reconsideration process that was developed for drug submissions has been applied to NHPs; the eligibility criteria for NHP reconsiderations and administrative forms have been added.

- The reconsideration process used for TPD and BGTD submissions since 2015 remains unchanged with three minor exceptions. Time frames have been modified for:
    - the Internal Review process;
    - parties to submit their draft and final versions of their presentations;
    - applicant to submit a list of representatives who will participate in the reconsideration meeting.

Details about these changes are found on pages 2 and 3 under “Document Change Log”.

- The guidance document was edited to improve the flow and readability; TPD and BGTD stakeholders may notice that some sections have been re-ordered or merged.

The 60-day consultation period ends on August 24, 2018. Once the consultation is complete and comments have been analyzed, the guidance document will be updated to replace the 2015 web version. This work will be carried out by FDALO, in collaboration with NNHPD, TPD and BGTD. Cosmetics Alliance will be reviewing the Draft Guidance Document and will be providing comments to FDALO. CA encourages membership to review the guidance document and send your comments and concerns to regulatory@cosmeticsalliance.ca. Comments may also be submitted to FDALO by email fdalo@hc-sc.gc.ca. Please use the subject line: “Reconsideration Guidance Document”. By regular mail to:

Food and Drugs Act Liaison Office
200 Eglantine Driveway
Address Locator 1915C

Ottawa, Ontario
K1A 0K9

FDALO Summary of Activities

The Food and Drugs Act Liaison Office (FDALO) released its 2016-2017 release on activities. Every year FDALO prepares a report based on the cases they have managed and their observations and interactions with stakeholders. This report serves as feedback to the department to consider options for making system-wide improvements to regulatory processes. Cosmetics Alliance encourages membership to the review the report as it contains important information on FDALO's outreach and communication efforts, reconsideration process for Natural and non-prescription Health Products and next steps for 2018. To view the report please see below.

FDALO 2016-2017 Activities

Aligned Reviews between Health Canada and Health Technology Assessment Organizations

Health Canada's Regulatory Review of Drugs and Devices initiative aims to provide more timely access to drugs and devices. Health Canada is therefore giving the option to sponsors to formally align reviews of all qualifying drug submissions in partnership with the Canadian Agency for Drugs and Technologies in Health (CADTH) and l'Institut national d'excellence en santé et en services sociaux (INESSS) (hereinafter referred to as Health Technology Assessment organizations (HTAs)).

The following notice and associated template authorizing the sharing of information was posted on June 22, 2018. It formalizes the timelines, process, and considerations for sponsors with qualifying drug submissions that are interested in participating in aligned reviews between HC and HTAs.

Notice

Template

Health Canada and the HTAs plan to host a webinar in early Fall 2018 for all interested stakeholders to describe the aligned review process in more detail, and answer questions about the initiative. More information on the webinar will follow.

Release of the Post-Notice of Compliance Changes

Health released various publications regarding Post-Notice of Compliance (NOC) Changes. The safety and efficacy of NOCS, the framework guidance document and Notices of Change Level III Form. Please see below for details regarding the Level III Form. Please take the time review the NOC changes if you have non-monograph Drug Products. Please let your CA regulatory team know if you have any concerns.

1. Introduction

The clarification of when a Level III change should be filed, and the documentation to be submitted to Health Canada was included in the revisions to two of the Post-Notice of

Compliance (NOC) Changes guidance documents: Safety & Efficacy and Framework. As a consequence, revisions have been made to Section #2 of this Notice to reflect the change.

Only the Level III Changes form that is currently posted on the Health Canada website will be accepted.

2. When to file

A Level III changes form should be filed at the time the changes are implemented or submitted with the Annual Drug Notification depending on the type of drug (pharmaceutical or biologic) and the type of change made (Quality or Safety and Efficacy). Refer to Sections 2.1.3 and 2.2.4 of the Post-Notice of Compliance (NOC) Changes: Framework Document for more detailed information on when to file Quality or Safety & Efficacy Level III changes and what documentation should be submitted when filing these changes.

Level III Changes should be filed for:

- New drugs that have received a Notice of Compliance (NOC) pursuant to section C.08.004 of the Food and Drug Regulations. These drugs may include pharmaceuticals, biologics, and radiopharmaceuticals for human use and pharmaceuticals, radiopharmaceuticals and certain biotechnological products for veterinary use.

- New drugs for which an NOC has been recommended but issuance of the NOC has been placed on hold.

- Drugs regulated under Part C, Division 1 of the Food and Drug Regulations that have received a drug identification number (DIN) pursuant to Section C.01.014.2 for Drug Identification Number applications - Biologic products (DIN-B).

Level III changes forms should not be provided for the following:

- Drugs regulated under Part C, Division 1 of the Food and Drug Regulations that have received a drug identification number (DIN) pursuant to Section C.01.014.2 for the following DIN types:

  - Drug Identification Number Application (DINA)

  - Disinfectant Drug Identification Number Application (DIND)

  - Category IV Monograph Drug Identification Number Application (DINF)

  - Veterinary Drug Identification Number Application (VDIN)

3. File Format and Content

Sponsors should complete a separate Level III changes form for each drug product and save them as separate PDF files.

A cover letter should not be provided in a regulatory transaction with a Level III Changes form.

Supporting data should not be provided with the Level III changes form. If additional information is required, it will be requested. Any unsolicited supporting data will not be reviewed.

4. How to File

Health Canada strongly recommends that all Post-NOC Changes: Level III changes forms are filed in eCTD format via the Common Electronic Submission Gateway (CESG). Refer to the Guidance Document: Preparation of Regulatory Activities in the Electronic Common Technical Document (eCTD) format for detailed instructions.

If not provided in eCTD format, the forms should be filed in "non-eCTD electronic-only" format. Refer to the Guidance Document: Preparation of Regulatory Activities in the "Non-eCTD Electronic-Only" format for detailed instructions.

Health Canada will not accept Level III changes forms provided in paper format.

Environmental Updates

2018 CEPA ICG Conference

Cosmetics Alliance requests your participation in this years 2018 CEPA ICG Conference on October 1st – 3rd at the Holiday Inn Toronto International. Your participation in the conference is critical in shaping the next phase of work in CMP as the government looks to complete the current CMP-3 and looks towards engagement post 2020. Cosmetics Alliance is part of the ICG planning committee and we are working on shaping a program that will be relevant to our membership. Cosmetics Alliance encourages membership to attend the conference especially if the CMP is of interest to you as this will be great opportunity for engagement. Please see below for conference details.

2018 CEPA ICG Conference:

Date: October 1 to 3, 2018

Time: October 1: 8:00 a.m. to 6 p.m.

October 2: 8:30 a.m. to 7 p.m.

October 3: 8:30 a.m. to 3 p.m.

Location: Holiday Inn Toronto International

970 Dixon Road, Etobicoke, ON M9W 1J9

Register: http://cepa-icg.ca/privacy-policy/

For more information: http://cepa-icg.ca/

International Update

Norway to Amend the Basel Convention - Control of Transboundary Movements of Hazardous Wastes

Recently Norway proposed to amend the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal to add a new entry to Annex II (e.g. Y48) covering “Plastic Waste: Waste and scrap from plastic and mixed plastic waste materials and mixtures of waste containing plastics, including micro plastic beads.” In addition, Norway proposes removing B3010 Solid Plastic Waste from Annex IX. The proposal would move plastic waste from Annex IX list of non-hazardous waste that are not subject to Convention controls to Annex II list of categories of wastes requiring special consideration, defined as “other wastes” for purposes of the Convention. This would mean that transboundary movements of such

plastic waste would be subject to the Basel prior informed consent procedure in cases where the importing State has not prohibited import. Norway believes this action will help to address marine litter and encourage better environmentally sound management of plastic waste. Norway's proposal can be found here. Cosmetics Alliance will be monitoring this development and will notify membership on any significant developments.