

## Use of Swiss indication of source for cosmetics products List of Swiss substances for the production of cosmetics products

### Regulations

#### General information

1. The Swiss Cosmetic and Detergent Association SKW maintains a list (hereinafter referred to as "list") of Swiss substances for the production of cosmetics products. Producers can apply for Swiss substances to be included in this list which are available in sufficient quantities and at constant quality in Switzerland for industrial production and which meet the requirements for the use of Swiss indication of source within the meaning of Section 47 et seqq. of the Trademark Protection Act (TmPA)<sup>1</sup>.
2. The SKW decides on the updates of the list and the date of publication the list below. The list is generally updated and published twice a year.
3. Whether or not a substance is of Swiss origin is determined in accordance with Section 47 et seqq. of the Trademark Protection Act (TmPA) and the relevant provisions of the Trademark Protection Ordinance (TmO)<sup>2</sup>.
4. All list users accept the conditions of these regulations. List users are, in particular, substance producers which register their products for inclusion in the list and the producers of cosmetics products which label their cosmetics products with Swiss indication of source taken from the list.

#### Inclusion of a substance in the list

5. Producers of Swiss substances which meet the requirements in accordance with Section 1 above, or the industry associations of respective producers, can submit a request to SKW for the inclusion of a substance in the list. The SKW determines the content of such requests and the submission process (e.g. written or electronically through a website). Such request should generally comprise:
  - a. Trade name of the substance;
  - b. Surname and forename, or company, and address of the substance producer;
  - c. Information on the ingredients of the substance in accordance with INCI (International Nomenclature Cosmetic of Ingredients) with percentages;
  - d. Tonnage in accordance with Regulation (EC) No 1907/2006, REACH;
  - e. Specific properties of the substance (specifications);

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<sup>1</sup> TmPA, SR 232.11.

<sup>2</sup> TmO, SR 232.111.

- f. Declaration of the substance producer to confirm that the substance is available in sufficient quantities and at a constant quality in Switzerland for the industrial production of cosmetics products and that the substance meets the relevant Swiss regulations on the use of Swiss indication of source.
    - g. Declaration of the substance producer confirming that it accepts these regulations
6. SKW shall be notified immediately and without requiring prompting of any changes to any of the information stated above in Section 5 a-g provided for a substance before or after its inclusion in the list.
7. The SKW charges producers a processing fee of CHF 100.00 for processing a request for inclusion of a substance in the list. The SKW only processes requests once it has received this fee. The processing of a request does not incur any additional costs for SKW members as the fee is already included in their membership contribution.
8. The SKW may submit a request for inclusion of a substance in the list to an internal committee for assessment before registering the substance.
9. Once a substance has been included in the list, the substance producer must send confirmation to SKW that the requirements in accordance with Section 5 a-g for inclusion of the respective substance continue to be met every two years, but no later than two months from the date of publication of the substance, without requiring prompting to do so. Within the same period, the producer shall also pay SKW a renewal fee of CHF 50.00 for the substance to remain on the list for another two years. This fee is included in the membership contributions of SKW members. The SKW may delete a substance from the list if the producer fails to send confirmation or payment within the above period or if such confirmation and payment is late. The SKW may send reminders in the case of late confirmations or renewal fee payments, but is not obliged to do so. Once a substance has been deleted from the list, a new request for inclusion will have to be submitted to resubmit it.
10. Any requests for inclusion in the list submitted by a substance producer evidently containing insufficient, incomplete or incorrect information shall not be processed. SKW shall retain the processing fee in such case.
11. Should it come to light at a later date that the entry of a substance in the list is based on insufficient, incomplete or incorrect information, the respective substance shall be deleted from the list.
12. Any substance that no longer meets the requirements of these regulations for inclusion in the list shall be deleted from the list. It may be re-listed as soon as it meets the requirements again. A new request has to be submitted for the substance to be re-listed.
13. The SKW may choose, on its own accord, to include substances in the list that are generally known to be available for the industrial production of cosmetics products in Switzerland in sufficient quantities and at a constant quality and which meet the relevant regulations on the use of Swiss indication of source. No processing fee falls due in this case.

14. If the availability of a natural product is stated in Appendix 1 to the Ordinance of 2 September 2015 on the Use of Swiss Indications of Source for Foodstuffs (ISFA), the availability of such natural products is based on the respective appendix. The cosmetics industry interprets a natural product to be available for the production of cosmetics products in Switzerland in sufficient quantities and at a constant quality if the Swissness self-sufficiency level in accordance with Appendix 1 to ISFA is at least 50%. In exceptional circumstances, Appendix 1 to ISFA does not apply to a natural product listed therein if such natural product cannot be produced in Switzerland in compliance with the technical requirements for the production of cosmetics products.

#### Access to the list

15. The list can be accessed free of charge until further notice. The SKW may introduce a usage fee for access to the list in the future.

#### Assumptions and interpretation by the industry

16. If a substance is included in the list, the producers of cosmetics products may assume that the respective substance is available in Switzerland in sufficient quantities and at a constant quality in accordance with the information provided by the producer and within the meaning of Section 47 et seqq. Of the Trademark Protection Act.
17. If a substance is not included in the list, the producers of cosmetics products may assume that the respective substance is not available in Switzerland in sufficient quantities and at a constant quality according to the interpretation of the industry and that in terms of the use of the Swiss indications of source they may exclude the costs of the substance procured abroad from the calculation of the production costs for the cosmetics product.
18. Companies are free to choose to also include costs for unlisted substances when calculating the production costs for the use of Swiss indication of source.
19. It complies with the interpretation of the Swiss cosmetics industry that no later than 12 months after the publication of a substance in the list, no further cosmetics products with Swiss indication of source may be produced, imported into Switzerland, exported from Switzerland or transited through Switzerland without the respective substance being taken into consideration in the calculation of production costs. According to the interpretation of the Swiss cosmetics industry, cosmetics products produced in or imported into Switzerland within this transitional period of 12 months may still be advertised, sold and delivered in Switzerland up to 24 months after the publication of the substance in the list.

#### Warranty, liability and exclusion of liability

20. The list users shall guarantee that the information provided by them in connection with these regulations are complete and accurate and that they shall notify SKW immediately of any changes. Deliberately incorrect or misleading information in connection with the use of the list may result in civil proceedings and, in the case of malicious intent, may also violate the penal

provisions of the Federal Act on Unfair Competition (UCA)<sup>3</sup>, thus carrying a prison sentence of up to three years or fine if prosecuted.

21. The list users shall be liable to SKW for any damage caused by them, regardless of such damage being within their scope of control, and any damage incurred by SKW in connection with the maintenance and/or use of the list.
22. The SKW shall not assume any liability whatsoever for the completeness, accuracy and availability of the information provided in the list. The SKW reserves the right to discontinue the maintenance of the list or to change the structure and content of the list at any time. Any discontinuation or change of the list shall not entitle users to claim damages from SKW. Insofar as legally permissible, the SKW shall not assume any contractual or non-contractual liability for damages arising in connection with the list at hand. SKW's liability to users shall be limited to EUR 100.00 per case. Any liability for subsequent damages and loss of earnings shall be excluded.

Amendments, place of jurisdiction and governing law

23. The SKW may amend these regulations at any time. Claims against SKW based on an amendment of these regulations shall be excluded.
24. The **place of jurisdiction** for all disputes in connection with these regulations and services provided by SKW in connection with the list is **Zurich, Switzerland**. These regulations are governed by substantive Swiss law under exclusion of conflict of laws.

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**We agree to the provisions of these regulations**

Place, date

Company

Legally binding signature(s)

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<sup>3</sup> UCA, SR 241.