Australian Government
Department of Health
Therapeutic Goods Administration

Notice of an interim decision to amend the current Poisons Standard

23 September 2020

TGA Health Safety Regulation

Contents

1 Notice of an interim decision made under regulation 42ZCZN of the *Therapeutic Goods Regulations 1990*

This invitation is limited to the delegate of the Secretary's interim decision on nicotine and it is not concerned with the prohibition on importing e-cigarettes containing vaporiser nicotine.

This web publication constitutes a notice for the purposes of regulation 42ZCZP of the *Therapeutic Goods Regulations 1990* (the **Regulations**). In accordance with regulation 42ZCZP, this notice sets out:

- an interim decision made by a delegate of the Secretary under regulation 42ZCZN in relation to a proposed amendment to the current Poisons Standard, which was referred to an expert advisory committee under Division 3D.2 of the Regulations in June 2020; and
- the proposed date of effect of the proposed amendment (in circumstances where the interim decision proposes an amendment to the current Poisons Standard).

In accordance with regulation 42ZCZP, interested persons (including the applicant requesting the amendment) are invited to make submissions to the Secretary in relation to this interim decision on or before **12 November 2020.**

Please note that in accordance with subregulation 42ZCZQ(4) of the Regulations, the Secretary must publish all relevant submissions received, unless the Secretary considers the information to be confidential information.

We have changed the way to make submissions.

Submissions now should be provided through our consultation hub. Submissions will be considered by the Delegate in making the final decision.

Please note that in accordance with subregulation 42ZCZQ(4) of the Regulations, the Secretary must publish all relevant submissions received, unless the Secretary considers the information to be confidential information.

How to respond

We have changed the way to make submissions.

Go to our consultation page to make a submission about these proposals to amend the Poisons Standard.

If you have difficulty accessing the consultation hub or uploading your submission, contact medicines.scheduling@health.gov.au and include 'Public submission – interim decision on Nicotine' in the subject line of the email.

2 Interim decision on proposed amendments referred to the Advisory Committee on Medicines and Chemicals Scheduling in joint session (Joint ACMS-ACCS #25, June 2020)

2.1 Interim decision in relation to nicotine

Interim decision

Pursuant to regulation 42ZCZN of the Regulations, a delegate of the Secretary has, in relation to the proposed amendments, made an interim decision to amend the current Poisons Standard in relation to nicotine as follows:

Schedule 7 – Amend Entry

NICOTINE **except**:

a) ~~when included in Schedule 6;~~

a) when included in Schedule 4; or

b) in preparations for oromucosal or transdermal administration for human therapeutic use as an aid in withdrawal from tobacco smoking; or

c) in tobacco prepared and packed for smoking.

Schedule 6 – Amend Entry

~~NICOTINE in preparations containing 3 per cent or less of nicotine when labelled and packed for the treatment of animals.~~

Schedule 4 – Amend Entry

NICOTINE in preparations for human ~~therapeutic~~ use **except**:

a) in preparations for oromucosal or transdermal administration for human therapeutic use as an aid in withdrawal from tobacco smoking ~~in preparations for oromucosal or transdermal use.~~; or

b) in tobacco prepared and packed for smoking.

Appendix D, Item 5 – New Entry

Nicotine

(Secretariat note: the Appendix D listing applies only in relation to preparations included in the Schedule 4 nicotine entry)

The Delegate additionally seeks comments on child resistant closures for liquid nicotine products

I note the advice of the Joint ACMS-ACCS #25, which raised a need to address the risk of accidental exposure to or ingestion of liquid nicotine, which are primarily used with e-cigarettes. Of particular concern was the death of a toddler in Victoria following the ingestion of liquid nicotine in May 2018. I have considered the legislative instrument, *Therapeutic Goods Order No. 95 - Child-resistant packaging requirements for medicines 2017* (**TGO 95**), which sets out particular requirements in relation to the packaging of medicines that present a significant risk of toxicity to children if accidentally ingested. These requirements describe packaging that is

designed to be resistant to opening by children, thereby reducing the incidence of accidental poisoning. The requirements apply in relation to medicines registered on the Australian Register of Therapeutic Goods (**ARTG**), and include prescription, over-the-counter (**OTC**) and listed medicines. In accordance with TGO 95, nicotine is a substance for which child resistant closure is required regardless of whether the nicotine-containing medicine is available only on prescription or can be self-selected as an OTC or listed medicine. TGO 95 does not capture unapproved products and I recognise that there is an argument for having consistency in the requirements for a child resistant container for any liquid nicotine product whether or not it is approved or unapproved.

I have had regard to the response from international jurisdictions to the public health concerns associated with accidental nicotine exposure to children. In my review, I have identified at least five international jurisdictions that have sought measures to include child resistant requirements for liquid nicotine products. These jurisdictions include Canada, European Union, Finland, United Kingdom and United States. I invite comment in the public submissions on further amendments to the current Poisons Standard (or alternative measures) in response to child resistant closures for liquid nicotine products.

Materials considered

In making this interim decision, the delegate considered the following material:

- the proposal to amend the current Poisons Standard with respect to nicotine;
- the 13 public submissions received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations;
- the advice received from the Advisory Committee on Medicines and Chemicals Scheduling in joint session (Joint ACMS-ACCS #25);
- provisions of the *Therapeutic Goods Act 1989* (the **Act**) relating to the scheduling of substances (Part 6-3) in particular those matters identified in subsection 52E(1) of the Act;
- provisions in the Regulations relating to the procedure for amending the current Poisons Standard (Division 3D of Part 6);
- the Australian Health Ministers' Advisory Council's Scheduling Policy Framework (SPF 2018);
- the Scheduling handbook: Guidance for amending the Poisons Standard (version 1.1 July 2019);
- the 2018 report on the Public Health Consequences of E-Cigarettes from the United States National Academies of Sciences, Engineering and Medicine; and
- the Royal Australian College of General Practitioners publication, Supporting smoking cessation - A guide for health professionals (second edition, December 2019).

Summary of Joint ACMS-ACCS advice to the Delegate

The Committee recommended moving nicotine for human use to Schedule 4, while retaining the current exemptions for tobacco and certain smoking cessation products. The Committee also recommended deleting the Schedule 6 entry and creating an Appendix D listing for nicotine in the current Poisons Standard.

The Committee recommended an implementation date of **1 June 2021**.

Members agreed that the matters under subection 52E(1) of the Act relevant to the delegate's consideration include: (a) the risks and benefits of the use of a substance; (b) the purposes for which a substance is to be used and the extent of use of a substance; (c) the toxicity of a

substance; (d) the dosage, formulation, labelling, packaging and presentation of a substance; (e) the potential for abuse of a substance; and (f) any other matters considered necessary to protect public health.

In relation to each of these matters, the Committee provided the following advice:

a - the risks and benefits of the use of a substance:

- The Committee considered the available evidence, which does not support that e-cigarettes are a safer alternative to smoking cessation aids currently available and that there is currently insufficient evidence to conclude whether e-cigarettes can benefit smokers in quitting;
- The Committee identified the following risks:
  - Nicotine addiction for new or continuing users of novel nicotine delivery systems;
  - The introduction of novel nicotine delivery system may have a negative impact on tobacco control and may re-normalise smoking;
  - Exposure to nicotine in adolescents may have long-term consequences for brain development, potentially leading to learning and anxiety disorders;
  - Unknown toxicity of long-term alveolar exposure to heated and inhaled excipients; and
  - Risk of accidental exposure to children, particularly in relation to liquid nicotine.

b - the purposes for which a substance is to be used and the extent of use of a substance:

- The Committee noted the following purposes for which nicotine is to be used:
  - Nicotine Replacement Therapy (**NRT**) for the purposes of smoking cessation e.g. transdermal patches and oromucosal absorption formulations, such as chewing gum or lozenges (the existing approved use); and
  - Nicotine in tobacco prepared and packed for smoking in conventional cigarettes (the existing use permitted with restrictions other than scheduling);
- The Committee considered the extent to which nicotine is being used in e-cigarettes, e-juice, heat-not-burn tobacco products, chewing tobacco and snuff. It was noted that such nicotine delivery systems or preparations have not been approved by the TGA, nor by any equivalent foreign medicines regulator, as a smoking cessation aid.

c - the toxicity of a substance:

- The Committee identified the following in relation to the toxicity of nicotine:
  - Severe hazard from repeated use may lead to potential addiction and a significant risk of producing irreversible toxicity, which may involve serious, acute or chronic health risks or death; and
  - Long-term toxicity of unapproved products is unknown;
- In addition, the Committee noted the death of a toddler in Victoria who accidentally consumed liquid nicotine his mother had been mixing with vape juice for an e-cigarette in May 2018.

d - the dosage, formulation, labelling, packaging and presentation of a substance:

- The Committee noted the following for the 'dosage, formulation, labelling, packaging and presentation' of nicotine in unapproved products for human use:
  - The dosage of nicotine varies between preparations and devices, and varies depending on the technique of the user; and
  - Child-resistant packaging might reduce the risk of unintentional exposure to nicotine in children. While nicotine is listed in TGO 95, the scope of the order does not cover compounded medicines. Further amendments to the current Poisons Standard or TGO 95 would need to be taken to require child-resistant packaging for compounded nicotine-containing products.

e - the potential for abuse of a substance:

- The Committee advised that e-cigarettes containing nicotine when used as intended carry a high risk of dependence.

f - any other matters considered necessary to protect public health:

- The Committee identified the following matters:
  - Australia as a Party to the World Health Organization Framework Convention on Tobacco Control, must adopt and implement effective measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke;
  - The proposed amendments to the Schedule 4 entry and Appendix D entry would remove a perceived inconsistency between Commonwealth and State and Territory laws regulating nicotine-containing e-cigarettes and help clarify the circumstances under which Australian Border Force may seize e-cigarettes containing nicotine, which are imported into Australia. In effect, it will remove the present uncertainty for some stakeholders over the regulatory treatment of nicotine. A product for human use containing nicotine (other than those specifically excluded from the Poisons Standard) will be included in Schedule 4 regardless of the intended purpose of its use, that is therapeutic or non-therapeutic (recreational), by the user. Currently, where the supplier's labelling, advertising or other documentation does not clearly state if it is for therapeutic use, there is a reliance on the personal intention of the user to determine the appropriate entry in the current Poisons Standard and the applicable State and Territory laws. This creates uncertainty, such that these products may evade compliance and enforcement regimes;
  - The proposed amendments would make it clearer that there is no established beneficial human use for nicotine outside therapeutic use and remove any discretionary notion regarding non-therapeutic use;
  - It would also help prevent the introduction of non-smokers to nicotine via vaping and ensure that nicotine-based e-cigarettes can only be imported, including under the personal importation scheme in the therapeutic goods framework, on the basis of a prescription from a medical practitioner;
  - The Committee advised that the current pathway for approval to supply products for smoking cessation is available for e-cigarettes containing nicotine. An application for registration on the ARTG could be made, which would involve assessment of the safety, efficacy and quality by the TGA, consistent with the requirements for existing nicotine replacement products;
  - The delegate's March 2017 final decision on nicotine in e-cigarettes is of relevance;

- The Schedule 4 entry would capture other novel nicotine-containing products and preparations for human use, with the exception of those uses currently exempted, on the basis that medical intervention is required for these products. The requirement for a prescription provides an opportunity for a medical practitioner to fully assess a patient's need for a product containing-nicotine and provide information to reduce the risks associated with nicotine use. The Committee discussion focussed on access controls on e-cigarettes containing nicotine due to the current public health risk. However, the substance-related harms would similarly apply to other novel nicotine-containing preparations.

Reasons for the interim decision (including findings on material questions of fact)

I have made an interim decision to re-schedule nicotine for human use (other than nicotine when in tobacco prepared and packed for smoking, or for therapeutic oromucosal or transdermal administration as a smoking cesssation aid) from Schedule 7 to Schedule 4. The proposed Schedule 4 entry will capture all human use apart from those uses currently exempted. The Schedule 4 entry will capture nicotine when prepared for use in e-cigarettes, e-juice, heat-not-burn tobacco products, chewing tobacco, snuff and other novel nicotine products, even if no therapeutic claims are made. I have also made a decision to include nicotine, when included in Schedule 4 medicines, in item 5 of Appendix D to ensure that possession of Schedule 4 products containing nicotine must be in accordance with a legal prescription. I have made a decision to delete the Schedule 6 entry as there are no longer any registered agricultural and veterinary products containing nicotine. The proposed change would mean that any new agricultural and veterinary product will be captured as a Schedule 7 dangerous poison. It should be noted that my interim decision does not alter the current exemption from scheduling for tobacco prepared and packed for smoking. The detailed reasons for my final decisions follow.

The proposed amendment to the Schedule 4 entry will clarify that nicotine for human use, other than tobacco for smoking, is only exempt from Schedule 4 when it is included in oromucosal and transdermal preparations for smoking cessation. I find that nicotine in preparations for human use such as e-cigarettes or other novel preparations and delivery systems are consistent with the scheduling factors relevant to Schedule 4 substances as outlined in the Scheduling Policy Framework (SPF). While there is currently a focus on access controls for e-cigarettes containing nicotine due to the present public health risk the substance-related harms and requirement for medical intervention apply to other novel nicotine preparations and delivery systems.

The experience on the use of nicotine in e-cigarettes for smoking cessation under normal clinical conditions is limited. In my assessment of the evidence, I find that the use of nicotine containing e-cigarettes for non-therapeutic use has contributed to, and is likely to contribute to, communal harm. The SPF provides that substances are scheduled according to the risk of harm and the level of access control required to protect consumers. In my view, restrictions on the availability of e-cigarettes are necessary to mitigate the potential uptake of smoking in young adults who would otherwise be at low risk of initiating nicotine addiction. I have had regard to the 2018 report on the Public Health Consequences of E-Cigarettes from the United States National Academies of Sciences, Engineering and Medicine, which found substantial evidence that e-cigarette use results in young people taking up smoking of conventional cigarettes. At the time of making this interim decision, I have considered evidence which establishes that exposure to nicotine in adolescents may have long-term consequences for brain development, potentially leading to learning and anxiety disorders. I note that the harms associated with e-cigarette use among youth and young adults were also raised in the final decision on nicotine in e-cigarettes published in March 2017. In my opinion, the requirement for a prescription would help prevent the introduction of non-smokers to nicotine via vaping and ensure that nicotine-based e-cigarettes can only be imported, including under the personal importation scheme in the therapeutic goods framework, on the basis of a prescription from a medical practitioner.

In my view, the inclusion of nicotine in Schedule 4 would require a medical practitioner to make an informed decision, taking into account the risks of nicotine, on whether it is in the patient's

best interest to prescribe e-cigarettes as a smoking cessation aid or higher risk novel nicotine delivery preparations. The requirement for a prescription provides an opportunity for a medical practitioner to fully assess a patient's need for e-cigarettes or other novel products containing nicotine and allow for the provision of advice to patients on all of the potential risks and benefits and how to reduce the risks associated with nicotine use. Medical intervention may involve a discussion on what nicotine replacement product is most suitable for people living with young children and how to use liquid nicotine safely.

I have considered a number of public health concerns associated with the use of e-cigarettes containing nicotine, even under strict medical supervision. These include:

- the potential for the delivery of a much higher dose of nicotine than registered medicines, in some cases even higher than that obtained from smoked cigarettes;
- the risk of maintenance or initiation of nicotine addiction; and
- the unknown long-term adverse effects.

I consider the publication of the Royal Australian College of General Practitioners Supporting smoking cessation - A guide for health professionals (second edition, December 2019) (**RACGP guidelines**) to be relevant to my deliberations. The RACGP guidelines stipulate that nicotine-containing e-cigarettes are not first-line treatments for smoking cessation and the strongest evidence base for efficacy and safety is for currently approved pharmacological therapies combined with behavioural support. Further, the RACGP guidelines provide that nicotine containing e-cigarettes may be a reasonable intervention for individuals who have failed to achieve smoking cessation with approved pharmacotherapies, but remain motivated to quit smoking and have raised e-cigarette usage with their healthcare practitioner.

I note the available evidence does not support that e-cigarettes are a safer alternative to smoking cessation aids currently available and that there is currently insufficient evidence to conclude whether e-cigarettes can benefit smokers in quitting. It should also be noted the inclusion of a poison in a Schedule indicates the degree of control required if it is marketed. It does not indicate that the poison is available; nor that is has been approved or is efficacious for any use that may be specified in a Schedule; nor does it negate any obligation for registration of a therapeutic good containing that poison.

I have had regard for the seven pre-meeting public submissions in opposition. It should be noted that a number of the submissions raised arguments for the total exemption from scheduling of unapproved nicotine products, rather than specifically addressing the current proposal. In my view, arguments in relation to that exemption have been previously considered and I note those arguments were subsequently refuted in the interests of public safety.

I note the support of the present scheduling proposal from the Cancer Council Australia, Pharmacy Guild, Public Health Association of Australia, Royal Australian and New Zealand College of Psychiatrists and the Australian Medical Association received in response to the pre-meeting consultation.

For the reasons referred to above, on balance, it is my view that the scheduling factors enumerated in the SPF in relation to Schedule 4 substances are satisfied and a Schedule 4 classification for nicotine for human use (other than nicotine when in tobacco prepared and packed for smoking, or for therapeutic oromucosal or transdermal administration as a smoking cessation aid) is appropriate.

My interim decision to include nicotine, when in Schedule 4 medicines, in item 5 of Appendix D of the current Poison Standard will ensure that possession of Schedule 4 preparations containing nicotine must be in accordance with a legal prescription. It should be noted that the reference to 'human therapeutic use' in the current Schedule 4 entry for nicotine is a source of uncertainty for some stakeholders in relation to the regulatory treatment of nicotine. It is my

understanding that, currently, where the supplier's labelling, advertising or other documentation does not clearly state whether the product is for therapeutic use, there is a reliance on the personal intention of the user to determine the appropriate entry in the current Poisons Standard and the applicable State and Territory laws. I note that the reliance on personal intention of the user creates uncertainty, such that these products may evade compliance and enforcement regimes.

Paragraph 52E(1)(f) of the Act relevantly provides that the Secretary must take into account '*any other matters that the Secretary considers necessary to protect public health*'. On that basis, I am concerned that, under the current scheduling for nicotine, unapproved nicotine products are able to be imported into Australia and may be associated with adverse health outcomes when used without medical supervision. I find that the use of unapproved nicotine products without medical supervision, whether for the purpose of smoking cessation or non-therapeutic use, is a matter necessitating consideration under paragraph 52E(1)(f) in order to protect public health. In accordance with the principles of scheduling provided in the introduction of the current Poisons Standard, the additional controls on possession and supply in Appendix D for any given substance apply only when that substance is included in Schedule 4 or Schedule 8. On that basis, it should be noted that the requirement for a prescription is applicable to the current Schedule 4 nicotine entry. The proposed Appendix D controls for nicotine do not apply to the current exemption from scheduling for tobacco prepared and packed for smoking.

In making my interim decision, I have had regard to the Australian Government's proposed prohibition on the importation of e-cigarettes containing liquid nicotine. The proposed prohibition would ban the importation of e-cigarettes and refill liquids containing nicotine, except when prescribed and responds to increasing evidence that the use of e-cigarettes containing nicotine by non-smoking youths predicts future take up of smoking. Based on my understanding of the legislation, the sale of e-cigarettes containing liquid nicotine is already prohibited by law by each State and Territory, because of public health concerns. I agree with the Joint ACMS-ACCS #25 advice that there is currently inconsistency across the States and Territories insofar as it relates to possession laws for the importation of e-cigarettes containing nicotine. It is my view that a nationally consistent approach to possession and importation is necessary to promote public health by ensuring that the possession of Schedule 4 preparations containing nicotine, apart from those uses currently exempted, must be under the care of a prescriber.

I have proposed editorial amendments for clarity in the entries for nicotine in Schedule 4 and Schedule 7 relating to the exemption for preparations for therapeutic oromucosal or transdermal administration as an aid in withdrawal from tobacco smoking

My interim decision to delete the Schedule 6 entry for nicotine was made on the basis of the former use of nicotine preparations as a veterinary dermal pesticide has been superseded by safer and more effective products and that there are no longer any registered agricultural and veterinary products containing nicotine. I note that a new proposal to amend the current Poisons Standard could be submitted, if a nicotine containing preparation intended for animal use, becomes available in the future.

I agree with the Committee's finding that the relevant matters in subsection 52E(1) of the *Therapeutic Goods Act 1989* are (a) the risks and benefits of the use of a substance; (b) the purpose for which a substance is to be used and the and extent of use of a substance; (c) the toxicity of a substance; (d) the dosage, formulation, labelling, packaging and presentation of a substance; (e) the potential for abuse of a substance; and (f) any other matters that the Secretary considers necessary to protect public health.

Proposed implementation date

I have had regard for the concerns that there is currently a lack of comprehensive prescribing guidelines for e-cigarettes for medical practitioners given that the evidence base relating to smoking cessation remains contested.

In order to establish a process for patients obtaining prescriptions through their medical practitioner, if clinically appropriate, I have proposed an implementation date of **1 June 2021** to allow for professional standards and clinical guidelines to be developed to guide decision making by medical practitioners. Should such materials be available sooner then I would consider an earlier implementation date.