Australian Government
Department of Health and Aged Care
Therapeutic Goods Administration

Notice of interim decisions to amend (or not amend) the current Poisons Standard

19 August 2022

TGA Health Safety Regulation

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Contents

1. Notice of interim decisions made under Regulation 42ZCZN of the *Therapeutic Goods Regulations 1990*

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:

- the interim decisions made by a delegate of the Secretary of the Department of Health and Aged Care under regulation 42ZCZN (the **Delegate**) in relation to proposed amendments to the current Poisons Standard which were referred to an expert advisory committee under subdivision 3D.2 of the Regulations in March 2022;
- the proposed date of effect of the proposed amendments (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 these interim decisions on or before **15 September 2022.**

Submissions 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.

2. Interim decisions on proposed amendments referred to the Advisory Committee on Medicines Scheduling (ACMS meeting #37, March 2022)

2.1 Interim decision in relation to azelastine and fluticasone propionate

Proposal

The applicant proposed amendments to the current Schedule 2 Poison Standard entries for azelastine and fluticasone propionate to include additional specific entries for fixed-dose combination (FDC) products containing both of these substances for use up to 6 months duration (the **Proposal**). The Proposal is made in the context that FDC products containing these substances that are not indicated for a limited period of use are currently included in the Australian Register of Therapeutic Goods (ARTG) as prescription-only medicines.

Interim decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) has made an interim decision to not amend the current Poisons Standard in relation to azelastine and fluticasone propionate. The Delegate's interim decision differs from the Proposal and the detailed reasons for the decision follow.

Materials considered

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

- The application to amend the current Poisons Standard with respect to azelastine and fluticasone propionate (the **Application**);
- The Twenty-five (25) public submissions, with four (4) including a written component, received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 37th meeting of the Advisory Committee on Medicines Scheduling (the **Committee**);
- Subsection 52E(1) of the *Therapeutic Goods Act 1989* (Cth) (the **Act**), in particular (a) 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 that the Secretary considers necessary to protect public health;
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and
- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

The Committee recommended that the current Poisons Standard entries for azelastine and fluticasone propionate remain appropriate.

Members agreed that the relevant matters under subsection 52E(1) of the Act included: (a) 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; and (e) the potential for abuse of a substance; and (f) any other matters that the Secretary considers necessary to protect public health.

The reasons for the advice included:

a) the risks and benefits of the use of a substance

Benefits:

- Azelastine and fluticasone propionate are well tolerated in topical intranasal use, with some potential for complications in the context of infection or recent surgery.
- Fixed-dose combinations offer convenience for patients over the two active ingredients being used in separate products.

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

- Allergic rhinitis and its associated symptoms are common and often undertreated.
- Current therapeutic guidelines support the use of combination intranasal antihistamine + corticosteroid FDC for mild disease after either antihistamine (oral or intranasal) or nasal steroid therapy has been found unsatisfactory, or in moderate-to-severe disease.

c) the toxicity of a substance

- The substances when formulated in a FDC product have minimal systemic absorption following intranasal administration.
- There is some risk of eye complications (glaucoma) notice of which should be retained in the labelling of any non-prescription products.

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

- Packaging, labelling and approved indications would be assessed by the TGA prior to any approval. The Committee's view was that any approved indications should reflect that this combination of substances is primarily a second-line therapy or for first line use only in moderate to severe disease, and the warning statements currently present on the prescription-only product be retained where possible.
- The Committee felt TGA approval was a more adequate control over safety and quality use of medicines (QUM) concerns than the Poisons Standard.

e) the potential for abuse of a substance

- Low potential for abuse.

f) any other matters that the Secretary considers necessary to protect public health

- Nil

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

I have made an interim decision that no change be made to the scheduling of azelastine or fluticasone propionate in the Poisons Standard.

I agree with the Committee's findings on the relevant provisions of section 52E of the Act, with the addition of paragraph 52E(1)(f), as I will detail in my interim decision below.

Allergic rhinitis (AR) and rhino-conjunctivitis (a predominant symptom associated with allergic rhinitis) affect a large proportion of adult Australians both seasonally and perennially, with an annual incidence of 20% in adults.[1] In accordance with paragraphs 52E(1)(a) and (f) of the Act, I agree with the sentiments of the Pharmaceutical Society of Australia (PSA) and the Pharmacy Guild of Australia (the Guild) in their pre-meeting public submissions that increased access to efficacious topical treatment for a condition as common as AR and its associated symptoms is beneficial to public health.

In making my interim decision, I have taken into account that while there are currently FDC products containing azelastine and fluticasone propionate for nasal use on the market and these are Schedule 4 preparations, sponsors may in future seek to make FDC products containing these substances available without a prescription. The Proposal envisages that such products sought to be marketed in the future would be for treatment up to 6 months, in contrast to the currently marketed products.

As stated in the introduction to the Poisons Standard, the scheduling status of preparations containing more than one scheduled substance is that which is the most restrictive for any of the individual substances. To date, such FDC products included in the ARTG as registered medicines have fallen outside of the scope of the entries for these substances in Schedule 2, due to being indicated for an open-ended duration of use, which is consistent with the Schedule 2 entry for azelastine. This interim decision affirms the ongoing suitability of the current Schedule 2 entries for both azelastine and fluticasone propionate, and that preparations for their use in combination that are not indicated for a limited duration of use are not suitable for inclusion in Schedule 2.

Pursuant to paragraph 52E(1)(f), I find that the amendments to the existing Schedule 2 entries in the Proposal to be both unnecessary and inappropriate to accommodate potential future FDC products proposed to be included on the ARTG. On the one hand, the existing Schedule 2 entry for fluticasone propionate provides that FDC products containing these substances with a duration of use restricted to 6 months are themselves Schedule 2 preparations. On the other hand, including product-focused scheduling entries is inconsistent with the approach of the Poisons Standard and may carry the potential to reduce the clarity of the existing entries, since they already provide for the scheduling outcome for FDC products that is sought by the applicant. In effect, the Proposal provides no material change to access of these substances, and it is my interim decision that the current entries remain appropriate.

In further support of this interim decision and considering paragraph 52E(1)(c) of the Act, the safety of these substances when used for defined purposes, such as allergic rhinitis and rhino-conjunctivitis, accord with the SPF scheduling factors for Schedule 2.

Consistent with paragraphs 52E(1)(a) and (d), a significant factor in my interim decision is the pre-market evaluation of any new FDC products containing these substances that are proposed to be available over the counter (OTC) rather than prescription-only, the former being already permitted under the Poisons Standard in certain circumstances. Product indications, directions

[1] Australian Institute of Health and Welfare, Australian Government, *Allergic rhinitis*, < https://www.aihw.gov.au/reports/chronic-respiratory-conditions/allergic-rhinitis-hay-fever/contents/allergic-rhinitis>

for use, warning and safety statements and the suitability of overall presentation aspects such as name and labelling will be evaluated by the Therapeutic Goods Administration (TGA). I have confidence that the rigorous standards of evaluation of registered products will ensure that public safety is not compromised if applications for OTC products are lodged, and that all relevant warning and safety statements currently used for prescription-only products will be retained. I agree with the Committee that, in this instance, TGA evaluation is a more appropriate control over safety and the quality use of medicines than the Poisons Standard.

I have considered the four (4) written public submissions received during the pre-meeting consultation period. Two (2) written responses received were fully supportive of the applicant's proposal, one partially supportive and one opposed. Interested parties were also given the choice to select from options to indicate their support or opposition to the proposed amendment without providing a written component. Twenty-one (21) such vote-only responses were received, with nine (9) supportive and twelve (12) opposed. These respondents did not provide reasons for their support or opposition and as a result, the extent of my consideration is limited to noting that the submissions were mixed in relation to the scheduling proposal.

The Australian Medical Association opposed the proposed scheduling amendments, based on overseas regulatory settings and the recommended use of these two active ingredients in combination only in the context of treating moderate-to-severe AR symptoms or as second line therapy after oral antihistamine treatment has failed. The Committee echoed this concern, in particular the quality use of medicines (QUM) ramifications of second line therapies being accessible for patient self-selection, and thus potentially used in the context of mild disease. Current Australian therapeutic guidelines for AR support the use of combination intranasal antihistamine + corticosteroid FDC for mild disease after oral therapy has been found unsatisfactory, or as first-line therapy in moderate-to-severe disease. Given the strictures of evaluation for these medicines, and consistent with paragraphs 52E(1)(b) and (d) of the Act and the SPF scheduling factors for pharmacy medicines I am of the view that this interim decision will continue to serve the objectives of the National Medicines Policy regarding the quality use of medicines[2]. I note that single-active ingredient products containing azelastine or fluticasone propionate are currently available for self-selection, with no impediment to their concurrent use. I also note that, while some overseas regulators control these FDC products as prescription-only medicines, New Zealand permits access to FDC products containing azelastine and fluticasone propionate as over-the-counter medicines, similar to Schedule 2 controls in Australia.

I note the submission from Consumer Healthcare Products Australia (CHP Australia) suggesting that the entry in Schedule 2 for fluticasone propionate be simplified to match that of azelastine, namely changing it to read "for use in a nasal spray". It is my view that, consistent with the Schedule 2 scheduling factors stated in the SPF, the current age, dosage and duration limits in the fluticasone propionate entry are necessary given the use of this substance may carry the potential to mask or delay the diagnosis of more serious conditions such as sinusitis or bacterial infection.

I consider that the pre-market evaluation, and the clear TGA-approved labelling with warning and safety statements, of FDC products containing azelastine and fluticasone propionate, adequately mitigate concerns of inappropriate use in mild conditions or use in more serious conditions such as sinusitis or sinus infection.

I find that the current scheduling entries for these substances remain adequate and allow for the inclusion of FDC products under the existing Schedule 2 entries. I have therefore made an

[2] Department of Health and Aged Care, Australian Government, *Quality Use of Medicines (QUM)*, < National Strategy for Quality Use of Medicines | Australian Government Department of Health and Aged Care>

interim decision that the current scheduling remains appropriate and that no change be made to the scheduling of azelastine or fluticasone propionate in the Poisons Standard.

3. Interim decisions on proposed amendments referred to the Advisory Committee on Medicines and Chemicals Scheduling in joint session (Joint ACMS-ACCS meeting #30, March 2022)

3.1 Interim decision in relation to cannabis and tetrahydrocannabinols

Proposal

The applicant proposed the creation of new Schedule 7 and Appendix J entries for cannabis and tetrahydrocannabinols (THCs) for use specifically in analytical and scientific research (the **Proposal**). This would allow use of cannabis and its derivatives in research without the controls imposed under Schedule 9, which can include specific approval from State and Territory health departments.

Interim decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) made an interim decision to not amend the current Poisons Standard in relation to cannabis and THCs.

Materials considered

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

- The application to amend the current Poisons Standard with respect to cannabis and THCs (the **Application**);
- The fifty-six (56) public submissions, with six (6) including a written component, received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 30th meeting of the Advisory Committees on Medicines and Chemicals Scheduling in joint session (the **Committee**);
- Subsection 52E(1) of the *Therapeutic Goods Act 1989* (Cth) (the **Act**), in particular (a) 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 that the Secretary considers necessary to protect public health;
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and

- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

The Committee recommended that the current Poisons Standard entries for cannabis and THCs remain appropriate.

Members agreed that the relevant matters under subsection 52E(1) of the Act included: (a) 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; (e) the potential for abuse of a substance; and (f) any other matters that the Secretary considers necessary to protect public health.

The reasons for the advice included:

a) the risks and benefits of the use of a substance;

Benefits

- Reduced barriers to access by legitimate researchers would generate broadened and strengthened evidence for Schedule 8 therapeutic indications.

Risks

- Low toxicity to adults, some toxicity risk to children.
- High potential for misuse, abuse, dependence and diversion.

b) the purpose for which a substance is to be used and the and extent of use of a substance;

- Analytical and scientific research are purposes for which the use of a Schedule 9 substance can be authorised. Inclusion in Schedule 7 is not required for cannabis to be accessible for analytical and scientific research.
- Human therapeutic use is permitted under Schedule 8. Analytical/research use is subject to Schedule 9 restrictions unless the product is "prepared or packed for human therapeutic use".

c) the toxicity of a substance;

- The toxicity of cannabis (and its extracts) is not consistent with the Schedule 7 factors.

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

- N/A, applicant is not proposing a product.

e) the potential for abuse of a substance

- Strong and recognised evidence that cannabis has abuse potential and can cause dependence which means continued inclusion in Schedules 8 and 9 is appropriate.

f) any other matters that the Secretary considers necessary to protect public health;

- Inclusion of cannabis in Schedule I of the UN Single Convention on Narcotic Drugs, to which Australia is a signatory, precludes any down-scheduling from Schedule 8.
- Office of Drug Control (ODC) is concerned that Schedule 7 controls may not meet Australia's obligations under the Single Convention on Narcotic Drugs and do not support a Schedule 7 entry on this basis.

- Office of Drug Control (ODC) is concerned that Schedule 7 controls may not meet Australia's obligations under the Single Convention on Narcotic Drugs and do not support a Schedule 7 entry on this basis.

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

I agree with the Committee's findings on the relevant provisions of section 52E of the Act.

During the pre-meeting submission period for this application, interested parties were given the choice to select from options to indicate their support or opposition to the proposed amendment without providing a written component. Fifty responses were received, with 26 supportive, 15 partially supportive and 9 opposed. These respondents did not provide reasons for their support or opposition and as a result, the extent of my consideration is limited to noting that the submissions were generally in favour of the scheduling proposal.

I have also considered the six written public submissions received during the pre-meeting consultation period. Three written responses received were fully supportive of the applicant's proposal, one partially supportive and two opposed.

Submissions received from the applicant and from Medicinal Cannabis Industry Australia (MCIA) noted an error in the pre-meeting public notice for this application, which incorrectly identified the "key uses" for these substances as "medicines", which should have read "research", or similar. This oversight has not impacted on my interim decision, the reasons for which follow.

I find no compelling evidence that the approval processes required by the states and territories for access to cannabis and cannabinoids present a significant barrier to researchers. On balance and considering paragraphs 52E(1)(a), (b) and (f) of the Act, any advantage to a Schedule 7 entry is far outweighed by the risks of misuse, abuse and diversion of these substances, particular in the absence of controls around possession and destruction of the substance that are typically required under Schedule 8 and Schedule 9. Noting paragraph 52E(1)(b) of the Act, the current Schedule 9 entries for these substances specifically allow use in analytics and research.

In relation to paragraph 52E(1)(c) of the Act, I acknowledge the applicant's assertion that these substances have a low to moderate toxicity profile, however I do not find the data submitted to be congruous with the limits stated in the Schedule 7 scheduling factors in the SPF. Taken together with the Single Convention requirements outlined above, I find that Schedule 7 entries for cannabis and THCs are inappropriate at this time.

The SPF clearly states that substances appearing in Schedules I and II of the UN Single Convention on Narcotic Drugs 1961 (the **Single Convention**)[3] should be entered into Schedule 8 and Schedule 9 of the Poisons Standard. As a party to the Single Convention, Australia has responsibilities in the control of substances such as cannabis and its psychoactive derivatives that inclusion in Schedule 7 of the Poisons Standard may not satisfy. I also note that the majority of comparable international regulators control access to cannabis and THC consistent with Schedules 8 and 9 of the Poisons Standard.[4,5,6,7]

[3] International Drug Control Conventions, *Single Convention on Narcotic Drugs of 1961,* United Nations (UN) Office on Drugs and Crime, https://www.unodc.org/unodc/en/commissions/CND/conventions.html
[4] Food and Drug Administration https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd
[5] Medical and Healthcare products Regulatory Agency https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency
[6] New Zealand Medicines and Medical Devices Safety Authority https://www.medsafe.govt.nz
[7] European Monitoring Centre for Drugs and Drug Addiction https://www.emcdda.europa.eu/publications/adhoc/cannabis-legislation-europe_en

I acknowledge the submission from PharmOut Ltd, which suggested amendments to the existing Schedule 8 entries for these substances to include use in analytics and research, however I do not agree this is appropriate. I agree with the Committee that the Schedule 8 entries for these substances as written do not preclude use in research and that widening the entries may carry undesirable consequences. Paragraph 52E(1)(a) of the Act weighs the risks and benefits of the use of a substance. According to law enforcement agencies, despite the legalisation of medicinal cannabis in Australia, illicit cultivation and supply remain a significant issue.[8] Therefore, I consider the risks presented by the potential diversion of the substance under Schedule 7 controls to outweigh any benefits to researchers. I find that inclusion of cannabis and THCs in Schedule 7 of the Poisons Standard presents minimal or no significant benefit to public health at this time, and do not consider the existing controls on cannabis and THCs to present undue barriers to research on these substances.

I recognise the burgeoning research into individual constituents of cannabis and note that cannabidiol is included in Schedules 3 and 4 of the Poisons Standard. I acknowledge that alternative scheduling options for specific cannabinoids may be considered in future. However, in weighing the factors in paragraphs 52E(1)(a), (b), (c), (e) and (f) of the Act, were the Proposal to be implemented, the benefit of increased access for use in research—for which no compelling evidence was presented—does not outweigh the risk to public health. I have therefore made an interim decision not to amend the current Poisons Standard in relation to cannabis and THCs.

3.2 Interim decision in relation to lead

Proposal

The applicant has proposed changes to the entries for lead and lead compounds as follows (the **Proposal**): the entries in Schedules 4, 5 and 6 be removed; preparations including medicines and cosmetics that contain lead be captured in an expanded Schedule 10 entry; and amendments aimed at reducing or eliminating lead in consumer products are made to Appendix A for printing inks or ink additives, Appendix B for metallic lead, and the entries for lead compounds in Appendices E and F. These changes will prohibit the presence of lead in any of the specified products.

Interim Decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) has made an interim decision to amend the current Poisons Standard in relation to lead as follows:

Schedule 10 – Amend entry

LEAD COMPOUNDS:

a) in anti-fouling or anti-corrosive paints except in preparations containing 0.1 per cent or less of lead calculated on the non-volatile content of the paints; or
b) in paints (other than anti-fouling or anti-corrosive paints), tinters, inks or ink additives **except** in preparations containing 0.009 per cent or less of lead calculated on the non-volatile content of the paint, tinter, ink or ink additive; or

[8] Lintzeris N, Mills L, Suraev A, et al. *'Medical cannabis use in the Australian community following introduction of legal access: the 2018–2019 Online Cross-Sectional Cannabis as Medicine Survey'*, Harm Reduction Journal, 2020, 17 (37)

c) for human therapeutic use **except** in preparations containing 10 mg/kg or less of lead.

Schedule 6 – Amend entry

LEAD COMPOUNDS **except**:

a) ~~when included in Schedule 4;~~when included in, or expressly excluded from, Schedule 10;
b) ~~in paints, tinters, inks or ink additives;~~
c) in preparations for cosmetic use containing ~~100~~10 mg/kg or less of lead;
d) in pencil cores, finger colours, showcard colours, pastels, crayons, poster paints/colours or coloured chalks containing ~~100~~25 mg/kg or less of lead;
e) in ceramic glazes when labelled with the warning statement:

CAUTION – Harmful if swallowed. Do not use on surfaces which contact food or drink.

written in letters not less than 1.5 mm in height.

Schedule 4 – Delete entry

~~LEAD for human therapeutic use.~~

Appendix A – Amend Entry

PRINTING INKS or INK ADDITIVES **except**:

a) when containing a pesticide; or
b) preparations containing more than ~~0.1~~0.009 per cent of lead calculated on the non-volatile content of the ink or ink additive.

Appendix F, Part 3 – Amend Entry

LEAD COMPOUNDS

a) in hair cosmetics: Warning statement 25 (Do not use on broken skin. Wash hands thoroughly after use.)
b) when in Schedule 6 preparations that are not hair cosmetics: Safety directions 1 (Avoid contact with eyes), 4 (Avoid contact with skin) and 8 (Avoid breathing dust (or) vapour (or) spray mist.)

Index – Delete entry

~~**LEAD**~~
~~cross reference: GLAZING PREPARATIONS, PRINTING INKS or INK ADDITIVES, SELENIUM~~

~~Schedule 4~~

Materials considered

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

- The application to amend the current Poisons Standard with respect to lead (the **Application**);

- The twenty-eight (28) public submissions, including six with a written component, that were received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 30th meeting of the Advisory Committees on Medicines and Chemicals Scheduling in joint session (the **Committee**);
- Australian/New Zealand Standard AS/NZ 2904:1995 *Damp-proof courses and flashing*;
- the 2022 edition of the National Construction Code;
- The Trade Practices Act 1974, Consumer Protection Notice No. 1 of 2009;
- The Health Canada Guidance on Heavy Metal Impurities in Cosmetics;
- The United States Food and Drug Administration Guidance on Lead in Cosmetic Lip Products and Externally Applied Cosmetics;
- Subsection 52E(1) of *the Therapeutic Goods Act 1989* (the **Act**), in particular (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; and (f) any other matters considered necessary to protect public health;
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and
- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

The Committee recommended that the Poisons Standard be amended in relation to lead as follows:

Appendix A – Amend Entry

PRINTING INKS AND INK ADDITIVES **except**:

a) when containing a pesticide; or
b) preparations containing more than ~~0.1~~0.009 per cent of lead calculated on the non-volatile content of the ink or ink additive.

The Committee recommended an implementation date of **1 October 2022.**

The Committee was unable to provide advice on other amendments in the absence of further information about how other regulatory schemes may already control the risks from lead in other types of products. The Committee recommended that the Delegate investigate and consider interfaces with other regulation to determine what, if any, other amendments to the standard may be required.

Members agreed that the relevant matters under Section 52E(1) of the Act included: (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; and (f) any other matters considered necessary to protect public health.

The reasons for the advice included:

a) the risks and benefits of the use of a substance

Risks

- The risks associated with human exposure, both by ingestion or inhalation, small risk of dermal absorption.
- The risk of using the substance substantially overrides the benefits and exposure needs to be minimised.

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

- There are a very large range of purposes, being a cheap, malleable, corrosion resistant metal, with electronic properties allowing use in energy storage devices, formation of a range of compounds and salts etc.

c) the toxicity of a substance

- Lead is considered to have no known threshold for toxicity. Has been associated with a range of poor health outcomes at very low levels and proven to be causally related to harm including increased blood pressure, abnormally low haemoglobin, abnormal kidney function, long-term kidney damage and abnormal brain function, reduced IQ (and other neurological measures), especially in populations of exposed children [9].

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

- Packaging should be consistent with its known content and use - childproof (where appropriate).

e) the potential for abuse of a substance

- Nil

f) any other matters that the Secretary considers necessary to protect public health

- In case of lead flashing, the Building Code of Australia could be considered as an alternative avenue to reduce use.
- In the case of lead in plumbing products, the current pending change in the Australian standard needs to be considered.
- In the case of homeopathic ingredients; the Permissible Ingredients Determination, which allows lead to be used as an active ingredient in homeopathic preparations at concentrations not exceeding 0.001%.
- Lead is a ubiquitous element and present in many settings, but its toxicity necessitates control and monitoring. Due to its pervasiveness, zero tolerance for lead is not practical or achievable in most cases.

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

I have made an interim decision to make several amendments to the current Poisons Standard in relation to lead and lead compounds. The detailed reasons for my decision follow.

I agree with the Committee's finding that the relevant provisions of section 52E of the Act. It should be noted that I recently made a decision to delete the Schedule 5 entry for lead in hair cosmetics and this was implemented into the Poisons Standard on 1 June 2022; and a decision to

[9] National Health and Medical Research Council (NHMRC) 2015, supported by WHO, CDC USA.

amend the entries affecting the concentration of lead in paint was implemented into the Poisons Standard on 1 October 2021 with additional changes coming into force in 1 October 2023 for the presence of lead in anti-fouling and anti-corrosion paints.

In making this decision to amend the Poisons Standard with regards to lead, I recognise that this is a complex issue, affecting multiple schedules within the Poisons Standard and encompassing a wide variety of consumer products, including medicines, cosmetics, paints and building supplies.

In relation to paragraphs 52E(1)(a), (b) and (c) of the Act, I note that lead is a naturally occurring element and its ubiquitous presence in the environment. The toxic effects of lead on organic life are well established, and there is a comprehensive body of research available regarding the adverse health effects of even low levels of lead exposure on humans. These effects are particularly pronounced in children, infants and unborn babies, and can range from adverse cognitive development and behavioural effects through to increased risk of hypertension, delay in sexual maturation, and in cases of high exposure encephalopathy and death.

In response, most Organization for Economic Cooperation and Development (OECD) countries have moved away from defining a safe level (threshold) of lead intake for humans. I agree with the Committee that, wherever possible and within the ambit of the Poisons Standard, it is desirable to promote the reduction of lead exposure. This objective should be balanced against any identified benefits of its continued use and the risk associated with possible alternatives to the use or presence of lead in a range of products. Furthermore, it must be recognised that the natural contamination of various raw materials means some allowance must made for the very low-level presence of lead in products. This is consistent with the policies of authorities such as the World Health Organization, United States Centre for Disease Control, and the Australian National Health and Medical Research Council.

Concerning the Schedule 4 entry for lead for therapeutic use, I note that there are currently no products on the Australian Register of Therapeutic Goods that contain lead as an ingredient, and I agree with the Committee that is not appropriate to sanction the use of lead as an ingredient in prescription-only medicines by including it in Schedule 4 of the Poisons Standard. However, while lead has no recognised therapeutic value, the potential for the presence of the substance as a contaminant in therapeutic goods must be taken into account. This is particularly relevant to complementary medicines containing mineral ingredients, the raw materials for which may inevitably contain trace levels of lead that are unlikely to affect health outcomes but would cause the prohibition of these preparations under the proposed Schedule 10 entry.

Therefore, I have decided to delete the existing Schedule 4 entry for lead for therapeutic use and introduce a new Schedule 10 entry, which will include an exemption for therapeutic preparations containing 10 mg/kg or less of lead. This exemption limit was already previously applied to the existing Schedule 4 entry under Part 1, paragraph (2)(j) of the Poisons Standard, which applies a general limit for all substances listed in Schedules 1-6. The amendment effectively changes the classification of any therapeutic preparations containing greater than 10 mg/kg of lead from prescription-only medicines to products prohibited for sale, supply and use. A value of 10 mg/kg is equivalent to 0.001% w/w or 10 ppm.

This decision aligns with the *Therapeutic Goods (Permissible Ingredients) Determination (No. 3) 2020*, which allows the presence of lead as an active homeopathic ingredient at a concentration of no more than 0.001%.

With regards to the proposal to amend the reference to “paints” in the Schedule 10 entry to “primers”, I note the definition of paint included in Part 1 of the Poisons Standard that states:

> **Paint**...includes any substance used or intended to be used for application as a colouring or protective coating to any surface but does not include graphic paint or paints for therapeutic use.

Under this definition, primers are already included in the Schedule 10 listing which prohibits the use of such preparations containing greater than 0.009 per cent except for anti-fouling and anti-corrosive paints, which will come into alignment with other paints on 1 October 2023. I have noted the submissions that indicated that the current Proposal's universal Schedule 10 entry, would effectively partially revoke the previous decision on anti-corrosive and anti-fouling paints. With this in mind, I have decided not to amend the Poisons Standard with respect to lead in paint at this time.

I do acknowledge that the previous decision on lead, published in September 2021, overlooked the entry in Appendix A for PRINTING INKS or INK ADDITIVES which currently excludes from scheduling consideration such preparations containing 0.1 per cent or less of lead calculated on the non-volatile content of the ink or ink additive. In line with the other amendments outlined in the September 2021 decision, I have decided that the limit for an Appendix A listing for lead in these preparations will be reduced to 0.009 per cent for the reasons outlined in the previous decision.

I agree with the Committee's advice that the proposal to include lead in hair cosmetics in Schedule 10 is impractical, as it is unlikely that completely lead-free products of this kind exist. I find that the warning statements associated with the new Schedule 6 entry for lead in hair cosmetics, as implemented in the June 2022 Poisons Standard, are sufficient to alert the public of the potential toxicity associated with the use of these products and minimise the risk of inadvertent exposure to non-users of the product. I have therefore decided not to amend the Poisons Standard with respect to lead in hair cosmetics beyond the changes already implemented.

However, I observe that while hair cosmetics containing lead are now captured by the Schedule 6 entry in the most recent publication of the Poisons Standard, the Appendix F warning statements require adjustment to reflect this change and clarify the requirements. By making an editorial change to specify "when in Schedule 6 preparations that are not hair cosmetics" for paragraph (b) of the entry under lead compounds in Appendix F, Part 3, the different warning label and safety direction requirements for Schedule 6 preparations containing lead are more clearly delineated, while not changing the label requirements for these products in practice.

The Schedule 6 entry for lead compounds primarily addresses non-therapeutic products containing lead, most notably cosmetics and art supplies such as crayons, finger colours and chalks. On the advice of the Committee, I have reviewed the 100 mg/kg scheduling exemption for lead content placed upon these products, which was established in the Poisons Standard in 1986 and was largely based on the analytical capabilities of testing laboratories at the time. Pursuant to paragraph 52E(1)(f) of the Act, I find this limit to be misaligned with modern national and international guidelines:

- The United States Food and Drug Administration issued draft guidance to industry in December 2016[10] recommending that cosmetic lip products and externally applied cosmetics not contain more than 10 parts per million (10 mg/kg) of lead as an impurity.

[10] Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level Guidance for Industry https://www.fda.gov/media/99866/download

- The Health Canada Guidance on Heavy Metal Impurities in Cosmetics[11] states that lead as an impurity in cosmetics is seen to be technically avoidable when exceeding 10 parts per million.
- The Trade Practices Act 1974, Consumer Protection Notice No. 1 of 2009[12] presents a mandatory consumer product safety standard for finger paints, including a maximum acceptable migration level for lead of 25 mg/kg.

I have decided to align the Poisons Standard with these standards by reducing the relevant exclusion limits in the Schedule 6 entry. I acknowledge that the relevant products that are currently supplied for sale in Australia will likely already meet these limits, however these changes reflect the importance of controlling the levels of lead in consumer products and allow for future changes should the limits in these other standards be reconsidered. I consider that the Schedule 6 warning statements to be placed on products that exceed these limits, including the 'POISON' heading, would be sufficiently informative to the consumer and may even act as an incentive for the manufacturer to maintain low levels of lead in their product. I have also considered Part (e) of the Schedule 6 entry addressing lead in ceramic glazes, but do not consider it necessary to make an amendment to this exemption at this time.

I have considered the proposal to introduce warning labels for leaded brass, the details of which would vary depending on the concentration of lead within the item. I agree with the Committee that these labels would likely be impractical and ineffective, as they would be removed upon installation and not be available to the consumer who is most at risk of exposure. I also acknowledge the Regulation Impact Statement[13] regarding lead in plumbing products, prepared by the Australian Building Codes Board in 2021, which addresses this issue and examines possible options to reduce the potential for exposure to lead via drinking water. Most importantly in this regard, I have noted the changes drafted in the 2022 edition of the National Construction Code (NCC) concerning the use of lead in plumbing products. Under the NCC from 1 September 2025[14], copper alloy plumbing products (including those made from brass) containing more than 0.25% lead will no longer be authorised for installation in a plumbing system used to convey drinking water in Australia. As the NCC is Australia's primary set of technical design and construction provisions for buildings, I find that there is no requirement to place further controls on these products through the Poisons Standard, and I have decided to not amend the Poison Standard with regards to leaded brass as outlined in the Proposal.

Finally, I have considered the Appendix B listing for metallic lead. Appendix B contains a list of substances that have been considered to not require control by scheduling. In this instance, metallic lead is included in Appendix B based on its low toxicity, particularly in comparison to the various salts of lead which are chiefly responsible for the adverse effects of lead on organic life. The application identified the use of metallic lead as flashing on roofs where rainwater may be collected for potable use as an area for concern and proposed a Schedule 10 entry to prohibit this practice. In similar fashion to the proposal regarding leaded brass, the use of metallic lead in roofing is addressed by the NCC, in which Volume Two, Part 3.5.2.3(e) states:

> *Lead flashings must not be used on any roof that is part of a potable drinking water catchment area.*

[11] Health Canada Guidance on Heavy Metal Impurities in Cosmetics Guidance on Heavy Metal Impurities in Cosmetics - Canada.ca

[12] Consumer Protection Notice No. 1 2009 https://www.legislation.gov.au/Details/F2009L00223

[13] ABCB Lead in plumbing products in contact with drinking water. Final Regulation Impact Statement 2021 https://www.abcb.gov.au/sites/default/files/resources/2021/Lead%20in%20Plumbing%20Products%20Final%20RIS%20-%20May%2017%202021.pdf

[14] ABCB Advice for plumbing practitioners on the new lead requirements https://abcb.gov.au/news/2022/advice-plumbing-practitioners-new-lead-requirements

Therefore, the use of lead flashing on roofs is already addressed by the NCC. In addition, I also note the Australian Standard AS/NZ 2904:1995 *Damp-proof courses and flashing*[15] which also references and places controls on these materials. I have decided that it is not necessary to include the proposed amendment regarding lead flashing in the Poisons Standard, and to retain the existing Appendix B entry for metallic lead.

I have noted the six written public submissions regarding the Proposal, most of which were only partially supportive or opposed to the amendments as proposed. The common reasoning for these views in the submissions was the lack of suitable exemption limits for trace levels of lead in the proposed Schedule 10 entries for cosmetics and therapeutic preparations. I recognise and appreciate these concerns and consider that these have been addressed in the modified amendments included in this decision.

The ubiquitous nature of lead and its well-documented toxicity present a hazard to human health in variety of settings. I consider that the changes outlined above adequately address these concerns, while not unduly burdening stakeholders in affected industries. I have therefore made an interim decision to amend Schedule 10, Schedule 6, Schedule 4, Appendix A and Appendix F in the Poisons Standard for lead, as outlined in my reasons above. Given the breadth of changes, I have decided to delay the implementation of these amendments to the Poisons Standard until 1 October 2023.

Proposed implementation date

1 October 2023.

3.3 Interim decision in relation to meloxicam

Proposal

The applicant proposed the creation of a new Schedule 6 entry for oral transmucosal preparations of meloxicam, at concentrations of up to 1 per cent for pre-surgical treatment and pain management during routine animal husbandry procedures (the **Proposal**). This would enable access to certain preparations of meloxicam, for use in animals, without a prescription.

Interim decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) has made an interim decision to amend the current Poisons Standard substantially in line with the Proposal as follows:

Schedule 6 – New Entry

MELOXICAM in oral transmucosal preparations containing 1 per cent or less meloxicam for pre-surgical treatment and pain management in livestock during routine animal husbandry procedures.

Schedule 4 –Amend Entry

MELOXICAM **except** when included in Schedule 6.

[15] Australian Standard AS/NZ 2904:1995 *Damp-proof courses and flashings* : AS/NZS 2904:1995 Damp-proof courses and flashings (saiglobal.com)

Index – Amend Entry

MELOXICAM

Schedule 6
Schedule 4

Materials considered

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

- The application to amend the current Poisons Standard with respect to meloxicam (the **Application**);
- The three hundred and ninety-three (393) public submissions, with one hundred and forty-three (143) including a written component, received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 30th meeting of the Advisory Committees on Medicines and Chemicals Scheduling in joint session (the **Committee**);
- Subsection 52E(1) of the *Therapeutic Goods Act 1989* (Cth) (the **Act**), in particular (a) 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 that the Secretary considers necessary to protect public health;
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and
- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

Members agreed that the relevant matters under subsection 52E(1) of the Act included: (a) 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 that the Secretary considers necessary to protect public health.

The reasons for the advice included:

a) the risks and benefits of the use of a substance

Risks

- Inappropriate use in animals (beyond only livestock).
- Inappropriate use of veterinary preparations in humans, taking into account extrapolation from veterinary doses.

Benefits

- Relief of pain, inflammation and discomfort for livestock associated with animal husbandry procedures such as castration, tail docking and mulesing.

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

- To alleviate pain associated with routine husbandry procedures of disbudding (dehorning), castration, tail docking and mulesing. Only to be used in veterinary medicine procedures.

c) the toxicity of a substance

- Moderate toxicity based on acute oral, intravenous, and intraperitoneal toxicity studies. Meloxicam has an established and generally good safety profile. Systemic effects include gastrointestinal ulceration and renal toxicity.

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

- 10 mg/mL meloxicam in a ready-to-use liquid oral formulation in 200 mL, 450 mL, 1 L and 5 x 200 mL LDPE vials with a bromobutyl rubber stopper and aluminium cap closure system and supplied with a draw-off tube and an applicator.
- Labelling for potential Schedule 6 products will highlight withholding periods (WP) and export slaughter intervals (ESI) (meat, milk).
- Label directions/instructions will include animal age restriction (limits).
- Packaging – ensure child resistant packaging.

e) the potential for abuse of a substance

- Minimal risk of abuse.
- Obtaining the product from a supplier rather than a veterinarian is likely to change the availability of the product for misuse.
- Potential for diversion is low. Meloxicam for human use is readily available by prescription and at relatively low cost, although the buccal preparation is much cheaper. Inappropriate use of Meloxicam can have severe consequences for both humans and animals.

f) any other matters that the Secretary considers necessary to protect public health

- Were meloxicam to be included in Schedule 6, the entry should specify the species, relevant routine husbandry procedures and appropriate ages of the animal.
- Appropriate labelling and packaging should be applied to the product to reduce harm to animals and humans.
- Schedule 6 products have purchase age limits (greater than 16 years of age) imposed by State and Territory regulation.
- The withdrawal period for milk and meat after administering Ilium Buccalgesic OTM needs to be printed on the packaging in order to prevent inadvertent human exposure.

The Committee also recommended an implementation date of **1 February 2023**.

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

I agree with the Committee's findings on the relevant provisions of section 52E of the Act.

I have also considered the Submissions. Ten (10) written responses were fully supportive of the Proposal, one was partially supportive and one hundred and thirty-two (132) were opposed. Interested parties were also given the choice to select from options to indicate their support or opposition to the Proposal without providing a written component. Two hundred and fifty (250)

responses were received, with thirteen (13) supportive and two hundred and thirty-seven (237) opposed. These respondents did not provide reasons for their support or opposition and as a result, the extent of my consideration is limited to noting that the submissions were generally opposed to the scheduling proposal.

I note that the majority of the Submissions opposed to the Proposal came from veterinarians and veterinary associations, including the Australia Veterinary Association (AVA). Many of these submissions expressed similar concerns including:

- The Proposal would remove veterinary oversight in the administration of meloxicam during routine animal husbandry procedures. Veterinary oversight is needed to identify any medical contraindications to use of the drug or any potential drug interactions, and to respond to any adverse events including overdose.
- A Schedule 6 entry, without restrictions on access, poses the potential for increased instances of misuse of meloxicam. This includes the use of meloxicam in animals other than livestock, the administration of inappropriate doses through errors in dose calculation, and animal preparations of meloxicam substituted for the prescription-only preparations intended for human use.
- The current scheduling of meloxicam, and the need for veterinary oversight, does not pose undue difficulty in accessing meloxicam.

I note that Submissions included support for the Proposal from farmers, agricultural associations, and animal welfare associations, including the Royal Society for the Prevention of Cruelty to Animals (RSPCA). The points raised by submissions supporting the Proposed amendment included:

- Easier access to oral transmucosal meloxicam would potentially improve animal welfare outcomes.
- Down-scheduling meloxicam would allow it to be accessed by a greater number of farmers, particularly those in rural and remote areas without ready access to veterinary consultation.
- The wording of the proposed amendment should be clear that the rescheduling of meloxicam applies to use in livestock for animal husbandry procedures only.

Currently, meloxicam is captured by a Schedule 4 entry in the Poisons Standard. Meloxicam is a non-steroidal anti-inflammatory drug (NSAID) and is a cyclooxygenase-2-(COX-2) inhibitor, with a well-established safety profile available in a number of human and veterinary therapeutic products. The Proposal relates to veterinary preparations of oral transmucosal meloxicam, at a concentration of one per cent or less for pain relief during animal husbandry procedures. I agree with the Committee that meloxicam has a long history of safe use in Australian veterinary products.

In relation to paragraph 52E(1)(a) of the Act, I have considered the risks and benefits of the use of the substance. I note that the risk of inappropriate use of meloxicam in animals other than livestock already exists under the current Schedule 4 entry. Currently, veterinary oversight is not required for administration of the substance and unused product is typically retained on the site of use by the product end user. The benefits of creating a Schedule 6 entry for low concentration veterinary preparations of meloxicam include the potential improvement to animal welfare outcomes through the relief of pain, inflammation and discomfort associated with animal husbandry procedures such as castration, tail docking and mulesing. I acknowledge the variety of opinions presented in the public submissions and I am of the view that the increased access to meloxicam resulting from creation of a Schedule 6 entry may encourage a greater uptake and wider use of meloxicam for animal husbandry procedures, particularly to

those who find that the current scheduling of meloxicam is a barrier to providing adequate pain relief measures to their livestock.

In considering paragraphs 52E(1)(a) and (e) of the Act, I acknowledge concerns that a scheduling change may result in misuse of meloxicam by the diversion of veterinary preparations for human use and that inappropriate use of meloxicam can have severe consequences. However, I consider that the risk of diversion of a veterinary preparation of meloxicam for use in humans is unlikely, due to the availability of and ease of access to products for human use. Therefore, I agree with the Committee that the risk of off-label use of meloxicam would be largely unchanged under the proposed scheduling. I consider that the risks as mitigated by Schedule 6 controls, such as child resistant packaging and labelling informing consumers of known dangers and appropriate safety measures,[16] do not outweigh the potential benefits to animal welfare.

In considering paragraph 52E(1)(b) of the Act, I note that the amendment only applies to oral transmucosal preparations of meloxicam used in veterinary medicine procedures. These preparations of meloxicam will only be used to alleviate pain associated with routine animal husbandry procedures such as disbudding, mulesing, tail docking and castration in livestock.

In relation to paragraphs 52E(1)(c) and (d) of the Act, I agree with the Committee that meloxicam has a well-established safety profile, and the acute toxicity profile of the substance is consistent with the SPF scheduling factors for Schedule 6. I note that the Proposal only applies to oral transmucosal preparations of meloxicam at a concentration of one per cent or less. The risks to human health with regards to this formulation of meloxicam are appropriately mitigated by Schedule 6 controls. These risks can be contrasted with those for injectable preparations of meloxicam, for which there is a risk to users of these preparations from needlestick injury and potential inhalation toxicity through aerosolization of the formulation. I am of the view that oral transmucosal preparations of meloxicam have a much lower risk profile and the aforementioned risks are sufficiently reduced in this formulation.

My interim decision is to amend the Poisons Standard with slightly different wording to the Proposal. Pursuant to paragraph 52E(1)(f) of the Act, and in agreement with the advice of the Committee, I have decided to add the words 'in livestock' to the proposed Schedule 6 entry to clarify that it does not apply to companion animals. I have determined that companion animals should be excluded because if meloxicam is made available as a Schedule 6 poison, then the entry should preferably have the species, relevant routine husbandry procedures and age of the animal specified in the Schedule 6 entry in the Poisons Standard.

I acknowledge the submissions opposing the Proposal that expressed concerns about the risk of dose calculation errors, risk to human food safety, and risk of substance misuse. In addressing these concerns, I note that substances listed in Schedule 6 are required to have appropriate packaging and labelling to mitigate potential risks. Conditions for packaging and labelling would be specified and approved by the product regulator (APVMA) prior to products becoming available that contain a Schedule 6 substance. The product packaging and labelling would also be required to list appropriate withdrawal periods for meat and milk after administering these products, based on livestock age and species. This will also be specified and approved by the product regulator.

It is worth noting that a proposal to amend the scheduling of meloxicam and create a Schedule 6 entry for *injectable preparations* of a concentration up to 2 per cent, for the pre-surgical treatment of sheep undergoing husbandry procedures was considered by the Committee at its meeting in November 2021. Moreover, the proposed injectable preparation did not include the use of a device (applicator) to administer the meloxicam. The final decision with regards to that

[16] https://www.tga.gov.au/publication/national-guideline-retail-storage-schedule-6-and-schedule-7-poisons

proposal was to not amend the Poisons Standard, in particular due to the potential for needlestick injuries and the risk of inhalation toxicity through aerosolization. These risks are significantly minimised or eliminated in oral *transmucosal* preparations of meloxicam.

In weighing the factors in paragraphs 52E(1)(a), (b), (c), (d), (e) and (f) of the Act, the benefit of increased access to oral transmucosal preparations of meloxicam for use in livestock for routine animal husbandry procedures, outweighs the risks to human health and safety. I have therefore made an interim decision to create a Schedule 6 entry for low strength, oral transmucosal preparations of meloxicam for routine animal husbandry procedures in livestock.

Implementation date

1 February 2023.

3.4 Interim decision in relation to lidocaine

Proposal

The applicant proposed that the existing Schedule 5 entry for lidocaine be amended to exclude injectable formulations for veterinary use in certain husbandry procedures (the **Proposal**). The proposal effectively sought to reverse the scheduling decision on lidocaine published in September 2021.

Interim Decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) has made an interim decision not to amend the current Poisons Standard in relation to lidocaine.

Materials considered

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

- The application to amend the current Poisons Standard with respect to lidocaine (the **Application**);
- The four hundred and seventy-nine (479) public submissions, including one hundred and eighty-three (183) with a written component, received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 30th meeting of the Advisory Committees on Medicines and Chemicals Scheduling in joint session (the **Committee**);
- Subsection 52E(1) of *the Therapeutic Goods Act 1989* (the **Act**), in particular (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;
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and
- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

The Committee recommended that no change be made to the current scheduling for lidocaine.

Members agreed that the relevant matters under Section 52E(1) of the Act included: (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.

The Committee's reasons were:

a) the risks and benefits of the use of a substance

Risks

- There is some risk of misuse and diversion of the substance. The packaging has the potential for compromise as it is tamper resistant, not tamper proof.

Benefits

- There is a significant benefit to animal welfare for routine animal husbandry measures through pain relief.

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

- Use is for pain relief associated with tail docking and castration of lambs, and castration of calves.

c) the toxicity of a substance

- The formulated product has low oral and dermal toxicity.
- The risk of systemic toxicity associated with parenteral administration is low due to the dosage, limited use in particular procedures, and relatively fast metabolism of the substance.

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

- The applicants have raised issues of the packaging not being tamper proof, but this is no different to prescribed products.
- Packaging of product reduces the risk of accidental or inappropriate use (tamper resistant).
- Any issues with the product quality can be managed by the product regulator.

e) the potential for abuse of a substance

- No potential for abuse of lidocaine. Misuse of lidocaine is possible.

f) any other matters that the Secretary considers necessary to protect public health

- It is unlikely that veterinary advice on these normal animal husbandry procedures would add much in comparison with the APVMA approved labelling, and so veterinary intervention only needs to be looked at on the basis of product availability.
- APVMA is still considering the label for the Schedule 5 product, with no currently registered products meeting this definition available as yet.
- Inadequate evidence presented regarding diversion and misuse. Not well supported.

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

I have made an interim decision to not amend the current Poisons Standard in relation to lidocaine. The basis of my decision is that the benefits of retaining the current scheduling entry outweigh the risks presented by the applicant.

I agree with the Committee's findings on the relevant provisions of section 52E of the Act. I also note that section 52AA of the Act provides that "the scheduling of substances allows restrictions to be placed on their supply to the public, in the interests of public health and safety. This is aimed at minimising the risks of poisoning from, and the misuse and abuse of, scheduled substances". Consequently, in my decision I have given greater weight to the reasons related to the risk to public health and safety, than the potential risks to animals from potentially, greater non-veterinary access to lidocaine-based treatments.

In weighing up the benefits and risks, including the toxicity and potential for misuse, I have considered the public submissions received during the pre-meeting consultation period. Of the one hundred and eighty-three (183) written submissions received, 121 respondents were opposed to the Proposal, with 62 in support. Interested parties were also given the choice to select from options to indicate their support or opposition to the Proposal without providing a written component. Two hundred and ninety-six (296) responses were received, with 126 supportive, one partially supportive and 169 opposed. These respondents did not provide reasons for their support or opposition and as a result, the extent of my consideration is limited to noting that the submissions were generally opposed to the Proposal.

Factors relating to paragraphs 52E(1)(a) and (b) of the Act, addressing the risk and benefits of use of the substance and the purposes for which the substance is to be used, have already been established in my previous decisions regarding Schedule 5 preparations of injectable lidocaine for veterinary use. In addition, there is significant benefit in providing pain relief to animals involved in the procedures outlined in the current Schedule 5 entry, namely tail docking and castration by the use of a device that concurrently administers an appropriate dose of lidocaine. The improvement in animal welfare outcomes resulting from the administration of lidocaine in this way may also be expected to carry through to the mental health and wellbeing of humans charged with tending to these animals during these procedures.

Regarding paragraph 52E(1)(c) of the Act, I reiterate my findings from the decision to down-schedule injectable preparations of lidocaine for animal use has a favourable safety profile with a low potential for causing harm to humans. The oral and dermal toxicity of the substance is consistent with the SPF scheduling factors for a Schedule 5 classification. I note that these findings were not opposed by the applicant or any of the pre-meeting public submissions, nor by any of the submissions related to the original decision.

In relation to paragraph 52E(1)(d) of the Act, I have considered the claims in the Application, which were also included in the supporting submissions, that the product that was the subject of the original application to down-schedule lidocaine does not, in fact, possess tamper resistant packaging and is therefore susceptible to misuse under a Schedule 5 classification. I note that there are currently a number of registered injectable lidocaine products for veterinary use in Australia. Injectable lidocaine products for veterinary use would be assessed by the Australian Pesticides and Veterinary Medicines Authority (APVMA) prior to market authorisation. At present there are no registered injectable products containing lidocaine that are part of a tamper resistant device that applies a rubber ring for castration or tail docking purposes and concurrently administers an appropriated dose of lidocaine to the animal.

It is important to note that any products deemed by the regulator (APVMA) to fail to meet this condition, would default to the higher scheduling and be classified as a Schedule 4 (prescription-only) medicine. Consistent with the advice of the Committee, I find that a product that is deemed to have tamper resistant packaging by the regulator also presents a reduced risk of diversion

and misuse, and the use of the applicator also reduces the likelihood of accidental self-injection during administration of lidocaine to the animal.

In considering the potential for abuse pursuant to paragraph 52E(1)(e) of the Act, I agree with the Committee that the potential for abuse of lidocaine is minimal or non-existent, as the substance does not develop dependency and is not regarded as a drug of abuse.

Turning to paragraph 52E(1)(f) of the Act, I have considered the potential for diversion and misuse of preparations of injectable lidocaine for veterinary use. I agree with the Committee that the isolated reports provided in the Application are insufficient to demonstrate that misuse of an injectable lidocaine preparation designated for veterinary use is likely. I have also been unable to identify significant reports in this regard from the scientific literature, compliance authorities or other regulatory bodies. As lidocaine is currently readily available at relatively low cost in a multitude of different preparations for human use, I find that it is unlikely that veterinary preparations of this kind would be diverted in this way. I also consider it unlikely that these preparations of lidocaine would be used in the dilution or "cutting" of illicit drugs. In the unlikely event that such diversion or misuse occurred, this would be a matter for compliance authorities as it would be for the misuse of any other therapeutic substance or illicit drug.

Based on the number of public submissions stating the difficulties in accessing lidocaine for veterinary procedures, I disagree with the applicant's statement that there are no significant barriers to access. Enabling greater access to lidocaine with the appropriate safeguards in place as provided by the specialised packaging (applicator) should contribute to greater uptake of pain relief medication by the farming community for these veterinary procedures, particularly in remote areas where veterinary oversight may not be readily available.

In making my decision, I agree with the Committee that there is insufficient evidence of actual or potential detrimental effects associated with lidocaine preparations that would be captured by the existing Schedule 5 entry, to justify overturning the original decision related to the introduction of a specific entry for the specified indications and applicator. Overall, I find that the benefits of greater access to an injectable lidocaine preparation outweigh the potential risks. Therefore, I have decided to not amend the Poisons Standard in relation to lidocaine.

4. Interim decisions on proposed amendments referred to the Advisory Committee on Chemicals Scheduling (ACCS meeting #33, March 2022)

4.1 Interim decisions in relation to flumioxazin

Proposals

Two scheduling proposals were received with respect to flumioxazin.

- The proposal by the first applicant was to amend the Schedule 6 entry for flumioxazin to include liquid preparations that are currently captured by the Schedule 7 entry (the **first proposal**).
- The proposal by the second applicant was to delete the Schedule 6 and Schedule 7 entries for flumioxazin and create a new Schedule 5 entry for all preparations of flumioxazin except

water soluble bags in sealed sachets (the **second proposal**), thereby exempting these preparations from scheduling.

Interim decision

Pursuant to regulation 42ZCZN of Therapeutic Goods Regulations 1990 (Cth) (the **Regulations**), a delegate of the Secretary of the Department of Health and Aged Care (the **Delegate**) has made an interim decision not to amend the current Poisons Standard in relation to flumioxazin.

The detailed reasons for the Delegate's interim decision, which differs from the applicants' proposals, follow.

Materials considered

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

- The applications to amend the current Poisons Standard with respect to flumioxazin (the **Applications**);
- Sixteen (16) public submissions were received for each of the two applications, with a written component provided in one and two instances, respectively, for the first and second applications , received in response to the pre-meeting consultation under regulation 42ZCZK of the Regulations (the **Submissions**);
- The advice received from the 33rd meeting of the Advisory Committee on Chemicals Scheduling (the **Committee**);
- Subsection 52E(1) of the *Therapeutic Goods Act 1989* (Cth) (the **Act**), in particular (a) 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; and (d) the dosage, formulation, labelling, packaging and presentation of a substance.
- The Scheduling Policy Framework 2018 (the **SPF**), pursuant to paragraph 52E(2)(a) of the Act; and
- The Scheduling handbook: Guidance for amending the Poisons Standard.

Summary of Committee advice to the Delegate

The Committee recommended that the current Poisons Standard entry for flumioxazin remains appropriate.

Members agreed that the relevant matters under subsection 52E(1) of the Act included: (a) 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 that the Secretary considers necessary to protect public health.

The reasons for the advice included:

a) the risks and benefits of the use of a substance;

Risks

- Potential to cause birth defects if used by pregnant women. Suspected human reproductive toxicant.

- Suspected human reproductive toxicant, taking into consideration the classification assigned by overseas jurisdictions.

Benefits

- Flumioxazin is a herbicide used for rapid knockdown and control of various grass and broadleaved weeds.

b) the purposes for which a substance is to be used and the extent of use of a substance;

- Rapid knockdown and control of various grass and broadleaved weeds.

c) the toxicity of a substance;

- Low acute toxicity: oral, dermal, inhalation
- Slight skin and eye irritant
- Developmental toxicity – Ventricular Septal Defect (VSD) and other structural cardiac abnormalities

d) the dosage, formulation, labelling, packaging and presentation of a substance;

- 500 g / kg flumioxazin
- As water dispersible granules in water soluble sachets
- In a suspension concentrate

e) the potential for abuse of a substance;

- NIL

f) any other matters that the Secretary considers necessary to protect public health;

- Consideration of the Scheduling Policy Framework for Schedule 6 and Schedule 7 substances:

  Schedule 5

  - Low health hazard and only minor adverse effects to humans in normal use.

    Schedule 6

  - Moderate health hazard and reasonably foreseeable harm to users can be reduced.
  - Liquid preparations carry a higher risk of harm than water soluble bags but, based on the toxicity data presented, both preparations are deemed unsuitable for Schedule 5.

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

I have made the interim decision to not amend the Poisons Standard with respect to flumioxazin.

I agree in general with the Committee's findings on the relevant provisions of section 52E of the Act.

I have considered the written public submissions from two parties received during the pre-meeting consultation period. One submission was fully supportive of the second application, while the other opposed both applications. Interested parties were also given the choice to

select from options to indicate their support or opposition to the proposed amendment without providing a written component.

- *First application:* 15 responses were received, with five supportive, two partially supportive and eight opposed.
- *Second application:* 14 responses were received, with five supportive, two partially supportive and seven opposed.

The respondents did not provide reasons for their support or opposition and as a result, the extent of my consideration is limited to noting that the submissions were generally not in favour of the scheduling proposal.

In relation to paragraphs 52E(1)(a) and (c) of the Act, I agree with the Committee that hepatotoxicity was a common finding in standard repeat dose toxicity studies with flumioxazin in mice, rats and dogs, despite it having a generally low acute toxicity by the oral, dermal and inhalation routes. The most significant effect from flumioxazin exposure is the risk to foetal development and the potential for adverse effects being severe enough to end in miscarriage or life-long disability including ventricular septal defects (VSD), ventricular wall thinning and dilation of the atrium.

I acknowledge the submission supporting the second application stated that the classification of flumioxazin as toxic for reproduction was updated from category 1B (presumed human reproductive toxicant) to category 2 (suspected human reproductive toxicant) by the European Union (EU) as per Regulation (EU) 2021/849[17] and has since been adopted by all 26 Organization for Economic Cooperation and Development (OECD) countries. However, I note that the Global Harmonized System (GHS) classification and labelling of chemicals still maintains that flumioxazin is classified as GHS 08 – systemic health hazards (used for internal organs (i.e., reproductive toxicity)) and the hazardous chemical classification H361d (suspected of damaging the unborn child).

I have considered the SPF and I am of the view that liquid preparations of flumioxazin did not meet the Schedule 6 scheduling factors, due to the high potential for causing harm from exposure to the chemical resulting in a significant risk of producing irreversible toxicity. Under this scenario, it would be more appropriate to list liquid preparations under Schedule 7. Furthermore, flumioxazin does not meet the Schedule 5 scheduling factors because it does not have a low health hazard or low potential for causing harm. Flumioxazin poses a greater risk of exposure when in liquid preparations than in water soluble bags, through splash or spillage during mixing and loading operations. Furthermore, I consider that both preparations are still unsuitable for Schedule 5. Pursuant to paragraph 52E(1)(b) of the Act, I have taken into account that flumioxazin is used to control various grass and broadleaved weeds. However, I consider that the liquid formulation should remain in Schedule 7 and retained for professional use only, due to the potential for exposure during mixing and loading operations.

In considering paragraph 52E(1)(d) of the Act, I agree with the Committee's advice that: (i) flumioxazin is a porphyrin pathway inhibitor (protoporphyrinogen oxidase, PPO), which in both animals and humans interferes with the haem biosynthesis; (ii) flumioxazin is the only member of the PPO inhibitors that produces VSD, despite being a less potent inhibitor of heme synthesis than other members of the class; and (iii) mechanistic data have not fully ruled out the potential to induce developmental toxicity in humans.

[17] Commission Delegate Regulation (EU) 2021/849 of 11 March 2021 amending, for the purposes of its adaption to technical and scientific progress, Part 3 of Annex VI to Regulation (EU) No 1271/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ L 188, 28.5.2021, p. 27).

In weighing the factors in paragraphs 52E(1)(a), (b), (c) and (d) of the Act and the SPF, I consider that the risk of significant, irreversible developmental toxicity remains a major risk factor, with exposure to flumioxazin. These risks have not been demonstrated to be lessened from liquid preparations, but that preparations e.g., sealed sachets containing water soluble bags that reduce exposure for professionals during mixing and loading operations, may lessen these risks. Furthermore, I agree with the Committee that there is no clear or compelling reason to amend the current scheduling of flumioxazin. As such, I have made an interim decision to not amend the Poisons Standard with respect to flumioxazin.