FDA Briefing Document

May 18, 2023
Meeting of the Tobacco Products Scientific Advisory Committee

Requirements for Tobacco Product Manufacturing Practice
Proposed Regulation

Center for Tobacco Products
Food and Drug Administration

DISCLAIMER STATEMENT

The attached briefing document contains information prepared by the Food and Drug Administration (FDA) for the panel members of the Tobacco Products Scientific Advisory Committee (TPSAC) on the proposed regulation titled "Requirements for Tobacco Product Manufacturing Practice" (TPMP). This briefing package may not include all issues relevant to TPSAC's consideration of the proposed regulation. It is intended to focus on issues identified by FDA for discussion by the TPSAC. The information in these materials is not a formal dissemination of information by FDA and does not represent agency position or policy. The information is being provided to TPSAC to aid the Committee in its evaluation of the proposed regulation.

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1. Overview of the proposed rule

The Food and Drug Administration (FDA) is proposing to establish tobacco product manufacturing practice requirements for manufacturers of finished and bulk tobacco products. This proposed rule, if finalized, would set forth the requirements with which finished and bulk tobacco product manufacturers must comply in the manufacture, preproduction design validation, packing, and storage of finished and bulk tobacco products, to assure that the public health is protected and that tobacco products are in compliance with chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

This proposed regulation--proposed part 1120 (21 CFR part 1120)--sets forth requirements for tobacco product manufacturing practice (TPMP) and provides a framework for manufacturers of finished or bulk tobacco products to follow that would include: (1) establishing tobacco product design and development controls to prevent or minimize certain risks; (2) ensuring that finished and bulk tobacco products are manufactured in conformance with established specifications; (3) minimizing the likelihood of the manufacture and distribution of nonconforming tobacco products; (4) requiring investigation and identification of nonconforming products, including those that have been distributed in order to institute appropriate corrective actions, such as conducting a recall as needed; (5) requiring manufacturers to take appropriate measures to prevent contamination of tobacco products; and (6) establishing traceability to account for all components or parts, ingredients, additives, and materials, as well as each batch of finished or bulk tobacco product, to aid in investigations of nonconforming tobacco products. Therefore, this proposed regulation would establish requirements for the control of tobacco product manufacturing activities and the treatment of contaminated or

otherwise nonconforming tobacco products, including the investigation, evaluation, and corrective and preventive actions (CAPA) necessary to protect the public health.

This proposed regulation is intended to provide a framework that requires all finished and bulk tobacco product manufacturers subject to the rule (including specification developers, contract manufacturers, and repackagers/relabelers) to establish and maintain procedures for various aspects of the manufacturing, preproduction design validation, packing, and storage processes, while allowing flexibility to establish procedures that are unique to the manufacturer's facilities and activities, and appropriate for a given tobacco product. The proposed requirements are written in general terms to allow manufacturers to establish procedures appropriate for their specific products and operations. The extent of the procedures necessary to meet the regulation requirements may vary with the size and complexity of the design and manufacturing operations.

In the development of this proposed rule, FDA considered its existing current good manufacturing practice (cGMP) and hazard analysis and critical control point (HACCP) regulations for other regulated products and evaluated them for their suitability and applicability to tobacco products. The Agency also applied its experience in regulating tobacco products, which includes conducting tobacco manufacturing facility inspections, its review and consideration of industry GMP recommendations, and comments submitted on these recommendations from a variety of stakeholders (Docket No. FDA-2013-N-0227). FDA has specifically considered the quality systems and quality management system (QMS) requirements in 21 CFR Part 820: FDA's medical device quality system regulation (QSR); the food, dietary supplement, and drug cGMP regulations; the Agency regulations on HACCP systems; FDA's Initiative: 'Pharmaceutical cGMPs for the 21st century – A Risk-based Approach'; ISO 9001:2015--Quality management systems—Requirements; and ISO 31000: 2018--Risk

management—Guidelines, in designing this proposed rule. The Agency believes that certain aspects of these regulations and guidelines are informative but not entirely applicable to tobacco products with their inherent risks. The TPMP regulation is not meant to assure the safety and effectiveness of a tobacco product, but rather to assure that the public health is protected and that the tobacco product is in compliance with the Tobacco Control Act.

While all tobacco products have inherent risks to the public health, FDA is proposing TPMP requirements to minimize or prevent product problems, as well as health issues not normally associated with use of a tobacco product. For example, these requirements would help minimize or prevent the manufacture and distribution of tobacco products contaminated with foreign substances and nonconforming electronic nicotine delivery systems (ENDS) e-liquids whose nicotine concentration levels vary from the labeled amount and vary from one ENDS product to another sold under the same label. Tobacco products may also introduce preventable harms not normally associated with the use of tobacco products due to design or manufacturing defects, and the proposed regulation would help protect the public from such harms.

The proposed regulation would help assure that the public health is protected by, among other things, minimizing the likelihood of the manufacture and distribution of nonconforming tobacco products. Nonconforming products occur for many different reasons, including inadequate sanitation practices, design issues, failures of or problems with purchasing controls, inadequate process controls, improper facilities or equipment, inadequate personnel training, inadequate manufacturing methods and procedures, the introduction or presence of hazards, or improper handling or storage of the tobacco product. A tobacco product that does not conform to established specifications; has incorrect packaging, labeling, or labels; or is contaminated could increase the product's risk compared to what would normally be associated with use of the

product. For example, smokeless product contaminated with foreign materials can cause cuts or lacerations to the lips and gums or result in broken teeth. Similarly, tobacco products contaminated with biological materials, such as mold and mildew, or chemical hazards, such as caustic cleaning agents, may cause vomiting, nausea, allergic reactions, dizziness, numbness, or headaches. Even when nonconforming tobacco products are not contaminated with foreign objects or substances, they may contain higher levels of an addictive or toxic constituent than the consumer is expecting, which can have negative health effects not normally associated with the tobacco product.

The proposed regulation would also help assure that tobacco products are in compliance with the requirements of chapter IX of the FD&C Act, including requirements related to adulteration in section 902, misbranding in section 903, submission of ingredients, additives, and harmful and potentially harmful constituents under section 904, registration and listing in section 905, product standards issued under section 907, and premarket review under sections 910 and 911.

For example, by requiring controls over the manufacturing process, the proposed regulation would help assure that new tobacco products are manufactured in accordance with the specifications provided in their premarket applications authorized by FDA and preexisting tobacco products are manufactured to their original specifications. If a firm is manufacturing a new tobacco product that is inconsistent with the specifications identified in the application under which it has received marketing authorization, the tobacco product may be adulterated or misbranded pursuant to section 902 or section 903 of the FD&C Act and subject to regulatory action. Pursuant to section 910(a)(1) of the FD&C Act, tobacco products that were commercially marketed (other than exclusively in test markets) in the United States as of

February 15, 2007 ("pre-existing products"), are not considered "new tobacco products" and thus are not subject to the premarket review requirements of the FD&C Act. These products are subject to other provisions of the FD&C Act, including proposed TPMP requirements. The proposed rule would help manufacturers ensure that pre-existing tobacco products are manufactured to their original specifications and do not undergo any modification that would render them "new" and in violation of the requirements of chapter IX of the FD&C Act because they lack proper marketing authorization. It would also help FDA identify and determine if any changes to established specifications or manufacturing methods and procedures result in a modification that would render the tobacco product "new." The proposed requirements would also help a finished or bulk tobacco product manufacturer to ensure that, and FDA to review whether, the tobacco products conform to applicable tobacco product standards issued under section 907 of the FD&C Act.

In addition to helping assure that tobacco products are manufactured in accordance with the specifications provided in their marketing applications authorized by FDA and that products are manufactured in accordance with applicable product standards, the proposed TPMP rule would help tobacco product manufacturers assure compliance with other requirements in chapter IX of the FD&C Act. For example, tobacco product manufacturers must submit a listing of ingredients, additives, and harmful and potentially harmful constituents to FDA under section 904 and applicable regulations under section 915 of the FD&C Act. The proposed TPMP recordkeeping requirements, including the master manufacturing record (MMR) and production record requirements, could help FDA verify that the ingredients of these products are consistent with the listing of ingredients reported to FDA under section 904(a)(1) of the FD&C Act. Similarly, under sections 905(i), 910(b)(1)(F), and 911(d)(4) of the FD&C Act, copies and

specimens of labeling, must be submitted to FDA, as applicable. These requirements help the Agency evaluate whether the product complies with applicable labeling requirements in the FD&C Act. For example, FDA can determine if a manufacturer has included modified risk claims on product labels or labeling that would render the product an unauthorized modified risk product or if product labeling is false or misleading or otherwise renders the product misbranded under section 903 of the FD&C Act. The recordkeeping requirements in the proposed regulation related to packaging and labeling would help the Agency make similar assessments, as well as identify variations between the submitted labeling and actual packaging and labeling.

2. TPSAC meeting

On March 10, 2023, FDA issued a proposed regulation on Requirements for Tobacco Product Manufacturing Practice (TPMP). [1] Under section 906(e)(1)(B)(i), "before promulgating any regulation under subparagraph (A), [FDA must] afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated." Thus, we are holding an advisory committee meeting of the Tobacco Products Scientific Advisory Committee (TPSAC) on May 18, 2023. The general function of the committee is to advise FDA in discharging its responsibilities as it relates to the regulation of tobacco products. We have provided TPSAC with proposed 21 CFR Part 1120. This meeting will be held to discuss and provide an opportunity for TPSAC to provide FDA recommendations on, the proposed TPMP rule (proposed 21 CFR part 1120). The meeting will be open to the public.

3. Topics for Discussion

[1] Requirements for Tobacco Product Manufacturing Practice, (88 FR 15174, March 10, 2023) available at https://www.federalregister.gov/documents/2023/03/10/2023-04591/requirements-for-tobacco-product-manufacturing-practice

While FDA seeks recommendations on the entirety of proposed Part 1120, we are specifically interested in the Committee's recommendations as well as any supporting data or information in regard to the following:

1. The proposed scope of the rule covers finished and bulk tobacco product manufacturers, including specification developers (see terms described at 88 FR 15183-15184 and defined at 88 FR 15253-15255 in the provided copy of the proposed rule). Does the committee have any recommendations on the scope, including expanding the scope?
2. Does the committee have any recommendations or comments on the "umbrella" approach that proposes requirements in flexible terms to enable manufacturers subject to the rule to establish procedures that are appropriate for their specific products and operations?
    - Because the TPMP regulation would apply to many different types of tobacco products, the proposal does not prescribe in detail how a manufacturer must produce a specific tobacco product. Rather, the proposed regulation provides the framework that all manufacturers would follow by requiring that manufacturers establish and maintain procedures and fill in the details that are appropriate to a given tobacco product.
    - This approach provides a framework that would require all finished and bulk tobacco product manufacturers subject to the rule to establish procedures, follow their established procedures, and maintain records, while at the same time allowing a manufacturer flexibility to establish procedures that are unique to the manufacturer's facilities and activities, and appropriate for a given tobacco product.
    - The proposed requirements are written in flexible terms to allow manufacturers to establish procedures appropriate for their specific products and operations. The

extent of the procedures necessary to meet the regulation requirements may vary with the size and complexity of the design and manufacturing operations.

3. Does the committee have any recommendations on the product specifications that FDA proposes to require in the MMR?
    - The proposed MMR would require manufacturers to establish the following minimum tobacco product specifications:
        - Identity and amount of any components or parts, ingredients, additives, and materials in the finished and bulk tobacco product,
        - Finished and bulk tobacco product design, an identification of the product's heating source (if any), a discussion of intended user operation, and any relevant product drawings or schematics
        - Any specification necessary to ensure tobacco product meets requirement of any applicable tobacco product standard, and
        - Specification(s) for pesticide chemical residue(s) for raw tobacco
4. Does the committee have recommendations on the proposed design and development activities and risk management process to control the risks associated with finished and bulk tobacco product and its production processes, packing, and storage?
5. Does the committee have any additional recommendations on the proposed rule?

TPSAC's recommendations on this proposed rule will inform the Agency's future steps with regard to promulgating TPMP requirements applicable to tobacco products.