

In Confidence

Office of the Minister of Health
Chair, Cabinet Legislation Committee

Psychoactive Substances (Nitrous Oxide) Regulations 2026

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Psychoactive Substances (Nitrous Oxide) Regulations 2026.

Policy

- 2 On 28 April 2026, Cabinet agreed:
 - 2.1 to regulate nitrous oxide under the Psychoactive Substance Act 2013 to provide that it is a psychoactive substance when supplied in canisters larger than 10 grams net weight; and
 - 2.2 that this regulation will exclude containers used for legitimate medical and industrial purposes [SOU-26-MIN-0035].
- 3 Nitrous oxide is already regulated as a psychoactive substance when used recreationally for its psychoactive effect. These regulations will address the large containers being sold as cream chargers, without the need to prove intent.
- 4 The regulations provide an exception for large canisters supplied for manufacturing or industrial use. Medical nitrous oxide and nitrous oxide as an ingredient of prepackaged food are excluded from the definition of psychoactive substance in the principal Act, so are exempt by default.

Timing and 28-day rule

- 5 I seek a waiver of the 28-day rule, so that the regulations come into force on 5 June 2026: the day after they have been notified in the New Zealand Gazette. This is to reduce the risk of individuals defeating the purpose of the regulations by stockpiling supplies of nitrous oxide, or heavily discounting sales, in the interim period between the regulations being gazetted and coming into force.

Compliance

- 6 The amendment regulation complies with:
 - 6.1 the principles of the Treaty of Waitangi;

- 6.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (include a summary of any concerns raised);
 - 6.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 6.4 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 6.5 relevant international standards and obligations;
 - 6.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 7 The Psychoactive Substances Act requires that before recommending regulations, I must:
- 7.1 be satisfied that the proposed regulations are reasonably necessary for achieving the purpose of this Act; and
 - 7.2 seek, and have regard to, the advice of the advisory committee in respect of the proposed regulations; and
 - 7.3 consult any person or organisation I consider to be representative of the interests of persons likely to be substantially affected by the proposed regulations.
- 8 I confirm that these requirements have been met.

Regulations Review Committee

- 9 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 10 The draft Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 11 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.

Publicity

- 12 I will make a public statement once the regulations are made. The Ministry of Health has information about nitrous oxide regulation on its website, which will be updated as needed.

Proactive release

- 13 I intend to proactively release these papers, with any redactions as appropriate under the Official Information Act 1982, once the Regulations comes into force.

Consultation

- 14 The following agencies were consulted: New Zealand Customs Service, New Zealand Police, the Ministry of Business Innovation and Employment, the Ministry of Justice, the Ministry for Primary Industries, the Ministry of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 28 April 2026, Cabinet agreed:
 - 1.1 to regulate nitrous oxide under the Psychoactive Substance Act 2013 to provide that it is a psychoactive substance when supplied in containers larger than 10 grams net weight; and
 - 1.2 that this regulation will exclude those containers used for legitimate medical and industrial purposes [SOU-26-MIN-0035].
- 2 note that the Psychoactive Substances (Nitrous Oxide) Regulations 2026 will give effect to the decision agreed to by Cabinet;
- 3 note that section 99 of the Psychoactive Substances Act requires that the responsible Minister:
 - 3.1 be satisfied that the regulations are reasonably necessary for achieving the purpose of the Act and;
 - 3.2 seek and give regard to, the advice of the advisory committee regarding the regulations and;
 - 3.3 consult with those likely to be substantially affected by the regulations, before recommending the making of an Order in Council under section 99;
- 4 note my advice that these requirements have been met;
- 5 note that a waiver of the 28-day rule is sought:
 - 5.1 so that the regulations can come into force the day after they have been notified in the New Zealand Gazette;
 - 5.2 on the grounds that it will prevent individuals defeating the purpose of the regulation by stockpiling nitrous oxide, or heavily discounting, in the period between the regulations being gazetted and coming into effect;

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- 6 agree to waive the 28-day rule so that the regulations can come into force 5 June 2026;
- 7 authorise the submission to the Executive Council of the Psychoactive Substances (Nitrous Oxide) Regulations 2026.

Authorised for lodgement

Hon Simeon Brown

Minister of Health

PROACTIVELY RELEASED

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