

Supporting Statement
Environmental Impact Considerations - 21 CFR Part 25 -
(OMB Control Number 0910-0322)

A. Justification

1. Circumstances Making the Collection of Information Necessary

FDA is requesting OMB approval for the reporting requirements contained in the FDA regulation “Environmental Impact Considerations.”

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347), states national environmental objectives and imposes upon each Federal agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

The FDA NEPA regulations are at 21 CFR part 25. All applications or petitions requesting agency action require the submission of a claim for a categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Sections 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

This collection of information is used by FDA to assess the environmental impact of

agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a Federal Register document also filed for comment at the Environmental Protection Agency (EPA). The final EIS, including the comments received, is reviewed by the agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact.

Any final EIS would contain additional information gathered by the agency after the publication of the draft EIS, a copy of or a summary of the comments received on the draft EIS, and the agency's responses to the comments, including any revisions resulting from the comments or other information. When the agency finds that no significant environmental effects are expected, the agency prepares a finding of no significant impact (FONSI).

2. Purpose and Use of the Information Collection

This collection of information is used by FDA to assess the environmental impact of agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the

proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a Federal Register notice also filed for comment at the Environmental Protection Agency (EPA). If the agency finds that no significant environmental effects are expected, the agency prepares a finding of no significant impact (FONSI).

3. Use of Improved Information Technology and Burden Reduction

For human drugs, the submissions under 21 CFR part 25 are part of an application for marketing. Some of the steps that FDA has taken to facilitate the electronic submission of marketing applications include:

In the Federal Register of December 11, 2003, FDA issued a final rule amending FDA regulations governing the format in which certain labeling is required to be submitted for review with NDAs, certain BLAs, ANDAs, supplements, and annual reports. The final rule requires the electronic submission of the content of labeling (i.e., the content of the package insert or professional labeling, including all text, tables, and figures) in NDAs, certain BLAs, ANDAs, supplements, and annual reports electronically in a form that FDA can process, review, and archive.

The following guidances for industry are among those that have been developed to improve the use of information technology in the submission of marketing applications for human drugs and related reports:

- "Providing Regulatory Submissions in Electronic Format--NDAs". This guidance provides information on how to submit a complete archival copy of an NDA in electronic format and

applies to the submission of original NDAs as well as to the submission of supplements and amendments to NDAs.

- "Providing Regulatory Submissions in Electronic Format--General Considerations". This guidance includes a description of the types of electronic file formats that the agency is able to accept to process, review, and archive electronic documents. The guidance also states that documents submitted in electronic format should enable the user to: (1) Easily view a clear and legible copy of the information; (2) print each document page by page while maintaining fonts, special orientations, table formats, and page numbers; and (3) copy text and images electronically into common word processing documents.
- "Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format". This guidance provides information to assist applicants in submitting documents in electronic format for review and archive purposes as part of a BLA, product license application (PLA), or establishment license application (ELA).
- "Providing Regulatory Submissions in Electronic Format—Prescription Drug Advertising and Promotional Labeling". This draft guidance discusses issues related to the electronic submission of advertising and promotional labeling materials for prescription drug and biological products.
- "Providing Regulatory Submissions in Electronic Format—ANDAs". This guidance discusses issues related to the electronic submission of ANDAs and supplements and amendments to those applications.
- "Providing Regulatory Submissions in Electronic Format—Annual reports for NDAs and ANDAs". This guidance discusses issues related to the electronic submission of annual reports for NDAs and ANDAs.
- "Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse

Drug Experience Reports". This guidance discusses general issues related the electronic submission of postmarketing periodic adverse drug experience reports for NDAs, ANDAs, and BLAs.

- "Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions". This draft guidance discusses issues related to the electronic submission of ANDAs, BLAs, INDs, NDAs, master files, advertising material, and promotional material.
- "Providing Regulatory Submissions in Electronic Format—General Considerations". This draft guidance discusses general issues common to all types of electronic regulatory submissions.
- "Providing Regulatory Submissions in Electronic Format—Content of Labeling". This draft guidance discusses issues related to the submission of the content of labeling in electronic format for marketing applications for human drug and biological products.

These guidance documents are available at FDA's web site

<http://www.fda.gov/cder/guidance/index.htm>.

4. Efforts to Identify Duplication and Use of Similar Information

FDA avoids duplication by encouraging applicants to reference in their environmental documents data and information presented in other documents that are available to FDA and the public (21 CFR 25.40(d)). FDA intends to focus environmental reviews on the use and disposal from use of FDA regulated articles. Because FDA actively works to ensure the consistency of its protocols with those prescribed by EPA, the American Society for Testing and Materials (ASTM), and Organization for Economic Co-operation and Development (OECD), FDA avoids unnecessary duplication of environmental testing. Thus, environmental testing that has already been performed will not have to be repeated by a different protocol when applicants

move from one regulatory agency to another and from one country to another for approvals of the same chemical substance.

Where possible, existing data are used by FDA in evaluating the environmental impact of an industry-sponsored application or petition. To the extent publicly available, data in FDA files may be cross-referenced, data available in the scientific literature may be submitted, and data gathered for other government agencies, such as EPA, may be used in support of the environmental review of an application to FDA.

FDA recognizes that there are instances where the same substance may be the subject of separate environmental analyses by another agency, for example by EPA. FDA has determined that separate environmental review is not necessary for FDA approval of a food additive petition or FDA granting a request for an exemption from regulations as a food additive if the substance is already registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the same use requested in the petition. Although both agencies have worked to eliminate duplication of effort, applications submitted to FDA sometimes involve a different use of a chemical substance than the use(s) reviewed by EPA and the patterns of environmental introduction often vary. Therefore, in some circumstances, a document prepared by FDA or another agency may not suffice as the NEPA document.

5. Impact on Small Businesses or Other Small Entities

For both large and small entities, FDA has identified the types of information necessary to review the environmental impact of a new product and, where possible, provides case-by case guidance on the specific types of information required for a particular action. FDA does not have the resources to perform a firm's environmental studies and the information

gathering necessary for the evaluation of a new product. However, small manufacturers may request help in applying for approval from the FDA office that works with small manufacturers. Because FDA has identified categories of actions that are categorically excluded from the requirement to prepare an EA and EIS, fewer EA's and EIS's are likely to be required from small businesses.

6. Consequences of Collecting the Information Less Frequently

Industry-sponsored applications and petitions are submitted to obtain permission to market a new product or to expand the usage of a currently regulated product. If the frequency of collection for environmental impact data were reduced, the agency could not assess the environmental impact of approving applications. Failure to take environmental factors into account in the agency decision making would leave the agency susceptible to court challenge and may result in unnecessary delays in the approval for marketing of products.

7. Special Circumstances Relating to the Guidelines in 5 CFR 1320.5

Data collection for applications is consistent with these guidelines.

8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency

In the Federal Register of September 9, 2009 (74 Vol 46430), FDA requested comments on the proposed collection of information. No comments were received.

9. Explanation of Any Payment or Gift to Respondents

FDA has not provided and has no intention to provide any payment or gift to respondents under the revisions of part 25.

10. Assurance of Confidentiality Provided to Respondents

NEPA requires that EA's and EIS's be made available for public review. However, 21 CFR 25.50(b) recognizes that FDA actions involving investigations, review, and approval of applications and premarket notifications for human drugs, animal drugs, biologic products, and devices are protected from disclosure under the Trade Secret Act (TSA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and 21 CFR part 20. Additionally, under 21 CFR 25.51 (a), data constituting trade secrets or confidential information under the TSA or the FFDCA must not be included in the portion of environmental documents that is made public. Thus, environmental information will be made available to the public to the extent permitted.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature in the environmental impact requirements.

12. Estimates of Annualized Hour Burden and Costs

Annualized Hour Burden -

Estimated annual reporting burden for human drugs (including biologics in CDER)

Under 21 CFR 312.23(a)(7)(iv)(e), 21 CFR 314.50(d)(1)(iii), and 21 CFR 314.94(a)(9)

(i), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under §§ 25.30 or 25.31 or an EA under § 25.40. In 2008, FDA received 2,550 INDs from 2,026 sponsors, 106 NDAs from 88 applicants, 2,856 supplements to NDAs from 615 applicants, 13 BLAs from 9 applicants, 206 supplements to BLAs from 64 applicants, 835 ANDAs from 165 applicants, and 4,143 supplements to ANDAs from 224 applicants. FDA estimates that it receives approximately 10,689 claims for categorical exclusions as required under §§ 25.15(a) and (d), and 20 EAs as required under §§ 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

Estimated Annual Reporting Burden for Human Drugs					
CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15 (a)&(d)	3,171	3.37	10,689	8	85,512
25.40 (a)&(c)	20	1	20	3,400	68,000
Total					153,512

There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated annual reporting burden for human foods

Under 21 CFR 71.1, 171.1, 170.39, and 170.100, food additive petitions, color additive

petitions, requests for exemption from regulation as a food additive, and submission of a food contact notification (FCN) for a food contact substance must contain either a claim of categorical exclusion under §§ 25.30 or 25.32, or an EA under § 25.40. In 2008, FDA received 112 industry submissions. FDA received an annual average of 67 claims of categorical exclusions as required under § 25.15(a) and (d), and 45 EAs as required under §§ 25.40(a) and (c). FDA estimates that, on average, it takes petitioners, notifiers, or requestors approximately 3 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated annual reporting burden for medical devices

Under 21 CFR 814.20(b)(11), pre-market approvals (original PMAs and supplements) must contain a claim for categorical exclusion under §§ 25.30 or 25.34 or an environmental assessment under § 25.40. In 2008, FDA received approximately 39 claims (original PMAs and supplements) for categorical exclusions as required under §§ 25.15(a) and (d), and 0 EAs as required under §§ 25.40(a) and (c). Based on information provided by less than 10 sponsors, FDA estimates that it takes approximately 6 hours to prepare a claim for a categorical exclusion and an unknown number of hours to prepare an EA.

Estimated Annual Reporting Burden for Medical Devices					
CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15 (a)&(d)	39	1	39	6	234
25.40 (a)&(c)	0	0	0	0	0
Total					234

There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated annual reporting burden for biological products in CBER

Under 21 CFR 312.23(a)(7)(iv)(e) and 601.2(a), IND and biologics license applications (BLAs) must contain a claim for categorical exclusion under §§ 25.30 or 25.31 or an EA under §

25.40. In 2008, FDA received 245 INDs from 180 sponsors, 28 BLAs from 13 applicants, and 972 BLA supplements to license applications from 173 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA estimates that it received approximately 370 claims for categorical exclusion as required under §§ 25.15(a) and (d), and 2 EAs as required under §§ 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim for categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

Estimated Annual Reporting Burden for Biological Products					
CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15 (a)&(d)	210	1.76	370	8	2,960
25.40 (a)&(c)	2	1	2	3,400	6,800
Total					9,760

There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated annual reporting burden for animal drugs

Under 21 CFR § 514.1(b)(14) (21 CFR 514.1(b)(14)), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs), § 514.8(a)(1) supplemental NADAs and ANADAs, § 511.1 (b)(10) investigational new animal drug applications (INADs),

and § 571.1(c) food additive petitions must contain a claim for categorical exclusion under §§ 25.30 or 25.33 or an EA under § 25.40. In 2008, FDA's Center for Veterinary Medicine (CVM) has received approximately 676 claims for categorical exclusion as required under §§ 25.15(a) and (d), and 8 EAs as required under §§ 25.40(a) and (c). FDA estimates that it takes sponsors/applicants approximately 5 hours to prepare a claim for a categorical exclusion and an average of 2,160 hours to prepare an EA.

Estimated Annual Reporting Burden for Animal Drugs					
CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15 (a)&(d)	65	10.4	676	5	3,380
25.40 (a)&(c)	6	1.3	8	2,160	17,280
Total					20,660

There are no capital costs or operating and maintenance costs associated with this collection of information.

Combined Estimated Annual Total Burden Hours for All Centers					
Total					193,817

Costs -

FDA's Economics Staff estimates the average industry wage rate of \$74.00 per hour for preparing and submitting the information collection requirements associated with marketing applications. Based on a total industry burden of 193,817 hours, the annualized cost burden to respondents would be \$14,342,458.

13. Estimates of Other Total Annual Cost Burden to Respondents and Recordkeepers

There are no other costs, including capital costs or operating and maintenance costs, associated with this collection of information.

14. Annualized Cost to the Federal Government

FDA estimates that a total of approximately 8 FTEs are devoted to the review of submissions associated with 21 CFR part 25. Based on an estimate of \$145,000 per FTE, the annualized cost burden to FDA would be approximately \$1,160,000.

15. Explanation for Program Changes or Adjustments

The revised burden estimates are the result of updated data -- the number of claims for categorical exclusions and EAs submitted mainly during 2007-2008.

16. Plans for Tabulation and Publication and Project Time Schedule

FDA does not intend to publish tabulated results of the information collection requirements that are imposed by 21 CFR part 25.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

There are no forms associated with this collection.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the "Certification for Paperwork Reduction Act

Submissions" in item 19 of OMB Form 83-I.

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<p>1. Agency/Subagency originating request FDA</p>	<p>2. OMB control number a. <u>0910 - 0322</u> b. <input type="checkbox"/> None</p>
<p>3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions</p>	<p>4. Type of review requested (<i>check one</i>) a. <input checked="" type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by ___/___/___ c. <input type="checkbox"/> Delegated</p>
<p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: ___/___/___</p>	
<p>7. Title 21 CFR 25 - Environmental Impact Considerations</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords NEPA, Environmental Impact Statement, Environmental Assessment, Categorical Exclusion</p>	
<p>10. Abstract This collection of information is used by FDA to assess the environmental impact of agency actions and to ensure that the public is informed of environmental analyses.</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households b. <input checked="" type="checkbox"/> Business or other for-profit c. ___ Not-for-profit institutions d. ___ Farms e. ___ Federal Government f. ___ State, Local or Tribal Government</p>	<p>12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input checked="" type="checkbox"/> Mandatory</p>
<p>13. Annual recordkeeping and reporting burden a. Number of respondents <u>3,577</u> b. Total annual responses <u>11,916</u> 1. Percentage of these responses collected electronically – Approx..25% c. Total annual hours requested <u>193,817</u> d. Current OMB inventory <u>170,352</u> e. Difference <u>23,465</u> f. Explanation of difference <u>Updated data on the number of submissions we have received</u> 1. Program change _____ 2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference <u>0</u> f. Explanation of difference 1. Program change _____ 2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits b. ___ Program evaluation c. ___ General purpose statistics d. ___ Audit e. ___ Program planning or management f. ___ Research g. <input checked="" type="checkbox"/> Regulatory or compliance</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input checked="" type="checkbox"/> Reporting 1. <input checked="" type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: <u>Elizabeth Barbakos</u> Phone: _____</p>

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date
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