

**Record Retention Requirements  
For the Soy Protein/CHD Health Claim**

**OMB Control No. 0910-0428**

**SUPPORTING STATEMENT**

**Terms of Clearance:** None.

**A. Justification**

**1. Circumstances Making the Collection of Information Necessary**

Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement meets the requirements of the regulations promulgated by the Secretary of Health and Human Services to authorize the use of such a health claim. The Food and Drug Administration (FDA, we) authorized the use in food labeling of a health claim about the relationship between soy protein and the risk of coronary heart disease (CHD) in § 101.82 (21 CFR 101.82) of our regulations. To bear the soy protein/CHD health claim, foods must contain at least 6.25 grams of soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. However, at the present time there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, we must rely on information known only to the manufacturer to assess compliance with the requirement that the food contain the qualifying amount of soy protein. Thus, we require manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

We request OMB approval for extension of the following information collection requirements contained in § 101.82:

**21 CFR 101.82 -- Recordkeeping**

Requires food manufacturers to retain, and make available to regulatory officials, records concerning the ratio of soy protein to other sources of protein in a food product bearing a soy protein/CHD health claim.

**2. Purpose and Use of the Information Collection**

We use the information during inspection review of firms' label claims to determine the basis of soy protein/CHD health claims. The purpose of the information collection is to permit calculation of the ratio of soy protein to other sources of protein in a food when that food bears a soy protein/CHD health claim. Requiring records retention in this circumstance for soy protein/CHD health claims is

necessary for the efficient enforcement of the FD&C Act. Without access to this information, we would be unable to ensure that food products that contain non-soy proteins comply with the requirements for the soy protein/CHD health claim.

*Description of Recordkeepers:* Recordkeepers include businesses engaged in the manufacture of foods containing soy and other proteins that bear soy protein/CHD health claims. Respondents are from the private sector (for-profit businesses).

### **3. Use of Improved Information Technology and Burden Reduction**

The regulation does not specifically prescribe the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology as necessary for use by firms. Companies are free to use whatever forms of information technology may best assist them in retaining the appropriate records and making them available to regulatory officials.

The agency estimates that about ninety-five percent (95%) of the recordkeeping will be maintained electronically in the next three years.

### **4. Efforts to Identify Duplication and Use of Similar Information**

No duplication of Federal regulations concerning the regulation for a health claim for soy protein/CHD is likely because of the clear Congressional authorization that FDA promulgate regulations pertaining to health claims for foods as opposed to the jurisdiction of the U.S. Department of Agriculture (meats and poultry) and the Federal Trade Commission (advertising).

### **5. Impact on Small Businesses or Other Small Entities**

We estimate that ten percent (10%) of recordkeepers are small businesses. The recordkeeping is no more burdensome for small businesses than for large. The requirements are the minimum requirements for the health claim for soy protein and CHD. We aid small businesses in complying with our requirements through the our Regional Small Business Representatives and through the scientific and administrative staffs within the agency. We have provided a Small Business Guide on our website at <http://www.fda.gov/oc/industry/>.

### **6. Consequences of Collecting the Information Less Frequently**

Data collection occurs occasionally. There are no consequences to Federal program or policy activities if the information is not collected or is collected less frequently. Under the regulations, a food manufacturer could not use a soy protein/CHD health claim on a food product containing non-soy sources of protein if it did not retain the appropriate records for possible review by regulatory officials.

### **7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5**

There are no special circumstances associated with this collection of information.

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

In accordance with 5 CFR 1320.8(d), we published a 60-day notice for public comment in the Federal Register of March 10, 2015 (80 FR 12640). No comments were received.

## 9. Explanation of Any Payment or Gift to Respondents

We do not provide any payments or gifts to respondents.

## 10. Assurance of Confidentiality Provided to Respondents

Company records such as nutrient databases or analyses, recipes or formulations, and purchase orders for ingredients, which may be consulted or copied during FDA inspections, often contain trade secret and confidential commercial information. This information is safeguarded by section 301(j) of the FD&C Act and would be protected from disclosure under the Freedom of Information Act (FOIA) under sections 552(a) and (b) (5 U.S.C. 552(a) and (b)) and by part 20 of our regulations (21 CFR part 20).

## 11. Justification for Sensitive Questions

This information collection does not involve any questions that are of a personally sensitive nature.

## 12. Estimates of Annualized Burden Hours and Costs

### 12 a. Annualized Hour Burden Estimate

*Description of Respondents:* Respondents are businesses engaged in the manufacture of foods containing soy and other proteins that bear soy protein/CHD health claims. Respondents are from the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

Table 1.--Estimated Annual Recordkeeping Burden <sup>1</sup>					
21 CFR Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Recordkeeping	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon our experience with the use of health claims, we estimate that only about 25 firms would be likely to market products bearing a soy protein/CHD health claim and that only, perhaps, one of each firm's products might contain non-soy sources of protein along with soy protein. The records required to be retained by § 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is limited to in assembling and retaining the records, which we estimate will take 1 hour annually.

## **12 b. Annualized Cost Burden Estimate**

We estimate the annualized burden hour cost to a respondent for assembling and retaining the required records to be approximately \$2,176. We estimate a recordkeeper's average wage to be that of a Federal government employee at the GS-13/Step-1 rate for the Washington-Baltimore locality pay area for the year 2015, which makes the annual wage cost for assembling and retaining the required records approximately \$1,088 (25 hours x \$43.52 per hour). To account for overhead, this cost is increased by 100%, making the total estimated burden hour cost to the recordkeepers \$2,176.

## **13. Estimates of Other Total Annual Cost Burden to Recordkeepers**

There are no capital, start-up, operating, or maintenance costs associated with this collection.

## **14. Annualized Cost to Federal Government**

Our review of the retained records would generally occur as part of our scheduled inspection of a food firm. We estimate that our review of the retained records would take one hour per product (25 products x one hour = 25 hours). Thus, we estimate the annual cost to the Federal government to be 25 hours at rate of \$43.52/hour, the GS-13/Step-1 rate for the Washington-Baltimore locality pay area for the year 2015 (25 hours x \$43.52/hour = \$1088). To account for overhead, this cost is increased by 100%, making the total estimated annual cost to the Federal government \$2,176.

## **15. Explanation for Program Changes or Adjustments**

There is no change in the burden estimate.

## **16. Plans for Tabulation and Publication and Project Time Schedule**

The information obtained from this information collection will not be published.

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

There are no reasons why display of the expiration date for OMB approval of the information collection would be inappropriate.

## **18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to the certification.