**Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use**

**OMB Control No. 0910-0583**

**SUPPORTING STATEMENT**

## Part A. Justification

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

The Food and Drug Administration (FDA) encourages developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA early in the development process to discuss possible scientific and regulatory issues that might arise (see 57 FR 22984). The guidance entitled, "*Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use*," fosters early communication by encouraging developers to submit to FDA their evaluation of the food safety of their new protein. Such communication helps ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply. FDA believes that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the procedures for early food safety evaluation of new proteins produced by new plant varieties, including bioengineered food plants, and the procedures for communicating with FDA about the safety evaluation.

Respondents may use Form FDA 3666 to transmit submissions to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition. Form FDA 3666, available at http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM350010.pdf, is entitled, "*Early Food Safety Evaluation of a New Non-Pesticidal Protein Produced by a New Plant Variety (New Protein Consultation)*" and may be used in lieu of a cover letter for a New Protein Consultation (NPC). Form FDA 3666 prompts the respondent to include certain elements of a NPC in standard format and helps the respondent organize the submission to focus on the information needed for FDA's safety review. The form, and elements prepared as attachments to the form, may be submitted in electronic format via the Electronic Submission Gateway (ESG), or may be submitted in paper format, or as electronic files on physical media with paper signature page.

Accordingly, FDA is requesting an extension of approval for the information collection provisions in the guidance entitled, "*Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use*," and Form FDA 3666.

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

FDA reviews NPCs to ensure that foods are safe, wholesome, sanitary, and properly labeled, in accordance with its legislative mandates: Section 903 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. Section 393), as well as the authority found in the food additive provisions in sections 201(s) and 409 of the FD&C Act (21 U.S.C. Sections 321(s) and 348) and in the adulterated food provisions in section 402 of the FD&C Act (21 U.S.C. Section 342).

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

Form FDA 3666, and elements prepared as attachments to the form, may be submitted in electronic format via the ESG, or may be submitted in paper format, or as electronic files on physical media with paper signature page. The agency estimates that all of the NPCs (100%) will be submitted electronically.

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

FDA procedures seek to prevent duplicative collection of information. FDA makes submissions of NPCs, and FDA's responses thereto, easily accessible to the public via the internet. If a protein has been evaluated in a NPC and no safety concerns are identified, we would not expect an additional NPC to be submitted if the same protein is introduced into another plant species. Also, if a protein has previously been reviewed as part of a biotechnology consultation (approved by OMB under control number 0910-0704) and there were no safety concerns identified, we would not expect the submission of a NPC for such a protein.

Additionally, FDA continues to work with the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA) to eliminate areas of duplicate data collection and evaluation. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.), EPA has authority to regulate all pesticides, regardless of how they are made or their mode of action. FDA's NPC applies to non-pesticidal proteins and is not duplicative with EPA responsibilities. Meanwhile, many plants developed using recombinant DNA (rDNA) technology are considered "regulated articles" under regulations of USDA's Animal and Plant Health Inspection Service (APHIS) (7 CFR Part 340), which regulates the introduction of certain "genetically engineered" plants into the environment. A developer must obtain authorization from APHIS to field test such crops and, depending on the nature of the crop, a developer files either a permit application or a notification. In contrast, FDA requests a submission of data and information concerning the food safety of a specific new protein produced in a new plant variety. Therefore, although a submission to APHIS would include some information, such as the name of the company and the identity of the protein, which would be included in the information requested by FDA in a NPC, the submission is not duplicative.

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

FDA estimates that five percent (5%) of respondents are small businesses. FDA's NPC minimizes the reporting burden on all businesses, including small businesses, by providing that the developer submit a summary of data and information, rather than the data and information itself. There is no burden to respondents for developing the data and information that underlie the new protein evaluation because respondents would have already generated such data and information to ensure that the protein is safe and is in compliance with all applicable requirements of the FD&C Act. FDA aids small businesses in complying with its requirements through the agency's Regional Small Business Representatives and through the scientific and administrative staffs within the agency.

FDA has provided a Small Business Guide on the agency's website at http://www.fda.gov/oc/industry/.

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

Data collection occurs occasionally. The data in a NPC are submitted only once for each specific new protein and therefore cannot be collected less frequently.

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

There are no special circumstances for 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), FDA published a 60-day notice for public comment in the *Federal Register* of June 19, 2015 (80 FR 35370). No comments were received.

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

FDA does not provide any payment or gifts to respondents.

**10. Assurance of Confidentiality Provided to Respondents**

FDA believes that, in most cases, neither the existence of a NPC, nor most or all of its content, would satisfy the criteria for exemption from disclosure. However, information submitted to FDA in a NPC may contain trade secret and commercial confidential information. As a result, all files are maintained in a secured area. Form FDA 3666, its instructions, and related guidance, provide instructions for assisting FDA with protecting confidential information. A submitter may choose to provide a redacted copy of the NPC, identifying that information that the submitter views as trade secret or as confidential commercial or financial information. Only information that is releasable under the agency's regulations in 21 CFR part 20 would be released to the public. This information is also 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)). At this time, we do not proactively disclose the submission of a NPC until after the submitter completes the consultation procedure. After the consultation is complete, we place on the FDA Internet site the redacted copy of the NPC and an electronic version of the agency response to the submitter (http://www.fda.gov/Food/Biotechnology/Submissions/default.htm).

**11. Justification for Sensitive Questions**

This information collection does not ask questions of a sensitive nature.

**12. Estimates of Annualized Burden Hours and Costs**

*Description of Respondents*: The respondents to this collection of information are developers of new plant varieties intended for food use. Respondents are from the private sector (for-profit businesses, as well as not-for-profit institutions).

**12 a. Annualized Hour Burden Estimate**

FDA estimates the burden of this collection of information as follows:

| Table 1.--Estimated Annual Reporting Burden[1] | | | | | | |
|---|---|---|---|---|---|---|
| Category | FDA Form No. [2] | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Avg. Burden per Response | Total Hours |
| First four data components | 3666 | 6 | 1 | 6 | 4 | 24 |
| Two other data components | 3666 | 6 | 1 | 6 | 16 | 96 |
| Total | | | | | | 120 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Form FDA 3666 may be submitted electronically via the ESG.

The estimates provided for this collection of information are based on FDA's experience with its early food safety evaluation submission program. Based on our review, we received 12 NPCs during the 5-year period from 2005 through 2009, for an average of 2.4 NPCs per year. However, during the last extension period, we saw a decrease in the number of NPCs submitted by developers, with no NPCs submitted in 2010 through 2014. More recently, FDA received 4 NPCs in the first 4 months of 2015. By combining an average of these figures together with our observations, we expect the total number of annual NPC submissions to be 6 or fewer and the total hourly burden to be 120 hours.

The early food safety evaluation for new proteins includes six main data components. Four of these data components are easily and quickly obtainable, having to do with the identity and source of the protein. FDA estimates that completing these four data components will take about 4 hours per NPC and thus we estimate the reporting burden is 24 hours (4 hours x 6 responses), as reflected in Table 1 row 1 above. At the same time, two data components ask for original data to be generated, where one component consists of a bioinformatics analysis which can be performed using publicly available databases. The other component involves "wet" lab work to assess the new protein's stability and the resistance of the protein to enzymatic degradation using appropriate in vitro assays (protein digestibility study). FDA estimates that completing these two data components will take about 16 hours per NPC and thus we estimate the reporting burden is 96 hours (16 hours x 6 responses), as reflected in Table 1 row 2 above.

As requested in part III of Form FDA 3666, section 5, submissions may incorporate by reference information from a previous submission to FDA (biotechnology notification file (BNF), new protein consultation, generally recognized as safe (GRAS) notice, GRAS affirmation petition, food additive petition, and food master file). These collections of information have been approved by OMB under the following control numbers:

- biotechnology consultation procedures are approved under OMB Control No. 0910-0704;
- new protein consultations are approved under this collection, OMB Control No. 0910-0583;
- GRAS notices and affirmation petitions are approved under OMB Control No. 0910-0342; and
- food additive petitions and food master files are approved under OMB Control No. 0910-0016.

**12 b. Annualized Cost Burden Estimate**

Gathering the information for the NPC and providing it to the agency requires a team of employees, which may include toxicologists, chemists, and lawyers. FDA estimates that the average hourly wage for these employees is equivalent to a GS-14/Step-1 in the locality pay area of Washington-Baltimore in 2015, approximately $51.43/hour. Doubling this wage to account for overhead costs, FDA estimates the average hourly cost to respondents to be $102.86/hour. Thus, the overall estimated cost incurred by the respondents is $12,343 (120 burden hours x $102.86/hour = $12,343.20, rounded to $12,343). In addition, while FDA does not charge for the use of the ESG, FDA requires respondents to obtain a public key infrastructure (PKI) certificate in order to set up the account. This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 to 3 years. The certificate typically costs from $20-$30.

**13. Estimates of Other Total Annual Costs to Respondents and/or Recordkeepers/Capital Costs**

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

**14. Annualized Cost to Federal Government**

FDA estimates that the staffing burden for review of a NPC is 80 hours per submission. We estimate that we will receive approximately 6 NPCs annually. Thus, we estimate 480 hours will be needed to review NPC submissions annually. FDA estimates the annual cost to the Federal government to be 480 hours at rate of $56.57/hour, the GS-13/Step-10 rate for the Washington-Baltimore locality pay area for the year 2015 (480 hours x $56.57/hour = $27,153.60, rounded to $27,154). To account for overhead, this cost is increased by 100%, making the total estimated annual cost to the Federal government $54,308.

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

The estimated burden for this collection of information has decreased. Annual responses decreased from 60 to 6 (a reduction of 14 responses) resulting in a corresponding hourly burden decrease from 400 to 120 (a reduction of 280 hours). We attribute the change to a decrease in the number of respondents and NPC submissions and are therefore characterizing it as an adjustment.

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

No statistics from the information obtained from this data collection will be published. However, as noted above in Section 10, we do not proactively disclose the submission of a NPC until after the submitter completes the consultation procedure. After the consultation is complete, we place on the

FDA Internet site the redacted copy of the NPC and an electronic version of the agency response to the submitter (http://www.fda.gov/Food/Biotechnology/Submissions/default.htm).

**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.