Substances Generally Recognized as Safe (GRAS) Notification Procedures

OMB Control No. 0910-0342

SUPPORTING STATEMENT

Terms of Clearance: *In accordance with the terms of 5 CFR 1320, this ICR is approved for a period of three years. OMB notes that the Supporting Statement claims that the new form will be more efficient than the existing form, but it does not calculate a reduction in the burden on the public or a reduction in Agency processing time. Please examine this as the form is in use and consider updating these figures, as appropriate, when resubmitting to OMB.*

Response: Because FDA is undertaking rulemaking that will affect the information collection, for purposes of this extension request we are retaining our current estimates. Upon finalizing our GRAS notification procedures we will revise the information collection accordingly.

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 409 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348) establishes a premarket approval requirement for "food additives"; section 201(s) of the FD&C Act (21 U.S.C. 321) provides an exclusion to the definition of "food additive," and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. In the Federal Register of April 17, 1997 (62 FR 18938), FDA published a proposed rule that would establish a voluntary procedure whereby manufacturers would notify us about a view of a particular use (or uses) of a substance not subject to the statutory premarket approval requirements based on a determination that such use is GRAS. Under an interim policy announced in the proposed rule, we invited manufacturers to submit notices of their independent determinations for review under the framework of the proposed rule during the period between issuance of the proposal and any final rule based on the proposal. The proposed regulations (proposed 21 CFR 170.36 and 21 CFR 570.36) provide a standard format for the voluntary submission of a notice. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the subject of the GRAS notice, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act (FOIA) and other Federal disclosure statutes.

While FDA is currently undertaking rulemaking to finalize the proposed rule, we are requesting an extension of the currently approved provisions of the information collection, including FDA Form 3667 entitled "Generally Recognized as Safe (GRAS) Notice." The form is available on the internet at: http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM350015.pdf. 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. For submissions to FDA's Center for Veterinary Medicine (CVM), respondents may continue to send GRAS notices in letter format to the agency, as instructed in the Federal Register notice of June 4, 2010 (75 FR 31800).

2. Purpose and Use of the Information Collection

Form FDA 3667 along with the GRAS notification procedures set forth in proposed §§ 170.36 and 570.36 describe the information that FDA considers important in evaluating whether a notice provides a sufficient basis for a GRAS determination and facilitates FDA review. The information is used to evaluate whether the notice provides a sufficient basis for a conclusion of GRAS status and to determine whether information in the notice or otherwise available to FDA raises issues of public health significance that would lead the agency to question whether use of the substance is GRAS.

Description of Respondents: The respondents to this collection of information are manufacturers of substances used in food and feed. Respondents are from the private sector (for-profit businesses).

3. Use of Improved Information Technology and Burden Reduction

Form FDA 3667 allows respondents to transmit GRAS notices to CFSAN. GRAS notices submitted to CVM continue to be in letter format. Therefore, the agency estimates that approximately 70% of submissions will be made electronically, while 30% will continue to be submitted in letter format as established under the current procedures.

4. Efforts to Identify Duplication and Use of Similar Information

Duplication of the information collection is unlikely. Under the Meat and Poultry Inspection Acts, the United States Department of Agriculture's Food Safety and Inspection Service (USDA/FSIS) has regulatory authority for meat and poultry. Both USDA/FSIS (64 FR 72167; December 23, 1999) and FDA (65 FR 51758; August 25, 2000) have amended their regulations to harmonize and improve the efficiency of the procedures used by USDA/FSIS and FDA with respect to reviewing and approving the use of substances in meat and poultry. In general, USDA/FSIS evaluates food substances as to their suitability for specified uses in meat or poultry products. When USDA/FSIS receives a request to evaluate the suitability of a substance for use in meat or poultry products, USDA/FSIS consults with FDA about the regulatory status of the substance. When FDA receives a GRAS notice that includes a use in meat or poultry products, FDA consults with USDA/FSIS and provides to the notifier feedback from USDA/FSIS about the suitability of the substance for use in meat or poultry products. If USDA/FSIS informs FDA that the use of the substance in meat or poultry products requires rulemaking under the statutes that FSIS implements, FDA provides that information to the notifier. FDA and USDA have now signed a Memorandum of Understanding regarding these procedures (http://www.fsis.usda.gov/Oa/topics/mou_fda.htm?redirecthttp=true).

5. Impact on Small Businesses or Other Small Entities

We estimate ten percent (10%) of respondents are small businesses. However we have attempted to minimize burden on all respondents, including small businesses, by providing that the notifier submit a detailed summary of the data and information rather than the underlying data that are the basis for the conclusion of GRAS status. At the same time, 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 also provides a Small Business Guide on the agency's website at http://www.fda.gov/oc/industry/.

6. Consequences of Collecting the Information Less Frequently

GRAS notifications are submitted only once.

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

Under procedures resulting from the proposed rule, GRAS notification records are to be retained for more than three years. The proposal explains that notifiers would submit a detailed summary of the information that provides the basis for a conclusion of GRAS status rather than the information itself, but retain the underlying information and sign a statement that such information is available for FDA review and copying at reasonable times, or submitted to FDA upon request. There are no other 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), FDA published a 60-day notice for public comment in the Federal Register of September 17, 2015 (80 FR 55857). FDA received the following three comments in response to the notice:

(Comment 1) One comment "strongly supports FDA's efforts of improving the Notification Procedure for Substances GRAS and appreciates and supports the Agency development of Form FDA 3667 entitled "Generally Recognized as Safe Notice," to assist with GRAS notice submissions."

(Comment 2) One comment questioned whether a new food additive can be GRAS if not previously used. The comment continued with a suggestion to require data submitted in support of a GRAS determination to be published and reviewed by independent scientists prior to approval.

(Comment 3) One comment suggested that GRAS notifications require listing the qualified experts making the safety determination, their credentials, and their affiliations on Form 3667. The comment suggested that including this information would "minimize the potential for conflicts of interest in companies' GRAS determinations" and "provide greater transparency and accountability" of the substance in question and its safety.

FDA acknowledged and expressed its appreciation for the comments in its 30 day notice responding that current rulemaking is under way to address these as well as other issues substantive to the information collection.

9. Explanation of Any Payment or Gift to Respondents

FDA does not provide any payments or gifts to respondents.

10. Assurance of Confidentiality Provided to Respondents

FDA proposed that a particular section (i.e., the "GRAS exemption claim") of a notice be immediately available for public disclosure on the date the notice is filed. FDA also proposed that all remaining data and information in a notice will become available for public disclosure, in accordance with 21 CFR part 20, on the date of receipt of the notice. The general recognition

standard signifies that neither the proposed use of the substance nor the critical information needed to establish its safety are confidential. Therefore, FDA presumes that a notice will not contain any information that is protected from public disclosure. Moreover, because a GRAS substance may be marketed without prior approval, FDA presumes that, in most cases, submission of a notice will not reflect the notifier's plans about the timing of commercialization, which is arguably confidential commercial information (21 CFR 20.61(b)), because a notifier may market a substance at any time before or after notifying FDA. FDA makes the information in the GRAS exemption claim and the agency's response to the notice accessible to the public through an electronic inventory of GRAS notices posted on the agency's website at http://www.accessdata.fda.gov/scripts/fcn/fcnNavigation.cfm?rpt=grasListing.

FDA believes that, in most cases, neither the existence of a GRAS notice, nor most or all of its content, would satisfy the criteria for exemption from disclosure. However, information submitted to FDA in a GRAS notice may contain trade secret and commercial confidential information. As a result, all files are maintained in a secured area. Form FDA 3667, 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 GRAS notice, 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 FOIA under sections 552(a) and (b) (5 U.S.C. 552(a) and (b)).

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

FDA estimates the burden of the information collection as follows:

12 a. Annualized Hour Burden Estimate

Table 1 – Estimated Annual Reporting Burden[1]

21 CFR Section	FDA Form No.[2]	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Avg. Burden per Response	Total Hours
170.36 (CFSAN)	FDA 3667[3]	40	1	40	150	6,000
570.36 (CVM)	N/A	20	1	20	150	3,000
Total						9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Only CFSAN uses Form FDA 3667.
[3] Form FDA 3667 may be submitted electronically via the ESG.

Table 2 – Estimated Annual Recordkeeping Burden[1]

21 CFR Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Avg. Burden per Recordkeeping	Total Hours
170.36(c)(v) (CFSAN)	40	1	40	15	600
570.36(c)(v) (CVM)	20	1	20	15	300
Total					900

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

For purposes of this extension request, we are retaining our 2012 estimates. The PRA analysis for the GRAS final rule will take into account any changes to the GRAS notification procedure as set forth in the final rule and we will revise the collection accordingly.

12 b. Annualized Cost Burden Estimate

FDA estimates the annualized burden hour cost to respondents for this collection of information to be approximately $903,276. FDA estimates a respondent's average wage to be that of a Federal government employee at the GS-13/Step-2 rate for the Washington-Baltimore locality pay area for the year 2016, which is $45.62 per hour. To account for overhead, this cost is increased by 100 percent, which is $91.24 per hour. Thus, the annual wage cost for completion and submission of GRAS notifications is approximately $903,276 (9,900 hours x $91.24 per hour). 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 year to 3 years. The certificate typically costs from $20-$30.

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

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

14. Annualized Cost to Federal Government

FDA estimates it will direct approximately 4 full time equivalent positions (FTE's) to the GRAS notification procedure for human foods. Due to the smaller number of notices anticipated for animal food, only 3 FTE is expected to be devoted to processing the notices submitted to CVM. Based on an average cost of $172,000 per fully supported position ($86,000 increased by 100 percent to account for overhead), the cost of processing GRAS notifications would be $1,204,000 per year ($172,000 x 7).

15. Explanation for Program Changes or Adjustments

For purposes of this extension request, we are retaining our 2012 estimates. The PRA analysis for the GRAS final rule will take into account any changes to the GRAS notification procedure as set forth in the final rule and we will revise the collection accordingly.

16. Plans for Tabulation and Publication and Project Time Schedule

FDA proposed to make readily accessible to the public the information in a section of the notice called the "GRAS exemption claim" and the agency's response to the notice. At this time, FDA is making this information accessible through an electronic inventory of GRAS notices, available at http://www.accessdata.fda.gov/scripts/fcn/fcnNavigation.cfm?rpt=grasListing

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.