Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

OMB Control No. 0910-0635

SUPPORTING STATEMENT

A. Justification

1. Circumstances Making the Collection of Information Necessary

The Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) (Public Law 109–462, 120 Stat. 3469) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting and recordkeeping for dietary supplements and non-prescription drugs marketed without an approved application. Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa-1(b)(1)) requires the manufacturer, packer, or distributor whose name under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States to submit to FDA all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch form (FDA 3500A) when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the "responsible person") is required to submit to FDA a follow-up report of any related new medical information the responsible person receives within 1 year of the initial report.

Section 761(e)(1) of the FD&C Act requires that responsible persons maintain records related to the dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years.

As required by section 3(d)(3) of the DSNDCPA, FDA issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. In the Federal Register of July 14, 2009 (74 FR 34024), FDA announced the availability of guidance entitled "*Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act*." The guidance discusses how, when, and where to submit serious adverse event reports for dietary supplements and follow-up reports. The guidance also provides FDA's recommendation on records maintenance and access for serious and non-serious adverse event reports and related documents.

FDA is requesting OMB approval of the information collection provisions in the guidance and the following statutory citations:

21 U.S.C. 379aa-1(b)(1) – Reporting

Serious adverse event reports for dietary supplements – Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa-1(b)(1)) requires the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1)) appears on the label of a dietary supplement marketed in the United States submit to FDA any serious adverse event report it receives regarding use of dietary supplements in the United States.

21 U.S.C. 379aa-1(c)(2) – Reporting

Follow-up reports of new medical information – Section 761(c)(2) of the FD&C Act (21 U.S.C. 379aa-1(c)(2)) requires the responsible party to submit to FDA a follow-up report of any new medical information received within one year of the initial report.

21 U.S.C. 379aa-1(e)(1) -- Recordkeeping

Maintenance of records of dietary supplement adverse events – Section 761(e)(1) of the FD&C Act (21 U.S.C. 379aa-1(e)(1)) requires that responsible persons maintain for six years records related to dietary supplement adverse event reports they receive, whether or not the adverse event is serious.

2. Purpose and Use of the Information Collection

The FDA will receive the information as required by the DSNDCPA with respect to serious adverse event reporting for dietary supplements. The reporting and recordkeeping requirements for serious adverse events related to dietary supplements are important for public health reasons. Reporting of serious adverse events to FDA will serve as an early warning sign of potential public health issues associated with dietary supplements. Without notification of all serious adverse events associated with dietary supplements, FDA would be unable to investigate and follow up promptly, which in turn could cause delays in alerting the public when safety problems are found. In addition, the information received will provide a reliable mechanism to track patterns of adulteration in food that would support efforts by FDA to target limited inspection resources to protect the public health.

Description of Respondents: Respondents are businesses engaged in the manufacture, packing, or distribution of dietary supplements marketed in the United States. Respondents are from the private sector (for-profit businesses).

3. Use of Improved Information Technology and Burden Reduction

Adverse event reports for dietary supplements may be submitted to FDA electronically via the FDA Safety Reporting Portal (the SRP). FDA estimates about seventy-five percent (75%) of the dietary supplement adverse event reports will be submitted electronically.

4. Efforts to Identify Duplication and Use of Similar Information

FDA is aware of no duplicative reporting requirements to those found in the DSNDCPA. The manufacturer, packer, or distributor of a dietary supplement is required by statute to use a MedWatch form when submitting a serious adverse event report to FDA. The statute permits but does not require FDA to modify the MedWatch form for dietary supplement serious adverse event reporting. The agency has determined that MedWatch Form 3500A (approved under OMB Control No. 0910-0291[1]), the form used for mandatory reporting of adverse events for other FDA-regulated products, is also the most appropriate MedWatch form currently available for mandatory reporting of dietary supplement serious adverse events.

5. Impact on Small Businesses or Other Small Entities

FDA estimates that eighty percent (80%) of respondents are small businesses. Because the information collection requirements are mandated by the DSNDCPA, there is no statutory exception for small businesses. However, 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 DSNDCPA requires that serious adverse event reports received through the address or phone number on the label of a dietary supplement, as well as follow-up reports of new medical information received by the responsible person within one year after the initial report, be submitted to FDA no later than 15 business days after the report is received by the responsible person. FDA believes that prompt, mandatory reporting is consistent with the Congressional intent of the DSNDCPA and important for public health reasons. Delayed or less frequent reporting of serious adverse events to FDA would diminish the effectiveness of adverse event reporting as an early warning sign of possible safety problems with dietary supplements. Without notification of all serious adverse events associated with dietary supplements, FDA is unable to investigate and follow-up promptly, which in turn could cause delays in alerting the public when safety problems are found.

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

The DSNDCPA requires that serious adverse event reports, as well as follow-up reports of new medical information received by the responsible person within one year after the initial report, be submitted to FDA no later than 15 business days after the report is received by the responsible

[1] Burden for the instant collection, 0910-0635, represents a subset of adverse event reporting associated with the underlying guidance "*Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act*." We have counted this burden separately from the burden approved under 0910-0291 but we are currently considering combining these collections.

person. As a result, reporting information to FDA may occur more frequently than on a quarterly basis. Also, section 761(e)(1) of the FD&C Act requires that responsible persons maintain for records related to dietary supplement adverse event reports they receive for six years, whether or not the adverse event is serious. This collection of information does not involve submission of more than an original and 2 copies, the use of statistical methods, pledges of confidentiality by FDA not supported by authority established in statute or regulation, or require the disclosure of trade secrets or other confidential 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 October 21, 2015 (80 FR 63797). No comments were received.

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

Section 761(f)(2) of the FD&C Act (21 U.S.C. 379aa-1(f)(2)) provides that a serious adverse event report submitted to FDA, including any new medical information submitted, shall be considered a record about an individual under section 552a of title 5, United States Code (commonly referred to as the "Privacy Act of 1974") and a medical or similar file the disclosure of which would constitute a violation of section 552 of such title 5 (commonly referred to as the "Freedom of Information Act"), and shall not be publicly disclosed unless all personally identifiable information is redacted.

11. Justification for Sensitive Questions

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

12. Estimates of Annualized Burden Hours and Costs

We estimate the burden for this information collection as follows:

12a. Annualized Hour Burden Estimate

Reporting

Table 1 – Estimated Annual Reporting Burden[1]

21 U.S.C. Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Avg. Burden per Response	Total Hours
21 U.S.C. 379aa-1(b)(1)- serious adverse event reports for dietary supplements	170	17	2,890	2	5,780
21 U.S.C. 379aa-1(c)(2) – follow-up reports of new medical information	42	17	714	1	714
TOTAL					6,494

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

This estimate is based on FDA's experience with similar adverse event reporting programs and the number of serious adverse event reports and follow-up reports received in the past 3 years. All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event mandatory reporting.

We received 2,435 initial serious adverse event reports in fiscal year (FY) 2012, 3,414 in FY2013, and 2,745 in FY2014. We averaged these figures (2,860 rounded to the nearest 10) as a basis for our estimated number of annual reports. We also used an average of the number of firms filing reports (170 rounded to the nearest 10). Finally, we estimate that it takes respondents an average of 2 hours per report to collect information about a serious adverse event associated with a dietary supplement and report the information to us on Form FDA 3500A (approved under OMB Control No. 0910-0291). Thus, the estimated burden associated with submitting initial dietary supplement serious adverse event reports is 5,720 hours (2,860 responses × 2 hours) as shown in row 1 of Table 1.

If a respondent that has submitted a serious adverse event report receives new information related to the serious adverse event within 1 year of submitting the initial report, the respondent must provide the new information to us in a follow-up report. We estimate 25 percent of serious adverse event reports related to dietary supplements will require a follow-up report, resulting in approximately 715 follow-up reports submitted annually (2,860 × 0.25 = 715). Dividing the annual number of reports among the 170 firms reporting results in approximately 17 reports for 42 respondents. We estimate that each follow-up report will require an hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the guidance. Thus the estimated burden for follow-up reports of new information is 715 hours (715 responses × 1 hour) as shown in row 2 of Table 1.

Recordkeeping

Table 2 – Estimated Annual Recordkeeping Burden[1]

21 U.S.C. Section	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Avg. Burden per Recordkeeping	Total Hours
21 U.S.C. 379aa-1(e)(1)- dietary supplement adverse events records	1,700	74	125,800	0.5 (30 mins.)	62,900
TOTAL					62,900

[1]There are no capital costs or operating costs associated with the collection of information

All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event recordkeeping. We estimate that there are 1,700 such respondents, based on the figure 1,460 as provided in our final rule of June 25, 2007 (72 FR 34751) on the "Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements," and factoring a two percent annual growth rate. Estimating that each recordkeeper will keep approximately 74 records per year results in an annual burden of 125,800 records. Estimating that assembling and filing these records, including any necessary photocopying, will take approximately 30 minutes, or 0.5 hours, per record, results in an annual burden of 62,900 hours (125,800 records × 0.50 hours = 62,900 total hours).

Once the documents pertaining to an adverse event report have been assembled and filed in accordance with the safety reporting portal, we expect the records retention burden to be minimal, as we believe most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice.

12b. Annualized Cost Burden Estimate

Reporting Cost Burden Estimate

The total annual hour cost burden to respondents is approximately $671,427.90 per year. FDA estimates that the average hourly wage for an employee to prepare and submit an adverse event report and follow-up medical information would be equivalent to a GS-14/Step-1 level in the locality pay area of Washington-Baltimore in 2016, which is $52.17/hour. Doubling this wage to account for overhead costs, FDA estimates the average hourly cost to respondents to be $104.34/hour. Thus, the overall estimated cost incurred by the respondents is $671,427.90 (6,435 burden hours x $104.34/hour = $671,427.90).

Recordkeeping Cost Burden Estimate

FDA estimates the recordkeeping hour burden costs to be about $52.17 ($104.34 x 0.5 hours) per record kept. This estimate is based upon the records being kept by an employee making a salary equivalent to a GS-14/Step 1 level in the locality pay area of Washington-Baltimore in 2016, which is $52.17/hour. Doubling this wage to account for overhead costs, FDA estimates the average hourly cost to recordkeepers to be $104.34/hour. Thus, the overall estimated cost incurred by recordkeepers is $6,562,986 ($52.17 per record x 125,800 records).

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

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

14. Annualized Cost to the Federal Government

The initial evaluation of a dietary supplement adverse event includes reviewing the case, reviewing related literature, writing a summary of the case, and providing an opinion about the association between the product(s) and the adverse event(s) and documenting the clinical review into the CFSAN Adverse Event Report System (CAERS) database. This task takes between 1-2 hours. A more in-depth analysis of an adverse event(s) such as looking for adverse event patterns, or signal detection of an adverse event(s) being associated with a product and then rewriting summarized reports to supervisors, could take between 40 to 60 hours or much longer depending on the number of cases needed to be analyzed, complexity of the cases and related literature research. Therefore, we estimate that on average it takes 1.5 hours for an initial evaluation. The cost of each evaluation is about $203.49 (1.5 hours x $135.66 per hour). This estimate is based upon the evaluation being done by an employee making a salary equivalent to a GS-14-10 level in the locality pay area of Washington-Baltimore in 2016, which is $67.83/hour. Doubling this wage to account for overhead costs, FDA estimates the average hourly cost to the Federal Government to be $135.66/hour.

The in-depth analysis of each adverse event we estimate takes an average of 50 hours. The cost of each in-depth analysis is about $6,783 (50 hours x $135.66 per hour). This estimate is based upon the analysis being done by an employee making a salary equivalent to a GS-14-10 level in the locality pay area of Washington-Baltimore in 2016, which is $67.83/hour. Doubling this wage to account for overhead costs, we estimate the average hourly cost to the Federal Government to be $135.66/hour.

Estimating that FDA will receive 2,860 serious adverse event reports annually, the total annual cost to the Federal Government for the initial evaluation and in-depth analysis of all reports is approximately $19,399,380 ($6,749 x 2,860).

15. Explanation for Program Changes or Adjustments

This information collection reflects agency adjustments. Also, the agency notes minor calculation errors in its published notices but has corrected them in this supporting statement. While there is a decrease in annual reports from 10,200 to 3,604 (a decrease of 6,596) with a

corresponding decrease in hourly burden from 18,360 to 6,494 (a decrease of 11,866 hours), there is an increase in annual records from 118,400 to 125,800 (an increase of 7,400) with a corresponding increase in hourly burden from 59,200 to 62,900 (an increase of 3,700 hours). The decrease in reporting reflects that fewer adverse event reports have been received and consequently there are fewer follow-up reports. At the same time, the increase in recordkeeping is attributable to an increase in the estimated number of respondents.

16. Plans for Tabulation and Publication and Project Time Schedule

We are not publishing any information received as a result of this information collection.

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

We are not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.