Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

0910-0641

SUPPORTING STATEMENT

Terms of Clearance: None.

A. Justification

1. Circumstances Making the Collection of Information Necessary

This information collection approval request is for a Food and Drug Administration (FDA) guidance for industry entitled "Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act."

Public Law 109–462, the Dietary Supplement and Nonprescription Drug Consumer Protection Act, which was signed by the President on December 22, 2006, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to add safety reporting requirements for nonprescription drug products that are marketed without an approved application. In accordance with section 760(b) of the FD&C Act (21 U.S.C. 379aa), the manufacturer, packer, or distributor whose name appears on the label of a nonprescription drug marketed in the United States without an approved application (referred to as the responsible person) must submit to FDA any report of a serious adverse event associated with such drug when used in the United States, accompanied by a copy of the label on or within the retail package of such drug. Public Law 109-462 also added section 502(x) of the FD&C Act (21 U.S.C. 352(x)) to require the label of a nonprescription drug product marketed without an approved application in the United States to include a domestic address or domestic telephone number through which the responsible person may receive a report of a serious adverse event associated with the product. If the label does not

include the required domestic address or telephone number, the product is misbranded. The guidance provides information on: (1) The meaning of "domestic address" for purposes of the labeling requirements of section 502(x) of the FD&C Act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or telephone number that is required to appear on the product label under section 502(x) of the FD&C Act; and (3) FDA's intent regarding enforcing the labeling requirements of section 502(x) of the FD&C Act. Public Law 109–462 also requires certain postmarketing safety reports for dietary supplements.

2. Purpose and Use of the Information Collection

In section 760 of the FD&C Act, Congress has required that important safety information relating to certain nonprescription human drug products be made available to the FDA by manufacturers, packers, or distributors so that it can take appropriate action to protect the public health when necessary.

3. Use of Improved Information Technology and Burden Reduction

FDA has a goal of requiring the submission of all mandatory reports in an electronic format. In the *Federal Register* of June 10, 2014 (79 FR 33072), the Agency published a final rule entitled "Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements" notifying human drug and biological product manufacturers that it has amended its postmarketing safety reporting regulations for human drug and biological products to require that postmarketing safety reports for certain human drug and biological products be submitted electronically, effective June 10, 2015. In addition, the final rule requiring electronic submission of safety reports includes those for nonprescription human drug products as required by section 760 of the FD&C Act (21 CFR part 329) entitled "Nonprescription Human Drug Products subject to Section 760 of the FD&C Act." Pharmaceutical companies are now

required to electronically submit individual case safety reports (previously adverse event reports) in the FDA Adverse Event Reporting System (FAERS) database as specified at http://www.fda.gov/drugs/guidancecomplianceregulatoryinformation/surveillance/adversedrugeffects/ucm115894.htm

In the *Federal Register* of June 10, 2014, FDA announced the availability of a draft guidance for industry entitled "Providing Submissions in Electronic Format—Postmarketing Safety Reports." The draft guidance provides general information pertaining to electronic submission of postmarketing safety reports (individual case safety reports (ICSRs, attachments to ICSRs (ICSR attachments), and other postmarketing safety reports) for certain human drug and biological products.

The submission of ICSRs and ICSR attachments in an electronic format is intended to significantly improve FDA's efficiency in processing, archiving, and reviewing the reports.

4. Efforts to Identify Duplication and Use of Similar Information

The information collection requested under the guidance does not duplicate any other information collection.

5. Impact on Small Businesses or Other Small Entities

Although new drug development is typically an activity completed by large multinational drug firms, the information collection requested under the guidance applies to small as well as large companies. Under the Regulatory Flexibility Act, FDA regularly analyzes regulatory options that would minimize any significant impact on small entities. FDA also assists small businesses in complying with statutory and regulatory requirements. The availability of Form FDA 3500A in a fillable pdf format, at www.fda.gov/medwatch/getforms.htm, facilitates the mandatory reporting efforts to FDA from small businesses.

6. Consequences of Collecting the Information Less Frequently

Less frequent data collection would mean that industry may not make the one-time labeling changes that Congress and FDA believes are necessary to ensure that reports of death, serious injury or illness are received by the manufacturer, packer, distributor, or retailer whose name appears on the label.

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

There is no inconsistency with 5 CFR 1320.5. The specific reporting and recordkeeping timeframes are justified by the statutory requirements.

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 July 17, 2015 (80 FR 42502). FDA received one comment. However, these comments did not address the information collection.

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 this guidance.

10. Assurance of Confidentiality Provided to Respondents

Section 760(f) of the FD&C Act provides that a serious adverse report submitted to FDA, including new medical information, under section 760 of the FD&C Act, or an adverse event report voluntarily submitted to FDA, is considered to be a record about an individual under section 552a of title V of the U.S.C. (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 title V (commonly referred to as the "Freedom of Information Act"), not to be disclosed unless all

personally identifiable information is redacted. Similarly, 760(h)(2)(B) of the FD&C Act further protects personally-identifiable information in adverse event reports provided by FDA to any State official.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature.

12. Estimates of Annualized Burden Hours and Costs

Section 502(x) of the FD&C Act requires the label of a nonprescription drug product marketed without an approved application in the United States to include a domestic address or domestic telephone number through which the responsible person (i.e., the manufacturer, packer, distributor, or retailer whose name appears on the label) may receive a report of a serious adverse event associated with the product. When the responsible person chooses to provide a domestic address (rather than a telephone number) for adverse event reporting, FDA concluded that the statute requires the product label to bear a full U.S. mailing address that includes the street address or P.O. Box, city, state, and zip code of the responsible person. Similarly, when the responsible person chooses to provide a domestic telephone number for adverse event reporting, FDA concluded that the statute requires the telephone number on the product label to include the area code. Currently, many nonprescription drug products include a domestic telephone number, which is optionally included in the "Drug Facts" label under 21 CFR 201.66(c)(9).

In addition to discussing the statutory requirement that labels include a domestic address or a domestic telephone number, the guidance includes recommendations about the location of this information on the label and the recommendation that the label make clear the purpose of this information.

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

Table 1.--Estimated Annual Third-Party Disclosure Burden

Activity	No. of Respondents	No. of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
Including a domestic address or phone number and a statement of its purpose on OTC drug labeling (21 U.S.C. 502(x))	300	3	900	4	3,600

As indicated in table 1 of this document, FDA estimates that approximately 300 manufacturers will revise approximately 900 labels to add a full domestic address or a domestic telephone number, and should they choose to adopt the guidance's recommendation, to add a statement identifying the purpose of the domestic address or telephone number. FDA believes that designing the label change should not take longer than 4 hours per label. Automated printing of the labels should only require a few seconds per label.

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

Based on previous reviews, FDA typically estimates $4,000 per label or stock-keeping unit (SKU) to make a label revision. If 900 labels are revised, the total cost burden to respondents would be $3.6 million. However, the costs associated with the revisions made as a result of this guidance would be less if label revisions are made contemporaneously with other scheduled label revisions.

14. Annualized Cost to the Federal Government

There is no FDA cost for the label changes because FDA does not review the labels of nonprescription drugs before marketing.

15. Explanation for Program Changes or Adjustments

There is a significant adjustment in burden for this ICR from 400,000 to 3,600 total burden hours. This adjustment was required to eliminate double-counting of burden hours discovered in 0910-0641 and 0910-0340. For 0910-0641, we have limited the third party disclosure burden to new OTC drug products marketed without approved new drug applications.

16. Plans for Tabulation and Publication and Project Time Schedule

There are no publications.

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

The agency is not seeking to 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 statement.