

**U.S. Food and Drug Administration
Environmental Impact Considerations
21 CFR Part 25
OMB Control No. 0910-0322
SUPPORTING STATEMENT**

Terms of Clearance: None.

A. Justification

1. Circumstances Making the Collection of Information Necessary

FDA is requesting OMB approval for the reporting requirements contained in the FDA collection of information “Environmental Impact Considerations.”

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347), states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

The FDA NEPA regulations are contained in 21 CFR part 25. All applications or petitions requesting agency action require the submission of a claim for a categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Sections 25.40(a) and (c) specifies the content requirements for EAs for non-excluded actions.

This collection of information is used by FDA to assess the environmental impact of agency actions. The final EIS, including the comments received, is reviewed by the

agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact.

Any final EIS would contain additional information gathered by the Agency after the publication of the draft EIS, a copy of or a summary of the comments received on the draft EIS, and the Agency's responses to the comments, including any revisions resulting from the comments or other information. When the Agency finds that no significant environmental effects are expected, the Agency prepares a finding of no significant impact (FONSI).

2. Purpose and Use of the Information Collection

This collection of information is used by FDA to assess the environmental impact of Agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture, and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for determining whether the proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the Agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a Federal Register notices also filed for comment at the Environmental Protection Agency (EPA). If the Agency finds that no significant environmental effects are expected, the agency prepares a finding of no significant impact (FONSI).

The respondents to this collection are primarily from private sector businesses.

3. Use of Improved Information Technology and Burden Reduction

FDA estimates that approximately 95% of the respondents to this collection of information will use electronic means to fulfill the Agency's requirements or request for information.

4. Efforts to Identify Duplication and Use of Similar Information

FDA avoids duplication by encouraging applicants to reference in their environmental documents data and information presented in other documents that are available to FDA and the public (21 CFR 25.40(d)). FDA intends to focus environmental reviews on the use and disposal from use of FDA regulated articles. Because FDA actively works to ensure the consistency of its protocols with those prescribed by EPA, the American Society for Testing and Materials (ASTM), and Organization for Economic Co-operation and Development (OECD), FDA avoids unnecessary duplication of environmental testing. Thus, environmental testing that has already been performed will not have to be repeated by a different protocol when applicants move from one regulatory Agency to another and from one country to another for approvals of the same chemical substance.

Where possible, existing data are used by FDA in evaluating the environmental impact of an industry-sponsored application or petition. To the extent publicly available, data in FDA files may be cross-referenced, data available in the scientific literature may be submitted, and data gathered for other government Agencies, such as EPA, may be used in support of the environmental review of an application to FDA.

FDA recognizes that there are instances where the same substance may be the subject of separate environmental analyses by another Agency, for example by EPA. FDA has determined that separate environmental review is not necessary for FDA approval of a food additive petition or FDA granting a request for an exemption from regulations as a food additive if the substance is already registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the same use requested in the petition. Although both agencies have worked to eliminate duplication of effort, applications submitted to FDA sometimes involve a different use of a chemical substance than the use(s) reviewed by EPA and the patterns of environmental introduction often vary. Therefore, in some circumstances, a document prepared by FDA or another Agency may not suffice as the NEPA document.

5. Impact on Small Businesses or Other Small Entities

For both large and small entities, FDA has identified the types of information necessary to review the environmental impact of a new product and, where possible, provides case-by-case guidance on the specific types of information required for a particular action. FDA does not have the resources to perform a firm's environmental studies and the information gathering necessary for the evaluation of a new product. However, small manufacturers may request help in applying for approval from the FDA office that works with small manufacturers. Because FDA has identified categories of actions that are categorically excluded from the requirement to prepare an EA and EIS, fewer EA's and EIS's are likely to be required from small businesses.

6. Consequences of Collecting the Information Less Frequently

Industry-sponsored applications and petitions are submitted on an occasional basis to obtain permission to market a new product or to expand the usage of a currently regulated product. If the frequency of collection for environmental impact data were reduced, the agency could not assess the environmental impact of approving applications. Failure to take environmental factors into account in the Agency decision making would leave the Agency susceptible to court challenge and may result in unnecessary delays in the approval for marketing of products. There are no legal obstacles to reduce the burden for this collection of information.

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

Data collection for applications is consistent with these guidelines. 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 7, 2018 (83 FR 26477). One PRA related comment was received.

(Comment) One commenter requested that FDA should categorically exclude all categories of SE applications from the EA requirement.

(Response) FDA appreciates this comment. We note, however, that any action to establish a categorical exclusion would need to be undertaken through a notice and comment rulemaking procedure.

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 the revisions of part 25.

10. Assurance of Confidentiality Provided to Respondents

NEPA requires that EA's and EIS's be made available for public review. However, 21 CFR 25.50(b) recognizes that FDA actions involving investigations, review, and approval of applications and premarket notifications for human drugs, animal drugs, biologic products, devices, and tobacco products are protected from disclosure under the Trade Secret Act (TSA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and 21 CFR part 20. Additionally, under 21 CFR 25.51 (a), data constituting trade secrets or confidential information under the TSA or the FFDCA must not be included in the portion of environmental documents that is made public. Thus, environmental information will be made available to the public to the extent permitted.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature in the environmental impact requirements.

12. Estimates of Annualized Burden Hours and Costs

12 a. Annualized Hour Burden Estimate

Estimated Annual Reporting Burden for Human Drugs (Including Biologics in CDER)

Under §§ 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i) (21 CFR 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i)), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31, or an EA under § 25.40. Annually, FDA receives approximately 3,687 INDs from 2,456 sponsors; 140 NDAs from 116 applicants; 3,192 supplements to NDAs from 443 applicants; 28 biologic license applications (BLAs) from 22 applicants; 464 supplements to BLAs from 52 applicants; 1,152 ANDAs from 248 applicants; and 6,774 supplements to ANDAs from 384 applicants. FDA estimates that it receives approximately 15,437 claims for categorical exclusions as required under § 25.15(a) and (d) and 10 EAs as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

Table 1.--Estimated Annual Reporting Burden for Human Drugs

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|------------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.15(a) and(d) | 3,724 | 4.1453 | 15,437 | 8 | 123,496 |
| 25.40(a) and (c) | 10 | 1 | 10 | 3,400 | 34,000 |
| Total | | | | | 0 |

Estimated Annual Reporting Burden for Medical Devices

Under § 814.20(b)(11) (21 CFR 814.20(b)(11)), premarket approvals (PMAs) (original PMAs and supplements) must contain a claim for categorical exclusion under § 25.30 or § 25.34 or an EA under § 25.40. In 2017, FDA received an average of 50 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under § 25.40(a) and (c). FDA estimates that approximately 50 respondents will submit an average of 1 application for categorical exclusion annually. Based on information provided by sponsors, FDA estimates that it takes approximately 6 hours to prepare a claim for a categorical exclusion.

Table 2.--Estimated Annual Reporting Burden for Medical Devices

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|------------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.15(a) and (d) | 50 | 1 | 50 | 6 | 300 |

Estimated Annual Reporting Burden for Biological Products, Drugs, and Medical Devices in the Center for Biologics Evaluation and Research

Under 21 CFR 601.2(a), BLAs as well as INDs (§ 312.23), NDAs (§ 314.50), ANDAs (§ 314.94), and PMAs (§ 814.20) must contain either a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. Annually, FDA receives approximately 34 BLAs from 18 applicants, 801 BLA supplements to license applications from 156 applicants, 345 INDs from 256 sponsors, 1 NDA from 1 applicant, 26 supplements to NDAs from 8 applicants, 1 ANDA from 1 applicant, 1 supplement to ANDAs from 1 applicant, 8 PMAs from 3 applicants, and 33 PMA supplements from 16 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA has received approximately 481 claims for categorical exclusion as required under § 25.15(a) and (d) annually and 2 EAs as required under § 25.40(a) and (c) annually. Therefore, FDA estimates that approximately 247 respondents will submit an average of 2 applications for categorical exclusion and 2 respondents will submit an average of 1 EA. Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim of categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

Table 3.--Estimated Annual Reporting Burden for Biological Products

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|------------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.15(a) and (d) | 247 | 2 | 494 | 8 | 3,952 |
| 25.40(a) and(c) | 2 | 1 | 2 | 3,400 | 6,800 |
| Total | | | | | 10,752 |

Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs); 21 CFR 514.8(a)(1) supplemental NADAs and ANADAs; 21 CFR 511.1(b)(10) investigational new animal drug applications (INADs) and generic investigational new animal drug applications (JINADs), and 21 CFR 571.1(c) food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. Annually, FDA’s Center for Veterinary Medicine has received approximately 810 claims for categorical exclusion as required under § 25.15(a) and (d) and 22 EAs as required under § 25.40(a) and (c). Assuming an average of 10 claims per respondent, FDA estimates that approximately 81 respondents will submit an average of 10 claims for categorical exclusion. FDA further estimates that 22 respondents will submit an average of 1 EA. FDA estimates that it takes sponsors/applicants approximately 3 hours to prepare a claim of categorical exclusion and an average of 2,160 hours to prepare an EA.

Table 4.--Estimated Annual Reporting Burden for Animal Drugs

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|------------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.15(a) and (d) | 81 | 10 | 810 | 3 | 2,430 |
| 25.40(a) and (c) | 22 | 1 | 22 | 2,160 | 47,520 |
| Total | | | | | 0 |

Estimated Annual Reporting Burden for Tobacco Products

Under sections 905, 910, and 911 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387e, 387j, and 387k), product applications and supplements (PMTAs), SEs, Exemption from SEs, and modified risk tobacco products must contain a claim for categorical exclusion or an EA. After further review, the agency has concluded that the majority of the EA burden for tobacco products is covered under already existing information collections. To avoid double counting, the agency has removed the burden which is approved under other FDA information collections. The burden for SEs are currently approved under OMB control number 0910-0673; the burden for PMTAs are currently approved under OMB control number 0910-0768; the burden for SE exemptions are currently approved under OMB control number 0910-0684.

FDA’s estimates are based on actual report data from fiscal year (FY) 2015 to FY 2017, on average FDA estimated it received approximately 27 modified risk tobacco product

applications (MRTPAs) from 27 respondents. Based on updated data for this collection, FDA estimates 27 EAs from 27 respondents. A total of 27 respondents will submit an average of 1 application for environmental assessment. Based on FDA’s experience, previous information provided by potential sponsors and knowledge that part of the EA information has already been produced in one of the tobacco product applications, FDA estimates that it takes approximately 80 hours to prepare an EA.

Table 5.--Estimated Annual Reporting Burden for Tobacco Products

| 21 CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|------------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.40(a) and (c) | 27 | 1 | 27 | 80 | 2,160 |

Table 6.--Estimated Annual Total Reporting Burden for All Centers

| CFR Section | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Average Burden per Response | Total Hours |
|-----------------|--------------------|---------------------------------|------------------------|-----------------------------|-------------|
| 25.15 (a) & (d) | 4,102 | - | 16,791 | - | 130,178 |
| 25.40 (a) & (c) | 61 | - | 61 | - | 90,480 |
| Total | 0 | - | 0 | - | 0 |

The Estimated Annual Reporting Burden for Human Foods is no longer a part of this information collection. The burden has now been incorporated into OMB control number 0910-0541.

12b. Annualized Cost Burden Estimate

FDA's Economics Staff estimates the average industry wage rate of \$74.00 per hour for preparing and submitting the information collection requirements associated with marketing applications. Based on a total industry burden of 220,658 hours, the annualized cost burden to respondents would be \$16,328,692.

| Type of | Total Burden | Hourly Wage Rate | Total Respondent |
|---------|--------------|------------------|------------------|
|---------|--------------|------------------|------------------|

| Respondents | Hours | | Costs |
|-------------|---------|---------|--------------|
| Businesses | 220,658 | \$74.00 | \$16,328,692 |

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 information collection.

14. Annualized Cost to the Federal Government

FDA estimates that a total of approximately 8 FTEs are devoted to the review of submissions associated with 21 CFR part 25. Based on an estimate of \$170,000 per FTE, the annualized cost burden to FDA would be approximately \$1,360,000.

15. Explanation for Program Changes or Adjustments

Our estimated burden for the information collection reflects an overall decrease of 10,566 hours (currently approved 231,224) and a corresponding increase of 1,325 annual responses (currently approved 15,527). The new estimated totals are 220,658 hours and 4,163 annual responses (as shown in table 6). We attribute this adjustment to the number of EA submissions, and categorical exclusions we received since the last extension, and the adjustment of burden for the agencies centers.

A summary of changes to burden is as follows:

In reporting burden for Human Drugs, table 1, the net increase in burden is 10,784 hours. The number of respondents submitting categorical exclusions is expected to decrease by 308, and the responses per respondent has increase slightly, resulting in an increase of 14,184 burden hours. In addition, the number of environmental assessments is expected to decrease by 1 and burden hours are expected to decrease by 3,400 hours.

In reporting burden for Medical Devices, table 2, the number of respondents submitting categorical exclusions is expected to increase by 11, resulting in an increase in burden of 66 hours.

In reporting burden for Biological Products, table 3, there is no net change in burden hours. The number of respondents submitting categorical exclusions, the numbers of environmental assessments, remained the same as currently approved by OMB.

In reporting burden for Animal Drugs, table 4, the number of respondents submitting categorical exclusions has increased by 11 and 330 burden hours, the numbers of environmental assessments have increased by 12 respondents and 25,920 hours. This resulted in a total increase of 33 respondents and 26,250 burden hours.

In reporting for Tobacco Products, table 5, the number of respondents submitting environmental assessments is expected to decrease by 505, resulting in a burden hour decrease of 40,400 hours.

As mentioned above, in reporting burden for Human Foods, CFSAN is no longer a part of this information collection. The burden has now been incorporated into OMB control number 0910-0541. This resulted in a decrease of 75 respondents and 7,266 hours.

16. Plans for Tabulation and Publication and Project Time Schedule

FDA does not intend to publish tabulated results of the information collection requirements that are imposed by 21 CFR part 25.

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

There are no forms associated with this collection.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.