

UNITED STATES FOOD AND DRUG ADMINISTRATION

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

OMB Control No. 0910-0562

SUPPORTING STATEMENT – **Part A: Justification**

1. Circumstances Making the Collection of Information Necessary

This information collection supports Food and Drug Administration (FDA, us or we) guidance pertaining to pesticide tolerances in food. The Food Quality Protection Act of 1996 (FQPA), which amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (the FD&C Act), established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under FIFRA) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FD&C Act). EPA may, for various reasons, *e.g.*, as part of a systematic review or in response to new information concerning the safety of a specific pesticide, reassess whether a tolerance for a pesticide residue continues to meet the safety standard in section 408 of the FD&C Act (21 U.S.C. 346a). When EPA determines that a pesticide's tolerance level does not meet the safety standard, the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the FD&C Act, when the registration for a pesticide is canceled or modified due to, in whole or in part, dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture has responsibility for monitoring residue levels and enforcing pesticide tolerances in certain egg products, *Siluriformes* fish, including catfish, and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. We would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an “adulterated” food. However, the channels of trade provision of the FD&C Act addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FD&C Act) states that food containing a residue of such a pesticide shall not be deemed “adulterated” by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA’s satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner which were lawful under FIFRA.

FDA's guidance document entitled, "*Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations*" represents the agency's current thinking on its planned enforcement approach to the channels of trade provision of the FD&C Act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA pursuant to dietary risk considerations. The guidance can be found at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-channels-trade-policy-commodities-residues-pesticide-chemicals>. We anticipate that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If we encounter food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, we intend to address the situation in accordance with provisions of the guidance.

In general, we anticipate that the party responsible for food found to contain pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, *e.g.*, packed or processed, during the acceptable timeframes cited in the guidance by providing appropriate documentation to the agency as discussed in the guidance document. We are not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, we are leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation which we anticipate will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

We therefore request extension of OMB approval of information collection provisions found in the guidance entitled, "*Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations*" as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

Information will be collected by field personnel during the course of or in follow-up inspections, investigations, or sample collections. The information collected is used to determine whether commodities found to contain pesticide residues after the tolerances for the same pesticides in those particular commodities have been revoked, suspended, or modified are in compliance with the channels of trade provision of the FD&C Act.

Description of Respondents: Respondents are typically from the private sector (*e.g.*, for-profit businesses) engaged in the produce and food-processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

3. Use of Improved Information Technology and Burden Reduction

We do not specifically recommend the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology for use by respondents. In accordance with applicable regulations, the records must be made available upon FDA request. We estimate about 100% of the records will be maintained electronically in the next three years.

4. Efforts to Identify Duplication and Use of Similar Information

We are unaware of duplicative information collection.

5. Impact on Small Businesses or Other Small Entities

We estimate that 10% of respondents are small businesses who will use electronic means to fulfill the agency's requirement. However, we do not believe the information collection poses undue burden on these entities. We aid small businesses in complying with our requirements through the agency's Regional Small Business Representatives and through the scientific and administrative staffs within the agency. We also provide assistance via our Small Business Assistance webpage on the agency's website at <https://www.fda.gov/industry/small-business-assistance>.

6. Consequences of Collecting the Information Less Frequently

The information collection schedule discussed in the guidance is consistent with section 408(l)(5) of the FD&C Act.

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

Special circumstances in the collection of information may occur when a firm's submission of appropriate documentation to the agency may contain trade secret and commercial confidential information. This information is protected by FDA as discussed below in Item 10. In addition, if for some reason samples are collected from a firm on a more-than-quarterly basis and these samples are found to be potentially violative, the firm may wish to report information demonstrating compliance of such commodities with the channels of trade provision. This would result in a firm reporting on more than a quarterly basis. Also, chemical pesticide residues may remain in processed foods (*e.g.*, frozen food commodities) indefinitely. Processed foods are expected to remain in the channels of trade up to four years after harvesting. Firms dealing with processed foods may be asked to make a showing up to four years after the harvesting of the crop.

8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency

In accordance with 5 CFR 1320.8(d), we published a 60-day notice requesting public comment in the *Federal Register* of May 13, 2020 (85 FR 28639). Four comments were received. Three comments offered general support for the information collection and one comment was non-responsive to the information collection topics solicited. None of the comments suggested that we revise our burden estimate.

9. Explanation of Any Payment or Gift to Respondents

There are no incentives, payments, or gifts associated with this information collection.

10. Assurance of Confidentiality Provided to Respondents

In preparing this supporting statement, we consulted with our Privacy Office to ensure appropriate handling of information collected. Firms whose food product(s) are found to contain apparently illegal pesticide residues may provide records to FDA to demonstrate compliance of the products(s) with the channels of trade provision of the FD&C Act. Any records that the agency may copy or take possession of in such event 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)), and by part 20 of the agency's regulations (21 CFR part 20).

Privacy Act

This information collection request (ICR) is collecting personally identifiable information (PII) or data of a personal nature. The PII collected is company point-of-contact information that is included with evidence provided by a company. Information collected by FDA is to provide evidence from the firm to demonstrate that the pesticide residue found in its product is a result of legal application. Some examples of types of documentation we may find acceptable for demonstrating that a food meets the requirements of the channels of trade provision include dated invoices, bills of sale, airway bills, and customs entry forms. Based on our assessment we have determined that the information collection is not subject to the Privacy Act of 1974 and the particular notice and other requirements of the Act do not apply. Specifically, we do not use name or any other personal identifier to routinely retrieve records from the information collected.

11. Justification for Sensitive Questions

The collection of information does not involve sensitive questions.

12. Estimates of Annualized Burden Hours and Cost

12a. Annualized Hour Burden Estimate

Table 1.--Estimated Annual Reporting Burden¹

Activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Submission of documentation in accordance w/Guidance	1	1	1	3	3

We expect the total number of pesticide tolerances that are revoked, suspended, or modified by EPA pursuant to dietary risk considerations in the next three years to remain at a low level, as there have been no changes to the safety standard for pesticide residues in food since 1996. Thus, we expect the number of submissions we receive pursuant to the guidance document will also remain at a low level. However, to avoid counting this burden as zero, we have estimated the burden at one respondent making one submission a year for a total of one annual submission.

We base our estimate of the average burden per record on the assumption that the information requested in this guidance is readily available to the submitter. The submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for submission to FDA. The submitter almost always merely needs to copy existing documentation. This effort should take no longer than 3 hours per submission.

Table 2.--Estimated Annual Recordkeeping Burden¹

Activity	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Record	Total Hours
Develop documentation process	1	1	1	16	16

In determining the estimated annual recordkeeping burden, we estimated that at least 90% of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10% of firms that may not be currently maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. We have retained our prior estimate of 16 hours per record for the recordkeeping burden. As shown in Table 1, we estimate that one respondent will make one submission per year.

12b. Annualized Cost Burden Estimate

Gathering the information requested in the guidance and providing it to the agency may be done by an administrative support employee familiar with batch records and inventory records. We estimate that the hourly wage for the employee would be \$25.83 per hour (corresponding to that of a Federal government employee at the GS-8, step 1 rate for the Washington-Baltimore locality pay area for the year 2020). Based on that, and on the total of the burden hours calculated above (16 + 3 = 19), the annual cost to respondents is \$490.77 (19 burden hours x \$25.83/hour). To account for overhead, this cost is increased by 100 percent, making the total estimated annualized cost to the respondents \$981.54 (\$490.77 x 2).

Table 3.--Estimated Annual Cost Burden

Activity	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Gathering information and providing to FDA	19	\$51.66	\$981.54

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

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

14. Annualized Cost to the Federal Government

Assuming the hourly cost for review and evaluation of records to be \$49.19 per hour (OPM GS-13/Step-1 pay rate for the Washington-Baltimore locality pay area for the year 2020) and doubling the figure to account for overhead costs, we estimate annual costs to the Federal government would be \$491.90 (\$98.38/hour x 5 hours).

15. Explanation for Program Changes or Adjustments

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

16. Plans for Tabulation and Publication and Project Time Schedule

The agency has no plans for publication of information from this information collection.

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.