UNITED STATES FOOD AND DRUG ADMINISTRATION

Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded

OMB Control No. 0910-0688

SUPPORTING STATEMENT – **Part A: Justification**

1. Circumstances Making the Collection of Information Necessary

This information collection supports Food and Drug Administration (FDA, the agency, us or we) regulations in 21 CFR part 330 regarding Over-The-Counter (OTC) Human Drugs. As explained in the regulations, "*[a]n over-the-counter (OTC) drug listed in this subchapter is generally recognized as safe and effective and is not misbranded if it meets each of the conditions contained in this part and each of the conditions contained in any applicable monograph. Any product which fails to conform to each of the conditions contained in this part and in an applicable monograph is liable to regulatory action*." (See 21 CFR 330.1). FDA follows the procedures outlined in 21 CFR 330.10 for classifying active ingredients in OTC drug products as generally recognized as safe and effective (GRASE) and not misbranded.

By final rule on December 23, 2016 (RIN 0910-AH30), additional criteria and procedures by which OTC drugs initially marketed in the United States were established. The regulations in 21 CFR 330.14 define a two-step process to include an ingredient in an OTC drug monograph (i.e., to classify the ingredient as GRASE for a particular purpose). First, to determine whether a drug product is eligible to be considered for inclusion in the OTC drug monograph system, certain information must be submitted in a "*time and extent application*" (TEA) to show that a drug product meets the criteria described in 21 CFR 330.14(b) (see 21 CFR 330.14(c) and (d)). Second, if the drug product is found eligible, we will publish a notice of eligibility in the Federal Register requesting that interested persons submit data to demonstrate the safety and effectiveness of the drug product for its OTC use(s) (21 CFR 330.14(f)).

To assist respondents with the information collection provisions found in the regulations, we developed the document entitled, "*Guidance for Industry: Time and Extent Applications for Nonprescription Drug Products.*" The guidance is intended to explain what information an applicant should submit in a TEA to request that a drug product be included in the over-the-counter (OTC) drug monograph system. The guidance also discusses format and content elements as described in the regulations.

We, therefore, request OMB approval of the information collection provisions found in 21 CFR 330, and the document, "*Guidance for Industry: Time and Extent Applications for Nonprescription Drug Products*," as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

Respondents (private sector businesses) submit information under the provisions of 21 CFR 330.14 to substantiate that an ingredient or ingredients are eligible to be considered for inclusion in the OTC drug monograph system and, if so, to demonstrate that the ingredient or ingredients can be classified as GRASE. We use the information collected to determine eligibility (part of two-step process) and, if determined eligible, to classify the ingredient(s) as GRASE or not GRASE (second part of the process).

3. Use of Improved Information Technology and Burden Reduction

Because new drug, investigational new drug, and other applications are required to be submitted electronically to FDA, we expect TEAs to be submitted electronically as well.

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

There is no undue burden imposed on small entities as a result of the information collection.

6. Consequences of Collecting the Information Less Frequently

The information collection schedule is consistent with statutory and regulatory requirements.

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

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), we published a 60-day notice for public comment in the Federal Register of July 30, 2020 (85 FR 45892). No comments were received.

9. Explanation of Any Payment or Gift to Respondents

No payment or gift is provided to respondents.

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. This ICR collects personally identifiable information (PII) or information of a personal nature. The information collected includes

respondent's name, address, telephone number and email address of the individual submitting an application. The information collected is required to amend one or more OTC monographs through use of a time and extent (TEA) application. We further determined that although PII is collected the 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. We also minimized the PII to be collected to protect the privacy of the individuals.

Certain information submitted in a TEA or a safety and effectiveness submission may be considered confidential. Under 21 CFR 330.14(d), all TEAs are handled as confidential upon receipt until such time as a decision is made on the eligibility of the drug product. If the drug is found to be eligible for inclusion in the OTC drug monograph system, any information that FDA deems confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act will be removed from the TEA, and the remainder of the application will be placed on public display in the Division of Dockets Management when the notice of eligibility is published (21 CFR 330.14(d))). If the condition is not found to be eligible, the TEA will not be placed on public display, but a letter from FDA to the applicant stating why the condition was not found to be eligible will be placed on public display in the Division of Dockets Management (21 CFR 330.14 (d)).

Under 21 CFR 330.14(f), safety and effectiveness data submitted in response to a notice of eligibility will be made publicly available for viewing at the Division of Dockets Management, except data deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act. Submissions must clearly identify data considered confidential under these provisions (21 CFR 330.14(f)). Proposed compendial standards will not be considered confidential (21 CFR 330.14(f)).

11. Justification for Sensitive Questions

The collection of information does not involve sensitive questions.

12. Estimates of Annualized Burden Hours and Cost

12a. Estimated Hour Burden:

Table 1.--Estimated Annual Reporting Burden[1]

21 CFR Part and Activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Time and extent application and submission of information (§ 330.14(c) and (d))	2	1	2	1,525	3,050
Safety and effectiveness data (§ 330.14(f) and (i))	2	1	2	2,350	4,700
Sponsor request for an informal conference (§ 330.14(j)(3))	1	1	1	1	1

Sponsor signed statement that submission is complete (§ 330.14(j)(4))	2	1	2	1	2
Sponsor request for FDA to withdraw TEA consideration (§ 330.14(k)(1))	1	1	1	1	1
Sponsor request for FDA not to deem the submission withdrawn (§ 330.14(k)(2))	1	1	1	2	2
Total					7,756

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

Based on our experience with submissions we have received under § 330.14, we estimate that we will receive two TEAs and two safety and effectiveness submissions each year and that it will take approximately 1,525 hours to prepare a TEA and 2,350 hours to prepare a comprehensive safety and effectiveness submission.

We revised our regulations in part 330 (21 CFR part 330) (81 FR 84465, November 23, 2016), thus adding 6 hours to our estimated annual reporting burden for the information collection. Specifically, § 330.14(j) clarifies the requirements on content and format criteria for a safety and effectiveness data submission and provides procedures for our review of the submissions and determination of whether a submission is sufficiently complete to permit a substantive review.

Section 330.14(j)(3) describes the process for cases in which we refuse to file the safety and effectiveness data submission. Under § 330.14(j)(3), if we refuse to file the submission, we will notify the sponsor in writing, state the reason(s) for the refusal, and allow the sponsor 30 days to submit a written request for an informal conference with us about whether we should file the submission. We estimate that approximately one respondent will submit a request for an informal conference each year and that preparing and submitting each request will take approximately 1 hour.

Under § 330.14(j)(4)(iii), the safety and effectiveness data submission must contain a signed statement that the submission represents a complete safety and effectiveness data submission and that the submission includes all the safety and effectiveness data and information available to the sponsor at the time of the submission, whether positive or negative. We estimate that approximately two respondents will submit such signed statements each year and that preparing and submitting each signed statement will take approximately 1 hour.

Under § 330.14(k)(1), we, in response to a written request from a sponsor, may withdraw consideration of a TEA submitted under § 330.14(c) or a safety and effectiveness data submission under § 330.14(f). We estimate that approximately one respondent will submit such a request each year and that preparing and submitting the request will take approximately 1 hour.

Under § 330.14(k)(2), a sponsor may request that FDA not withdraw consideration of a TEA or safety and effectiveness data submission. We estimate one respondent will submit such a request each year and that preparing and submitting the request will take approximately 2 hours.

12b. Annualized Cost Burden Estimate

The preparation of two TEAs per year will cost approximately $171,300 annually (using a 2017 wage rate of $56.17 multiplied by the total number of burden hours associated with submissions (3,050 hours)). Similarly, we calculated that preparation of safety and effectiveness data in support of TEA ingredients will cost approximately $264,000 per year ($56.17 per hour times 4,700 hours). Thus, we estimate a total annualized cost of $435,300 per year ($171,300 plus $264,000).

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

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

14. Annualized Cost to the Federal Government

Costs to the Federal Government are absorbed under existing resource allocations.

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

This information collected will not be published or tabulated.

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

Display of the OMB expiration date as required by 5 CFR 1320.5 is appropriate.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.