UNITED STATES FOOD & DRUG ADMINISTRATION

Product Jurisdiction and Combination Products
21 CFR Part 3

OMB Control Number 0910-0523 – Revision

SUPPORTING STATEMENT – **Part A: Justification**

1. Circumstances Making the Collection of Information Necessary

This information collection supports implementation of section 503(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353(g)), as amended by the 21st Century Cures Act (Pub. L. 114-255) (Cures Act); section 563 of the FD&C Act (21 U.S.C 360bbb-2) as added by the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115); and regulations in 21 CFR part 3. Section 503(g) of the FD&C Act expressly provides for the regulation of combination products, including how primary agency responsibility shall be designated for such products and how certain submissions regarding such products may be made to the Food and Drug Administration (FDA). Section 563 of the FD&C Act requires FDA to classify products as biological products, devices, drugs, or combination products and to assign products to an agency component for regulation, in response to requests for designation (RFDs) submitted by product sponsors. In 2005, we updated our regulations in 21 CFR part 3 to clarify the meaning of the statutory term "*primary mode of action*," which determines the FDA component to which a combination product is assigned. We proposed to update these regulations further on May 15, 2018 (83 FR 22428), intending to: (1) clarify the scope of our regulations; (2) streamline and clarify the appeals process; (3) align the regulations with more recent legislative and regulatory measures; (4) update advisory content; and (5) clarify agency policies and practices.

We are revising the information collection to include changes resulting from current statutory and legislative mandates. Specifically, as amended by the Cures Act, section 503(g) of the FD&C Act includes provisions exclusive to FDA's Office of Combination Products (OCP) and/or to provide for combination product-specific submission types, including provisions addressing engagement between OCP and combination product sponsors and Combination Product Agreement Meetings (CPAMs) for sponsors to engage with FDA. We have developed associated procedures for respondents to obtain feedback regarding medical product classification and assignment. To assist respondents with format and content elements related to the information collection for RFDs and pre-RFDs, we have developed proposed Forms FDA 5003, 5004, and 5005 (pre-request and request for designation). The forms include instruction and are available in fillable, fileable format.

In addition, to support RFD and pre-RFD submissions, we have made technological system enhancements to enable sponsors to use preferred submission methods, including automated, electronic, mechanical, and other technological collection techniques to satisfy the information collection. We expect the use of improved technology to improve user experience with submissions.

Finally, we have developed the following agency guidance documents consistent with sections 503(g) and 563 of the FD&C Act and with our Good Guidance Practice regulations in 21 CFR 10.115 (approved under OMB control number 0910-0191).

- "*How to Write a Request for Designation*" (issued April 2011), provides instruction regarding the information that needs to be submitted to OCP in a RFD as described in 21 CFR section 3.7. The guidance is available at www.fda.gov/regulatory-information/search-fda-guidance-documents/how-write-request-designation-rfd;

- "*How to Prepare a Pre-Request for Designation*," was developed to assist sponsors in obtaining a preliminary, nonbinding assessment from OCP through the pre-RFD process. The guidance explains the pre-RFD process and helps a sponsor understand the type of information to provide in a pre-RFD submission. The guidance is available at www.fda.gov/regulatory-information/search-fda-guidance-documents/how-prepare-pre-request-designation-pre-rfd. This guidance document was previously approved under OMB control no. 0910-0845 and was consolidated into this collection in October 2020;

- "*Requesting FDA Feedback on Combination Products*," was developed to discuss ways in which combination product sponsors can obtain feedback from FDA on scientific and regulatory questions and to describe best practices for FDA and sponsors when interacting on these topics. The guidance is available at www.fda.gov/regulatory-information/search-fda-guidance-documents/requesting-fda-feedback-combination-products.

We therefore request OMB approval for the information collection provisions regarding product jurisdiction and combination product submissions found in the applicable statutes; regulations in 21 CFR part 3; proposed forms FDA 5003, 5004, and 5005; and relevant agency guidance, as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

The information is submitted by a business/sponsor who submits an application or submission (including a petition, notification, and any other similar form of request). The information is used by the agency to classify a new product as a drug, device, biological product, or combination product and assign responsibility for regulation of the product within FDA.

3, Use of Improved Information Technology and Burden Reduction

Respondents may use automated, electronic, mechanical, other technological collection techniques, or other forms of information technology to submit the information collection. The use of improved technology to reduce burden is not applicable to the submission of a request for classification of drugs, devices, biological products, and combination products and assignment of agency component. We note that approximately 75% of RFDs for Fiscal Year 2018 were received as electronic copies submitted by the sponsor.

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

No undue burden is imposed on small entities as a result of the information collection. At the same time, we estimate 15% of respondents to the information collection may be considered small businesses. We assist small businesses in complying with FDA regulatory requirements through resources on our website at www.fda.gov/industry/small-business-assistance and through small business assistance representatives available throughout the agency.

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 that require the information to be collected in a manner inconsistent with the guidelines in 5 CFR 1320.6.

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

In accordance with 5 CFR 1320.8(d), notices announcing the following guidance documents were published in the Federal Register:

"*How to Write a Request for Designation*" (issued April 2011), provides instruction regarding the information that needs to be submitted to OCP in a RFD as described in 21 CFR section 3.7. In the Federal Register of July 17, 2019 (84 FR 34188), we published a notice requesting public comment on the proposed collection of information associated with 21 CFR part 3; no comments were received.

"*How to Prepare a Pre-Request for Designation*," was developed to assist sponsors in obtaining a preliminary, nonbinding assessment from OCP through the pre-RFD process. The guidance explains the pre-RFD process and helps a sponsor understand the type of information to provide in a pre-RFD submission. In the Federal Register of January 13, 2017 (82 FR 4351), we published a notice announcing the availability of the draft guidance that included an analysis under the PRA and solicited public comment on the recommended information collection. In consideration of comments, we made minor edits to the guidance, including clarifying our pledge of confidentiality for information submitted and clarifying that OCP may be contacted at any time to discuss questions. No comments suggested revision to the information collection, and therefore we made no adjustment in our burden estimate.

"*Requesting FDA Feedback on Combination Products*," was developed to discuss ways in which combination product sponsors can obtain feedback from FDA on scientific and

regulatory questions and to describe best practices for FDA and sponsors when interacting on these topics. In the Federal Register of December 26, 2019 (84 FR 70976), we published a notice announcing the availability of the draft guidance that included an analysis under the PRA and solicited public comment on the proposed collection of information for CPAMs. One comment was received in support of the collection but suggested no change in our burden estimate.

9. Explanation of Any Payment or Gift to Respondents

No payment or gift is provided under the terms of this information collection.

10. Assurance of Confidentiality Provided to Respondents

In preparing this supporting statement, we consulted the FDA Privacy Office to ensure appropriate handling of personally identifiable information (PII) that may be collected. In this information collection, the PII collected is the name and telephone number of the respondent, and PII is collected in the context of a subject individuals' professional capacity and the FDA-related work performed (e.g., point of contact at a regulated entity). Information requirements are listed in 21 CFR 3.7(c). In our evaluation we determined that, although this 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.

Additionally, there are no questions of a sensitive nature, and no assurance of confidentiality has been provided except as provided in 21 CFR 20.61 and generally considered in reviewing data and information submitted to FDA.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature involved in this information collection.

12. Estimates of Annualized Burden Hours and Costs

12a. Annualized Hour Burden:

Respondents to the information collection are sponsors of medical products, including combination products. We estimate the burden of this collection of information as follows:

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

21 CFR Section; Activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response (hours)	Total Hours
3.7; request for designation	53	1	53	24	1272
Pre-RFD submissions	83	1	83	24	1992
CPAMs requests	3	1	3	25	75
Total					3339

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

For RFDs and pre-RFDs, our estimate is based on the number of submissions received from October 1, 2018, to September 30, 2019. We assume 1 submission per respondent, for an annual average of 53 RFD submissions, and 83 pre-RFD submissions and assume that each submission requires an average of 24 hours to prepare and submit to FDA.

Our estimate for CPAM requests is based on future activity in light of the minimal use of CPAMs to date; FDA has received two CPAM requests since the enactment of the Cures Act in December 2016. We estimate one CPAM request will be received per year by each medical product center (Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, and Center for Devices and Radiological Health). We assume it will take sponsors approximately 25 hours to compile and submit the recommended information. Because we expect burden associated with application submissions is already captured by approved information collection requests for drug, biologic, and medical device applications, respectively (approved under OMB control numbers 0910-0001, 0910-0338, and 0910-0231), we do not include burden associated with application submissions captured by these programs in this information collection request.

12b. Annualized Cost Burden Estimate

Assuming an hourly wage plus benefit rate of $34.86,[1] the average annually recurring cost for these requirements would be $116,397.54 (3,339 hours x $34.86).

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

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

14. Annualized Cost to the Federal Government

The cost to the Federal Government covers review of the request for classification and assignment of drugs, devices, biological products, and combination products. It takes an average of 40 hours per request (ranging from 8 to 60 hours). We assume the cost of a fully supported professional employee GS 14/5, earning $62.23 per hour reviewing 139 requests per year would be $207,786. If the designation is appealed, we estimate the time will double.

15. Explanation for Program Changes or Adjustments

The information collection reflects changes and adjustments. As discussed in *Question 1*, we have made revisions resulting from statutory and regulatory updates and from consolidating burden under OMB control no. 0910-0845 since last review. We have also issued instructional guidance regarding the submissions process and on communicating with FDA about issues relating to product jurisdiction and/or combination products. This results in an overall increase in 227 burden hours, but reflects a decrease in the average number of annual submissions by 53.

[1] Wage is based on the 2018 Bureau of Labor Statistic's survey, National Industry Specific Occupational Employment and Wage Estimate, for standard occupational code 13-1041, compliance officer in pharmaceutical and medicine manufacturing. http://www.bls.gov/oes/current/oes131041.htm

16. Plans for Tabulation and Publication and Project Time Schedule

We have no plans to tabulate or publish this collection of information.

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

We believe that display of the OMB expiration date is appropriate for this collection of information.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.