

UNITED STATES FOOD & DRUG ADMINISTRATION

Recordkeeping and Reporting Requirements for Human Food
and Cosmetics Manufactured From, Processed With,
or Otherwise Containing, Material from Cattle

OMB Control No. 0910-0623

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) regulations in §§ 189.5 and 700.27 (21 CFR 189.5 and 700.27) which set forth bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA-regulated human food and cosmetics. The regulations designate certain materials from cattle as “prohibited cattle materials,” including specified risk materials (SRMs), the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from non-ambulatory disabled cattle, and mechanically separated (MS) beef. Sections 189.5(c) and 700.27(c) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle. We issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and 701(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the FD&C Act, FDA is authorized to issue regulations for the FD&C Act’s efficient enforcement. Regarding records concerning imported human food and cosmetics, we relied on our authority under sections 701(b) and 801(a) of the FD&C Act (21 U.S.C. 371(b) and 381(a)). Section 801(a) of the FD&C Act provides requirements with regard to imported human food and cosmetics and provides for refusal of admission of human food and cosmetics that appear to be adulterated into the United States. Section 701(b) of the FD&C Act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.

These requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know the following: (1) Whether cattle material may contain SRMs (SRMs include brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae and the wings of the sacrum), and dorsal root ganglia from animals less than 30 months old and tonsils and distal ileum of the small intestine from all animals of all ages); (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was non-ambulatory disabled or MS beef; and (4) whether tallow in human food or cosmetics contain less than 0.15 percent insoluble impurities.

We therefore request extension of OMB approval of the provisions found in 21 CFR parts 189 and 700 as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

Our regulations in §§ 189.5(c) and 700.27(c) require manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise containing prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Maintenance of electronic records is acceptable, and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by these sections and existing records relevant to compliance with these sections must be available to us for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because we do not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection (CBP), the importer of record of human food or cosmetics manufactured from, processed with, or otherwise containing cattle material must affirm that the human food or cosmetics were manufactured from, processed with, or otherwise containing cattle material and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if human food or cosmetics were manufactured from, processed with, or otherwise containing cattle material, the importer of record must provide within 5 business days records sufficient to demonstrate that the human food or cosmetics were not manufactured from, processed with, or otherwise containing prohibited cattle material, if requested.

As noted above, §§ 189.5(e) and 700.27(e) provide that a country seeking to be so designated must send a written request to the Director, Center for Food Safety and Applied Nutrition (CFSAN). The information the country is required to submit includes information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other information relevant to determining whether specified risk materials, the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from non-ambulatory disabled cattle, or MS (Beef) from the country seeking designation should be considered prohibited cattle materials. We use the information to determine whether to grant a request for designation, and whether to impose conditions if a request is granted.

As noted above, §§ 189.5 and 700.27 further state that countries that have been designated under §§ 189.5(e) and 700.27(e) will be subject to future review by us to determine whether designation remains appropriate. As part of this process, we may ask designated countries to confirm that their BSE situation and the information submitted by them in support of their original application remain unchanged. We may revoke a country's designation if we determine that it is no longer appropriate. Therefore, designated countries may respond to periodic requests by us by submitting information to confirm that their designation remains appropriate. We use the information to ensure that their designation remains appropriate.

Description of Respondents: Respondents to this information collection include manufacturers, processors, and importers of FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle, as well as, with regard to §§ 189.5(e) and 700.27(e), foreign governments seeking designation under those regulations.

3. Use of Improved Information Technology and Burden Reduction

Sections 189.5(c) and 700.27(c) do not specifically prescribe the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology as necessary for use by firms. Companies are free to use whatever forms of information technology may best assist them in their recordkeeping. Records on bovine materials and ingredients subject to the regulations may be kept in paper or electronic form, as long as they are easily accessible by us should the need arise. As noted above, maintenance of electronic records is acceptable and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. For §§ 189.5(e) and 700.27(e), we receive entries made to CBP's ACE system electronically.

4. Efforts to Identify Duplication and Use of Similar Information

We are unaware of duplicative reporting or recordkeeping requirements. FDA and the U.S. Department of Agriculture (USDA) agencies, the Animal and Plant Health Inspection Service (APHIS) and the Food Safety and Inspection Service (FSIS), have different regulatory responsibilities with respect to preventing BSE and ensuring food safety. We consult with APHIS and FSIS as part of our evaluation process. Further, we take into consideration available risk assessments of other competent authorities in conducting our evaluation. Though it is not required, a previous BSE evaluation by USDA, or by another country or another competent authority, will be helpful to us in our review and may decrease the time needed for us to make a determination.

5. Impact on Small Businesses or Other Small Entities

For §§ 189.5(c) and 700.27(c), we estimate that approximately ten percent (10%) of the respondents are small businesses. The regulations do not significantly impact small businesses as the records we suggest that manufacturers and processors keep are typically already kept by businesses for tax and other purposes. The same information is requested from large and small firms and is the minimal amount needed. There is no special burden placed on small businesses by these information collection provisions. The reporting and recordkeeping provisions are applicable to all businesses including small businesses. However, we aid small businesses in dealing with the requirements of the FD&C Act through the agency's Regional Small Business Representatives and through the scientific and administrative staffs within the agency. For §§ 189.5(e) and 700.27(e), none of the respondents are small businesses; they are foreign governments.

6. Consequences of Collecting the Information Less Frequently

We require that records on each shipment of bovine ingredients used in food, dietary supplement, and cosmetic production be kept for two years. Information is necessary on each shipment of

bovine materials to verify that source animals were under 30 months of age, were ambulatory, and passed USDA inspection. There is no apparent way to minimize the burden of collecting this information on each shipment.

Frequency of recordkeeping varies for different processors. We do not “collect” these records as a routine matter. Records are maintained on file at each processing facility and will be examined there periodically by FDA.

Delayed or less frequent recordkeeping or reporting would lessen the effectiveness of the regulations to prevent use of prohibited cattle materials in human food and cosmetics. There is currently no validated ante-mortem test to reliably detect the presence of the BSE agent or the presence of prohibited cattle material in human food and cosmetics. Once cattle material such as brain or spinal cord is separated from the source animal, it may not be possible to determine the age of the animal from which the material came without records and, therefore, whether the material is specified risk material. In addition, without records, it may not be possible to determine whether a product contains material from cattle that were not inspected and passed for human consumption. Also, a product might contain MS beef without its presence being evident from the appearance of the product.

Because there is currently no way to test reliably for the presence of the BSE agent or for the presence of prohibited cattle materials, manufacturers and processors of human food and cosmetics must depend on records from their suppliers of cattle materials to ensure that their source material does not contain prohibited cattle materials. Without records documenting the absence of prohibited cattle materials in source materials, manufacturers and processors of human food and cosmetics cannot know whether they are adulterating their products by including prohibited cattle materials. Therefore, a failure of manufacturers and processors to establish and maintain such records results in human food and cosmetics being prepared under insanitary conditions whereby they may have been rendered injurious to health. Furthermore, without adequate records, we cannot know whether manufacturers and processors of human food have complied with the prohibitions against use of prohibited cattle materials. Therefore, the recordkeeping requirements are necessary for the efficient enforcement of the regulations. Failure to comply with the recordkeeping requirements would render the affected human food and cosmetics adulterated under sections 402(a)(4) and 601(a) of the FD&C Act, respectively.

Data collection occurs occasionally for §§ 189.5(e) and 700.27(e). Only those countries seeking the designation provided for in §§ 189.5(e) and 700.27(e) will submit information to us. If the collection is not conducted, the designation will not be available to interested countries.

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

There are no special circumstances associated with this collection of information.

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

In the *Federal Register* of August 14, 2020 (85 FR 49657), we published a 60-day notice requesting public comment on the proposed collection of information. We received three comments. One comment questioned the adequacy of our recordkeeping requirement of

maintaining records for two years. Two comments were not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

With regard to the comment addressing the maintenance of records for a two year period, we require under §§ 189.5 and 700.27 manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Two years is adequate time for us to periodically examine these records to ensure the human food and cosmetic complies with the prohibitions against use of prohibited cattle materials. Maintaining these records beyond 2 years will not make the human food or cosmetic any safer and will unnecessarily increase the burden on recordkeepers.

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

Company records may be consulted during FDA plant inspections. Records that the agency may copy or take possession of will be treated as records that are exempt from release under the provisions of the Freedom of Information Act (FOIA) to the maximum extent permitted by that statute and FDA regulations. Confidential commercial information is protected from disclosure under 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). To the extent 21 CFR 20.64 applies, we will honor the confidentiality of any data in investigation records compiled for law enforcement purposes.

Privacy Act

This ICR does not collect personally identifiable information (PII) or information of a personal nature. The information collected is for business contact purposes only and includes business name, business address, business telephone numbers. The business contact information is maintained and stored at a vendor facility.

We further determined that the business information collected and stored at a vendor facility is not subject to the Privacy Act of 1974, and the particular notice and other requirements of the Act do not apply. Specifically, we (including vendors or service providers acting on behalf of FDA) do not use name or any other personal identifier to retrieve records from the information collected.

In preparing this supporting statement, our staff consulted with the FDA Privacy Office to ensure appropriate handling of information collected.

11. Justification for Sensitive Questions

This information collection does not involve questions that are of a personally sensitive nature.

12. Estimates of Annualized Burden Hours and Cost

12a. *Annualized Hour Burden Estimate*

Table 1.--Estimated Annual Reporting Burden¹

21 CFR section; activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
189.5(c)(6) and 700.27(c)(6); affirmation of compliance	54,825	1	54,825	0.033 (2 minutes)	1,809
§§ 189.5 and 700.27; request for designation	1	1	1	80	80
§§ 189.5(e) and 700.27(e); response to request for review by FDA	1	1	1	26	26
Total					1,915

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

Reporting

Our regulations in §§ 189.5(c)(6) and 700.27(c)(6) impose a reporting burden on importers of human food and cosmetics manufactured from, processed with, or otherwise containing cattle material. Importers of these products must affirm that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. The affirmation is made by the importer of record at CBP entry. Affirmation by importers is expected to take approximately 2 minutes per entry line.

Table 1 shows 54,825 lines of human food and cosmetics likely to contain cattle materials are imported annually. The reporting burden of affirming whether import entry lines contain cattle-derived materials is estimated to take 1,809 hours annually (54,825 lines × 2 minutes/line).

Our estimate of the reporting burden for designation under §§ 189.5 and 700.27 is based on our experience and the average number of requests for designation received in the past 3 years. In the last 3 years, we have not received any requests for designation. Thus, we estimate that one or fewer will be received annually in the future. We estimate that preparing the information required by §§ 189.5 and 700.27 and submitting it to us in the form of a written request to the CFSAN Director will require a burden of approximately 80 hours per request. Thus, the burden for new requests for designation is estimated to be 80 hours annually, as shown in Table 1, row 2.

Under §§ 189.5(e) and 700.27(e), designated countries are subject to future review by FDA and may respond to our periodic requests by submitting information to confirm their designations remain appropriate. In the last 3 years, we have not requested any reviews. Thus, we estimate that one or fewer will occur annually in the future. We estimate that the designated country undergoing a review in the future will need one-third of the time it took preparing its request for designation to respond to our request for review, or 26 hours (80

hours \times 0.33 = 26.4 hours, rounded to 26). The annual burden for reviews is estimated to be 26 hours, as shown in Table 1, row 3. The total reporting burden for this information collection is estimated to be 1,915 hours annually.

Table 2.--Estimated Annual Recordkeeping Burden¹

Type of Respondent	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Recordkeeper	Total Hours
Domestic Facilities	697	52	36,244	0.25 (15 minutes)	9,061
Foreign Facilities	916	52	47,632	0.25 (15 minutes)	11,908
Total					20,969

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

Recordkeeping

We estimate that there are 697 domestic facility relationships and 916 foreign facility relationships consisting of the following facilities: An input supplier of cattle-derived materials that requires records (the upstream facility) and a purchaser of cattle-derived materials requiring documentation (this may be a human food or cosmetics manufacturer or processor). The recordkeeping burden of FDA’s regulations in §§ 189.5(c) and 700.27(c) is the burden of sending, verifying, and storing documents regarding shipments of cattle material that is to be used in human food and cosmetics.

In this estimate of the recordkeeping burden, we treat these recordkeeping activities as shared activities between the upstream and downstream facilities. It is in the best interests of both facilities in the relationship to share the burden necessary to comply with the regulations; therefore, we estimate the time burden of developing these records as a joint task between the two facilities. Thus, we estimate that this recordkeeping burden will be about 15 minutes per week, or 13 hours per year, and we assume that the recordkeeping burden will be shared between 2 entities (i.e., the ingredient supplier and the manufacturer of finished products).

Therefore, the total recordkeeping burden for domestic facilities is estimated to be 9,061 hours (13 hours \times 697), and the total recordkeeping burden for foreign facilities is estimated to be 11,908 hours (13 hours \times 916), as shown in Table 2.

12b. Annualized Cost Burden Estimate

We estimate the burden hour costs to respondents choosing to submit a request for designation to be \$9,300.80. We estimate that the average hourly wage for the employee preparing and submitting the request for designation would be equivalent to a GS-14/Step-1 rate for the Washington-Baltimore locality pay area for the year 2020, approximately \$58.13/hour. Doubling this wage to account for overhead costs, we estimate the average hourly cost to respondents to be \$116.26/hour. Thus, the overall estimated cost incurred by the respondents is \$9,300.80 (80 burden hours \times \$116.26/hr).

We estimate the burden hour costs to countries that respond to requests for review by us to be \$3,022.76. We estimate that the average hourly wage for the employee preparing the response would be equivalent to a GS-14/Step-1 rate for the Washington-Baltimore locality pay area for the year 2020, approximately \$58.13/hour. Doubling this wage to account for overhead costs, we estimate the average hourly cost to respondents to be \$116.26/hour. Thus, the overall estimated cost incurred by the respondents is \$3,022.76 (26 burden hours × \$116.26/hr).

We estimate the recordkeeping and reporting burden hour costs to be approximately \$2,648,170.28 (Table 1, row 1 and Table 2). This estimate is based upon an employee making a salary equivalent to a GS-14/Step 1 rate for the Washington-Baltimore locality pay area for the year 2020, approximately \$58.13/hour. Doubling this wage to account for overhead costs, we estimate the average hourly cost to respondents to be \$116.26/hour. Thus, the overall estimated cost incurred by the respondents is \$2,648,170.28 (22,778 burden hours × \$116.26/hour).

Table 3.--Estimated Annualized Cost Burden

Activity	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Submitting a request for Designation	80	\$116.26	\$9,300.80
Responding to FDA requests for review	26	\$116.26	\$3,022.76
Recordkeeping and reporting costs from Table 1, row 1 and Table 2	22,778	\$116.26	\$2,648,170.28
Total			\$2,660,493.84

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

It takes us approximately 80 hours to review a request for designation. We estimate the hourly cost for review and evaluation is \$58.13/hour, the GS-14/Step-1 rate for the Washington-Baltimore locality pay area for the year 2020. Doubling this wage to account for overhead costs, we calculate the hourly cost is \$116.26/hour. Thus, the cost to the Federal government is estimated to be \$9,300.80 per review (80 hours x \$116.26/hour = \$9,300.80). Estimating one request for designation will be submitted to us annually, the total annualized cost for reviewing a request for designation is \$9,300.80.

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

We are not publishing any information received as a result of this information collection.

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

We are not seeking approval to not 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.