

United States Food and Drug Administration

Food Contact Substance Notification Program

OMB Control Number 0910-0495

Terms of Clearance: None.

SUPPORTING STATEMENT Part A: Justification

1. Circumstances Making the Collection of Information Necessary

This information collection supports the Food and Drug Administration's (FDA, us or we) food contact substance notification program and its related regulations, forms, and guidance. Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a "food contact substance" as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food." Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) FDA and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) a food contact substance notification (FCN) include a completed and signed Form FDA 3480 and (2) a notification for a food contact substance formulation include a completed and signed Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480, whether it is submitted in electronic or paper format. In addition to its required use with FCNs, Form FDA 3480 is recommended to be used to organize information within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to the agency, thus minimizing paperwork burden for food contact substance authorizations.

We recommend using Form FDA 3480A entitled, "Amendment to an Existing Food Contact Substance Notification, a Pre-Notification Consultation, or a Food Master File" for each submission of additional information (i.e., amendment) to an FCN submission currently under agency review. The form and elements prepared as attachments to the form can be submitted in

electronic format. Form FDA 3480A helps the respondent organize the submission to focus on the information needed for FDA's safety review.

Our guidance documents entitled: (1) "*Preparation of Food Contact Notifications: Administrative*," (2) "*Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations*," and (3) "*Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations*" provide assistance to industry regarding the preparation of an FCN and a petition for a food contact substance (FCSs). We have also issued a guidance entitled, "*Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk*." The guidance provides assistance to industry regarding the preparation of an FCN for FDA review and evaluation of the safety of FCSs used in contact with infant formula and/or human milk. These guidances are already considered within the burden analysis and are available at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/IngredientsAdditivesGRASPackaging/default.htm>.

Section 171.1 of FDA regulations (21 CFR 171.1) specifies the information respondents must submit in order to: (1) establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the indirect food additive may be safely used. In addition, our guidance document entitled, "*Use of Recycled Plastics in Food Packaging: Chemistry Considerations*" provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to FDA that their plastic products are safe for food contact.

We therefore request extension of OMB approval for Form FDA 3479; Form FDA 3480; Form FDA 3480A; as well as the information collection provisions found in the associated guidance documents as discussed in this supporting statement document.

2. Purpose and Use of the Information Collection

Notifications for food contact substances and formulations submitted by manufacturers are reviewed by FDA scientific personnel to ascertain that the data establish the identity of the substance, establish its use in contact with food, and support the notifier's determination that the intended use in contact with food is safe. Section 409(h)(4) of the FD&C Act requires FDA to keep confidential any information submitted in a premarket notification for the entire 120-day review period. If FDA does not object to the notification within 120 days after receipt, the notification becomes effective, and the substance may be legally marketed.

Description of Respondents: Respondents to the information collection are manufacturers of food contact substances sold in the United States. Respondents are from the private sector (for-profit businesses).

3. Use of Improved Information Technology and Burden Reduction

As discussed above, we have developed a number of guidance documents to assist respondents with the information collection requirements found in the applicable regulations. Notifications for food contact substances and formulations contain summaries of data and narrative text. We currently accept this information electronically via the Electronic Submission Gateway (ESG) or

electronic media (such as: CD ROM, DVD). We estimate that all notifications (100%) will be submitted electronically in the next three years.

4. Efforts to Identify Duplication and Use of Similar Information

We continue to work with EPA and USDA to eliminate areas of duplicate data collection and evaluation. USDA has eliminated its approval processes for components of food contact materials that duplicated FDA's processes. In addition, the Food Quality Protection Act of 1996 gave sole jurisdiction to EPA for certain substances formerly regulated by FDA as food additives and by EPA as pesticide chemicals. Currently there is no significant duplication of data collection and evaluation for food contact substances among Federal agencies with jurisdiction. In addition, to avoid unnecessary duplication for individual submissions, existing data would be used whenever possible by FDA in evaluating notifications for food contact substances.

Because section 409(h)(4) of the FD&C Act prohibits FDA from disclosing the information in a notification prior to the completion of the agency's review, such information would not be available to other notifiers until FDA's review is complete. In addition, section 409(h)(2)(C) of the FD&C Act permits only the manufacturer identified in the notification to rely on the notification to market legally the food contact substance. Therefore, the notification process will result in some duplication of review by FDA if a second manufacturer notifies the agency for the same use of the same food contact substance. In addition, the notification process for formulations that was requested by the regulated industry will also represent a small duplication of review. In order to minimize potential duplication of review, we use an image-based document management system to permit the agency to track effective notifications and determine if a food contact substance has already been reviewed by the agency.

5. Impact on Small Businesses or Other Small Entities

We estimate that ten percent (10%) of respondents are small businesses. The premarket notification process for food contact substances may increase the burden on small businesses because small businesses will be required to notify us if they wish to manufacture a food contact substance, even if the food contact substance was the subject of a previous notification by another manufacturer. Previously, small businesses would have been able to rely on authorizations requested by other manufacturers under the food additive petition process or threshold of regulation exemption process. Nevertheless, this increased burden will be minimal, because any information presented to support safety of the food contact substance in previous notifications will be available under the Freedom of Information Act (FOIA) after such previous notifications are effective. We place a list of effective notifications on our internet site. This list includes the notifier, the identity of the food contact substance, the effective date of the notification, as well as any appropriate limitations on the use of the food contact substance.

We have established the types of data necessary to demonstrate that the use of a food contact substance is safe under 21 CFR 170.101 and that the components of a formulation are authorized under 21 CFR 170.106. In addition, FDA has developed guidance documents to assist potential notifiers in preparing notifications. Whenever possible, individual assistance will be given to requesters to minimize the likelihood that unnecessary work is performed.

FDA aids small businesses in complying with its requirements through the agency's Regional Small Business Representatives and through the scientific and administrative staffs within the

agency. Assistance is available for small businesses via the agency's website at <https://www.fda.gov/industry/small-business-assistance>.

6. Consequences of Collecting the Information Less Frequently

Data collection occurs occasionally. Failure to provide requirements for notifications would prevent industry from preparing notifications sufficient to permit new products and would make Federal programs for notification review inefficient. Companies have a right, granted by law, to submit notifications for food contact substances in order to permit marketing of a food contact substance for a new use. Any restriction of this right would decrease the number of new food contact substances that could be legally marketed. In addition, FDA's acceptance of notifications for formulations will facilitate domestic and international trade in packaged foods and food contact materials.

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 accordance with 5 CFR 1320.8(d), we published a 60-day notice requesting public comment on the proposed collection of information in the *Federal Register* of September 15, 2021 (86 FR 51358). We received one comment which was non-responsive to the four PRA topics solicited and therefore will not be discussed in this document.

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

We expect that notifications for food contact substances will often contain trade secret and commercial confidential information. As a result, all files are maintained in a secured area. Forms FDA 3479, FDA 3480, and FDA 3480A, as well as their instructions and related guidance provide instructions for assisting FDA with protecting confidential information. Respondents may choose to provide a redacted copy of the notification, identifying that information that the submitter views as trade secret or as confidential commercial or financial information.

Only information that is releasable under our regulations in 21 CFR part 20 would be released to the public. This information is also safeguarded by section 301(j) of the FD&C Act and 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)).

Section 409(h)(4) of the FD&C Act prohibits FDA from publicly disclosing information in a notification while it is under review by the agency. After the review is complete and the FCN has become effective, we add it to the list of effective notifications on the FDA website. This list includes the notifier, the identity of the food contact substance, the effective date of the notification, as well as any appropriate limitations on the use of the food contact substance. It does not include any confidential information.

Privacy Act Review

In preparing this supporting statement, we consulted our Privacy Office to ensure appropriate identification and handling of information collected.

This ICR collects personally identifiable information (PII). PII is collected in the context of the subject individuals' professional capacity and the FDA-related work they perform for their employer (e.g., point of contact at a regulated entity). The PII submitted via Form FDA 3480 (Food Contact Substance: Notification for New Use Pre-Notification Consultation Food Master File), FDA Form 3480A (Amendment to an Existing Food Contact Notification Pre-Notification Consultation Food Master File), and Form FDA 3479 (Notification for a Food Contact Substance Formulation) is name, title, address, email address, telephone number, and fax telephone number. FDA determined that although PII is collected, it is not subject to the Privacy Act of 1974, and the particular notice and other requirements of the Act do not apply. Specifically, the contractor or FDA do not use name or any other personal identifier to routinely retrieve records from the information collected. Through appropriate form design, FDA limited submission fields and minimized the PII collected to protect the privacy of the individuals.

Under FOIA (5 U.S.C. 552), the public has broad access to government documents. However, FOIA provides certain exemptions from mandatory public disclosure of government records (5 U.S.C. 552(b)(1-9)). FDA will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade and confidential commercial or financial information.

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

We estimate the burden of this collection of information as follows:

21 CFR Section; Activity	Form FDA No.	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
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170.106 ² (Category A)	3479	10	2	20	2	40
170.101 ^{3,7} (Category B)	3480	6	1	6	25	150
170.101 ^{4,7} (Category C)	3480	6	2	12	120	1,440
170.101 ^{5,7} (Category D)	3480	42	2	84	150	12,600
170.101 ^{6,7} (Category E)	3480	38	1	38	150	5,700
Pre-notification Consultation or Master File (concerning a food contact substance) ⁸	3480	150	1	150	0.5 (30 minutes)	75
Amendment to an existing notification (170.101), amendment to a Pre- notification Consultation, or amendment to a Master File (concerning a food contact substance) ⁹	3480A	80	1	80	0.5 (30 minutes)	40
171.1; Indirect Food Additive Petitions	N/A	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations	N/A	65	1	65	25	1,625
Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk		2	1	2	5	10
Total						32,675

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

² Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 (“Notification for a Food Contact Substance Formulation”) only.

³ Duplicate notifications for uses of food contact substances.

⁴ Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.

⁵ Notifications for uses that are the subject of moderately complex food additive petitions.

⁶ Notifications for uses that are the subject of very complex food additive petitions.

⁷ These notifications require the submission of Form FDA 3480.

⁸ These notifications recommend the submission of Form FDA 3480.

⁹ These notifications recommend the submission of Form FDA 3480A.

Based on a review of the information collection since our last request for OMB approval, we made adjustments to our burden estimate. The estimates are based on our current experience with the Food Contact Substance Notification Program and informal communication with industry.

Our estimated burden for the information collection reflects an overall increase of 1,345 hours and a corresponding decrease of 5 responses. We attribute this adjustment to a decrease in Pre-Notification Consultations or Master Files by 40 responses, a subsequent decrease of amendments to Pre-Notification Consultations or Master Files by 20 responses, and an increase of 55 respondents using the recommendations in the guidance document entitled, “*Use of Recycled Plastics in Food Packaging: Chemistry Considerations.*” As the average burden for preparing recycling submissions is higher than for Pre-notification Consultations or Master Files, this results in an overall increase in total burden even with an overall decrease in responses.

12b. Annualized Cost Burden Estimate

Gathering the information discussed here and providing it to the agency requires a team of professional employees, which may include toxicologists, chemists, environmental scientists, and lawyers. FDA estimates that the average hourly wage for these employees would be equivalent to a GS-14/Step-1 level in the locality pay area of Washington- Baltimore in 2022, approximately \$60.49/hour. Doubling this wage to account for overhead costs, FDA estimates the average hourly cost to respondents to be \$120.98/hour. Thus, the overall estimated cost incurred by the respondents is \$3,953,022 (32,675 burden hours x \$120.98/hour = \$3,953,021.50, rounded to \$3,953,022). In addition, while FDA does not charge for the use of the ESG, FDA requires respondents to obtain a public key infrastructure (PKI) certificate in order to set up the account. This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 year to 3 years. The certificate typically costs from \$20-\$30.

All wages rates need to be fully loaded, i.e., reflect the full cost of labor including fringe benefits.

Table 2.--Estimated Annual Cost Burden

Type of Respondent	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Manufacturers of food contact substances sold in the United States	32,675	\$120.98	3,953,022

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

The annual cost to the government is \$6.36 million dollars (including salaries and other costs), based on current FTE allocations in support of the program.

15. Explanation for Program Changes or Adjustments

Our estimated burden for the information collection reflects an overall increase of 1,345 hours and a corresponding decrease of 5 responses. We attribute this adjustment to a decrease in Pre-Notification Consultations or Master Files by 40 responses, a subsequent decrease of amendments to Pre-Notification Consultations or Master Files by 20 responses, and an increase of 55 respondents using the recommendations in the guidance document entitled, “*Use of Recycled Plastics in Food Packaging: Chemistry Considerations.*” As the average burden for preparing recycling submissions is higher than for Pre-notification Consultations or Master Files, this results in an overall increase in total burden even with an overall decrease in responses.

16. Plans for Tabulation and Publication and Project Time Schedule

No statistics from the information obtained from this data collection will be published. However, as noted above in Section 10, a list of effective notifications is available on the FDA website. This list includes the notifier, the identity of the food contact substance, the effective date of the notification, as well as any appropriate limitations on the use of the food contact substance. It does not include any confidential information.

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

Consistent with established practice, FDA will publish a *Federal Register* notice announcing OMB approval of the information collection associated with the associated guidance documents and will display in that notice both the OMB control number and its current expiration date. In addition, the OMB control number will be displayed on the guidance documents cover pages and include a link to www.reginfo.gov to identify the current expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.