United States Food and Drug Administration

Substances Generally Recognized as Safe (GRAS): Notification Procedures

OMB Control No. 0910-0342

SUPPORTING STATEMENT

Part A: Justification:

1. Circumstances Making the Collection of Information Necessary

This information collection supports agency regulations. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that all food additives (as defined by section 201(s) (21 U.S.C. 321(s)) be approved by the Food and Drug Administration (FDA or we) before they are marketed. Section 409 of the FD&C Act (21 U.S.C. 348) establishes a premarket approval requirement for "food additives." Section 201(s) of the FD&C Act provides an exclusion to the definition of "food additive," and thus from the premarket approval requirement, for uses of substances that are generally recognized as safe (GRAS) by qualified experts.

The GRAS provision of section 201(s) of the FD&C Act is implemented in 21 CFR part 170 for human food and 21 CFR part 570 for animal food. The regulations clarify the criteria when the use of a substance in food for humans or animals is not subject to the premarket approval requirements of the FD&C Act because the substance is GRAS under the conditions of its intended use. Part 170, subpart E and part 570, subpart E provide a standard format for the submission of a notice. This collection utilizes a voluntary procedure for notifying FDA about a conclusion that a substance is GRAS under the conditions of its intended use in human or animal food.

The information submitted to us in a GRAS notice is necessary to allow us to administer efficiently the FD&C Act's various provisions that apply to the use of substances added to food, specifically with regard to whether a substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review. Food additives that are not determined to be GRAS must obtain premarket approval. The clarified criteria for GRAS status helps stakeholders draw more informed conclusions about whether the intended conditions of use of a substance in food for humans or animals complies with the FD&C Act, and the notification procedure enables stakeholders to be aware of whether we have questioned the basis of a conclusion of GRAS status.

As set forth in the regulations, a GRAS notice must include the following:

- signed statements and a certification;
- the identity, method of manufacture, specifications, and physical or technical effect of the notified substance;
- dietary exposure to the notified substance;
- self-limiting levels of use in circumstances where the amount of the notified substance that can be added to human food or animal food is limited because the food containing levels of the notified substance above a particular level would become unpalatable or technologically impractical;

- the history of consumption of the substance for food use by a significant number of consumers (or animals in the case of animal food) prior to January 1, 1958, if a conclusion of GRAS status is based on common use of the substance in food prior to 1958;
- a narrative that provides the basis for the notifier's conclusion of GRAS status, including why the scientific data, information, methods, and principles described in the notice provide a basis for the conclusion that the notified substance is generally recognized, among qualified experts, to be safe under the conditions of its intended use; and
- a list of the generally available data, information, and methods the notifier cites in the GRAS notice.

To assist respondents with the information collection we developed Form FDA 3667 entitled, "*Generally Recognized as Safe (GRAS) Notice*," which provides a standardized format for submitting the required information. We therefore request extension of OMB approval for the information collection provisions found in parts 170 and 570 of our regulations and Form FDA 3667, as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

The information submitted to FDA in a GRAS notice is necessary to allow us to administer efficiently the FD&C Act's various provisions that apply to the use of substances added to food, specifically regarding whether a substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review.

Description of Respondents: Respondents to the collection of information are manufacturers of substances used in human food and animal food and feed. Respondents are from the private sector (for-profit businesses).

3. Use of Improved Information Technology and Burden Reduction

The form, and elements prepared as attachments to the form, may be submitted in electronic format via the Electronic Submission Gateway (https://www.fda.gov/industry/electronic-submissions-gateway), or may be submitted in paper format, or as electronic files on physical media with paper signature page. While we do not expect Form FDA 3667 to reduce reporting time for respondents, use of the form helps to expedite our review of the information being submitted.

We acknowledge that technology may not be available to every notifier and, thus, do not require the submission of an electronic copy. Instead, a notifier may submit a GRAS notice either in an electronic format that is accessible for our evaluation or on paper (for the Center for Food Safety and Applied Nutrition, see § 170.210; for the Center for Veterinary Medicine, see § 570.210). Based on our review of past GRAS submissions, we estimate 70% of submissions will be made electronically, while 30% will continue to be submitted on paper.

4. Efforts to Identify Duplication and Use of Similar Information

We are unaware of duplicative information collection. Under the Meat and Poultry Inspection Acts, the United States Department of Agriculture's Food

Safety and Inspection Service (USDA/FSIS) has regulatory authority for meat and poultry. FDA and USDA have signed a Memorandum of Understanding that provides for a coordinated evaluation process with FSIS when the intended conditions of use of a notified substance include use in a product or products subject to regulation by USDA under statutes that it administers (75 FR 81536 at 81541-81542).

5. Impact on Small Businesses or Other Small Entities

We estimate ten percent (10%) of respondents are small businesses; however, the regulations do not pose an undue burden on small entities. We assist small businesses in complying with our requirements through Regional Small Business Representatives and through scientific and administrative staffs within the agency. Assistance is also 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

GRAS notifications are submitted only once and enable us to determine whether the substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review. We use the information collected through the GRAS notification procedure to complete our evaluation within the timelines specified in the regulations associated with parts 170 and 570.

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

The information collection requirements are consistent with 5 CFR 1320.5, excepting indefinite extended retention of GRAS notification records. We believe this extended retention period is necessary because, under the regulations, notifiers submit a summary of information that provides the basis for a conclusion of GRAS status rather than the information itself. Although the regulations in 21 CFR parts 170 and 570 do not specify any timeframe to retain the data and information that supports the conclusion of GRAS status, preservation of the data and information that are the basis for the conclusion of GRAS status represents prudent practice for those who claim an exclusion from a statutory requirement regardless of whether the person subsequently notifies FDA.

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 November 19, 2021 (86 FR 64943). One comment was received.

The comment offers that FDA underestimated the average burden per response for information collection activities related to animal food GRAS notices. It asserts that GRAS notices for animal food and feed require peer

reviewed journal publications to support the safety of ingredients, rather than accepting additional ways to demonstrate general recognition of safety of an ingredient for an intended use.

For any substance used in animal food to be GRAS under the conditions of its intended use, the data and information relied on to establish the safety of the use of the substance must be generally available, and that information can be in published scientific literature or other publicly available sources (e.g., textbooks, journal articles). While the notifier may conduct their own study and publish it in a peer reviewed journal, the information provided in a GRAS notice can include other generally available information (i.e., in the public domain). The notifier is not required to conduct de novo studies (and get that information published) in order to submit a GRAS notice. The regulations for human food GRAS notifications and animal food GRAS notifications are similar, thus the average burden provided for animal food GRAS notifications is therefore consistent with the estimates for GRAS notifications for human food. Therefore, the average burden hours for this collection remain unchanged.

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 accordance with our public information regulations in § 20.85 (Disclosure to other Federal government departments and agencies), we can share confidential commercial information with another Federal agency pursuant to a written agreement that the record will not be further disclosed. The MOU between FDA and USDA's FSIS provides for FDA to share with FSIS confidential commercial information in a submission such as a GRAS notice. We generally cannot share trade secret information with other Federal agencies under section 301(j) of the FD&C Act (21 U.S.C. 331(j)), and therefore we would need the notifier's authorization to share this information with FSIS.

For efficiency in administering the coordinated evaluation of a GRAS notice with FSIS, we have added a requirement for a notifier who submits a GRAS notice that we would send to FSIS to include in Part 1 of the GRAS notice a statement as to whether the notifier: (1) Authorizes us to send any trade secrets to FSIS; or (2) asks us to exclude any trade secrets from the copy of the GRAS notice that we will send to FSIS (see § 170.225(c)(11)). Under the provisions that make the coordinated evaluation of a GRAS notice with FSIS explicit, we will exclude any trade secrets unless the notifier has authorized us to send trade secret information to FSIS (see § 170.270). These provisions enable us, with the notifier's authorization, to share a GRAS notice that includes trade secret information with FSIS without first redacting the GRAS notice to remove the trade secret information and, thus, will reduce the time it takes for us to provide FSIS with a copy of the GRAS notice.

These provisions also clarify the notifier's expectations regarding whether we should share trade secret information with FSIS and, thus, require us to redact the trade secret information from the copy we send to FSIS when consistent with the notifier's express wishes.

Privacy Act

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 3667 (GRAS notice) is name, phone number, mailing address, email address, and fax 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, FDA does not use name or any other personal identifier to 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 the Freedom of Information Act (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

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

12. Estimates of Annualized Burden Hours and Cost

12a. Annualized Hour Burden Estimate

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

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

Activity; 21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
GRAS notification procedure for human food; 170.210-170.280 (part 170, subpart E)	100	1	100	170	17,000
GRAS notification procedure for animal food and animal feed; 570.210-570.280 (part 570, subpart E)	25	1	25	170	4,250
Total			125		21,250

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

Recordkeeping

This information collection also contains recordkeeping requirements. We believe that documentation used by respondents in support of a conclusion of GRAS status is information that is collected and retained as a part of usual and customary business practices for a firm engaged in the manufacture of substances used in human food and animal food. While we

do not specify a timeframe to retain the data and information that support the conclusion of GRAS status, preservation of the data and information that are the basis for the conclusion of GRAS status represents prudent practice for those who claim an exclusion from a statutory requirement regardless of whether the person subsequently notifies FDA. Accordingly, no estimated burden is provided for these activities.

12b. Annualized Cost Burden Estimate

We estimate the annualized burden hour cost to respondents for this collection of information to be $1,248,650. We estimate the average wage for an operations manager to be the equivalent of a Federal government employee at the GS-11/Step 4 rate for the Washington-Baltimore locality pay area for the year 2022, which is $39.50/hour. We also estimate the average wage rate for clerical staff to be the equivalent of a Federal government employee at the GS-4/Step 4 level for the Washington-Baltimore locality pay area for the year 2022, which is $19.26/hour. To account for overhead, both salaries will be doubled (i.e., $79.00/hour for operations managers and $38.52/hour for clerical staff.) In addition, we estimate that the effort to process a GRAS application will be split evenly between managers and clerical staff. Therefore, the total cost of this collection of information to respondents is estimated to be $1,248,650, which is the total annual cost of processing human and animal food GRAS applications and is listed in table 2 below.

Table 2.--Estimated Annual Cost Burden

Activity; 21 CFR Section	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
GRAS notification procedure for human food; 170.210 through 170.270 (managers)	8,500	$79.00	$671,500
GRAS notification procedure for human food; 170.210 through 170.270 (clerical)	8,500	$38.52	$327,420
GRAS notification procedure for animal food; 570.210 through 570.270 (managers)	2,125	$79.00	$167,875
GRAS notification procedure for animal food; 570.210 through 570.270 (clerical)	2,125	$38.52	$81,855
Total			$1,248,650

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 information collection.

14. Annualized Cost to the Federal Government

We estimate it will take 4 full-time equivalent positions (FTEs) to process the GRAS notification procedure for human food. Due to the smaller number of notices anticipated for animal food, only 3 FTEs are expected to be devoted to

processing the notices for animal food. Based on an average cost of $197,636 per fully supported position ($98,818 for a GS-12/Step 4 for the Washington-Baltimore locality pay area in 2022 increased by 100 percent to account for overhead), the cost of processing GRAS notifications would be $1,383,452 per year ($197,636 x 7 FTEs).

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 hourly burden estimate. This estimate is based on our experience with this information collection and the number of notifications received in the past 3 years, which has remained constant. However, burden hour costs were inadvertently entered into OMB's ROCIS digital platform for this collection during the last approval. FDA requests OMB revise those costs from $1,159,400 to zero.

16. Plans for Tabulation and Publication and Project Time Schedule

We will make the following readily accessible to the public: (1) A list of filed GRAS notices, including the information described in certain of the signed statements that are included in Part 1 of a GRAS notice (i.e., § 170.225(c)(2) through (c)(5)); and (2) The text of any letter that we issue under § 170.265(b)(1) (our response to a GRAS notice based on our evaluation of the notice), § 170.265(b)(3) (a letter if we grant a request that we cease to evaluate a GRAS notice), or § 170.265(c) (a subsequent letter that we send about a GRAS notice). (See § 170.275(b).) We are not specifying that the mechanism for us to do so is through an "Inventory" because the procedure we use to make this information readily accessible to the public evolved over time and may continue to evolve.

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

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.