CENTER FOR TOBACCO PRODUCTS

Premarket Tobacco Product Applications and Recordkeeping Requirements

OMB Control No. 0910-0879

SUPPORTING STATEMENT PART A

Terms of Clearance: None.

Part A: Justification:

1. Circumstances Making the Collection of Information Necessary

This information collection supports Food and Drug Administration (FDA, us or we) regulations. Tobacco products are governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (sections 900 through 920) (21 U.S.C. 387 through 21 U.S.C. 387t). Section 910(a) established requirements for premarket review of new tobacco products.

The Consolidated Appropriations Act of 2022 (the Appropriations Act), enacted on March 15, 2022, amended the definition of the term "tobacco product" in section 201(rr) of the FD&C Act to include products that contain nicotine from any source. As a result, non-tobacco nicotine (NTN) products that were not previously subject to the FD&C Act (e.g., products containing synthetic nicotine) will be subject to all of the tobacco product provisions in the FD&C Act beginning on April 14, 2022, including the requirement of premarket review for new tobacco products. The Appropriations Act also makes all rules and guidances applicable to tobacco products apply to NTN products on that same effective date. Additionally, the Appropriations Act includes a transition period for premarket review requirements, directing companies to submit premarket tobacco product applications (PMTAs) for NTN products by May 14, 2022, to receive an additional 60-day period of marketing without being considered in violation of premarket review requirements.

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order. A new tobacco product may not be introduced or delivered for introduction into interstate commerce under this part until FDA has issued a marketing granted order for the product (§ 1114.5). Further, § 1114.7 describes the required content and format of the PMTA. The PMTA must contain sufficient information for FDA to determine whether any of the grounds for denial specified in section 910(c)(2) of the FD&C Act apply. The application must contain the following sections: general information, descriptive information, product samples, labeling, a statement of compliance with 21 CFR part 25, a summary, product formulation, manufacturing, health risk investigations, effect on the population as a whole, and a certification statement.

Submitters can visit the following webpage which describes the process for submitting a PMTA (https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications).

After submission of a PMTA FDA may request, and an applicant may submit, an amendment to a pending PMTA. FDA generally expects that when an applicant submits a PMTA, the submission will include all information required by section 910(b)(1) of the FD&C Act and part 1114 to enable FDA to determine whether it should authorize the marketing of a new tobacco product. However, FDA recognizes that additional information may be needed to complete the review of a PMTA and, therefore FDA allows the submission of amendments to a pending application.

An applicant may transfer ownership of its PMTA at any time, including when FDA has yet to act on it. Section 1114.13 describes the steps that an applicant would be required to take when it changes ownership of a PMTA. This section is intended to facilitate transfers of ownership and help ensure that FDA has current information regarding the ownership of a PMTA.

Supplemental PMTAs are an alternative format of submitting a PMTA (§ 1114.15). Applicants that have received a marketing granted order are able to submit a supplemental PMTA to seek marketing authorization for a new tobacco product that results from a modification or modifications to the original tobacco product that received the marketing granted order. FDA restricts the use of supplemental PMTAs to only changes that require the submission of limited information or revisions to ensure that FDA can efficiently review the application.

If an applicant receives a marketing denial order, they may submit a resubmission to respond to the deficiencies outlined in the marketing denial order (§ 1114.17). A resubmission may be submitted for the same tobacco product that received a marketing denial order or for a different new tobacco product that results from changes necessary to address the deficiencies outlined in a marketing denial order. This application format allows an applicant to address the deficiencies described in a marketing denial order without having to undertake the effort of submitting a standard PMTA. The resubmission format is not available for PMTAs that FDA refused to accept, refused to file, cancelled, or administratively closed, or that the applicant withdrew because FDA has not previously completed reviews of such applications upon which it can rely, and such applications may need significant changes to be successfully resubmitted.

FDA requires applicants that receive a marketing granted order to submit postmarket reports. Postmarket reports determine or facilitate a determination of whether there may be grounds to withdraw or temporarily suspend a marketing granted order (§ 1114.41). Additionally, § 1114.41 describes the reports that FDA would require through this regulation; however, FDA may require additional reporting in an individual applicant's marketing granted order. Applicants are required to submit two types of postmarket reports after receiving a marketing granted order: periodic reports and adverse experience reports. Periodic reports are required to be submitted within 60 calendar days of the reporting date specified in the marketing granted order. FDA anticipates that the reports would be required on an annual basis, but FDA may require in a specific order that reports be made more or less frequently depending upon a number of factors.

Applicants are also required to report all serious and unexpected adverse experiences associated with the tobacco product that have been reported to the applicant or of which the applicant is aware. The serious and unexpected adverse experience reports must be submitted

to the Center for Tobacco Products' Office of Science through the HHS Safety Reporting Portal (https://www.safetyreporting.hhs.gov/) within 15 calendar days after receiving or becoming aware of a serious or unexpected adverse experience. FDA's Safety Reporting Portal is approved under OMB Control Number 0910-0291.

Applicants receiving a marketing granted order are required to maintain all records necessary to facilitate a determination of whether there are or may be grounds to withdraw or temporarily suspend the marketing granted order, including records related to both the application and postmarket reports, and ensure that such records remain readily available to the FDA upon request (§ 1114.45). Under § 1114.45(a)(1), an applicant must also retain any additional documentation supporting the application and postmarket reports that was not submitted to FDA.

Section 1114.49 requires an applicant to submit a PMTA and all supporting and related documents to FDA in electronic format. Under § 1114.49(c), an applicant that has a waiver would submit a paper submission to the address that FDA provides in the letter granting the waiver.

We therefore request extension of OMB approval of provisions found in 21 CFR 1114 as discussed in this supporting statement.

2. Purpose and Use of the Information Collection

The regulation associated with this information collection interprets and establishes requirements related to the basic content and format of premarket tobacco product applications (PMTAs), the procedure by which FDA would review PMTAs, and the maintenance of records regarding the legal marketing of certain tobacco products without PMTAs. The regulation also addresses issues such as the procedures of retention of records related to the PMTA, confidentiality of application information, electronic submission of the PMTA and amendments, and postmarket reporting requirements.

This collection of information will be requested of respondents from private sector, for-profit businesses. Respondents are tobacco product manufacturers defined as any person, including any repacker or relabeler, who: (1) manufactures, fabricates, assembles, processes, or labels a tobacco product; or (2) imports a finished tobacco product for sale or distribution in the United States.

3. Use of Improved Information Technology and Burden Reduction

FDA requires electronic submission of PMTAs (FDA Form(s): 4057, 4057a, 4057b), via FDA's Electronic Submissions Gateway.

Electronic submission of information is completed via the FDA's Electronic Submissions Gateway (ESG) using FDA's eSubmitter tool. The FDA ESG system requires users to apply for a free account before submitting data, a process which can take one to three weeks to complete. Once approved, the user can send all submissions to CTP using the eSubmitter tool

and FDA ESG. Instructions on obtaining an ESG account are available at https://www.fda.gov/industry/electronicsubmissions-gateway/create-esg-account.

FDA estimates that approximately 99% of respondents will submit electronically. FDA is also allowing for the alternative submittal of applications for premarket review in paper form for those individuals requesting a waiver from submitting in an electronic format.

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

The FD&C Act authorizes the submission of this information from all manufacturers of tobacco products that submit PMTAs.

We estimate that we would receive, on average, 1 bundle every 2 years, impacting at most 10 small entities over the burden estimate timeframe. Furthermore, firms would only submit originally regulated bundles if the expected lifetime profits from submission were greater than the expected lifetime cost of submission. Therefore, while this cost may be significant for some small entities, we do not anticipate that it would affect a substantial number of small entities. It is important to note that ENDS PMTA submissions were not added to the total burden for this collection as its currently approved under a separate OMB Control Number (0910-0768).

6. Consequences of Collecting the Information Less Frequently

This information collection for submissions regarding PMTAs is statutorily mandated.

Where a new tobacco product is not substantially equivalent to a tobacco product commercially marketed in the United States as of February 15, 2007 or exempt from the requirement to obtain a substantial equivalence determination, applicants must submit a premarket tobacco product application under section 910(b) of the FD&C Act and receive a marketing granted order under section 910(c)(1)(A)(i) prior to marketing the product. Collecting the information less frequently would not meet the FD&C Act premarket requirements.

Respondents to this collection of information include those manufacturers seeking a marketing granted order for a new tobacco product under section 910 who must submit a premarket tobacco product application under section 910(b). If this information were not collected, FDA would be unable to make the findings required by section 910(c) of the FD&C Act in order to provide a marketing granted order under section 910(c)(1)(A)(i) prior to the manufacturer being able to market the product.

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

This section is not applicable. 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 the Federal Register of May 16, 2022 (87 FR 29749), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

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

    Among the laws governing the disclosure of reports submitted under sections 910 and 905 of the FD&C Act are the Freedom of Information Act (FOIA) (5 U.S.C. 552) and FDA's implementing regulations. Under FOIA, the public has broad access to agency records, unless the records (or a part of the records) are protected from disclosure by any of the law's nine exemptions.

    Section 906(c) of the FD&C Act prohibits FDA from disclosing any information reported to FDA if that information is confidential commercial or trade secret information exempt from disclosure under FOIA Exemption 4 (5 U.S.C. 552(b)(4)). The provision contains exceptions allowing disclosure of the information to other officers of employees concerned with carrying out the tobacco products chapter of the FD&C Act and, when relevant, in any proceeding under the tobacco products chapter of the FD&C Act. Section 301(j) of the FD&C Act generally prohibits release of trade secret information obtained by FDA outside of the Department of Health and Human Services, except to courts when relevant in any judicial proceeding under the FD&C Act and to Congress in response to an authorized Congressional request.

    CTP also identified privacy compliance requirements and coordinated with FDA's Privacy Officer to ensure responsible offices in CTP satisfy all in accordance with law and policy. CTP received HHS approval on the privacy impact assessment (PIA) underneath PIA ID: 2060831.

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

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

21 CFR Part; Activity; Form FDA #	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
1114.5; Submission of Standard Bundled PMTAs[2]	1	1	1	1,713	1,713
PMTA Submission; Form FDA 4057	39	1	39	.58 (35 minutes)	23
PMTA Amendment and General Correspondence Submission; Form FDA 4057a	39	14	546	.16 (10 minutes)	87
PMTA Grouping Submission; Form FDA 4057b	39	1	39	.58 (35 minutes)	23
Tobacco Product Grouping Spreadsheet Validator	39	1	39	.08 (5 minutes)	3
1114.41; Reporting Requirements (periodic reports)	4	1	4	50	200
1114.9; Amendments	24	2	48	188	9,024
1114.13; Change in Ownership	1	1	1	1	1
1114.15; Supplemental applications	2	1	2	428	856
1114.17; Resubmissions	3	1	3	565	1,695
1114.49(b) and (c); Waiver from Electronic Submission	1	1	1	.25 (15 minutes)	.25
Total					13,625

[1] FDA anticipates that applicants will submit bundled PMTAs, which are single submissions containing PMTAs for a number of similar or related products. We estimate that a bundle will contain on average between 6 and 11 distinct products.

Table 1 describes the estimated annual reporting burden. FDA has based these estimates on the full analysis of economic impacts and experience with current PMTA submissions received under OMB Control Number 0910-0768 (which covers the burden for electronic nicotine delivery system (ENDS) products PMTA submissions). This average represents a wide range of hours that will be required for these applications under different circumstances, with some requiring more hours (e.g., as many as 5,000 hours for early applications that involve complex products and for which the company has no experience conducting studies or preparing analysis of public health impacts, or for which reliance on master files is not possible) as well as many requiring fewer hours (e.g., as few as 50 hours for applications for products that are very similar to other new products). FDA estimates that it will take each respondent approximately 1,500 hours to prepare a PMTA seeking an order from FDA allowing the marketing of a new tobacco product. FDA also estimates that it would on average take an additional 213 hours to prepare an environmental assessment (EA) in accordance with the requirements of 21 CFR 25.40, for a total of 1,713 hours per PMTA application.

FDA assumes that firms will submit all applications as PMTA bundles. For originally regulated products we expect to receive one full PMTA submission for a total of 1,713 hours. We believe that bundling PMTAs results in efficiencies for applicants when compared to submitting standalone, full-text submissions for each product. We expect to receive bundled PMTAs where applicants can use the same evidence to support PMTAs for similar or related

products. Bundling PMTAs into a single submission would eliminate the administrative burden of having to reproduce the same evidence in a standalone PMTA for each product.

FDA has three forms required for use under sections 1114.7(b) and 1114.9(a) when submitting PMTA information to the Agency. Form FDA 4057 for use when submitting PMTA single and bundled submissions. FDA estimates that 39 respondents will submit PMTA bundles using this form at 0.75 (35 minutes) per response. Included in this estimate are the 15 expected bundles submitted for NTN products. The number 39 is accounting for the bundles of ENDS products and the 1 bundle we expect to receive yearly for originally regulated products for a total of 23 hours.

Form FDA 4057a for use when firms are submitting amendments and other general correspondence. Our estimate is 0.16 (10 minutes) per response to fill out this form. Included in this estimate are the 15 expected submissions submitted from NTN products. We estimate there will be at least 14 amendments per application for a total of 87 hours. With most applications being submitted toward the end of our 3-year range, we expect fewer amendments during this period. However, FDA expects amendments from earlier applications to be submitted during this period.

Form FDA 4057b assists industry and FDA in identifying the products that are the subject of a submission where an applicant groups multiple PMTAs into a single submission (referred to as a bundled submission or a grouped submission). FDA has previously stated that one approach to submitting PMTAs could be to group applications for products that are both from the same manufacturer or domestic importer and in the same product category and subcategory into a single submission. FDA discussed bundled submissions in the proposed rule (84 FR 50566 at 50578) and noted that FDA intends to consider information on each tobacco product as a separate, individual PMTA as required under § 1114.7(c)(3)(iii). By having the identifying information for products contained in a submission be more clearly organized within the required forms, FDA will be able to more efficiently process and review the applications contained in a grouped submission

The form assists applicants in providing the unique identifying information for each product in a grouped submission of PMTAs. A respondent would utilize Form FDA 4057b once for each submission. We assume the submitter could include from 1 to 2,000 products in each Form FDA 4057b. Entering data for up to 2,000 rows can take approximately 4 hours on average per Form FDA 4057b for manual data entry. We reflect the average time of 35 minutes per response based on the assumption that we expect to receive an average of nine bundled products per submission. Included in this estimate are the 15 expected submissions submitted from NTN products. Assuming 35 minutes per Form FDA 4057b for 39 applications, we estimate a total burden of 23 hours for this activity.

The FDA Tobacco Product Grouping Spreadsheet Validator is a free software that validates the content of FDA product grouping spreadsheets such as “FDA 4057b – Premarket Tobacco Product Application Product Grouping Spreadsheet”. The validator is available for voluntary use by the tobacco industry (sponsors, manufacturers, and importers) prior to submitting a product grouping spreadsheet to FDA.

The Tobacco Product Grouping Spreadsheet Validator allows industry users to validate product attributes in their product grouping spreadsheet with the defined and accepted product

data standards, and make corrections as needed. If there are no errors found in a spreadsheet, the Validator will produce a certificate of completion that can be saved locally and included with the applicants FDA submission voluntarily. If errors are found during validation, the Validator will provide the applicants with the error to the end of each impacted row of the spreadsheet, allowing applicants to make necessary changes.

The software and any output files reside locally on an applicant's computer, allowing them to work on the product grouping spreadsheet offline. The Validator does not transmit any data across the web to FDA. FDA does not have the ability to access, review, or supplement the information on local computers through this application. We estimate the use the validator tool will take an average of five minutes per response.

FDA estimates under § 1114.41 that four respondents will submit a periodic report. This number is based on the average number of periodic report submissions received between 2020-2022. The Agency estimates that periodic reports will take on average of 50 hours per response for a total of 200 hours.

Section 1114.13 allows an applicant to transfer ownership of a PMTA to a new owner. FDA believes this will be infrequent, so we have assigned 1 hour acknowledging the requirement.

Section 1114.15 is an alternative format of submitting a PMTA, supplemental PMTA, meeting the requirements of § 1114.7 that would reduce the burden associated with the submission and review of an application. Our estimated number of 2 respondents is based on the number estimated for postmarket reports, which is 4 bundles (approximately 34 products). Not all applicants will resubmit modifications to previously authorized products, so we estimate 2 bundles (which is approximately 17 products). FDA estimates further that a supplemental PMTA will take 25 percent of the time it takes (estimated at 428 hours per response) to complete an original submission (including EA hours). We estimate a total of 856 burden hours for this activity.

Under § 1114.17 an applicant may submit a resubmission for the same tobacco product that received a marketing denial order or for a different new tobacco product that results from changes necessary to address the deficiencies outlined in a marketing denial order. Based on the preliminary RIA, we are estimating that out of all bundles received in 2020, 2021, and 2022, that an average of three bundles are authorized. If we receive 24 bundles yearly, and based on historical data, 58 percent fail at acceptance (8 bundles remaining), 17 percent fail at filing (7 bundles remaining), and 25 percent receive marketing orders (5 bundles remaining). We estimate that 50 percent will resubmit in a year. Thus, the number of respondents is three. FDA estimates that a resubmission will take 33 percent of the time it takes to complete an original submission (including EA hours) estimated at 565 hours per response for a total of 1,695 hours

Firms must also submit adverse experience reports (§ 1114.41(a)(2)) for tobacco products with marketing orders. We assume the same number of firms submitting periodic reports will submit adverse experience reports. Firms may submit voluntary and mandatory submit adverse experience reports using Form FDA 3800 under OMB Control Number 0910-0291.

Under § 1114.9 firms will prepare amendments to PMTA bundles in response to deficiency letters. These amendments contain additional information that we need to complete substantive

review. We anticipate 2 responses back per bundle and therefore, we estimate that 24 respondents will submit 48 amendments (24 × 2). Assuming 1,500 hours as the time to prepare and submit a full PMTA and amendments may on average take 10 percent to 15 percent of that time (150-225 hours). We averaged this time out (12.5 percent of a full submission preparation time) and arrived at 188 hours per response. FDA estimates the total burden hours for preparing amendments is 9,024 hours.

An applicant is required to submit a PMTA and all supporting and related documents to FDA in electronic format that FDA can process, review, and archive unless an applicant requests, and FDA grants, a waiver from this requirement (§ 1114.49). FDA does not believe we will receive many waivers, so we have assigned one respondent to acknowledge the option to submit a waiver. Consistent with our other application estimates for waivers, we believe it would take .25 hours (15 minutes) per waiver for a total of .25 hours.

Table 2.--Estimated Annual Recordkeeping Burden

21 CFR Part; Activity	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Recordkeeping	Total Hours
1114.45; PMTA records	39	1	39	2	78
1100.204; Pre-existing products records	1	1	1	2	2
1107.3; Exemptions from Substantial Equivalence (SE) records	1	1	1	2	2
Total					82

Table 2 describes the annual recordkeeping burden. FDA estimates that 39 recordkeepers will maintain records at 2 hours per record. Included in this estimate are the 15 expected recordkeepers of NTN products. Firms are also required to establish and maintain records related to SE exemption requests and pre-existing products (§ 1100.200 states that subpart C of part 1100). We expect the burden hours to be negligible for SE exemption requests. Firms would have already established the required records when submitting the SE exemption request. Similarly, we expect the hours to be negligible for any pre-existing tobacco products that have already submitted stand-alone pre-existing tobacco product submissions, because firms would have established the required records when submitting the stand-alone pre-existing tobacco product submissions. We estimate that it would take 2 hours per record to establish the required records for a total of 4 hours for pre-existing products records and SE exemptions.

The total burden for the collection of information is 13,625 reporting hours and 82 recordkeeping hours for a total of 13,707 hours.

12b. Annualized Cost Burden Estimate

The estimated annual reporting cost to respondents for this collection of information is $853,946. This estimate assumes that tobacco industry (all occupations) will account for the submissions regarding PMTAs at an average wage of $31.15 (Department of Labor’s Bureau of Labor Statistics for Tobacco Manufacturers (May 2021:

https://www.bls.gov/oes/current/naics4_312200.htm). We double this to account for benefits and overhead, yielding an hourly wage rate of $62.30.

Activity; Type of Respondent	Total Burden Hours	Hourly Wage Rate	Total Respondent Costs
Preparing PMTAs and Related Reports; Tobacco Industry	13,707	$62.30	$853,946

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

Our estimated cost to the Federal government reflects the allocation of fifty-five (55) full-time equivalent (FTE) employees to administering the requirements. Using as a basis salary and wage data for the Washington DC-Metropolitan area found at https://www.opm.gov for a GS-13/4 employee, we calculate a total cost of $6,462,775 ($117,505 x 55).

15. Explanation for Program Changes or Adjustments

FDA is submitting this non substantive change request for updates to FDA Forms 4057, 4057b, and a voluntary spreadsheet validation tool to assist industry users to complete the form efficiently and correctly. We expect a net decrease of 9 burden hours based on these changes to the collection. Please note the last change request (202306-0910-005) decreased the collection by 24 hours, but the hours were mistakenly not altered in ROCIS. We have corrected this in ROCIS and therefore the change in ROCIS will show a cumulative decrease of 33 burden hours. The new estimated burden for this collection is 13,707 hours.

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

FDA is not requesting an exemption for display of the OMB expiration date and is also not seeking OMB approval to exclude the expiration date for this information collection.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.