

UNITED STATES FOOD & DRUG ADMINISTRATION

Product Jurisdiction and Combination Products  
21 CFR Parts 3 and 4

OMB Control Number 0910-0523 – Extension

SUPPORTING STATEMENT – **Part A: Justification**

1. Circumstances Making the Collection of Information Necessary

This information collection helps support implementation of section 503(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353(g)), as amended by the 21st Century Cures Act (Pub. L. 114-255) (Cures Act); section 563 of the FD&C Act (21 U.S.C 360bbb-2) as added by the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115); and regulations in 21 CFR parts 3 and 4. Section 503(g) of the FD&C Act expressly provides for the regulation of combination products. As amended by the Cures Act, it includes provisions exclusive to FDA’s Office of Combination Products (OCP), such as provisions to address engagement between OCP and combination product sponsors and establish Combination Product Agreement Meetings (CPAMs) for sponsors to engage with FDA. The provisions in 21 CFR part 4 address the application to combination products of the current good manufacturing practice (CGMP) and postmarketing safety reporting (PMSR) regulatory requirements associated with their constituent parts (biological product, device, and/or drug).

Section 503(g) also addresses how primary agency responsibility shall be designated for combination products, and section 563 of the FD&C Act requires FDA to classify products as biological products, devices, drugs, or combination products and to assign products to an agency component for regulation, in response to requests for designation (RFDs) submitted by product sponsors. Regulations in 21 CFR part 3 provide for product classification determinations and FDA designation on which agency component will have primary jurisdiction for any drug, device, biological, or combination product, where such jurisdiction is unclear or in dispute. These determinations are made by the Office of Combination Products (OCP) upon receiving a Request for Designation (RFD). Regulations in 21 CFR part 4 discuss recordkeeping requirements applicable to combination products.

We have developed associated procedures for RFD and pre-RFD respondents to obtain feedback regarding medical product classification and assignment. We maintain a webpage that includes contact and resource information pertaining to the RFD process at <https://www.fda.gov/combination-products/jurisdictional-information>.

Although **Forms FDA 5003, 5004, and 5005** (pre-request and request for designation forms) were previously developed to facilitate information collection for Pre-RFDs and RFDs, we have more recently issued the following agency guidance documents to provide instruction and recommendations to respondents regarding submissions to FDA:

- “*How to Write a Request for Designation*” (issued April 2011), provides instruction regarding the information that needs to be submitted to OCP in an RFD as described in 21 CFR section 3.7. The guidance is available at [www.fda.gov/regulatory-information/search-fda-guidance-documents/how-write-request-designation-rfd](http://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-write-request-designation-rfd).
- “*How to Prepare a Pre-Request for Designation*” (issued February 2018), was developed to assist sponsors in obtaining a preliminary, nonbinding assessment from OCP, regarding the classification and assignment of products, through the Pre-RFD process. The guidance explains the pre-RFD process and helps a sponsor understand the type of information to provide in a pre-RFD submission. The guidance is available at [www.fda.gov/regulatory-information/search-fda-guidance-documents/how-prepare-pre-request-designation-pre-rfd](http://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-prepare-pre-request-designation-pre-rfd).
- “*Requesting FDA Feedback on Combination Products*” (issued December 2020), was developed to discuss ways in which combination product sponsors can obtain feedback from FDA on scientific and regulatory questions and to describe best practices for FDA and sponsors when interacting on these topics. The guidance is available at [www.fda.gov/regulatory-information/search-fda-guidance-documents/requesting-fda-feedback-combination-products](http://www.fda.gov/regulatory-information/search-fda-guidance-documents/requesting-fda-feedback-combination-products).

The guidance documents were developed consistent with sections 503(g) and 563 of the FD&C Act and with our Good Guidance Practice regulations in 21 CFR 10.115.

We therefore request extension of OMB approval for the information collection found in 21 CFR parts 3 and 4; and discussed in the referenced agency guidance and in this supporting statement.

## 2. Purpose and Use of the Information Collection

The information relating to Pre-RFDs and RFDs is submitted by a business/sponsor who submits an application or submission (including a petition, notification, and any other similar form of request). The information is used by the agency to classify a new product as a drug, device, biological product, or combination product and assign responsibility for regulation of the product within FDA. The information submitted in relation to a CPAM is used to facilitate engagement with sponsors regarding their combination products.

## 3. Use of Improved Information Technology and Burden Reduction

Respondents may use automated, electronic, mechanical, other technological collection techniques, or other forms of information technology to submit the information collection. The use of improved technology to reduce burden is not applicable to the submission of a request for classification of drugs, devices, biological products, and combination products and assignment of agency component. We note that approximately 95% of RFDs for Fiscal Year 2022 were received as electronic copies submitted by the sponsor.

#### 4. Efforts to Identify Duplication and Use of Similar Information

Since the provisions in 21 CFR part 4 address the application to combination products of regulatory requirements associated with their constituent parts (biological product, device, and/or drug), the burden associated with CGMP and PMSR recordkeeping and reporting for combination products is covered under the drug, medical device, and biological product ICRs, which address their respective CGMP and PMSR recordkeeping and reporting requirements. The burden associated with CGMP recordkeeping and reporting is covered under the following OMB control numbers: 0910-0139 (drug products), 0910-0116 (biological products), 0910-0073 (medical device products), and 0910-0541 (human cell and tissue products). Similarly, burden for recordkeeping and reporting associated with PMSR requirements applicable to drug, biological, and medical device products is accounted for in OMB control nos. 0910-0230 (drug products), 0910-0308 (biological products), and 0910-0437 (medical device products). We, therefore, do not include any burden associated with information collection activities covered under the provisions of 21 CFR part 4 in this ICR.

#### 5. Impact on Small Businesses or Other Small Entities

We do not believe any undue burden is imposed on small entities as a result of the information collection. We assist small businesses in complying with FDA regulatory requirements through resources on our website at [www.fda.gov/industry/small-business-assistance](http://www.fda.gov/industry/small-business-assistance) and through small business assistance representatives available throughout the agency.

#### 6. Consequences of Collecting the Information Less Frequently

The information collection schedule is consistent with statutory and regulatory requirements.

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

There are no special circumstances that require the information to be collected in a manner inconsistent with the guidelines in 5 CFR 1320.5.

#### 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 notice in the *Federal Register* on July 31, 2023 (88 FR 49467), soliciting comment on the proposed collection of information. No comments were received.

#### 9. Explanation of Any Payment or Gift to Respondents

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

## 10. Assurance of Confidentiality Provided to Respondents

**Consistent with 5 CFR 1320.5(d)(2)(vii), data will be kept private to the extent allowed by law:**

In preparing this supporting statement, we consulted the FDA Privacy Office to ensure appropriate handling of personally identifiable information (PII) that may be collected. In this information collection, the PII collected is the name and telephone number of the respondent, and PII is collected in the context of a subject individuals' professional capacity and the FDA-related work performed (e.g., point of contact at a regulated entity). Information requirements are listed in 21 CFR 3.7(c). In our evaluation, we determined that, although this PII is collected, the collection is not subject to the Privacy Act of 1974, and the particular notice and other requirements of the Privacy Act do not apply. Specifically, we do not use name or any other personal identifier to routinely retrieve records from the information collected.

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

## 11. Justification for Sensitive Questions

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

## 12. Estimates of Annualized Burden Hours and Costs

### *12a. Annualized Hour Burden:*

Respondents to the information collection are sponsors of medical products, including combination products.

Table 1.--Estimated Annual Reporting Burden<sup>1</sup>

21 CFR Section; Activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response (hours)	Total Hours
3.7; request for designation (RFD)	55	1	55	24	1320
Pre-RFD submissions	77	1	77	24	1848
CPAMs requests	3	1	3	25	75
Total					3,243

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

Our estimated burden reflects a decrease in the number of respondents (four respondents) and a corresponding decrease in total hours (96 hours). Based on a recent evaluation of CPAM requests received from each product center in fiscal years 2020, 2021, and 2022, our estimated annual burden for CPAM requests remains unchanged.

#### 12b. Annualized Cost Burden Estimate

Assuming an hourly wage plus benefit rate of \$43.14,<sup>1</sup> the average annually recurring cost for these requirements would be \$139,903.02 (3,243 hours x \$43.14).

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

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

#### 14. Annualized Cost to the Federal Government

The cost to the Federal Government covers review of the request for classification and assignment of drugs, devices, biological products, and combination products. It takes an average of 40 hours per request (ranging from 8 to 60 hours). We assume the cost of a fully supported professional employee GS 14/5, earning \$68.78<sup>2</sup> per hour reviewing 135 requests per year would be \$371,412. If the designation is appealed, we estimate the time will double.

#### 15. Explanation for Program Changes or Adjustments

The information collection reflects changes and adjustments. As discussed in *Question 1*, Form FDA 5005 has been discontinued and all of its information consolidated into Form FDA 5004. We also saw an increase in the average number of RFD and a decrease in the average number of pre-FRD submissions received annually, which results in an overall decrease of 4 annual submissions and 96 corresponding burden hours.

#### 16. Plans for Tabulation and Publication and Project Time Schedule

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

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

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

#### 18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.

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<sup>1</sup> Wage is based on the 2022 Bureau of Labor Statistic's survey, National Industry Specific Occupational Employment and Wage Estimate, for standard occupational code 13-1041, compliance officer in pharmaceutical and medicine manufacturing. <http://www.bls.gov/oes/current/oes131041.htm>

<sup>2</sup> 2022 General Schedule (GS) Locality Pay Tables (Washington-Baltimore-Arlington, DC-MD-VA-WV-PA) <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2022/general-schedule>