

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
190.6 .....	55	1	55	20	1,100

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

The Agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the Agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the FD&C Act. However, the Agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of Section 413 of the FD&C Act will require a burden of approximately 20 hours of work per submission.

The estimated number of premarket notifications and hours per response is an average based on the Agency's experience with notifications received during the last 3 years and information from firms that have submitted recent premarket notifications. FDA received 77 notifications in 2008, 39 notifications in 2009, and 48 notifications in 2010, for an average of 55 notifications. Accordingly, we estimate that 55 respondents will submit one premarket notification each and that it will take a respondent 20 hours to prepare the notification, for a total of 1,100 hours.

Dated: May 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-N-0564]

**Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Restaurant Menu and Vending Machine Labeling; Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Restaurant Menu and Vending Machine Labeling; Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 31, 2011 (76 FR 5384), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0664. The approval expires on April 30, 2013. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: May 19, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-N-0403]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and the guidance entitled "Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act."

**DATES:** Submit either electronic or written comments on the collection of information by August 2, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act—21 U.S.C. 343(r)(6) (OMB Control Number 0910–0626)—Extension**

Section 403(r)(6) of the FD&C Act (21 U.S.C. 343(r)(6)) requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. Under section 403(r)(6)(A) of the FD&C Act, such a statement is one that “claims a benefit related to a classical nutrient deficiency disease and

discloses the prevalence of such disease in the United States [(U.S.)], describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption for a nutrient or dietary ingredient.”

The guidance document entitled “Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act” provides FDA’s recommendations to manufacturers about the amount, type, and quality of evidence they should have to substantiate a claim under section 403(r)(6). The guidance does not discuss the types of claims that can be made concerning the effect of a dietary supplement on the structure or function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim. The guidance document is intended to assist manufacturers in their efforts to comply with section 403(r)(6). Persons with access to the Internet may obtain the guidance at <http://www.cfsan.fda.gov/~dms/guidance.html>.

Dietary supplement manufacturers collect the necessary substantiating information for their product as required by section 403(r)(6). The guidance provides information to manufacturers to assist them in doing so. The recommendations contained in the guidance are voluntary. Dietary supplement manufacturers will only need to collect information to substantiate their product’s nutritional deficiency, structure/function, or general well-being claim if they choose to place a claim on their product’s label.

The standard discussed in the guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the Federal Trade Commission for dietary supplements and other health-related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product’s label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Claim type	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Widely known, established .....	667	1	667	44	29,348
Pre-existing, not widely established .....	667	1	667	120	80,040
Novel .....	667	1	667	120	80,040
Total .....	.....	.....	.....	.....	189,428

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

FDA assumes that it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. FDA believes it will take closer to 120 hours

to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science,

where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals

and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the **Federal Register** of January 6, 2000 (65 FR 1000), FDA published a final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body. FDA estimated that there were 29,000 dietary supplement products marketed in the U.S. (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims ( $2,900 \times 69$  percent) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 189,428 (the sum of  $667 \times 44$  hours,  $667 \times 120$  hours, and  $667 \times 120$  hours).

Dated: May 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-N-0067]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Data To Support Drug Product Communications, as Used by the Food and Drug Administration

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 5, 2011.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202-395-7285, or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-NEW and title "Data to Support Drug Product Communications, as Used by the Food and Drug Administration." Also include the FDA docket number found in brackets in the heading of this document.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3792, [Elizabeth.Berbakos@fda.hhs.gov](mailto:Elizabeth.Berbakos@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Data To Support Drug Product Communications, as Used by the Food and Drug Administration—(OMB Control Number 0910-NEW)

Testing of communication messages in advance of a communication

campaign provides an important role in improving FDA communications as they allow for an indepth understanding of individuals' attitudes, beliefs, motivations, and feelings. The methods to be employed include individual indepth interviews, general public focus group interviews, intercept interviews, self-administered surveys, gatekeeper surveys, and professional clinician focus group interviews. The methods to be used serve the narrowly defined need for direct and informal opinion on a specific topic and, as a qualitative research tool, have two major purposes:

- To obtain information that is useful for developing variables and measures for formulating the basic objectives of risk communication campaigns and
- To assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences.

FDA will use these methods to test and refine its ideas and to help develop messages and other communications but will generally conduct further research before making important decisions, such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Office of the Commissioner, and any other Centers or Offices will use this mechanism to test messages about regulated drug products on a variety of subjects related to consumer, patient, or health care professional perceptions and about use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sale of medical products, and consumer and professional education.

In the **Federal Register** of February 8, 2011 (76 FR 6800), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows: