



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA-2010-N-0258]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 FDA's regulations for submission of petitions, including food and color additive petitions (FAPs and CAPs) (including labeling) submission of information to a master file in support of petitions, and electronic submission using FDA Form 3503.

DATES: Submit either electronic or written comments on the collection of information by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Late, untimely filed comments will not be considered. Electronic comments

must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2010-N-0258 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling); Submission of Information to a Master File in Support of Petitions; Electronic Submission Using Food and Drug Administration Form 3503.” Received comments, those filed in a timely manner (see DATES), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its

consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at:

<https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, PRASStaff@fda.hhs.gov, 301-796-7726.

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.

Submission of Petitions: Food Additive, Color Additive (Including Labeling); Submission of Information to a Master File in Support of Petitions; Electronic Submission Using FDA Form 3503--21 CFR 70.25, 71.1, 171.1, 172, 173, 179, and 180

OMB Control Number 0910-0016--Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under §409 that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact

notification submitted under §409(h) is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the FD&C Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under §721(f). CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the Agency's regulations (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in §70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA scientific personnel reviews FAPs to ensure the safety of the intended use of the additive in or on food, or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review CAPs to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Interested persons may transmit FAP or CAP regulatory submissions in electronic format or paper format to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3503. Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA’s safety review. Form FDA 3503 can also be used to organize information within a master file submitted in support of petitions 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 and color additive approvals. FDA estimates that the amount of time for respondents to complete FDA Form 3503 will continue to be 1 hour.

Description of respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

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

Table 1.--Estimated Annual Reporting Burden¹

21 CFR Section/FDA Form	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours	Total Operating and Maintenance Costs
Color Additive Petitions						
70.25, 71.1	2	1	2	1,337	2,674	\$5,600
Food Additive Petitions						
171.1	3	1	3	7,093	21,279	0
FDA Form 3503	6	1	6	1	6	0
Total					23,959	\$5,600

¹There are no capital costs associated with this collection of information.

The estimate of burden for food additive or color additive petitions is based on FDA’s experience with the petition process. The burden for this information collection has changed since the last OMB approval because the Generally Recognized as Safe affirmations have been removed pursuant to the implementation of “Substances Generally Recognized as Safe; Final Rule,” August 17, 2016 (81 FR 54960), 21 CFR parts 20, 25, 170, 184, 186, and 570. FDA is

retaining its prior estimate of the number of petitions received because the average number of petitions received annually has varied little over the past 10 years. The figures for hours per response are based on estimates from experienced persons in the Agency and in industry. Although the estimated hour burden varies with the type of petition submitted, an average petition involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from \$1,600 to \$3,000, depending on the intended use of the color additive and the scope of the requested amendment. A complete schedule of fees is set forth in §70.19. An average of one Category A and one Category B color additive petition is expected per year. The maximum color additive petition fee for a Category A petition is \$2,600 and the maximum color additive petition fee for a Category B petition is \$3,000. Because an average of 2 CAPs are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to \$5,600 $((1 \times \$2,600) + (1 \times \$3,000))$ listing fees = \$5,600). There are no capital costs associated with CAPs. The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the FD&C Act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under §70.25 for a

particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §70.25 and §71.1, and the burden hours for labeling are included in the estimate for §71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under §171.1, the burden hours for labeling are included in the estimate for §171.1.

Dated: May 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

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