

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007N-0015]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Adoption of the Food and Drug Administration Food Code by Local, State, and Tribal Governments

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

**ACTION:** Notice.

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**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 FDA's collection of information from local, State, and tribal governmental agencies concerning their adoption of, or plans to adopt, all or portions of the FDA Food Code or its equivalent by regulation, law, or ordinance.

**DATES:** Submit written or electronic comments on the collection of information by *[insert date 60 days after date of publication in the **Federal Register**]*.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. 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:** Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**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.

**Adoption of the FDA Food Code by Local, State, and Tribal Governments (OMB Control Number 0910–0448)—Extension**

FDA has developed its model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the local, State, and tribal governmental agencies that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243(a)). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service.

Nationwide adoption of the model FDA Food Code is an important step toward the agency’s goal for consistent, scientifically sound, and risk-based food safety standards and practices. A current, comprehensive, and accurate inventory of food code adoptions by States and U.S. territories, local, and tribal governments is necessary to determine the status of up-to-date protection of the U.S. population and to identify areas where assistance to these governments may promote the adoption of regulations based on the FDA Food Code.

This collection effort, which began in 2001, has had remarkable success with 97 percent participation from State and territorial governmental agencies. FDA contracted with the Association of Food and Drug Officials (AFDO) to conduct the initial survey using the OMB approved survey form. The rulemaking process that local, State, territorial, and tribal governmental agencies must follow to adopt the model FDA Food Code is often a long and

complicated process that can extend for several years. For this reason, many agencies have reported that they are still in the rulemaking process to adopt or update their food codes. Thus, FDA believes that extension of OMB approval of the survey is needed in order to keep the current database accurate and up-to-date. AFDO will collect the information electronically and/or telephonically and will be able to provide respondents with previous survey responses already in the database.

Description of Respondents: States and U.S. territories, local, and tribal governmental agencies.

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

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

Food Code Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Respondents	75	4	300	1	300

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

This estimate is based on FDA's experience and the number of updates received in the past 3 years. FDA has reduced the estimated number of annual respondents from 150 to 75. FDA estimates that 75 respondents will provide four quarterly updates each, resulting in an estimated 300 total annual responses. The agency estimates that each quarterly update will take about 1 hour. Of the 75 respondents, those who amend their regulations with changes unrelated to the risk factors and interventions, and those who are not adopting

model FDA Food Code provisions, but are incorporating certain Conference for Food Protection recommendations only, will likely need only annual contact.

Dated: January 17, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

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