

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-1119]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (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 reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

**DATES:** Either electronic or written comments on the collection of information must be submitted by May 22, 2023.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

#### 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):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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-2013-N-1119 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **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 Dockets Management Staff. 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.govinfo.gov/content/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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3521), 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.

**Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—21 CFR 108.25 and 108.35, and 21 CFR Parts 113 and 114**

OMB Control Number 0910-0037—  
Extension

Section 402 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342) deems a food to be adulterated, in part, if the food bears or contains any poisonous or deleterious substance that may render it injurious to health. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce of adulterated food. Under section 404 of the FD&C Act (21 U.S.C. 344), our regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit us to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* need to be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use

of adequate heat processes or other means of preservation.

To protect the public health, our regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with us using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(1) (21 CFR 108.25(c)(1) and 108.35(c)(1))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Forms FDA 2541d, FDA 2541e, FDA 2541f for all methods except aseptic processing, or Form FDA 2541g for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms also must document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§ 113.60(c) (thermally processed low-acid foods) and § 114.80(b) (acidified foods)).

The records of processing information are periodically reviewed during factory inspections by FDA to verify fulfillment

of the requirements in parts 113 or 114. Scheduled thermal processes are examined and reviewed to determine their adequacy to protect public health. In the event of a public health emergency, records are used to pinpoint potentially hazardous foods rapidly and thus limit recall activity to affected lots.

As described in our regulations, processors may obtain the paper version of Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g at <https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm>. Processors mail completed paper forms to us. However, processors who are subject to § 108.25 and/or § 108.35 have an option to submit Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g electronically.

Although we encourage commercial processors to use the electronic submission system for plant registration and process filing, we will continue to make paper-based forms available. To standardize the burden associated with process filing, regardless of whether the process filing is submitted electronically or using a paper form, we are offering the public the opportunity to use four forms, each of which pertains to a specific type of commercial processing and is available both on the electronic submission system and as a paper-based form. The electronic submission system and paper-based form “mirror” each other to the extent practicable. The four process filing forms are as follows:

- Form FDA 2541d (Food Process Filing for Low-Acid Retorted Method);
- Form FDA 2541e (Food Process Filing for Acidified Method);
- Form FDA 2541f (Food Process Filing for Water Activity/Formulation Control Method); and
- Form FDA 2541g (Food Process Filing for Low-Acid Aseptic Systems).

*Description of Respondents:* The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

We estimate the burden of this collection of information as follows:

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

21 CFR section; activity	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response <sup>2</sup>	Total hours
108.25(c)(1) and 108.35(c)(1); Food canning establishment registration.	2541	645	1	645	0.17 (10 minutes) .....	110

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

21 CFR section; activity	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response <sup>2</sup>	Total hours
108.25(c)(2); Food process filing for acidified method.	2541e	726	11	7,986	0.333 (20 minutes) .....	2,659
108.35(c)(2); Food process filing for low-acid retorted method.	2541d	336	12	4,032	0.333 (20 minutes) .....	1,343
108.35(c)(2); Food process filing for water activity/formulation control method.	2541f	37	6	222	0.333 (20 minutes) .....	74
108.35(c)(2); Food process filing for low-acid aseptic systems.	2541g	42	22	924	0.75 (45 minutes) .....	693
108.25(d); 108.35(d) and (e); Report of any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce.	N/A	1	1	1	4 .....	4
<b>Total</b> .....						<b>4,883</b>

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

We base our estimate of the number of respondents in table 1 on registrations, process filings, and reports received. The hours per response reporting estimates are based on our experience with similar programs and information received from industry.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
108, 113, and 114 .....	10,392	1	10,392	250	2,598,000

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

Our regulations require that processors mark thermally processed low-acid foods in hermetically sealed containers (§ 113.60(c)) and acidified foods (§ 114.80(b)) with an identifying code to permit lots to be traced after distribution. No burden has been estimated for the third-party disclosure requirements in §§ 113.60(c) and 114.80(b) because the coding process is done as a usual and customary part of normal business activities. Coding is a business practice in foods for liability purposes, inventory control, and process control in the event of a problem. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Based on a review of the information collection since our last request for

OMB approval, we have made no adjustments to our burden estimate.

Dated: March 15, 2023.  
**Lauren K. Roth,**  
*Associate Commissioner for Policy.*  
 [FR Doc. 2023-05742 Filed 3-20-23; 8:45 am]  
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2019-E-5280]

**Determination of Regulatory Review Period for Purposes of Patent Extension; ESPEROCT**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period

for ESPEROCT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 22, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 21, 2023. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late,