

SUPPORTING STATEMENT FOR

“Child Nutrition Labeling Program”

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SUPPORTING STATEMENT

Terms of Clearance:

FNS met with FSIS per the terms of clearance to investigate ways to identify and share FSIS records that may be duplicative. During the meeting held on April 21, 2008, the staff brainstormed ways that FNS could gather information directly from FSIS as opposed to requesting for information from industry on products that have already been submitted to FSIS for approval. Due to FSIS generic approved process for labeling regulations, FSIS will not have the label information required by FNS. Additionally, FSIS requires special claims added to labels, such as the Child Nutrition crediting statement, to be reviewed and approved by FSIS and FNS requires fill specifications and alternate protein product (APP) documentation which is not a requirement for FSIS approval. Therefore, the information gathered by FNS from FSIS would be incomplete. Numerous email exchanges between the agencies indicate that all of the roadblocks identified in the previous submissions are currently relevant to this information collection request and are found in regulations.

A. Justification

1. Circumstances that make the collection of information necessary.

The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program. This program is designed to aid schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP), by determining the contribution a commercial product makes towards the meal pattern requirements described in these programs. The U.S. Department of Agriculture's Food and Nutrition Service (FNS), in conjunction with the Food Safety and Inspection Service (FSIS), Agricultural Marketing Service (AMS), and the National Marine Fisheries Service (NMFS) of the U.S. Department of Commerce (USDC) administer the CN Labeling Program. FNS, FSIS, AMS, and NMFS staff worked together to recommend, design, and implement the CN Labeling Program to review and monitor various types of commercial products.

Legislative Basis

The National School Lunch Act (NSLA) was enacted as a measure of national security, to safeguard the health and well being of the nation's children and to encourage the domestic consumption of agricultural commodities through federally supported school lunch programs. Section 9 (a) of the Act provides that "Lunches served by schools participating in the school lunch program...shall meet minimum nutritional requirements

prescribed by the Secretary on the basis of nutritional research.” Public Law 90-302 enacted in 1968 amended the NSLA and established the Special Food Service Program for Children (SFSPFC). This was a pilot program consisting of the forerunners to the Child Care Food Program and Summer Food Service Program. The SFSPFC was created in response to the growing number of working mothers and their children’s need for good nutrition when not attending school. Food service programs for children were further strengthened in 1975 when Congress separated the Child Care Food Program and Summer Food Service components of the SFSPFC and provided each with legislative authorization. The National School Lunch Act mandates the establishment of meal pattern requirements for the Summer Food Service Program (Section 13(f)) and for the Child Care Food Program (Section 17 (g)). The Child Nutrition Act of 1966 was enacted to strengthen and expand food service programs for children. Section 4(e) mandates minimum nutritional requirements for the SBP.

Background of CN Labeling Program

The Child Nutrition Labeling Program evolved in response to a need by child nutrition food service personnel to determine the contribution foods make toward the meal pattern requirements of the Child Nutrition Programs. During the 1970’s, changes and expansion in food technology and marketing increased the availability and use of commercially prepared

products such as beef patties and combination food items (burritos, pizzas, etc.) in the Child Nutrition Programs. These products posed a problem for food service personnel. It was difficult at the point of sale to determine their contribution towards the food based meal pattern requirements and assure compliance with Federal regulations for serving specific amounts of food. This fact, coupled with the anticipation of increased sales of these products to the Child Nutrition Programs, prompted FNS to form an evaluation committee to determine a means for properly evaluating the contribution of these products in meeting the meal pattern requirements. The Committee, composed of FNS, FSIS, AMS, and NMFS staff worked together to recommend, design, and implement the CN Labeling Program to review and monitor such products.

2. Purpose and use of information.

To participate in the CN Labeling Program, industry submits labels to FNS of products that are in conformance with the FSIS label approval program (for meat and poultry), and USDC label approval program (for seafood products). Non-meat and juice products follow the same submittal procedures and use inspectors with the FSIS, USDC, or AMS under a cross utilization program. FNS reviews the manufacturer's product formulation to determine the contribution a serving of the product makes towards the food based meal pattern requirements. The CN label statement, which

indicates the portion size and what that portion provides toward the meal pattern requirements, is also reviewed for accuracy. FNS uses all of this information to give the submitted label an approval status that indicates if the label can be used as part of the CN Labeling Program. There is no Federal requirement that commercially prepared combination products have CN label statements. The decision to require that products used in the Child Nutrition Programs contain a CN label statement is left to the local schools, child-care or summer institutions, or States administering these programs.

The CN Labeling Program plays a significant role in the food service management of Child Nutrition Programs. The scope and use of products labeled under the CN Labeling Program have continually expanded. The continued requests for CN labels by food manufacturers and food service directors are due to the following. (1) The increased use of commercially prepared products, (2) the requirement by some States that applicable processed donated food products bear a CN label statement, and (3) increased use of the CN label as a requirement in purchasing specifications prepared by local school food authorities. In addition, support for the use of CN label statements has come from the Inspector General, food trade associations and the National Advisory Council on Child Nutrition. These

groups believe that a broad CN Labeling Program could help assure compliance with food based meal patterns.

3. Use of information technology and burden reduction.

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002 whenever possible. Since the inception of the Program, the labeling procedures employed by FNS have evolved on a case-by-case basis to meet new situations. Currently, FNS does not use any automated collection methods. However, FNS does not control the format for this collection since it uses forms developed by the Food Safety and Inspection Service and the National Marine Fisheries Service. These agencies would have to use technological collection techniques before FNS could begin using these techniques. There are no current plans for FNS and its partners to use information technology to reduce burden.

4. Describe efforts to identify duplication.

No similar data collection information is available.

5. Impact on small businesses or other small entities.

There is a minimal impact on small business or small entities.

Manufacturers submit the same application they submit for FSIS and NMFS label approval. FSIS assumes the information collection burden

associated with FSIS Form 7234-1 (OMB approval number: 0583-0092, Expiration Date 12/31/2007. USDC assumes the same burden associated with the National Oceanic and Atmospheric Administration (NOAA) Form 89-819 (OMB approval number: 0648-0266) Expiration Date 07/31/2008. Fish manufacturers are required by NMFS to also provide calculations that show how the portion size meets meal pattern requirements. The application and label are either mailed or hand-carried to FNS.

6. Consequence of collecting the information less frequently.

Participation in the CN Labeling Program is voluntary. Only manufacturers who wish to place CN labels on their products must comply with program requirements and can submit CN labels on an as needed basis. If the collection activity is not conducted, the CN Labeling Program would have no basis on which to determine how or if a product meets the meal pattern requirements. Schools and institutions using CN labeling would lose the support and benefit that is offered by the CN Labeling Program.

7. Special circumstances related to the Guidelines of 5 CFR 1320.6.

The amount and frequency of submissions is determined by the company submitting for approval. This will often be more frequently than quarterly. If a company submits a CN label application, copies are needed for distribution to those involved in the approval process and one copy is sent back to the company. Copies are disseminated to:

- a. FNS
- b. Either FSIS, AMS, or NMFS depending on the type of product

Requiring respondents to retain records for more than three years:

- Copies of label approvals are to be retained as long as the product is being produced. Without these records the companies would have no basis on which to produce the products. (FSIS requires the approvals be retained.)
- The collection form is maintained by the appropriate agency. FNS makes no claims on the forms.

Requiring respondents to submit proprietary trade secret:

- To get a CN label approved, the company must submit their product formulation. Since this is proprietary information, only authorized Agency personnel have access to these records. Information release is not given for FOIA requests, when the material is proprietary.

8. Comments in response to the Federal Register Notice and efforts to consult outside agency.

FNS received two comments in response to the Federal Register (FR) Notice published Tuesday, April 8, 2008, volume 73, number 68, page 19047. Each comment was review for consideration, no actions were necessary. However, FNS did provide guidance to the commenter on how to identify and reduce the amount of unnecessary documentation that was historically included in the manufacturer's applications. The comments and FR notice are included.

Consultation Outside of the Agency

During the meeting held on April 21, 2008, the staff brainstormed ways that FNS could gather information from FSIS as opposed to receiving the

information from industry on products that have already been submitted to FSIS for approval. Numerous issues were identified during the investigation.

The Attendees:

- FSIS staff: Jeff Canavan, Tawana Duncan, Sally Jones, and Rosalyn Murphy-Jenkins
- FNS staff: Janice Fabina and Tim Vazquez

9. Explain any decision to provide any payment or gift to respondents.

There is no payment or gift provided to respondents.

10. Assurance of confidentiality provided to respondents.

All label applications are handled as confidential information. Labeling data is logged and stored on a microcomputer and backed up on the LAN (local area network) with access limited to CN Division staff only.

Proprietary information is not entered into the computer, but is kept in file cabinets in hard copy form. Filing cabinets are in a locked separate location from central files and are accessed only by CN Labeling Program staff.

11. Justification for sensitive questions.

There are no questions of a sensitive nature.

12. Estimates of the hour burden including annualized hourly cost.

The following estimates below are based on interviews with employees who process CN label requests (verify calculations/review label statements).

*There were 269 active respondents or companies submitting label applications during the reporting period (RP) of October 2006 to October 2007. If a company only submits one label in a year, their actual burden hours would only be 0.75. Another company might submit 100 labels and would therefore have 75 burden hours. This would be up to the company and normally would vary from year to year for a particular company. The average frequency of responses for each company is 7.8 labels per year.

Table 12.A.1 Burden Estimates

Affected Public: Business or other for profit

Respondent Type	Title	Estimated # of Respondents	Frequency of Response	Total Annual Responses (Col. DxE)	Average Burden Hours per Response	Estimated Total Burden Hours (Col. FxG)
Manufacturers	Reporting					
	Process CN Labels	269	7.8	2098.2	0.75	1573.65
	Reporting Total	269		2098.2		1573.65

Table .12.A.2 breaks out the hour record keeping estimates by description of activity.

FNS received approximately 2,098.2 applications and it takes 0.003 hours to review application for record keeping.

Table 12.A.2 Record Keeping Burden Estimates and Burden Summary

Affected Public: Business or other for profit

Respondent Type	Description of Activities	Estimated # of Respondents	Frequency of Response	Total Annual Responses (Col. DxE)	Average Burden Hours per Response	Estimated Total Burden Hours (Col. FxG)
Recordkeeping						
Manufacturers	Recordkeeping activity: systematically place approved application in filing cabinet	269	7.8	2098.2	0.003	6.2946
				2,098.20		6.29
	BURDEN SUMMARY					
	Reporting Burden	1573.65		2,098.20		1,573.65
	Recordkeeping Burden	6.29				6.29
		1579.94		2,098.20		1,579.94

Table.12.A.3 below reports the respondent costs associated with the Child Nutrition Labeling Program (CNLP). The median wage rate is estimated at \$14.75 per hour.

Approximately 2,098.2 applications are processed by 269 respondents at the frequency of 7.8 annually which takes approximately 0.75 hours. The average wage rate *\$14.75/hour is based on the Bureau of Labor Statistics’ National Compensation Survey for 43-9199 Office and Administrative Support Workers, All Other (<http://www.bls.gov/oes/current/oes439199.htm>).

Table 12.A.3 Annualized Cost to Respondents

Type of Respondent	Average Response Time per Response	Number of Respondents	Frequency of Response	Reporting & Record Keeping Burden	Hourly Wages Rate	Respondent Cost
Manufacturers	0.7500	269	7.8	1579.94	\$14.75	\$23,304.12
Total Annualized Cost to Respondent		269		1579.94		\$23,304.12

13. Estimate of other total annual cost burden to respondents or record keepers.

There are no capital/start-up cost, operating cost or annual maintenance costs involved in total annual cost burden.

The only cost is in printing the label. Labels can vary from 0.5 cents to 0.20 cents each. This variance is determined by what kind of label is used (e.g. black and white paper label or a glossy multi colored label).

14. Estimates of annualized cost to the Federal government.

The cost of the form is not borne by FNS. All forms mentioned here are pending approvals at OMB. FSIS assumes the information collection burden associated with this application (OMB approval number: 0583-0092 Expiration Date 12/31/2007).

Cost of Information Collection

$$\begin{aligned} & \underline{2,098.2 \text{ applications/RP} \times 0.75 \text{ hours/application}^* \times \$32.07/\text{hour}^{**} =} \\ & \underline{\$50,467} \\ & = \text{Total Annualized Cost to Federal Government} \\ & \$50,467 \end{aligned}$$

* This includes the average time spent to first and second review each label at 20 minutes total plus the time associated with processing (e.g. data entry and filing) each label at 25 minutes per label.

**\$32.07/hour is based on the average hourly wage of 3 FTE's salaries for 2008.

15. Explanation for program changes or adjustments.

There is a decrease burden hours from 1995 to 1580. This is due to how FNS internally track applications. This has allowed for a more accurate count. Also, six and quarter hours were added for the record keeping function that was not accounted for during the last submission.

16. Plans for tabulation and publication and project time schedule.

None of the information collected will be published.

17. Reason(s) display the OMB expiration date is inappropriate.

There are no reasons to preclude display of the OMB expiration date on data collection instruments.

18. Exceptions to the certification for Paperwork Reduction Act Submission.

There are no exceptions to the certification statement.