

FRESH FRUIT AND VEGETABLE PROGRAM - 7 CFR PART 211

OMB CLEARANCE NUMBER 0584-NEW

PROPOSED RULE (RIN 0584-AD96)

Susan Weeks, Program Analyst

Food and Nutrition Service, USDA

Special Nutrition Programs

Child Nutrition Division

Program Analysis and Monitoring Branch

3101 Park Center Drive

Alexandria, VA 22302

Phone: 703-305-1506

susan.weeks@fns.usda.gov

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

This is a new information collection, associated with rule making, for the Fresh Fruit and Vegetable Program (FFVP). This program is administered by the Food and Nutrition Service.

The Food, Conservation, and Energy Act of 2008, also known as the Farm Bill, became law on May 22, 2008, Public Law 110-234

(<http://www.gpo.gov/fdsys/pkg/PLAW-110publ234/pdf/PLAW-110publ234.pdf>), and

permanently authorized the Fresh Fruit and Vegetable Program. Section 4304 of P.L. 110-234 amended the Richard B. Russell National School Lunch Act (NSLA) by adding section 19, the *Fresh Fruit and Vegetable Program*. Under section 19 of the NSLA, beginning July 1, 2008, the FFVP became a nationwide program that will operate in selected schools in the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. The proposed rule, published February 24, 2012, Federal Register, Vol. 77, No. 37, p. 10981-10997, proposes to set forth the regulatory requirements which will be codified in Title 7, Part 211 of the Code of Federal Regulations upon adoption of a final rule.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The purpose of this information collection associated with rulemaking is to comply with the requirements of Section 4304 of Public Law 110-234 which amended the Richard B. Russell National School Lunch Act (NSLA) by adding section 19, the *Fresh Fruit and Vegetable Program (FFVP)*. FNS requires State agencies to report FFVP expenditures five times per year using the Financial Status Report SF-425 form (approved under OMB# 0348-0061, Expiration date: 02/28/2015) to include four quarterly reports and one final report via the Food Reporting System (FPRS). In addition, an annual FFVP report must be submitted to FNS by the State agency using a new form, FNS-822, to FNS by November 1 of the current school year disclosing program data such as the number of schools eligible to participate, the number of schools that applied, the number of schools selected, the enrollment and percentage of students eligible for free and reduced-price meals and per student allocation provided to each selected school, as well as the number of schools that applied and were not selected and the percentage of certified students at those schools. The data collected will be used to determine FFVP participation and to monitor SFA and SA compliance. SFAs are required to apply annually using a form developed by their State agency and they are to consolidate and submit monthly claims for reimbursement to their State agency.

3. Describe whether, and to what extent, the collection of information involves the use

of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

FNS is committed to complying with the E-Government Act, 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. All 54 State agencies and U. S. territories that administer these programs, one hundred percent (100%), submit data electronically on form SF-425 through the Food Program Reporting System (FPRS) <https://fprs.fns.usda.gov/> to FNS. The annual FFVP report (FNS-822) will be submitted via e-mail to FNS.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.

There is no similar information collection available. Every effort has been made to avoid duplication. This is a new collection. FNS solely administers the FFVP and has reviewed USDA reporting and record keeping requirements. This information is not currently reported to any other entity outside of FNS.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Information being requested has been held to the minimum required for the intended use. Although smaller State Agencies are involved in this data collection effort, they deliver the same program benefits and perform the same function as any other State Agency. Thus, they maintain the same kinds of information on file. FNS estimates that approximately 1-3% of the 54 State Agencies are considered small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information is being collected for the purpose of administering a new program that will become an on-going program. The consequence to Federal program or policy activities if this collection is not conducted or is conducted less frequently is that FNS would not be able to adequately monitor SFA and SA compliance and it could also delay the allocation of Federal funds.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner that is inconsistent with 5 CFR 1320.5:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response

to that notice and describe actions taken by the agency in response to these comments.

A 60-day Federal Register Notice is embedded in the Proposed Rule, 7 CFR Part 211 “Fresh Fruit and Vegetable Program,” published February 24, 2012, Federal Register, Vol. 77, No. 37, p. 10981. The comment period ended April 24, 2012 and no comments were received on the information collection requirements for this rule.

- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported.**

FNS consults with its Regional Offices on any proposed changes as the result of legislative, regulatory, or administrative changes. The Regional Offices are in constant contact with State Agencies which provide feedback on FNS processes and procedures that may impact them.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift was provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Department complies with the Privacy Act of 1974. No confidential information is associated with the burden related to the analysis, implementation, record maintenance and reporting of Fresh Fruit and Vegetable Program data by the State agency to FNS.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature included in this information collection.

12. Provide estimates of the hour burden of the collection of information. The statement should include:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burned estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

Affected Public: 10,020 State, Local and Tribal Agencies: State Agencies (54) and School Food Authorities (4,983) and Schools (4,983)

Financial Reporting: FNS requires State agencies to report FFVP expenditures five times per

year to include four quarterly reports and one final report using the Financial Status Report SF-425 form (approved under OMB# 0348-0061, Expiration date: 02/28/2015) via the Food Reporting System (FPRS). FNS estimates that 54 State agencies will submit 5 reports annually for a total of 270 annual responses ($54 \times 5 = 270$). The estimated burden per response is 1.5 hours for a total reporting burden of 405 hours annually ($270 \times 1.5 = 405$). The estimated recordkeeping burden per response is estimated at 0.25 hours for a total recordkeeping burden of 67.5 hours annually ($270 \times 0.25 = 67.5$). The total burden allocated for form SF-425 is 472.5 burden hours. The burden for the SF-425 form is already approved under another information collection. Therefore, the burden calculations for the SF-425 for the FFVP are included in the burden chart, but are not included in the total burden for the FFVP information collection.

Participation Report: State agencies will be required to submit to FNS an annual FFVP Participation Report using a new form FNS-822. FNS estimates that 54 State agencies will submit 1 report annually for a total of 54 annual responses ($54 \times 1 = 54$). The estimated burden per response is 1.5 hours for a total reporting burden of 81 hours annually ($54 \times 1.5 = 81$). The estimated recordkeeping burden per response is estimated at 0.25 hours for a total recordkeeping burden of 13.5 hours annually ($54 \times 0.25 = 13.5$). The total burden allocated for form FNS-822 is 94.5 burden hours.

Program Application and Claims: FNS estimates that the majority of the estimated burden hours for the FFVP will be for State agencies, school food authorities, and schools to report and maintain records for program applications and claims for reimbursement. The total estimated burden has been determined to be 375,352.5 hours for these and other related requirements.

The estimated total annual burden for this information collection is 375,447 hours. The following table reflects burden associated with the information collection requirements.

**ESTIMATED ANNUAL BURDEN FOR 0584-NEW,
FRESH FRUIT AND VEGETABLE PROGRAM 7 CFR PART 211**

Reporting						
Reporting Burden	Citation / Instrument	Estimated Number of Respondents	Freq. of Response	Average Annual Responses	Average Burden per Response	Annual Burden Hours
State agency (SA) must submit first quarter estimates by June 1 to receive funds	7 CFR 211.5 Estim. of First Quarter Funds via email to FNS (No FNS Instrument)	54	1	54	0.25	13.5
SA shall solicit applications for participation	7 CFR 211.10(d) SA Solicitation of Applications (State Instrument)	54	1	54	1.25	67.5
SA shall submit an annual FFVP report to FNS	7 CFR 211.11(a)(1) FNS-822	54	1	54	1.5	81
SFAs consolidate monthly claims from schools and submit claim forms to SA for reimbursement	7 CFR 211.9(a) Program Claims (State Instrument)	4,983	9	44,847	1.5	67,270.50
SFA must submit to SA documented corrective action, for program violations	7 CFR 211.14(b) Corrective Action Plan (State Instrument)	4,983	1	4,983	3	14,949
Schools submit monthly claims for reimbursement for both food and non-food costs	7 CFR 211.9(a) and 211.10(e)(10) Program Claims (State Instrument)	4,983	9	44,847	0.5	22,423.50
School completes an application, implementation plan and partnership activities. Returning schools update information	7 CFR 211.10(d) Program Application and Plan (State Instrument)	4,983	1	4,983	1.25	6,229.20
SA must submit quarterly and annual Financial Status Report *	7 CFR 211.11(a)(2) and 2.11(a)(3)	54	5	270	1.5	405

	SF-425					
Total Reporting Burden for Rule 0584-NEW, Part 211		10,020	---	99,822	---	111,034

*not included in total burden

Recordkeeping						
Recordkeeping Burden	Citation	Estimated Number of Respondents	Freq.of Response	Average Annual Responses	Average Burden per Response	Annual Burden Hours
State agency (SA) must maintain records to support reimbursement to SFAs and reports submitted to FNS.	7 CFR 211.8(b)	54	9	486	0.25	121.5
SA maintains claims for reimbursement and records of financial action/compliance	7 CFR 211.9(g) and 2.11(b)	54	1	54	0.33	17.82
SA maintains applications for participation	7 CFR 211.10(d)	54	1	54	2.66	143.64
SA maintains investigations and actions	7 CFR 211.14 (b)&(d)	54	1	54	0.25	13.5
SA maintains records pertaining to claims against schools	7 CFR 211.19(c)	54	1	54	0.33	17.82
SFA maintains monthly school claims for reimbursement and supporting documentation	7 CFR 211.9(a) and 211.11(b)	4,983	9	44,847	5	224,235
SFA maintains records of school conducting program accordingly (review conducted with on-site review required under 210.8)	7 CFR 211.14(b)	4,983	1	4,983	3	14,949
Schools maintain program records for 3 years after the end of fiscal year	7 CFR 211.10(e)(15)	4,983	1	4,983	5	24,915
Total Recordkeeping Burden for Rule 0584-NEW, Part 211		10,020	---	55,515	---	264,413
TOTAL REPORTING AND RECORDKEEPING BURDEN		10,020		155,337		375,447

SUMMARY OF BURDEN (OMB #0584-NEW) 7 CFR PART 211	
TOTAL NO. RESPONDENTS	10,020
AVERAGE NO. RESPONSES PER RESPONDENT	15.50269
TOTAL ANNUAL RESPONSES	155,337
AVERAGE HOURS PER RESPONSE	2.41699
DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	375,447

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

The estimate of respondent cost is based on the burden estimates and utilizes the U.S. Department of Labor, Bureau of Labor Statistics May 2011 National Occupational and Wage Estimates Statistics, Occupational Group 25-0000 (<http://www.bls.gov/bls/wages.htm>). The hourly mean wage (for education-related occupation) for functions performed by State agency and local education agency staff are estimated at \$24.46 per staff hour.

TOTAL COST TO PUBLIC = 375,447 hours X \$24.46 per hour = \$9,183,433.62

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There is no start-up, operating or annual maintenance costs for this collection of information.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

It is estimated that federal employees receiving an average General Schedule (GS) grade 12 step 6 wage based on the Washington DC-Northern Virginia locality area take approximately 320 hours to analyze data received from State Agencies: $\$41.85 \times 320 = \$13,392.00$ (estimated annualized cost).

15. Explain the reasons for any program changes or adjustments reported in item 13 or 14 of the OMB 83-1.

This is a new collection. This program change will add 375,447 burden hours to OMB collection inventory.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

This collection does not employ statistical methods and there are no plans to publish the results of this collection for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18. Explain each exception to the certification statement identified in Item 19

"Certification for Paperwork Reduction Act."

There are no exceptions to the certification statement.