

**NATIONAL SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM:
NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL AS REQUIRED BY**

THE HEALTHY, HUNGER-FREE KIDS ACT OF 2010

PROPOSED RULE (RIN 0584-AE09)

SUPPORTING STATEMENT

OMB CLEARANCE NUMBER 0584-NEW

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- 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 collection, however, once OMB approval is complete the Food and Nutrition Service (FNS) will merge the burden hours with OMB control number 0584-0006 titled,

“7 CFR Part 210 National School Lunch Program”, expiration date 08/31/2015. The associated burden for the School Breakfast Program will be carried in this information collection to avoid duplication of burden.

Section 208 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296 (<http://www.gpo.gov/fdsys/pkg/PLAW-111publ296/pdf/PLAW-111publ296.pdf>) amended Section 10 of the Child Nutrition Act (CNA), 42 U.S.C. 1779, to give new authority to and require the Secretary of Agriculture to promulgate proposed regulations to establish science-based nutrition standards for all foods and beverages sold on the school campus at any time during the school day outside of the Federal school meal programs. USDA published a proposed rule in the Federal Register to establish the nutrition standards for all foods sold in school. The rule also implements Section 203 of the HHFKA which amended section 9(a) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758(a), by requiring that schools make potable water available to children at no charge in the place where lunches are served during the meal service. USDA will ultimately publish a final rule in the Federal Register to amend the NSLP regulations (7 CFR Part210) to incorporate these provisions.

- 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 the HHFKA Public Law 111-296. The rule increases the recordkeeping burden for documenting compliance with the new standards for all foods sold in schools which will be evaluated during State Agency (SA) administrative reviews of School Food Authorities (SFAs). FNS would not be able to properly monitor SA and SFA compliance without this collection of information.

- 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. There is no reporting burden for this collection; there is no information that will be collected electronically. The burden is for recordkeeping only.

- 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 data collection available. Every effort has been made to avoid duplication. FNS has reviewed USDA reporting requirements, state administrative agency requirements. FNS solely administers and monitors the Child Nutrition Programs.

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

Information being requested or required has been held to the minimum for the intended use. Although smaller SFAs will be involved in this information collection effort, they deliver the same program benefits and perform the same function as any other SFA. Thus, they maintain the same kinds of information. FNS estimates that up to 3% of the respondents 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 collected for the purpose of administering an ongoing program. If this information was not collected, or collected less frequently, FNS would not be able to properly

monitor for compliance. This information collection allows a SA to identify findings of non-compliance by the SFA with the nutrition standards requirements for all foods sold at schools.

7. 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.**

FNS' proposed rule "National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010" (FNS-2011-0019) will describe the information gathering requirements, and also provide a 60-day comment period. During this time, interested members of the public will have the opportunity to provide FNS with their input concerning the necessity, practical utility, accuracy, and merit of the information collection activities FNS is proposing.

- **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 Regional offices regarding any proposed changes as the result of legislative, regulatory or administrative changes. Regional offices are in contact with State agencies which provide feedback on FNS processes and procedures for the information collection.

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

No payment or gift will be 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 this information collection.

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 burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

FNS is requesting an increase of 926,935 burden hours for recordkeeping to document compliance with the new nutrition standards. The estimated average number of respondents for this rule is 122,662 (57 State agencies, 20,858 school food authorities, and 101,747 schools). The following table reflects the estimated burden associated with the information collection requirements.

ESTIMATED ANNUAL BURDEN FOR 0584-NEW, 7 CFR PART 210

NATIONAL SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM:

NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL

Recordkeeping						
	Section	Estimate d Number of Record- keepers	Record s per Record -keeper	Averag e Annual Records	Averag e Burden per Record	Annual Burden Hours
SA shall ensure that the LEA complies with the nutrition standards for competitive foods and retains documentation demonstrating compliance.	7 CFR 210.18(h) (7)	57	73	4,161	0.25	1,040
LEAs and SFAs shall be responsible for maintaining records documenting compliance with the competitive food standards.	7 CFR 210.11(b) (3)	20,858	1	20,858	20	417,160
Organizations responsible for competitive food service at various venues in schools shall maintain records.	7 CFR 210.11(b) (3)	101,747	1	101,747	5	508,735
Total Recordkeeping for Proposed Rule		122,662		126,766	7.3122	926,935

SUMMARY OF BURDEN (OMB #0584-NEW)	
TOTAL NO. RECORDKEEPERS	122,662
AVERAGE NO. RECORDS PER RECORDKEEPER	1.033457
TOTAL ANNUAL RECORDS	126,766
AVERAGE HOURS PER RECORD	7.31217
DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	926,935

# Recordkeepers	# Records Per Recordkeeper	Total Annual Records	Hours Per Record	Total Annual New Burden
122,662	1.033457	126,766	7.31217	926,935

- **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 Statistics, Occupational Group (25-0000) (<http://www.bls.gov/bls/wages.htm>). The hourly mean wage (for education-related occupations) for functions performed by State agency and local education agency staff are estimated at \$24.46 per staff hour.

TOTAL COST TO PUBLIC = 926,935 hours X \$24.46 per hour = \$22,672,830.10

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 10 hours (20 SAs x 0.5 hour each) to analyze administrative review data related to nutrition standards compliance for all foods during management evaluations of SAs and approximately 10 hours for analyzing compliance during participation on administrative reviews of SFAs: $\$41.85 \times 20 = \837 (estimated annualized cost to federal government).

- 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 rulemaking will add 926,935 burden hours for recordkeeping in the OMB information 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.

We are not seeking approval concerning the display of the expiration date.

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.