

**LOCAL SCHOOL WELLNESS POLICY IMPLEMENTATION UNDER THE
HEALTHLY, HUNGER-FREE ACT of 2010**

7 CFR PARTS 210

RIN 0584-AE25

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 information collection request for the proposed rule titled “Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010,” RIN 0584-AE25.

Upon approval from OMB, burden from this collection will be merged into a currently approved information collection titled, “National School Lunch Program” (NSLP), OMB Number 0584-0006 which expires on August 31, 2015.

The proposed rule would require all local educational agencies participating in the National School Lunch Program and School Breakfast Program to meet expanded local school wellness policy requirements consistent with the new requirements set forth in section 204 of the Healthy, Hunger-Free Kids Act of 2010. This proposed rule would establish the framework for the content of the local school wellness policies, ensure public participation in the development of such policies, and require periodic assessment of compliance and reporting on the progress toward achieving the goals of the local school wellness policy. Additionally, this proposed rule would require each local educational agency to make information about local school wellness policy implementation for all participating schools available to the public on a periodic basis. The provisions of this proposed rulemaking would ensure local educational agencies establish and implement local school wellness policies that meet minimum standards designed to ensure a school environment that promotes sound nutrition and student health, reduce childhood obesity, and provide transparency to the public on school wellness policy content and implementation.

Section 204 also requires that the local educational agency periodically measure and assess the policy and determine compliance, as well as make information about local school wellness policy implementation for all participating schools available to the public in the State on a periodic basis. This proposed rule would require local educational agencies to develop an annual progress report for each school's wellness policy implementation over the previous school year and make this report available to the public in an easily accessible, easily understood manner. Finally, the proposed rule requires each local educational agency to retain records demonstrating compliance with local school wellness policy requirements. The provisions of this proposed rulemaking would ensure local educational agencies establish and implement local school wellness policies that meet minimum standards designed to promote sound nutrition, student health, reduce childhood obesity, and provide transparency to the public on school wellness policy content and implementation. The proposed rule also requires local school wellness policies to include limits on food marketing and advertising on the school campus, during the school day to only those foods that comply with the Interim Final Rule, *Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*.

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 204 of Public Law 111-296 for local educational agencies. Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265), required each local

educational agency (LEA) participating in the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP) to establish a local school wellness policy. Subsequently, section 204 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA, P.L. 111–296, December 13, 2010) added a new section 9A to the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758b) which expands the scope of wellness policies. Specifically, section 9A of the NSLA, 42 USC 1758b, as added by the HHFKA, requires LEAs to establish local school wellness policies for all schools under the jurisdiction of the LEA, which, at a minimum, include:

- Goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness (section 9A(b)(1) of the NSLA); and
- Nutrition guidelines for all foods available on each school campus during the school day consistent with USDA’s meal pattern requirements and the nutrition standards for competitive foods, and designed to promote student health and reduce childhood obesity (section 9A(b)(2) of the NSLA).

This proposed rule would increase the recordkeeping and public disclosure burden for local educational agencies (LEA). Each LEA must establish a local wellness policy for all participating schools and publicly disclose the schools’ annual progress towards meeting the wellness policy goals. Additionally, once every three years, LEAs are required to conduct assessments and make updates and modifications to the policies as needed; the results of the updates and modifications are to be publicly disclosed. LEAs must retain records demonstrating compliance with the local school wellness requirements. See the attached Burden Narrative for details on the use of this collection.

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 of 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

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.

Every effort has been made to avoid duplication. FNS has reviewed USDA reporting requirements, state administrative agency reporting requirements, and special studies by other government and private agencies. FNS solely monitors and administers 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 required for the intended use. No small entities are impacted by this collection of information.

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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 collected annually is required for local educational agencies. If this information is not collected or is collected less frequently, the identification of local educational agencies participating in the school meals programs that require a local school wellness policy and the results of those policies would be unavailable.

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 circumstances that will cause the information collection to be inconsistent with the guidelines of 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 titled "Local Wellness Policy Implementation Required Under the Healthy, Hunger-Free Kids Act of 2010". Comments will be received on the information collection requirements during the 60 day comment period.

- **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.**

When FNS revises an information collection package, the information is posted on the Agency Web page for review and comment by Regional Offices, State agencies, community groups, and the public. FNS also 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 oversee local educational agencies to provide feedback on 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 clearance package.

12. Provide estimates of the hour burden of the information collection. 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 estimated 215,532 hours for publicly disclosing the results of local school wellness policies completed by local educational agencies. FNS is requesting an estimated 26,072.5 hours for recordkeeping requirements for local educational agencies. The following table reflects burden associated with the new information collection requirements.

**ESTIMATED ANNUAL BURDEN FOR 0584-NEW,
LOCAL WELLNESS POLICY IMPLEMENTATION UNDER THE HEALTHY,
HUNGER-FREE KIDS ACT OF 2010**

Affected Public	Section	Est. No. of Respondents	Responses per Respondent	Total Annual Responses	Est. Total Hours per Response	Est. Total Burden
Public Disclosure						
Each LEA must establish a local wellness policy for all participating schools	210.30(a)	20,858	5	104,290	1.0	104,290
LEAs are required to report schools annual progress towards meeting wellness policy goals, objectives and benchmarks and make report available to public.	210.30 (e)(2), (d)(2), & (d)(3)	20,858	5	104,290	1.0	104,290
LEAs are required to conduct triennial assessments and make results available to public and make updates and modifications to policies as needed	210.30 (e)(3), (d)(3), & (e)(4)	6,952	1	6,952	1.0	6,952
Total Estimated Public Disclosure Burden		20,858	10.3333	215,532	1.0	215,532
Recordkeeping						
LEAs must retain records demonstrating compliance with the local school wellness requirements.	210.30(f)	20,858	5	104,290	0.25	26,072.5
Total Estimated Recordkeeping Burden		20,858	5	104,290	0.25	26,072.5
Total of Public Disclosure and Recordkeeping for LWP						

		Est. No. of Respondents	Responses per Respondent	Total Annual Responses	Est. Total Hours per Response	Est. Total Burden
Public Disclosure		20,858	10.33	215,532	1.0	215,532
Recordkeeping		20,858	5	104,290	0.25	26,072.5
Total		20,858	15.33	319,822	.75	241,604.5

- **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 2012 National Occupational and Wage Estimates Statistics, Occupational Group 35-0000 (http://www.bls.gov/oes/current/oes_nat.htm).

The hourly mean wage (for Supervisors of Food Preparation and Serving Workers) for functions performed by local education agency is estimated at \$16.05 per staff hour.

TOTAL COST TO THE PUBLIC =241,604.5 hours X \$16.05 per hour = \$3,877,752

13. Provide estimates of the total annual cost burden to respondents or recordkeepers 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 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 wages based on the Washington DC-Northern Virginia locality area will spend approximately 40 hours annually in communication with State agencies (SA) regarding the local wellness program:
 $\$42.27 \times 40 = \$1,690.80$ (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-I.

This is a new information collection associated with rulemaking for 0584- AE25, Local Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010. This information collection will increase the OMB inventory by 241,604.5 burden hours for public disclosure and recordkeeping due to program changes to comply with the statutory requirements in Section 204 of Public Law 111-296.

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

This collection does not entail planned statistical use and there are no plans to publish the results of this collection for statistical analyses.

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.