

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

7 CFR PARTS 210 and 220

RIN 0584-AE25

OMB CLEARANCE NUMBER 0584-0592

Susan Weeks, Program Analyst

Food and Nutrition Service, USDA

Program Monitoring and Operational Support Division

Child Nutrition Programs

3101 Park Center Drive

Alexandria, VA 22302

PH: 703-305-1506

susan.weeks@fns.usda.gov

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- A. Burden Narrative
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Upon approval of the final rule, FNS will merge the public disclosure and recordkeeping burden hours for LEAs participating in the National School Lunch Program into a currently approved information collection, OMB control number #0584-0006, titled "National School Lunch Program" (NSLP).

A. JUSTIFICATION

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 final rule (RIN 0584-AE25) titled "Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010" (HHFKA). OMB filed a comment, under OMB control number 0584-0592, for the Information Collection Request (ICR) for the proposed rule that was published February 26, 2014, Federal Register, Vol. 79, No. 38, pages 10693-10706. The final rule incorporates into 7 CFR Part 210 provisions from section 204 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>), December 13, 2010.

Section 204 of the HHFKA added a new section 9A to the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758b. The NSLA authorizes the National School Lunch Program (NSLP). The provisions in section 204 of the HHFKA bring additional stakeholders into the development, implementation, and review of the local school wellness policies, expand the

scope, and require public updates on the content and implementation. Section 9A of the NSLA requires local educational agencies (LEAs) participating in the National School Lunch Program and/or School Breakfast Program to establish local school wellness policies that meet the expanded requirements. This final rule promulgates a new section of regulations, 7 CFR 210.30, that establish the local school wellness policy requirements.

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 LEAs. The final rule titled “Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010” incorporates requirements for all LEAs participating in the National School Lunch Program and/or School Breakfast Program to meet expanded local school wellness policy requirements consistent with the new requirements set forth in section 204 of the HHFKA. The final rule establishes the framework for the content of the local school wellness policies, ensures public participation in the development of such policies, and requires periodic assessment of compliance and reporting to the public on the progress toward achieving the goals of the local school wellness policy by making information about local school wellness policy implementation for all participating schools available to the public on a periodic basis.

The final rule requires LEAs to develop a triennial progress assessment for each school’s wellness policy implementation and make the assessment results available to the public in an

easily accessible, easily understood manner. Finally, the final rule requires each LEA to retain records demonstrating compliance with local school wellness policy requirements.

The final rule increases the recordkeeping and public disclosure burden for LEAs. Each LEA must establish a local wellness policy for all participating schools and inform the public annually about the policy. In addition, once every three years LEAs are required to conduct assessments and publicly disclose the schools' triennial progress towards meeting the wellness policy goals, including any updates and modifications to the policies. LEAs must retain records demonstrating compliance with the local school wellness requirements.

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. State agencies are not considered small entities as state populations exceed the 50,000 threshold for a small government jurisdiction. However, school food authorities, LEAs, and schools generally meet the definition of a “small governmental jurisdiction” which meets the definition of “small entity” in the Regulatory Flexibility Act. FNS estimates that 98% (approximately 19,426) of respondents are small entities impacted by this collection of information.

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 LEAs. If this information is not collected or is collected less frequently, the identification of LEAs participating in the school meals programs that have not yet implemented a local school wellness policy and the results of the policies would be unavailable. In addition, the data is used for statistical studies and research regarding program trends.

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 was embedded in the proposed rule titled "Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010", published February 26, 2014, Federal Register, Vol. 79, No. 38, pages 10693-10706. The comment period for the information collection ended on April 28, 2014.

FNS received 57,838 public comments total on the proposed rule. The final rule includes a detailed discussion of the public comments and FNS response. Regarding information collection, FNS received one individual comment in support of the information collection stating that the Healthy, Hunger-Free Kids Act of 2010 explicitly authorizes FNS to regulate school wellness policies to promote child nutrition. Approximately 50 comments expressed support for the proposed recordkeeping requirements. One State Department of Education stated that the recordkeeping and public disclosure burden on LEAs would exceed the FNS estimate. The commenter assumed the estimate did not account for larger school districts and recommended that FNS modify its estimates for the workload burden based on estimates provided by a sample of LEAs of various sizes. FNS based its proposed burden calculation on the average number of

schools per SFA nationwide; therefore, the calculation already accounts for SFAs with a large number of schools and SFAs with only one or a few schools. The same State Department of Education estimated that its administrative review process workload will increase at least 700 hours per year as a result of the proposed local school wellness policy requirements. The State agency disagreed with FNS' estimate that there would be no additional burden for the State agency and recommended that FNS modify its estimates for the workload burden based on the number of LEAs and schools being reviewed by the State agency. Proposed §210.18(h)(7) would require State agencies to ensure the LEA complies with the local school wellness requirements proposed in §210.30 by incorporating local school wellness policy compliance in their existing administrative review process. As noted in the Paperwork Reduction Act impact statement in the preamble to the Local School Wellness Policy Proposed Rule, FNS does not anticipate this provision will result in a significant increase to the annual information collection burden on State agencies as they conduct administrative reviews of LEAs once every three years. FNS had determined the information collection burden associated with local school wellness policy implementation was part of the existing administrative review process. It should be noted that the burden for this process will be undergoing further review as part of an upcoming final rule specifically on the administrative review process.

In response to these comments, the final rule reduces the burden by 253,749 hours by:

- Eliminating the proposed requirement at §210.20(e)(2) that would have required annual reporting of each school's progress in meeting policy goals;
- Clarifying that only LEAs are required to establish local school wellness policies, not each individual school; and

- Reducing the number of responses, including reports and records, to be submitted by only LEAs, not each individual school.

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 LEAs 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 151,967 hours for LEAs to publicly disclose local school wellness policies and their triennial assessment results. FNS is requesting an estimated 4,956 hours for recordkeeping requirements for LEAs. The following table reflects burden associated with the new information collection requirements.

**ESTIMATED ANNUAL BURDEN FOR 0584-0592,
LOCAL WELLNESS POLICY IMPLEMENTATION UNDER THE HEALTHY,
HUNGER-FREE KIDS ACT OF 2010
7 CFR PART 210 and 220**

Affected Public	7 CFR Reference	Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Estimated Hours per Response	Estimated Annual Burden Hours
Public Disclosure						
Each LEA must establish a local wellness policy for all participating schools	210.30(a) 210.30(c)(5)	19,822	1	19,822	5	99,110
LEAs must inform the public annually about the local wellness policy and make any updates available to the public.	210.30(d)(2) 220.7	19,822	1	19,822	1	19,822
LEAs are required to conduct triennial assessments and make assessment results and any updates available to public	210.30(d)(3), (e)(2), (e)(3)	6,607	1	6,607	5	33,035
Total Estimated Public Disclosure Burden		19,822	2.3333	46,251	3.2857	151,967
Recordkeeping						
LEAs must retain records to document compliance with local school wellness policy requirements.	210.15(b)(9) 210.30(f)	19,822	1	19,822	0.25	4,955.5
Total Estimated Recordkeeping Burden		19,822	1	19,822	0.25	4,955.5
Total of Public Disclosure and Recordkeeping						
		Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Estimated Hours per Response	Estimated Annual Burden Hours

		nts		es	Response	
Public Disclosure		19,822	2.3333	46,251	3.2857	151,967
Recordkeeping		19,822	1	19,822	0.25	4,955.5
Total		19,822	3.3333	66,073	2.375	156,923

SUMMARY OF BURDEN (OMB #0584-0592)	
TOTAL NO. RESPONDENTS	19,822
AVERAGE NO. RESPONSES PER RESPONDENT	3.3333
TOTAL ANNUAL RESPONSES	19,822
AVERAGE HOURS PER RESPONSE	2.375
TOTAL NEW BURDEN REQUESTED WITH NEW RULE)	156,923*

* Upon approval by OMB these 156,923 hours will be merged with OMB #0584-0006.

- **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 2014 National Occupational and Wage Estimates Statistics, Occupational Group 25-0000 (http://www.bls.gov/oes/current/oes_nat.htm).

The hourly mean wage (for education-related occupations) for functions performed by the LEA is estimated at \$25.10 per staff hour.

TOTAL COST TO THE PUBLIC = 156,923 hours X \$25.10 per hour = \$3,938,767

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 10 hours annually in communication with State agencies (SA) during Management Evaluations regarding the monitoring of the local school wellness policies:

$\$42.27 \times 10 = \422.70 (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 School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010. This information collection will increase the OMB inventory by a total of 156,923 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.

The burden hours for the final rule have been modified from those in the proposed rule. The changes reflect the final rule requirements for burden for the LEAs and a slight decrease in the

current number of estimated LEAs. The total number of LEAs has decreased. This results in an adjustment to the number of respondents for all requirements impacting LEAs.

- 210.30(a); 210.30 (c)(5): The final rule clarifies that only LEAs are required to establish local school wellness policies, not each individual school which decreased the number of responses by 83,432; however, the estimated hours per response were increased accordingly to respond to comments regarding burden hours to ensure no decrease in the burden hours for this provision. The aforementioned decrease in the number of LEAs caused an additional reduction in public disclosure of 1,036 responses. The net impact to burden is a reduction of 5,180 burden hours for this provision.
- 210.30 (d)(2); 220.7: Based on comments received, FNS has removed from the final rule the proposed 210.30(e)(2) which would have required annual reporting of each school's progress in meeting policy goals. Eliminating the proposed annual reporting requirement caused a significant reduction of 83,432 responses and 83,432 burden hours for public disclosure of the proposed report. The requirement to annually inform the public about the local wellness policy was retained, thus some burden remains. The decrease in the number of LEAs caused an additional reduction in public disclosure of 1036 responses and 1036 burden hours (net reduction to burden is 84,468 hours).
- 210.30(d) (3), (e)(2), (e)(3): Due to comments received, an increase was made in the estimated number of hours per response for LEAs conducting triennial assessments which increased the burden hours for public disclosure by 26,428 hours. Accordingly, a decrease in the number of LEAs caused a reduction in

public disclosure of 345 responses and 345 burden hours for this provision resulting in a net increase to burden of 26,083 hours.

- 210.15 (b)(9); 210.30(f): The clarification of only LEAs establishing local wellness policies and the reduction in number of LEAs also resulted in a decrease in responses and burden for recordkeeping. The net reduction is 20,081 responses and 21,117 burden hours.

Therefore, the overall changes between the proposed burden and the final burden for the final rule resulted in an overall decrease of 63,565 hours for public disclosure and a decrease of 21,117 hours for recordkeeping. However, this is a new collection, so it will increase the OMB inventory by 66,073 responses and 156,923 hours.

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.