

## **SUMMARY OF CLEARANCE**

### **Procurement Requirements for the National School Lunch**

#### **OMB CLEARANCE NUMBER 0584-NEW**

Proposed rule 7 CFR Parts 210, 215, and 220, Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs, was published December 30, 2004, at 69 FR 78340. This rule will amend regulations governing procedures related to the procurement of goods and services in these programs.

Currently, the National School Lunch Program (NSLP) burden hours are accounted for under docket #0584-0006, 7 CFR Parts 210, National School Lunch Program. Due to the possibility of other regulatory actions that may affect this package and to avoid any delay in implementation, we are processing this new burden under the NSLP as a new collection. Once this burden is approved and the rule is finalized, FNS will combine this burden with the #0584-0006 collection under a change request.

## JUSTIFICATION STATEMENT 7 CFR PART 210

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The National School Lunch Act (NSLA, P.L. 79-396), as amended, authorizes the National School Lunch Program (NSLP). Under Section 2 thereof, "It is hereby declared to be the policy of Congress, 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 nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs." Section 10 of the Child Nutrition Act (CNA) of 1966 (P.L. 89-642), as amended, requires the Secretary of Agriculture to "prescribe such regulations as the Secretary may deem necessary to carry out this Act and the Richard B. Russell National School Lunch Act (NSLA)..." Pursuant to that provision, the Food and Nutrition Service (FNS) of USDA has issued Part 210 to implement the NSLP. Part 210 includes requirements governing:

- a. The application by local level organizations to initiate NSLP operations and the execution of grant agreements with them.
- b. The maintenance of records by State and local organizations to document their compliance with NSLP requirements.
- c. The submission of reports on the results of program operations and the use of program funds.

The NSLP is a food assistance program. The program benefit is a lunch that meets the nutritional requirements prescribed by USDA in accordance with Subsection 9(a) of the NSLA. That provision requires that "Lunches served by schools participating in the school lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research..."

Needy children may receive their lunches free or at a reduced price. Paragraph 9(b)(3) of the NSLA requires that "Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family-size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch. Any child who is a member of household whose income, at the time the application is submitted, is at an annual rate greater than the applicable family-size income level of the income eligibility guidelines for

free lunches, as determined under paragraph (1), but less than or equal to the applicable family-size income level of the income eligibility guidelines for reduced-price lunches, as determined under paragraph (1), shall be served a reduced-price lunch.” 7 CFR Part 245, Determining Eligibility for free and Reduced-Price Meals and Free Milk in schools (OMB No. 0584-0026) sets forth policies and procedures for implementing these provisions. Part 245 requires schools operating the NSLP to determine children’s eligibility for free and reduced-price lunches on the basis of each child’s household income and size, and to establish operating procedures that will prevent physical segregation, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

On December 30, 2004, FNS published a proposed rule at 69 FR 78340 seeking to amend 7 CFR parts 210, 215 and 220, to revise the National School Lunch, Special Milk and School Breakfast Programs, respectively, regarding the use of Federal funds for the provisions of meals, milk and other services for schools operating these programs.

**2. Indicate how, by whom, how frequently, 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.**

These regulatory changes will ensure optimum utilization of funds in the nonprofit school food service account. The burden associated with the procurement requirement will only affect schools participating in the National School Lunch or School Breakfast Programs that contract with food service management companies. The burden associated with schools participating in the Special Milk Program would be minimal because milk is often the sole procured item and the procurement is generally handled at the school food authority level.

This rule would prohibit a school food authority from using funds in the nonprofit school food service account for expenditures made under an improperly procured contract, including any cost reimbursable provision of a contract that permits the contractor to receive payments in excess of the contractor's actual net allowable costs. State agencies would also be responsible for reviewing and approving contracts between school food authorities and food service management companies prior to their execution.

**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.**

Since the program participants vary considerably in level of sophistication, information related to the use of improved information technology to reduce burden is limited. FNS strives to comply with the E-Government Act. To the extent possible, agencies within the States use electronics to transfer information for SFAs where applicable.

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

We are unaware of any other program that has similar information already available or that requires the maintenance of the same records needed to document the proper operation of the NSLP. No State or local organization collects this same information for other Federal agencies, as the NSLP is administered at the Federal level solely by FNS.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.**

Some SFAs undoubtedly meet the definition of "small organizations". However, no correlation exists between the applicant's size and its eligibility to operate the NSLP. Each SA must determine whether the information it requests for use in monitoring compliance can be abridged in the case of small SFAs under its jurisdiction.

Although smaller SFAs record fewer financial transactions involving the NSLP, they deliver the same program benefits and perform the same functions as any other SFA. Thus, they maintain the same kinds of information on file. The SA, in its capacity as administering agency, has the flexibility to prescribe less detailed procedures for use by small SFAs in documenting program compliance. However, the SA must be guided by its responsibility to ensure proper disbursement and accountability for Federal program funds. The NSLP grant formula necessitates the reporting of certain information, regardless of the size of the respondent organization. The SA cannot determine the amount of Federal funds due to the SFA without knowing the number of lunches of each category served in schools under the SFA's jurisdiction.

**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. Applications can be accepted and agreements executed at any time, although SFAs generally execute agreements at or shortly before the beginning of each school year. SFAs submit claims for reimbursement for every month they operate the NSLP. Because funds for the NSLP are budgeted on a fiscal year basis, a collection period greater than one year would raise serious legal and accountability questions.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5(d)(2).**

The burden related to the review and approval of procurement contracts between SFAs and contractors are consistent with 5 CFR 1320.5(d)(2).

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), 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. Specifically address comments received on cost and hour burden.**

**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 format (if any), and on the data elements to be recorded, disclosed, or reported.**

A notice was published in the Federal Register on June 5, 2006, Volume 71, No. 107, page 32301. No comments were received on the information collection package.

The agency solicited comments and recommendations from persons outside the agency. Persons from whom we obtain their views on the regulations for this part include Ronald W. Hill, Assistant General Counsel, USDA, Office of the General Counsel, Food and Nutrition Division.

**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.**

No confidential information is associated with the burden related to the review and approval of procurement contracts between SFAs and contractors.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature included in this clearance package.

**12. Provide estimates of the hour burden of the collection of information.**

The new burden is due to the additional review and approval of procurement contracts by the SA between SFAs and contractors prior to execution. The recordkeeping burden imposed on the SA are due to the added recordkeeping requirement as the result of the additional paperwork needed from SFAs.

The table below reflect the new procurement requirement burden.

	Section	Annual number of respondents	No. responses per respondent	Hours per response	Total Burden
RECORDKEEPING SA review and approve SFA contracts prior to execution: New Burden Requirements	7 CFR 210.19(a)	57	30	0.28	477
REPORTING SFA provide procurement documents to SA for approval: New Burden Requirements	7 CFR 210.16	1,648	1	1.25	2,060
<b>Total Burden Requested</b>					<b>2,537</b>

PUBLIC COST

To estimate public cost, we made the assumption that the "typical" State or local program operator incurs paperwork cost at a rate of \$10.00 per hour. We also assumed that an appropriate portion of State level cost would be funded under the State Administrative Expense (SAE) Program (7 CFR Part 235; OMB No. 0584-0067). During the most recent fiscal year for which we have data on SA expenditure of both SAE and State appropriated

funds, SAs funded a percent from State sources. Therefore, we computed SA compliance cost at a rate of \$2.60 per hour rather than \$10.00. Given this prologue, we made the following computations:

<u>Reporting</u>		
SFA Level	2,060 hours x \$10.00	\$ 20,600.00
<u>Recordkeeping</u>		
SA Level	477 hours x \$ 2.60	\$ 1,240.20

TOTAL COST TO THE PUBLIC: \$21,840.20

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.**

There are no annual start-up or maintenance costs.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

FEDERAL COST

The cost to the Federal Government is \$201.47.

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

This is a new collection of information. The 2,537 hours associated with the collection are attributed to program change.

The rule amends the regulations governing procedures related to the procurement of goods and services in the National School Lunch Program, School Breakfast Program and Special Milk Program to remedy deficiencies identified in audits and programs reviews. The rule makes changes in three areas: the school food authority's responsibility for proper procurement procedures and contracts; prohibitions on the school food authority's use of nonprofit school food service account funds for costs resulting improper procurement and contracts; and the State agency's review and approval of school food authority procurement procedures and contracts.

**16. For collections of information whose results will 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 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 not to display the expiration date for OMB approval of this information collection.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.**

There are no exceptions to the certification statement.