

# RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

[As Amended Through P.L. 107-249, October 23, 2002]

## TABLE OF CONTENTS

U.S.C.	Act Sec.	Page
42 U.S.C.		
1751 note	1. Short title .....	3-2
1751	2. Declaration of policy .....	3-2
1752	3. Appropriations authorized .....	3-2
1753	4. Apportionments to States .....	3-3
1755	6. Direct Federal expenditures .....	3-4
1756	7. Payments to States .....	3-8
1757	8. State disbursement to schools .....	3-9
1758	9. Nutritional and other program requirements.	3-10
1759	10. Disbursement to schools by the Secretary	3-21
1759a	11. Special assistance .....	3-21
1760	12. Miscellaneous provisions and definitions ...	3-27
1761	13. Summer food service program for children	3-37
1762a	14. Commodity distribution program .....	3-48
1765	16. Election to receive cash payments .....	3-50
1766	17. Child and adult care food program .....	3-51
1766a	17A. Meal supplements for children in after-school care.	3-75
1769	18. Pilot projects .....	3-76
1769b	20. Department of Defense overseas dependents' schools.	3-83
1769b-1	21. Training, technical assistance, and food service management institute.	3-84
1769c	22. Compliance and accountability .....	3-87
1769f	25. Duties of the Secretary relating to non-procurement debarment.	3-88
1769g	26. Information clearinghouse .....	3-91
1769h	27. Accommodation of the special dietary needs of individuals with disabilities.	3-92
	General notes .....	3-94

Bracketed material and footnotes did *not* appear in Acts.

[Chapter 281]

## AN ACT

To provide assistance to the States in the establishment, maintenance, operation, and expansion of school lunch programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* [42 U.S.C. 1751 note] That this Act may be cited as the “Richard B. Russell National School Lunch Act”.<sup>1-1</sup>

### DECLARATION OF POLICY

SEC. 2. [42 U.S.C. 1751] 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.

### APPROPRIATIONS AUTHORIZED

SEC. 3. [42 U.S.C. 1752] For each fiscal year there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as the “Secretary”) to carry out the provisions of this Act, other than sections 13 and 17.<sup>3-1</sup> Appropriations to carry out the provisions of this Act and of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] for any fiscal year are authorized to be made a year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States. Notwithstanding any

<sup>1-1</sup> P.L. 79-396, 60 Stat. 230, June 4, 1946.

Section 312 of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended the Act—

(1) by striking “school-lunch” each place it appears and inserting “school lunch”;  
 (2) by striking “reduced-price” each place it appears and inserting “reduced price”; and  
 (3) by striking “special-assistance” each place it appears and inserting “special assistance”.

The amendments made by such section 312 have been executed to the compilation but have *not* been noted beyond this note.

Section 752(a) of P.L. 106-78, 113 Stat. 1169, Oct. 22, 1989, amended this section by striking “National School Lunch Act” and inserting “Richard B. Russell National School Lunch Act”.

<sup>3-1</sup> Amended by section 1 of P.L. 87-823, 76 Stat. 944, Oct. 15, 1962, to delete “beginning with the fiscal year ending June 30, 1947,” following “fiscal year” and to add the phrase “other than section 11.” Section 1 of P.L. 90-302, 82 Stat. 117, May 8, 1968, substituted “11 and 13” for “11.” Section 7 of P.L. 93-326, 88 Stat. 287, June 30, 1974, substituted “13” for “11 and 13.” Section 24 of P.L. 94-105, 89 Stat. 529, Oct. 7, 1975, substituted “13, 17, and 19” for “13”. Section 371(a)(2) of P.L. 99-500, 100 Stat. 1783-368, Oct. 18, 1986, substituted “sections 13 and 17” for “sections 13, 17, and 19”. Section 371(a)(2) of P.L. 99-591, 100 Stat. 3341-371, Oct. 30, 1986, and section 4501(a)(2) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the same substitution.

Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(h)) exempts child nutrition from reductions under sequestration deficit reduction orders.

The second sentence of the first section of the Act entitled “An Act to amend the National School Lunch Act to strengthen and expand food service programs for children, and for other purposes”, approved May 8, 1968 (42 U.S.C. 1752 note), amended section 3 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1752) and provided that appropriations shall be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

other provision of law, any funds appropriated to carry out the provisions of such Acts shall remain available for the purposes of the Act for which appropriated until expended.<sup>3-2</sup>

APPORTIONMENTS TO STATES<sup>4-1</sup>

SEC. 4.<sup>4-2</sup> [42 U.S.C. 1753] (a) The sums appropriated for any fiscal year pursuant to the authorizations contained in section 3 of this Act shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this Act.

(b)<sup>4-3</sup>(1) The Secretary shall make food assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in a total amount equal to the product obtained by multiplying—

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 9(a) of this Act) served during such fiscal year in schools in such State which participate in the school lunch program under this Act under agreements with such State educational agency; by

(B) the national average lunch payment prescribed in paragraph (2) of this subsection.

(2) The national average lunch payment for each lunch served shall be 10.5 cents (as adjusted pursuant to section 11(a) of this Act) except that for each lunch served in school food authorities in which 60 percent or more of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price, the national average lunch payment shall be 2 cents more.

[FOOD SERVICE EQUIPMENT ASSISTANCE]

[SEC. 5.<sup>5-1</sup> Repealed]

<sup>3-2</sup>The final two sentences added by section 1(a) of P.L. 91-248, 84 Stat. 208, May 14, 1970.

Section 17(g)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)), as authorized by this section, permits the advance appropriations of funds to carry out the special supplemental food program for women, infants, and children (WIC) program, and provides that the funds shall remain available until expended.

<sup>4-1</sup>Section heading for section 4 added by section 301 of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989.

<sup>4-2</sup>The original provisions for apportionment of funds among the States were amended by P.L. 82-518, 66 Stat. 591, July 12, 1952, to change apportionments to territories and possessions; by section 3 of P.L. 87-688, 76 Stat. 587, Sept. 25, 1962, to include American Samoa; and by section 2 of P.L. 87-823, 76 Stat. 944, Oct. 15, 1962, to change the apportionment factors, specify transitional formulas, and make several other changes. This section substantially amended by section 4(c) of P.L. 92-433, 86 Stat. 726, Sept. 26, 1972, effective July 1, 1973. Section 201(a) of P.L. 96-499, 94 Stat. 2599, Dec. 5, 1980, reduced for fiscal year 1981 the national average payment per lunch provided from general cash assistance funds, but section 820(b)(1) of P.L. 97-35, 95 Stat. 535, Aug. 31, 1981, effective September 1, 1981, repealed this change. Section 4 was again substantially amended by section 801(a) of P.L. 97-35, 95 Stat. 521, Aug. 13, 1981, effective September 1, 1981, which designated the first paragraph as subsection (a) and eliminated the reference to section 5 and language which authorized the Secretary to establish a national average payment factor for lunches "determined by the Secretary to be necessary to carry out the purposes of this Act".

<sup>4-3</sup>Section 801(a) of P.L. 97-35, 95 Stat. 521, Aug. 13, 1981, added subsection (b), which fixed the national average lunch payment at 10.5 cents (adjusted annually) and 2 cents per lunch more for schools which in the second preceding school year served 60 percent or more of the lunches in the program free or at a reduced price.

<sup>5-1</sup>Section 5, which authorized the food service equipment assistance program, repealed by section 805 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981.

DIRECT FEDERAL EXPENDITURES

SEC. 6.<sup>6-1</sup> [42 U.S.C. 1755] (a)<sup>6-2</sup> The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this Act, and for carrying out the provisions of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], other than section 3 thereof [(42 U.S.C. 1772)], less

(1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for the Secretary's<sup>6-3</sup> administrative expenses under this Act and under the Child Nutrition Act of 1966;

(2) the amount apportioned by the Secretary<sup>6-4</sup> pursuant to section 4 of this Act and the amount appropriated pursuant to sections 11 and 13<sup>6-5</sup> of this Act and sections 4 and 7 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773 and 1776)];<sup>6-6</sup> and

<sup>6-1</sup> Section 404 of the Agricultural Act of 1949 (7 U.S.C. 1424) permits the Secretary of Agriculture, in carrying out programs under section 6 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755), to utilize the services and facilities of the Commodity Credit Corporation, and make advance payments to it.

The second sentence of section 13 of the Child Nutrition Act of 1966 (42 U.S.C. 1782) requires Federal agencies administering programs under which funds are provided to schools for food service programs for children to transfer such funds to the Department of Agriculture for distribution in accordance with standards established under such Act and the Richard B. Russell National School Lunch Act.

Section 3(a)(2)(C) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) provides that certain commodity specification provisions shall apply to the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766).

Section 3(b)(1)(A)(iii)(III) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) requires the Secretary of Agriculture to implement a system to provide recipient agencies with options with respect to package sizes and forms of commodities, taking into account the duty of the Secretary to make direct purchases of agricultural commodities and other foods under the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766).

Section 3(e)(1)(D)(iii)(III) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) requires the Secretary of Agriculture to provide by regulation for delivery schedules for the distribution of commodities and products that are consistent with the needs of eligible recipient agencies, taking into account the duty of the Secretary to make direct purchases of agricultural commodities and other foods under the school lunch, commodity distribution, and child care food programs established under sections 6, 14, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755, 1762a, and 1766).

Section 241 of P.L. 106-224, 114 Stat. 410, June 20, 2000, requires the Secretary to use \$34,000,000 in fiscal year 2000, and \$21,000,000 in fiscal year 2001, to purchase commodities of the type provided under this section for distribution to schools participating in the school lunch program established under that Act (42 U.S.C. 1751 et seq.) and distribute the commodities as commodities are distributed under this section.

<sup>6-2</sup> Section 3 of P.L. 91-248, 84 Stat. 209, May 14, 1970, added the first sentence in place of provisions appearing earlier, adding, in particular, references to the Child Nutrition Act of 1966 and the provision concerning use of funds for nutritional training and education and for surveys and studies. This paragraph designated subsection (a) by section 2 of P.L. 93-13, 87 Stat. 10, March 30, 1973.

<sup>6-3</sup> Section 302(1) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended paragraph (1) by striking "his" and inserting "the Secretary's".

<sup>6-4</sup> Section 302(2) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended paragraph (2) by striking "him" and inserting "the Secretary".

<sup>6-5</sup> Section 3(b) of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962, added reference to section 11; and section 2(a) of P.L. 90-302, 82 Stat. 117, May 8, 1968, added reference to section 13.

<sup>6-6</sup> Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, removed references to sections 5 of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

Section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) requires the Secretary of Agriculture to make payments to States for administrative costs incurred in connection with programs authorized under such Act and the Richard B. Russell National School Lunch Act.

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this Act and the programs under the Child Nutrition Act of 1966, other than section 3, which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 18<sup>6-7</sup> of this Act, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 2 of this Act and section 2 of the Child Nutrition Act of 1966 [(42 U.S.C. 1771)],

shall be available to the Secretary during such year for direct expenditure by the Secretary<sup>6-8</sup> for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this Act and under the Child Nutrition Act of 1966 in accordance with the needs as determined by the local school and service institution authorities. Except as provided in the next 2 sentences, any school<sup>6-9</sup> participating in food service programs under this Act may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year.<sup>6-10</sup> Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence.<sup>6-11</sup> The provisions of law contained in the proviso of the Act of June 28, 1937<sup>6-12</sup> [; 15 U.S.C. 713c], facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 32 of the Act approved August 24, 1935,<sup>6-13</sup> [; 7 U.S.C. 612c] shall, to the extent not inconsistent with the provisions of this Act, also be applicable to expenditures of funds by the

<sup>6-7</sup> Section 10 of P.L. 95-166, 91 Stat. 1336, Nov. 10, 1977, authorized funds for pilot projects and studies under then-section 20 of this Act. Section 371(c)(2) of P.L. 99-500, 100 Stat. 1783-369, Oct. 18, 1986, substituted "section 18" for "section 20". Section 371(c)(2) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4501(c)(2) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the same substitution.

<sup>6-8</sup> Section 302(3)(A) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended the matter following paragraph (3) by striking "him" and inserting "the Secretary".

<sup>6-9</sup> Section 101(1) of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994, amended the second sentence by striking "Any school" and inserting "Except as provided in the next 2 sentences, any school".

<sup>6-10</sup> Section 7 of P.L. 95-166, 91 Stat. 1335, Nov. 10, 1977, added the choice of commodities option for not more than 20 percent of commodities tendered to a school.

<sup>6-11</sup> This sentence and the preceding sentence added by section 101(2) of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994.

<sup>6-12</sup> Section 302(3)(B) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended the matter following paragraph (3) by striking "(50 Stat. 323)".

<sup>6-13</sup> Section 302(3)(C) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended the matter following paragraph (3) by striking "(49 Stat. 774), as amended".

Secretary under this Act. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this Act and the Child Nutrition Act of 1966.<sup>6-14</sup>

(b)<sup>6-15</sup> The Secretary shall deliver, to each State participating in the school lunch program under this Act, commodities valued at the total level of assistance authorized under subsection (c) for each school year for the school lunch program in the State, not later than September 30 of the following school year.

(c)<sup>6-16</sup>(1)<sup>6-17</sup>(A) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using 5 major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighed using the same relative weight as determined by the Bureau of Labor Statistics.

(B) The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest  $\frac{1}{4}$  cent.

(C) For each school year, the total commodity assistance or cash in lieu thereof available to a State for the school lunch program shall be calculated by multiplying the number of lunches served in the preceding school year by the rate established by sub-

<sup>6-14</sup>This sentence added by section 11(a) of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975.

<sup>6-15</sup>Subsection (b) completely revised by section 102 of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994. This subsection was previously amended by section 2 of P.L. 93-13, 87 Stat. 10, Mar. 30, 1973; section 5 of P.L. 93-150, 87 Stat. 562, Nov. 7, 1973; section 5 of P.L. 95-166, 91 Stat. 1334, Nov. 10, 1977; section 4 of P.L. 94-105, 89 Stat. 511, Oct. 7, 1975; section 321 of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986; section 321 of P.L. 99-591, 100 Stat. 3341-364, Oct. 30, 1986; and section 4201 of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986.

<sup>6-16</sup>This subsection added by section 3 of P.L. 93-326, 88 Stat. 286, June 30, 1974, and redesignated by section 101(a)(2) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998. Former subsections (c) and (d) were added by section 2 of P.L. 93-13, 87 Stat. 10, Mar. 30, 1973, and section 5 of P.L. 93-150, 87 Stat. 562, Nov. 7, 1973, and struck by section 101(a)(1) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998.

<sup>6-17</sup>Paragraph (1) completely revised by section 131(a)(1) of P.L. 101-147, 103 Stat. 906, Nov. 10, 1989.

In former text, section 3(j)(1) of P.L. 100-237, 101 Stat. 1738, Jan. 8, 1988, inserted "(1)" after subsection designation.

In former text, section 19(a) of P.L. 95-166, 91 Stat. 1345, Nov. 10, 1977, substituted "school years" for "fiscal years" and "school year after June 30, 1975" for "fiscal year after June 30, 1975" in former text of first sentence. Section 202(a) of P.L. 96-499, 94 Stat. 2600, Dec. 5, 1980, reduced for fiscal year 1981 the national average value of donated foods or cash payments by 2 cents. Section 802 of P.L. 97-35, 95 Stat. 524, Aug. 13, 1981, rewrote the first sentence fixing the national average value of donated foods or cash payments at 11 cents, adjusted July 1, 1982, and annually thereafter.

In former text, section 5(b) of P.L. 95-627, 92 Stat. 3619, Nov. 10, 1978, effective July 1, 1979, deleted from the first sentence "the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor" and inserted in lieu thereof "the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components. . ." and all of the material through the end of the fourth sentence.

In former text, material in parentheses added by section 12(a) of P.L. 95-627, 92 Stat. 3625, Nov. 10, 1978.

In former text, section 12(a) of the Child Nutrition Amendments of 1978 (92 Stat. 3625) erroneously placed the parenthetical in the "second" sentence after "alternatives".

In former text, the last sentence added by section 11(b) of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975.

paragraph (B). After the end of each school year, the Secretary shall reconcile the number of lunches served by schools in each State with the number of lunches served by schools in each State during the preceding school year and increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State based on such reconciliation.

(D) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

(E) Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

(2)<sup>6-18</sup> To the maximum extent feasible,<sup>6-19</sup> each State agency shall offer to each school food authority under its jurisdiction that participates in the school lunch program and receives commodities, agricultural commodities and their products, the per meal value of which is not less than the national average value of donated foods established under paragraph (1). Each such offer shall include the full range of such commodities and products that are available from the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

(d)<sup>6-20</sup> Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773)].

(e)<sup>6-21</sup>(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 4, this section, and section 11 shall be in the form of—

(A) commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section; or

(B) during the period beginning October 1, 2003,<sup>6-22</sup> and ending September 30, 2009, commodities provided by the Secretary under any provision of law.

(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 14(a) to meet the requirement for the school year.

<sup>6-18</sup>This paragraph added by section 3(j)(2) of P.L. 100-237, 101 Stat. 1738, Jan. 8, 1988.

<sup>6-19</sup>Phrase “To the maximum extent feasible,” inserted by section 131(a)(2) of P.L. 101-147, 103 Stat. 907, Nov. 10, 1989.

<sup>6-20</sup>This subsection added by section 202(b) of P.L. 96-499, 94 Stat. 2600, Dec. 5, 1980.

<sup>6-21</sup>This subsection added by section 103 of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994. Section 411 of P.L. 106-170, 113 Stat. 1917, Dec. 17, 1999, converted the text of subparagraph (A) into subparagraph (A) and added subparagraph (B).

<sup>6-22</sup>Section 241(b) of P.L. 106-224, 114 Stat. 410, June 20, 2000, amended this subparagraph by striking “2000” and inserting “2001”. Sec. 4301(a) of P.L. 107-171, 116 Stat. 330, May 13, 2002, amended this subparagraph by striking “2001” and inserting “2003”.

PAYMENTS TO STATES<sup>7-1</sup>

SEC. 7.<sup>7-2</sup> [42 U.S.C. 1756] (a)(1) Funds appropriated to carry out section 4 of this Act during any fiscal year shall be available for payment to the States for disbursement by State educational agencies in accordance with such agreements, not inconsistent with the provisions of this Act, as may be entered into by the Secretary and such State educational agencies for the purpose of assisting schools within the States in obtaining agricultural commodities and other foods for consumption by children in furtherance of the school lunch program authorized under this Act. For any school year, such payments shall be made to a State only if, during such school year, the amount of the State revenues (excluding State revenues derived from the operation of the program) appropriated or used specifically for program purposes (other than any State revenues expended for salaries and administrative expenses of the program at the State level) is not less than 30 percent of the funds made available to such State under section 4 of this Act for the school year beginning July 1, 1980.<sup>7-3</sup>

(2) If, for any school year, the per capita income of a State is less than the average per capita income of all the States, the amount required to be expended by a State under paragraph (1) for such year shall be an amount bearing the same ratio to the amount equal to 30 percent of the funds made available to such State under section 4 of this Act for the<sup>7-4</sup> school year beginning July 1, 1980, as the per capita income of such State bears to the average per capita income of all the States.

(b) The State revenues provided by any State to meet the requirement of subsection (a) shall, to the extent the State deems practicable, be disbursed to schools participating in the school lunch program under this Act. No State in which the State educational agency is prohibited by law from disbursing State appropriated funds to private schools shall be required to match Federal funds made available for meals served in such schools, or to disburse, to such schools, any of the State revenues required to meet the requirements of subsection (a).

(c) The Secretary shall certify to the Secretary of the Treasury, from time to time, the amounts to be paid to any State under this section and shall specify when such payments are to be made. The Secretary of the Treasury shall pay to the State, at the time or times fixed by the Secretary, the amounts so certified.

(d)<sup>7-5</sup> Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 4 or 11 may be used by the Secretary for the purpose of purchasing commodities for use by the

<sup>7-1</sup>Section heading inserted by section 303(a) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989.

<sup>7-2</sup>This section completely revised by section 804 of P.L. 97-35, 95 Stat. 526, Aug. 13, 1981. Earlier amendments to this section were made by section 4 of P.L. 91-248, 84 Stat. 209, May 14, 1970; section 10 of P.L. 92-433, 86 Stat. 731, Sept. 26, 1972; section 5 of P.L. 94-105, 89 Stat. 511, Oct. 7, 1975; and section 19(b) of P.L. 95-166, 91 Stat. 1345, Nov. 10, 1977.

<sup>7-3</sup>Section 7(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(f)) restricts payments for State administrative expenses to States that agree to maintain a certain level of State funding for such expenses.

<sup>7-4</sup>Section 303(b) of P.L. 101-147, 103 Stat. 913, Nov. 10, 1989, amended this paragraph by striking "the the" and inserting "the".

<sup>7-5</sup>This subsection added by section 104 of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994.

school food service authority in meals served under the school lunch program under this Act.

STATE DISBURSEMENT TO SCHOOLS

SEC. 8.<sup>8-1</sup> [42 U.S.C. 1757] (a) Funds paid to any State during any fiscal year pursuant to section 4<sup>8-2</sup> shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school lunch program.

(b)<sup>8-3</sup> The agreements described in subsection (a)<sup>8-4</sup> shall be permanent agreements that may be amended as necessary.

(c)<sup>8-5</sup> The State educational agency may<sup>8-6</sup> suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(d)<sup>8-7</sup> Use of funds paid to States<sup>8-8</sup> may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing, or handling thereof.

(e)<sup>8-9</sup> In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school lunch program under this Act during such year by the maximum per meal reimbursement rate<sup>8-10</sup> for the State, for the type of lunch served, as prescribed by the Secretary.

(f)<sup>8-11</sup> In any fiscal year in which the national average payment per lunch determined under section 4 is increased above the amount prescribed in the previous fiscal year, the maximum per meal reimbursement rate for the type of lunch served, shall be increased by a like amount.

<sup>8-1</sup> Section 701(a)(2) and (3) of P.L. 104-193, 110 Stat. 2287, Aug. 22, 1996, amended this section by striking the former fourth and fifth sentences and by redesignating the former first through seventh sentences as subsections (a) through (g), respectively. The former fourth sentence was amended by section 8 of P.L. 92-433, 86 Stat. 729, Sept. 26, 1972, and section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981. The former fifth sentence was added by section 10(d)(1) of P.L. 95-627, 92 Stat. 3624, Nov. 10, 1978, and amended by section 304 of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989.

<sup>8-2</sup> Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, eliminated a reference to section 5.

<sup>8-3</sup> See note 8-1. This sentence originally added by section 201 of P.L. 101-147, 103 Stat. 908, Nov. 10, 1989.

<sup>8-4</sup> Section 701(a)(4) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, amended this subsection by striking "the preceding sentence" and inserting "subsection (a)".

<sup>8-5</sup> See note 8-1. This sentence originally added by section 201 of P.L. 101-147, 103 Stat. 908, Nov. 10, 1989.

<sup>8-6</sup> Section 701(a)(1) of P.L. 104-193, 110 Stat. 2287, Aug. 22, 1996, amended this sentence by striking "Nothing" and all that follows through "educational agency to" and inserting "The State educational agency may".

<sup>8-7</sup> See note 8-1.

<sup>8-8</sup> Section 701(a)(5) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, amended this subsection by striking "Such food costs" and inserting "Use of funds paid to States".

<sup>8-9</sup> See note 8-1.

<sup>8-10</sup> Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, substituted the phrase "per meal reimbursement rate" for "Federal food cost contribution rate".

<sup>8-11</sup> See note 8-1. This sentence originally added by section 2(b) of P.L. 93-150, 87 Stat. 560, Nov. 7, 1973. Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, amended this sentence by substituting the phrase "per meal reimbursement rate" for "Federal food-cost contribution rate".

(g)<sup>8-12</sup> Lunch assistance disbursements to schools under this section and under section 11 of this Act may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

#### NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9.<sup>9-1</sup> [42 U.S.C. 1758] (a)<sup>9-2</sup> (1)(A)<sup>9-3</sup> 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, except that the minimum nutritional requirements—

(i)<sup>9-4</sup> shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii)<sup>9-5</sup> shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B)<sup>9-6</sup> The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this Act, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

<sup>8-12</sup> See note 8-1. This sentence originally added by section 8 of P.L. 92-433, 86 Stat. 729, Sept. 26, 1972.

<sup>9-1</sup> This section was substantially amended by sections 6 (a) and (b) of P.L. 91-248, 84 Stat. 210, May 14, 1970. Among changes made were those which provided for determination of eligibility for free and reduced price lunches on the basis of publicly announced criteria and for establishment by the Secretary of income poverty guidelines with free or reduced price lunches for children from families with an annual income below such guidelines.

The second sentence of section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)) requires that breakfasts be served under the school breakfast program under the same terms and conditions as lunches served under section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758).

<sup>9-2</sup> Section 5 of P.L. 92-433, 86 Stat. 726, Sept. 26, 1972, designated this paragraph as subsection (a).

Section 322 of P.L. 99-500, 100 Stat. 1783-361, Oct. 18, 1986, numbered the first three sentences of subsection (a) as paragraphs (1), (3), and (4) and added paragraph (2).

Section 322 of P.L. 99-591, 100 Stat. 3341-364, Oct. 30, 1986, and section 4202 of P.L. 99-661, 100 Stat. 4072, Nov. 14, 1986, made identical changes.

Section 101(a) of P.L. 101-147, 103 Stat. 878, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)), as similarly amended first by section 322 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-361), later by section 322 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-364), and later by section 4202 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if only the latest amendment was enacted.

<sup>9-3</sup> Section 105(a)(1) of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994, inserted "(A)" after "(1)".

<sup>9-4</sup> This exception originally added by section 2(b) of P.L. 90-302, 82 Stat. 117, May 8, 1968. Section 106(a) of P.L. 103-448, 108 Stat. 4702, Nov. 2, 1994, amended this subparagraph (1) by striking "; except" and all that follows through "shall not" and inserting "; except" and all that follows through "(i) shall not"; (2) by striking the period at the end and inserting "; and"; and (3) by adding clause (ii).

<sup>9-5</sup> See note 9-4.

<sup>9-6</sup> This subparagraph added by section 105(a)(2) of P.L. 103-448, 108 Stat. 4701, Nov. 2, 1994.

(2)<sup>9-7</sup> Lunches served by schools participating in the school lunch program under this Act—

(A) shall offer students fluid milk; and

(B) shall offer students a variety of fluid milk consistent with prior year preferences unless the prior year preference for any such variety of fluid milk is less than 1 percent of the total milk consumed at the school.

(3)<sup>9-8</sup> Students in senior high schools that participate in the school lunch program under this Act (and, when approved by the local school district or nonprofit private schools, students in any other grade level)<sup>9-9</sup> shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this Act to any such school for such lunch.

(b)<sup>9-10</sup>(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year.<sup>9-11</sup> The<sup>9-12</sup> income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size<sup>9-13</sup> income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size<sup>9-14</sup> income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as

<sup>9-7</sup> Section 702(a)(1) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, amended this paragraph by striking “(2)(A) Lunches” and inserting “(2) Lunches”, by striking former subparagraph (B), and by redesignating former clauses (i) and (ii) as subparagraphs (A) and (B), respectively. Previously, this paragraph was amended by section 101(b) of P.L. 101-147, 103 Stat. 878, Nov. 10, 1989, and section 107 of P.L. 103-448, 108 Stat. 4703, Nov. 2, 1994.

<sup>9-8</sup> Section 702(a)(2) and (3) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, struck former paragraph (3) and redesignated former paragraph (4) as paragraph (3). Previously, section 6(a) of P.L. 94-105, 89 Stat. 512, Oct. 7, 1975, added two sentences that became former paragraphs (3) and (4).

<sup>9-9</sup> Section 811 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981, eliminated the words “in any junior high school or middle school”.

<sup>9-10</sup> Section 5 of P.L. 92-433, 86 Stat. 726, Sept. 26, 1972, designated this paragraph as subsection (b), substituted new wording requiring that children from households whose income is not above the applicable family size income level in the Secretary’s income poverty guidelines be served a free lunch, and directed State educational agencies to prescribe income guidelines by family size for use by schools in the State to determine eligibility for free and reduced price lunches. Subsection (b) was completely revised by section 803 of P.L. 97-35, 95 Stat. 524, Aug. 13, 1981.

Section 17(d)(2)(A)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(A)(i)) provides that any individual at nutritional risk shall be eligible for the special supplemental food program for women, infants, and children (WIC) program under section 17 of such Act only if such individual, inter alia, is a member of a family with an income that is less than the maximum income limit prescribed under section 9(b) of this Act for free and reduced price meals.

<sup>9-11</sup> Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(A)) provides that an individual shall be eligible for the special supplemental food program only if the individual, inter alia, is a member of a family that satisfies the income standards prescribed for free and reduced price school meals.

<sup>9-12</sup> Section 1 of P.L. 100-356, 102 Stat. 669, June 28, 1988, originally substituted “The” for “For the school years ending June 30, 1982, and June 30, 1983, the” and struck the third sentence.

Section 202(a) of P.L. 101-147, 103 Stat. 908, Nov. 10, 1989, eliminated the amendments made by P.L. 100-356 and made identical amendments.

<sup>9-13</sup> Section 305(b)(1) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, amended section 9 by striking “family-size” each place it appears and inserting “family size”.

<sup>9-14</sup> See note 9-13.

adjusted annually in accordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

(i) the official poverty line (as defined by the Office of Management and Budget); by

(ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size<sup>9-15</sup>, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size<sup>9-16</sup> income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches. Such forms and descriptive material may not contain the income eligibility guidelines for free lunches.

(C)<sup>9-17</sup>(i) Except as provided in clause (ii), each eligibility determination shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, State, or local food authority may verify any data contained in such application. A local school food authority shall undertake such verification of information contained in any such application as the Secretary may by regulation prescribe and, in accordance with such regulations, shall make appropriate changes in the eligibility determination with respect to such application on the basis of such verification.

(ii) Subject to clause (iii), any school food authority may certify any child as eligible for free or reduced price lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of such child's status as a member of—

(I) a household that is receiving food stamps under the Food Stamp Act of 1977; or

<sup>9-15</sup> See note 9-13.

<sup>9-16</sup> See note 9-13.

<sup>9-17</sup> Subparagraph (C) was completely revised by section 202(b)(1) of P.L. 101-147, 103 Stat. 908, Nov. 10, 1989

Section 803(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 525) requires the Secretary of Agriculture to conduct a pilot study to verify the data submitted on a sample of applications for free and reduced price meals.

(II) a family that is receiving assistance under the State program funded<sup>9-18</sup> under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.<sup>9-19</sup>

(iii)<sup>9-20</sup> The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in clause (ii), shall be limited to—

(I) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a regulation issued pursuant to either Act;

(II) a person directly connected with the administration or enforcement of—

(aa) a Federal education program;

(bb) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)); or

(cc) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the program under this section; and

(III)(aa) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(bb) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by paragraph (1) or this paragraph; and

(IV)<sup>9-21</sup> a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purpose of identifying children eligible for benefits under, and enrolling children in, such programs, except that this subclause shall apply only to the extent that the State and the school food authority so elect.

(iv)<sup>9-22</sup> Information provided under clause (iii)(II) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits was made or for whom eligibility information was provided under clause (ii), unless the

<sup>9-18</sup> Effective July 1, 1997, section 109(g)(1)(A)(i) of P.L. 104-193, 110 Stat. 2170, Aug. 22, 1996, amended this subclause by striking "program for aid to families with dependent children" and inserting "State program funded".

<sup>9-19</sup> Effective July 1, 1997, section 109(g)(1)(A)(ii) of P.L. 104-193, 110 Stat. 2170, Aug. 22, 1996, amended this subclause by inserting before the period at the end the following: "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995".

<sup>9-20</sup> Section 108 of P.L. 103-448, 108 Stat. 4704, Nov. 2, 1994, struck former clause (iii) and inserted new clauses (iii) through (v).

<sup>9-21</sup> Effective October 1, 2000, section 242(a) of P.L. 106-224, 114 Stat. 411, June 20, 2000, amended this clause by adding subclause (IV) and by making conforming amendments to subclauses (II) and (III).

<sup>9-22</sup> See note 9-20.

consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(v)<sup>9-23</sup> A person described in clause (iii) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(vi)<sup>9-24</sup> REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in clause (iii)(IV) shall ensure that any school food authority acting in accordance with that option—

(I) has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under clause (iii) to seek to enroll children in those health insurance programs; and

(II)(aa) notifies each household, the information of which shall be disclosed under clause (iii), that the information disclosed will be used only to enroll children in health programs referred to in clause (iii)(IV); and

(bb) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(vii)<sup>9-25</sup> USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under clause (iii)(IV) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in clause (iii)(IV).

(D)<sup>9-26</sup> FREE AND REDUCED PRICE POLICY STATEMENT.—After the initial submission, a school food authority shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the school food authority. A routine change in the policy of a school food authority, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, shall not be sufficient cause for requiring the school food authority to submit a policy statement.

(3) 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<sup>9-27</sup> 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 a household whose income, at the time the application is submitted, is at an annual rate greater than the applica-

<sup>9-23</sup> See note 9-20.

<sup>9-24</sup> Effective October 1, 2000, clauses (vi) and (vii) added by section 242(a)(2) of P.L. 106-224, 114 Stat. 411, June 20, 2000.

<sup>9-25</sup> See note 9-24.

<sup>9-26</sup> This subparagraph added by section 703 of P.L. 104-193, 110 Stat. 2289, Aug. 22, 1996.

<sup>9-27</sup> See note 9-13.

ily size<sup>9-28</sup> 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<sup>9-29</sup> income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch. The price charged for a reduced price lunch shall not exceed 40 cents.

(4) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published list of names, or by other means.

(5)<sup>9-30</sup> Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local school authorities shall publicly announce that such children are eligible for free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence<sup>9-31</sup> on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(6)<sup>9-32</sup>(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—<sup>9-33</sup>

(i)<sup>9-34</sup> a member of a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

<sup>9-28</sup> See note 9-13.

<sup>9-29</sup> See note 9-13.

<sup>9-30</sup> This paragraph added by section 6(d) of P.L. 94-105, 89 Stat. 513, Oct. 7, 1975.

<sup>9-31</sup> Section 803(a) of P.L. 97-35, 95 Stat. 525, Aug. 13, 1981, eliminated the word "solely" from this sentence.

<sup>9-32</sup> This paragraph added by section 323 of P.L. 99-500, 100 Stat. 1783-361, Oct. 18, 1986. Section 323 of P.L. 99-591, 100 Stat. 3341-364, Oct. 30, 1986, and section 4203 of P.L. 99-661, 100 Stat. 4072, Nov. 14, 1986, made the same addition.

Section 202(a)(1) of P.L. 101-147, 103 Stat. 908, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)), as similarly amended first by section 323 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-361), later by section 323 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-364), and later by section 4203 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), and as then amended by section 1 of Public Law 100-356, is amended to read as if only the amendment made by section 4203 of the Child Nutrition Amendments of 1986 was enacted.

<sup>9-33</sup> Effective September 25, 1995, section 109(a)(1)(A) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994, amended this subparagraph by striking "a member of".

<sup>9-34</sup> Effective September 25, 1995, section 109(a)(1)(B) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994, amended this clause by inserting "a member of" after "(i)" and by striking "or" at the end.

(ii)<sup>9-35</sup> a member of a family (under the State program funded<sup>9-36</sup> under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;<sup>9-37</sup> or

(iii)<sup>9-38</sup> enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).

(B) Proof of receipt of food stamps or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995,<sup>9-39</sup> or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),<sup>9-40</sup> shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).

(7)<sup>9-40A</sup> EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.—For each of fiscal years 2002 and 2003, the amount of a basic allowance provided under section 403 of title 37, United States Code, on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, United States Code, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this Act.

<sup>9-35</sup> Effective September 25, 1995, section 109(a)(1)(C) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994, amended this clause by inserting “a member of” after “(ii)” and by striking the period at the end and inserting “; or”.

<sup>9-36</sup> Effective July 1, 1997, section 109(g)(1)(B)(i)(I) of P.L. 104-193, 110 Stat. 2170, Aug. 22, 1996, amended this clause by striking “an AFDC assistance unit (under the aid to families with dependent children program authorized)” and inserting “a family (under the State program funded”.

<sup>9-37</sup> Effective July 1, 1997, section 109(g)(1)(B)(i)(II) of P.L. 104-193, 110 Stat. 2170, Aug. 22, 1996, amended this clause by striking “, in a State” and all that follows through “9902(2))” and inserting “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

<sup>9-38</sup> Effective September 25, 1995, this clause added by section 109(a)(1)(D) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994.

<sup>9-39</sup> Effective July 1, 1997, section 109(g)(1)(B)(ii) of P.L. 104-193, 110 Stat. 2170, Aug. 22, 1996, amended this subparagraph by striking “aid to families with dependent children” and inserting “assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

<sup>9-40</sup> Effective September 25, 1995, section 109(a)(2) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994, amended this subparagraph by striking “food stamps or aid to families with dependent children” and inserting “food stamps or aid to families with dependent children, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),”.

<sup>9-40A</sup> Para. (7) added by sec. 4302(a) of P.L. 107-171, 116 Stat. 330, May 13, 2002.

(c)<sup>9-41</sup> School lunch<sup>9-42</sup> programs under this Act shall be operated on a nonprofit basis. Commodities purchased under the authority of section 32 of the Act of August 24, 1935,<sup>9-43</sup> [(7 U.S.C. 612c)] may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this Act as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities.<sup>9-44</sup> The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.<sup>9-45</sup>

(d)<sup>9-46</sup>(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(2)(C).<sup>9-47</sup>

(2) No member of a household may be provided a free or reduced price lunch under this Act unless—

(A)<sup>9-48</sup> appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local school food authority so that such authority may calculate the total income of such household;

(B) documentation showing that the household is participating in the food stamp program under the Food Stamp Act of 1977 [(7 U.S.C. 2011 et seq.)] has been provided to the appropriate local school food authority; or

<sup>9-41</sup> Section 702(b)(2) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, amended this subsection by striking the former second, fourth, and sixth sentences. Previously, the former fourth sentence was amended by section 305(b)(2)(C) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, and the former sixth sentence was amended by Section 6(e) of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, and the former sixth sentence was amended by section 6(e) of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975. Section 5 of P.L. 92-433, 86 Stat. 726, Sept. 26, 1972, designated this paragraph as subsection (c) and amended subsection to extend the provisions with respect to certain nonprofit private schools to all such schools.

The first sentence of section 201(a) of the Act entitled "An Act to extend the Agricultural Trade Development and Assistance Act of 1954, and for other purposes", approved September 21, 1959 (7 U.S.C. 1431c(a); 73 Stat. 610), prescribes standards for the enrichment and packaging of certain foods when such foods are made available for distribution under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

<sup>9-42</sup> Section 305(b)(2)(A) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, amended the first sentence of subsection (c) by striking "School-lunch" and inserting "School lunch".

<sup>9-43</sup> Section 305(b)(2)(B) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, amended this sentence by striking "(49 Stat. 774), as amended".

<sup>9-44</sup> The third sentence of section 211(a) of the Agricultural Trade Suspension Adjustment Act of 1980 (7 U.S.C. 4004(a)) permits the Secretary of Agriculture to distribute agricultural commodities to community food banks through the food distribution system used under the Richard B. Russell National School Lunch Act.

<sup>9-45</sup> Section 702(b)(1) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996, amended this sentence by striking "of the provisions of law referred to in the preceding sentence" and inserting "provision of law".

<sup>9-46</sup> This subsection added by section 803(b) of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981.

<sup>9-47</sup> Section 202(b)(2)(A) of P.L. 101-147, 103 Stat. 909, Nov. 10, 1989, struck "numbers of all adult" and all that follows and inserted the above text.

<sup>9-48</sup> Subparagraph (A) completely revised by section 202(b)(2)(B)(i) of P.L. 101-147, 103 Stat. 909, Nov. 10, 1989.

(C)<sup>9-49</sup> documentation has been provided to the appropriate local school food authority showing that the family is receiving assistance under the State program funded<sup>9-50</sup> under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.<sup>9-51</sup>

(e)<sup>9-52</sup> A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

(f)<sup>9-53</sup>

(1) NUTRITIONAL REQUIREMENTS.—Except as provided in paragraph (2), not later than the first day of the 1996–1997 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the program that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

(B) provide, on the average over each week, at least—

(i) with respect to school lunches,  $\frac{1}{3}$  of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

(ii) with respect to school breakfasts,  $\frac{1}{4}$  of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

<sup>9-49</sup> Section 202(b)(2)(B) of P.L. 101–147, 103 Stat. 909, Nov. 10, 1989, added subparagraph (C) and made a conforming amendment to subparagraph (B).

<sup>9-50</sup> Effective July 1, 1997, section 109(g)(2)(A) of P.L. 104–193, 110 Stat. 2171, Aug. 22, 1996, amended this subparagraph by striking “program for aid to families with dependent children” and inserting “State program funded”.

<sup>9-51</sup> Effective July 1, 1997, section 109(g)(2)(B) of P.L. 104–193, 110 Stat. 2171, Aug. 22, 1996, amended this subparagraph by inserting before the period at the end the following: “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

<sup>9-52</sup> This subsection added by section 324 of P.L. 99–500, 100 Stat. 1783–361, Oct. 18, 1986. Section 324 of P.L. 99–591, 100 Stat. 3341–364, Oct. 30, 1986, and section 4204 of P.L. 99–661, 100 Stat. 4072, Nov. 14, 1986, made the same addition.

Section 305(a) of P.L. 101–147, 103 Stat. 914, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 9(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(e)), as similarly added first by section 324 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99–500 (100 Stat. 1783–361), later by section 324 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99–591 (100 Stat. 3341–364), and later by section 4204 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661), is amended to read as if only the latest amendment was enacted.

<sup>9-53</sup> This subsection added by section 106(b) of P.L. 103–448, 108 Stat. 4702, Nov. 2, 1994.

Section 702(c)(1) of P.L. 104–193, 110 Stat. 2288, Aug. 22, 1996, amended this subsection by striking former paragraph (1), by striking “(2)”, by redesignating former subparagraphs (A) through (D) as paragraphs (1) through (4), respectively, by amending paragraph (1) in its entirety, and by making conforming amendments to paragraphs (3) and (4).

(2) State educational agencies may grant waivers from the requirements of paragraph (1)<sup>9-54</sup> subject to criteria established by the appropriate State educational agency. The waivers shall not permit schools to implement the requirements later than July 1, 1998, or a later date determined by the Secretary.

(3) To assist schools in meeting the requirements of this subsection,<sup>9-55</sup> the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(4)<sup>9-56</sup> USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the Secretary in a timely manner, to meet the requirements of this subsection,<sup>9-57</sup> including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph (3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.<sup>9-58</sup>

(5)<sup>9-59</sup> WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2003, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(g)<sup>9-60</sup> Not later than 1 year after the date of enactment of this subsection, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

(h)<sup>9-61</sup> FOOD SAFETY INSPECTIONS.—

<sup>9-54</sup> Section 102(a)(1) of P.L. 105–336, 112 Stat. 3144, Oct. 31, 1998, amended this paragraph by striking “subparagraph (A)” and inserting “paragraph (1)”.

<sup>9-55</sup> Section 102(a)(2) of P.L. 105–336, 112 Stat. 3144, Oct. 31, 1998, amended paragraphs (3) and (4) by striking “this paragraph” each place it appears and inserting “this subsection”.

<sup>9-56</sup> This subparagraph amended in its entirety by section 2 of P.L. 104–149, May 29, 1996. See note 9–53 for redesignation and conforming amendments.

<sup>9-57</sup> See note 9–55.

<sup>9-58</sup> See note 9–55.

<sup>9-59</sup> This paragraph added by section 102(b) of P.L. 105–336, 112 Stat. 3144, Oct. 31, 1998.

<sup>9-60</sup> This subsection added by section 106(c) of P.L. 103–448, 108 Stat. 4703, Nov. 2, 1994.

<sup>9-61</sup> This subsection added by section 102(c) of P.L. 105–336, 112 Stat. 3144, Oct. 31, 1998. Former subsection (h) added by section 110 of P.L. 103–448, 108 Stat. 4705, Nov. 2, 1994, and struck by section 702(d) of P.L. 104–193, 110 Stat. 2289, Aug. 22, 1996.

(1) IN GENERAL.—Except as provided in paragraph (2), a school participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections.

(2) EXCEPTION.—Paragraph (1) shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.

(i)<sup>9-62</sup> SINGLE PERMANENT AGREEMENT BETWEEN STATE AGENCY AND SCHOOL FOOD AUTHORITY; COMMON CLAIMS FORM.—

(1) IN GENERAL.—If a single State agency administers any combination of the school lunch program under this Act, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 13 of this Act, or the child and adult care food program under section 17 of this Act, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

(2) ADDITIONAL REQUIREMENT.—The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

(j)<sup>9-63</sup> PURCHASES OF LOCALLY PRODUCED FOODS.—

(1) IN GENERAL.—The Secretary shall—

(A) encourage institutions participating in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to purchase, in addition to other food purchases, locally produced foods for school meal programs, to the maximum extent practicable and appropriate;

(B) advise institutions participating in a program described in subparagraph (A) of the policy described in that subparagraph and post information concerning the policy on the website maintained by the Secretary; and

(C) in accordance with requirements established by the Secretary, provide startup grants to not more than 200 institutions to defray the initial costs of equipment, materials, and storage facilities, and similar costs, incurred in carrying out the policy described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection \$400,000 for each of fiscal years 2003 through 2007, to remain available until expended.

<sup>9-62</sup>This subsection added by section 102(d) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998.

<sup>9-63</sup>Subsec. (j) added by sec. 4303 of P.L. 107-171, 116 Stat. 331, May 13, 2002.

(B) LIMITATION.—No amounts may be made available to carry out this subsection unless specifically provided by an appropriation Act.

#### DISBURSEMENT TO SCHOOLS BY THE SECRETARY

SEC. 10.<sup>10-1</sup> [42 U.S.C. 1759] (a) The Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to schools, institutions, or service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b)). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this Act. If the Secretary is administering (in whole or in part) any program authorized under this Act, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this Act to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

#### SPECIAL ASSISTANCE

SEC. 11.<sup>11-1</sup> [42 U.S.C. 1759a] (a)<sup>11-2(1)(A)</sup><sup>11-3</sup> Except as provided in section 10 of this Act, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to subsection 9(a) of this Act) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by mul-

<sup>10-1</sup> Section 4 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962, changed the apportionment formula used in disbursing funds directly to schools. Section 1(b) of P.L. 91-248, 84 Stat. 208, May 14, 1970, changed apportionment formula again. Section 4(d) of P.L. 92-433, 86 Stat. 726, Sept. 26, 1972, added a proviso that the Secretary shall make payments directly to non-profit private schools under same conditions as prescribed for State agencies, beginning with the fiscal year ending June 30, 1974. Section 3(b) of P.L. 93-150, 87 Stat. 562, Nov. 7, 1973, added a reference to section 11 of this Act in the proviso. Section 7 of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, completely revised this section. Section 817 of P.L. 97-35, 95 Stat. 531, Aug. 13, 1981, completely revised section again.

<sup>11-1</sup> The present section 11 was originally added by section 6 of P.L. 87-823, 76 Stat. 946, Oct. 15, 1962. Former section 11 was designated section 12 by section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962. Section 7 of P.L. 91-248, 84 Stat. 211, May 14, 1970, substantially amended this section by deleting provisions limiting special assistance to schools drawing attendance from areas in which poor economic conditions exist, basing the apportionment of funds upon number of children instead of number of lunches, and selecting schools on the basis of economic factors. Section 4 of P.L. 92-153, 85 Stat. 420, Nov. 5, 1971, added provisions for a base factor of 40 cents for free lunches and 40 cents, less the highest reduced price charged, for reduced price lunches. This section completely revised by section 3(a) of P.L. 93-150, 87 Stat. 561, Nov. 7, 1973.

<sup>11-2</sup> Section 801 of P.L. 97-35, 95 Stat. 521, Aug. 13, 1981, redesignated subsection (a) as (a)(1) and clauses (1) and (2) as (A) and (B), respectively, and deleted obsolete language concerning adjustments of rates.

<sup>11-3</sup> Section 111(1) of P.L. 103-448, 108 Stat. 4706, Nov. 2, 1994, amended this paragraph by inserting "(A)" after "(1)".

tiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.

(B)<sup>11-4</sup> Except as provided in subparagraph (C), (D), or (E), in the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the “first school year”) are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced priced lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.

(C)<sup>11-5(i)</sup> Except as provided in subparagraph (D), in the case of any school that—

(I) elects to serve all children in the school free lunches under the school lunch program during any period of 4 successive school years,<sup>11-6</sup> or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years;<sup>11-6</sup> and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period; special assistance payments shall be paid to the State educational agency with respect to the school during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period<sup>11-7</sup> shall be considered to be equal to the number of lunches or breakfasts served by the school to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

<sup>11-4</sup> Section 111(2) of P.L. 103-448, 108 Stat. 4706, Nov. 2, 1994, amended the second sentence by striking “In the case of” and inserting “(B) Except as provided in subparagraph (C), (D), or (E), in the case of”.

<sup>11-5</sup> Section 111(3) of P.L. 103-448, 108 Stat. 4706, Nov. 2, 1994, struck the third and fourth sentences and inserted subparagraphs (C) through (E).

<sup>11-6</sup> Section 103(a)(1)(A) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this subclause by striking “3 successive school years” each place it appears and inserting “4 successive school years”.

<sup>11-7</sup> Section 103(a)(1)(B) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended clauses (ii) and (iii) by striking “3-school-year period” each place it appears and inserting “4-school-year period”.

(iii) For purposes of computing the amount of the payments, a school may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.<sup>11-7</sup>

(D)<sup>11-8</sup>(i) In the case of any school that<sup>11-9</sup> is receiving special assistance payments under this paragraph for a 4-school-year period<sup>11-10</sup> described in subparagraph (C), the State may grant, at the end of the 4-school-year period,<sup>11-10</sup> an extension of the period for an additional 4 school years,<sup>11-11</sup> if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained stable.

(ii)<sup>11-12</sup> A school described in clause (i)<sup>11-13</sup> may reapply to the State at the end of the 4-school-year period,<sup>11-14</sup> and at the end of each 4-school-year period<sup>11-14</sup> thereafter for which the school receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.<sup>11-14</sup>

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period<sup>11-15</sup> for which the school receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)<sup>11-16</sup>(i) In the case of any school that—

(I) elects to serve all children in the school free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of

<sup>11-8</sup> See note 11-5.

<sup>11-9</sup> Section 704(a) of P.L. 104-193, 110 Stat. 2289, Aug. 22, 1996, amended this clause by striking “, on the date of enactment of this subparagraph.”

<sup>11-10</sup> Section 103(a)(2)(A)(i) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking “3-school-year period” each place it appears and inserting “4-school-year period”.

<sup>11-11</sup> Section 103(a)(2)(A)(ii) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking “2 school years” and inserting “4 school years”.

<sup>11-12</sup> Section 103(a)(2)(B)(i) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking the former first sentence.

<sup>11-13</sup> Section 103(a)(2)(B)(ii) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking “The school” and inserting “A school described in clause (i)”.

<sup>11-14</sup> Section 103(a)(2)(B)(iii) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking “5-school-year period” each place it appears and inserting “4-school-year period”.

<sup>11-15</sup> Section 103(a)(2)(C) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this clause by striking “5-school-year period” and inserting “4-school-year period”.

<sup>11-16</sup> See note 11-5.

Section 103(a)(3) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, struck former clause (iii) of this subparagraph.

the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period; total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school in the last school year for which the school accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained consistent with the income level of the population of the school in the last school year for which the school accepted the applications described in clause (i).

(2)<sup>11-17</sup> The special assistance factor prescribed by the Secretary for free lunches shall be 98.75 cents and the special assistance factor for reduced price lunches shall be 40 cents less than the special assistance factor for free lunches.

(3)(A) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the following:

(i) The national average payment rates for lunches (as established under section 4 of this Act).

(ii) the special assistance factor for lunches (as established under paragraph (2) of this subsection).

(iii) The national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 [(42 U.S.C. 1773(b))]).<sup>11-18</sup>

(iv) The national average payment rates for supplements (as established under section 17(c) of this Act).

(B)<sup>11-19</sup> COMPUTATION OF ADJUSTMENT.—

(i) IN GENERAL.—The annual adjustment under this paragraph shall reflect changes in the cost of operating meal programs under this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], as indicated by the change in the series for food away from home of the Consumer Price Index for all Urban Con-

<sup>11-17</sup> Paragraphs (2) and (3) added by section 801 of P.L. 97-35, 95 Stat. 522, Aug. 13, 1981.

<sup>11-18</sup> Section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)) requires that the national average payment rates for breakfasts served under such Act be adjusted pursuant to section 11(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)).

<sup>11-19</sup> Section 103(b)(1)(A) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this subparagraph by striking “(B) The annual” and inserting “(B) COMPUTATION” and all that follows through “(i) IN GENERAL.—The annual”.

Section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(2)(B)(ii)) provides for the adjustment of the maximum payment for each free breakfast in accordance with this subparagraph.

sumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii)<sup>11-20</sup> BASIS.—Each annual adjustment shall reflect the changes in the series for food away from home for the most recent 12-month period for which such data are available.

(iii)<sup>11-21</sup> ROUNDING.—

(I) THROUGH JUNE 30, 1999.—For the period ending June 30, 1999, the adjustments made under this paragraph shall be computed to the nearest one-fourth cent, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period.<sup>11-22</sup>

(II)<sup>11-23</sup> JULY 1, 1999, AND THEREAFTER.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.

(b) Except as provided in section 10 of the Child Nutrition Act of 1966 [(42 U.S.C. 1779)], the special assistance payments made to each State agency during each fiscal year under the provisions of this section shall be used by such State agency to assist schools of that State in<sup>11-24</sup> providing free and reduced price lunches served to children pursuant to subsection 9(b) of this Act. The amount of such special assistance funds that a school shall from time to time receive, within a maximum per lunch amount established by the Secretary for all States, shall be based on the need of the school for such special assistance. Such maximum per lunch amount established by the Secretary shall not be less than 60 cents.

(c) Special assistance payments to any State under this section shall be made as provided in the last sentence of section 7 of this Act.

<sup>11-20</sup> Section 103(b)(1)(B) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this subparagraph by striking “Each annual” and inserting “(ii) BASIS.—Each annual”.

<sup>11-21</sup> Section 103(b)(1)(C) of P.L. 105-336, 112 Stat. 3145, Oct. 31, 1998, amended this subparagraph by striking “The adjustments” and inserting “(iii) ROUNDING.—” and all that follows through “June 30, 1999, the adjustments”.

<sup>11-22</sup> Effective July 1, 1997, section 704(b)(1) of P.L. 104-193, 110 Stat. 2289, Aug. 22, 1996, amended this sentence by adding before the period at the end the following: “, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period”.

<sup>11-23</sup> Subclause (II) added by section 103(b)(1)(D) of P.L. 105-336, 112 Stat. 3146, Oct. 31, 1998.

<sup>11-24</sup> Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, removed the words “financing the cost of”.

(d)<sup>11-25(1)</sup><sup>11-26</sup> The Secretary, when appropriate, may request each school participating in the school lunch program under this Act to report monthly to the State educational agency<sup>11-27</sup> the average number of children in the school who received free lunches and the average number of children who received reduced price lunches during the immediately preceding month.

(2) On request of the Secretary, the<sup>11-28</sup> State educational agency of each State shall report to the Secretary<sup>11-29</sup> the average number of children in the State who received free lunches and the average number of children in the State who received reduced price lunches during the immediately preceding month.

(e)<sup>11-30</sup> Commodity only schools shall also be eligible for special assistance payments under this section. Such schools shall serve meals free to children who meet the eligibility requirements for free meals under section 9(b) of this Act, and shall serve meals at a reduced price, not exceeding the price specified in section 9(b)(3) of this Act, to children meeting the eligibility requirements for reduced price meals under such section. No physical segregation of, or other discrimination against, any child eligible for a free or reduced priced lunch shall be made by the school, nor shall there be any overt identification of any such child by any means.

(f)<sup>11-31</sup> INFORMATION AND ASSISTANCE CONCERNING REIMBURSEMENT OPTIONS.—

(1) IN GENERAL.—From funds made available under paragraph (3), the Secretary shall provide grants to not more than 10 State agencies in each of fiscal years 2000 and 2001 to enable the agencies, in accordance with criteria established by the Secretary, to—

(A) identify separately in a list—

(i) schools that are most likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1); and

(ii) schools that may benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1);

(B) make the list of schools identified under this subsection available to each school district within the State and to the public;

<sup>11-25</sup> Section 704(c) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, struck former subsection (d) and redesignated former subsections (e) and (f) as subsections (d) and (e), respectively. Previously, language added by section 7 of P.L. 91-248, 84 Stat. 212, May 14, 1970, and designated as subsection (h). Section 3(a) of P.L. 93-150, 87 Stat. 561, Nov. 7, 1973, deleted old subsections (d) and (e) and designated then subsections (g) and (h) as subsections (d) and (e), respectively. Section 8 of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, amended this subsection to change planning from a fiscal to a school year basis, and placed the date of the plans' submission at the discretion of the Secretary. This section was further amended by section 812 of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981, to delete former paragraph (1) which required States to file State plans.

<sup>11-26</sup> Section 812 of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981, redesignated paragraphs (2) and (3) as (1) and (2), respectively, and eliminated the requirement that schools and States provide an estimate of the number of children eligible for free or reduced meals.

<sup>11-27</sup> Section 203 of P.L. 101-147, 103 Stat. 909, Nov. 10, 1989, amended paragraph (1) by striking "Each school participating in the school lunch program under this Act shall report each month to its State educational agency" and inserting "The Secretary" and all that follows through "State educational agency".

<sup>11-28</sup> Section 704(c)(2)(A) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this paragraph by striking "The" and inserting "On request of the Secretary, the".

<sup>11-29</sup> Section 704(c)(2)(B) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this paragraph by striking "each month".

<sup>11-30</sup> This subsection added by section 813 of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981.

<sup>11-31</sup> This subsection added by section 103(c)(1) of P.L. 105-336, 112 Stat. 3146, Oct. 31, 1998.

(C) provide technical assistance to schools, or school districts containing the schools, to enable the schools to evaluate and receive special assistance under subparagraph (C) or (E) of subsection (a)(1);

(D) take any other actions the Secretary determines are consistent with receiving special assistance under subparagraph (C) or (E) of subsection (a)(1) and receiving a grant under this subsection; and

(E) as soon as practicable after receipt of the grant, but not later than September 30, 2003,<sup>11-32</sup> take the actions described in subparagraphs (A) through (D).

(2) REPORT.—

(A)<sup>11-33</sup> IN GENERAL.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2003, an interim report on the activities of the State agencies receiving grants under this subsection; and

(ii) not later than January 1, 2004, a final report on the activities of the State agencies receiving grants under this subsection.

(B) CONTENTS.—In the reports,<sup>11-34</sup> the Secretary shall specify—

(i) the number of schools identified as likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1);

(ii) the number of schools identified under this subsection that have elected to receive special assistance under subparagraph (C) or (E) of subsection (a)(1); and

(iii) a description of how the funds and technical assistance made available under this subsection have been used.

(3) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary \$2,250,000 for each of fiscal years 2000 and 2001 to carry out this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

#### MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 12.<sup>12-1</sup> [42 U.S.C. 1760] (a) States, State educational agencies, and schools participating in the school lunch program under this Act shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this Act are being complied with. Such accounts and records shall be available at any reasonable time<sup>12-2</sup> for inspection and audit by

<sup>11-32</sup>Section 766(1) of P.L. 107-76, 115 Stat. 744, Nov. 28, 2001, amended this subparagraph by striking “2001” and inserting “2003”.

<sup>11-33</sup>Section 766(2)(A) of P.L. 107-76, 115 Stat. 744, Nov. 28, 2001, amended subparagraph (A) in its entirety.

<sup>11-34</sup>Section 766(2)(B) of P.L. 107-76, 115 Stat. 744, Nov. 28, 2001, amended subparagraph (B) by striking “report” and inserting “reports”.

<sup>12-1</sup>Section 12 was section 11 until renumbered by section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962.

<sup>12-2</sup>Section 705(a) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this sentence by striking “at all times be available” and inserting “be available at any reasonable time”.

representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

(b) The Secretary shall incorporate, in the Secretary's<sup>12-3</sup> agreements with the State educational agencies, the express requirements under this Act with respect to the operation of the school lunch program under this Act insofar as they may be applicable and such other provisions as in the Secretary's<sup>12-4</sup> opinion are reasonably necessary or appropriate to effectuate the purpose of this Act.

(c)<sup>12-5</sup> In carrying out the provisions of this Act, the Secretary shall not<sup>12-6</sup> impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

(d)<sup>12-7</sup> For the purposes of this Act—

(1)<sup>12-8</sup> CHILD.—

(A) IN GENERAL.—The term “child” includes an individual, regardless of age, who—

(i) is determined by a State educational agency, in accordance with regulations prescribed by the Secretary, to have one or more disabilities;<sup>12-9</sup> and

(ii) is attending any institution, as defined in section 17(a), or any nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.

(B) RELATIONSHIP TO CHILD AND ADULT CARE FOOD PROGRAM.—No institution that is not otherwise eligible to participate in the program under section 17 shall be considered eligible because of this paragraph.

(2)<sup>12-10</sup> “Commodity only schools” means schools that do not participate in the school lunch program under this Act, but

<sup>12-3</sup> Section 306(b)(1) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (b) by striking “his” each place it appears and inserting “the Secretary’s”.

<sup>12-4</sup> See note 12-3.

<sup>12-5</sup> Section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962, deleted a requirement of equitable distribution of funds in States maintaining separate schools for minority and majority races.

<sup>12-6</sup> Section 705(b) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this subsection by striking “neither the Secretary nor the State shall” and inserting “the Secretary shall not”.

<sup>12-7</sup> Section 705(c)(2) and (3) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this subsection by striking former paragraphs (3) and (4) and by redesignating former paragraphs (1), (2), and (5) through (9) as paragraphs (6), (7), (3), (4), (2), (5), and (1), respectively, and rearranging the paragraphs so as to appear in numerical order.

Previously, section 9(c) of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, deleted a definition of “nonprofit private school” found in paragraph (3) and renumbered former paragraphs (4) through (7) as former paragraphs (3) through (6), respectively.

Former paragraph (3) (defining “participation rate”) was added by section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962. Section 1(b) of P.L. 91-248, 84 Stat. 207, May 14, 1970, provided for the use of data from a different fiscal year. Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, eliminated former paragraph (3) which defined “food service equipment” and renumbered paragraph (4) as paragraph (3).

Former paragraph (4) (defining “assistance need rate”) was added by section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962. Renumbered from (5) to (4) by section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981.

<sup>12-8</sup> This definition added by section 701(b) of P.L. 104-193, 110 Stat. 2288, Aug. 22, 1996. For redesignation, see note 12-7.

<sup>12-9</sup> Section 107(j)(3)(A)(i) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this subparagraph by striking “mental or physical” each place it appears.

<sup>12-10</sup> This definition added by section 813, P.L. 97-35, 95 Stat. 530, Aug. 13, 1981. For redesignation, see note 12-7.

which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(3)<sup>12-11</sup> “School” means (A) any public or nonprofit private school of high school grade or under<sup>12-12</sup>, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor)<sup>12-13</sup>.<sup>12-14</sup> For purposes of this paragraph, the term “nonprofit”, when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.<sup>12-15</sup>

(4)<sup>12-16</sup> “School year” means the annual period from July 1 through June 30.

(5)<sup>12-17</sup> “Secretary” means the Secretary of Agriculture.

<sup>12-11</sup> This definition transferred from section 4 by section 5 of P.L. 87-823, 76 Stat. 946, Oct. 15, 1962. Renumbered from (6) to (5) by section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981. For redesignation, see note 12-7.

<sup>12-12</sup> Section 3(a)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(1)) authorizes a special milk program for children in schools and institutions which do not participate in a meal service program authorized under such Act or the Richard B. Russell National School Lunch Act.

Section 3(a)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(2)) provides that the limitation imposed under section 3(a)(1) of such Act for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under such Act (42 U.S.C. 1771 et seq.) and this Act. Section 4209 of Public Law 99-661 added paragraph (2) of section 3(a) of the Child Nutrition Act of 1966 (effective October 1, 1986). In an earlier enactment, section 329 of Public Law 99-591 added the identical paragraph (effective July 1, 1987).

<sup>12-13</sup> Section 9(c) of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, expanded this definition to include nonprofit private residential child care institutions. Section 205 of P.L. 96-499, 94 Stat. 2601, Dec. 5, 1980, added the “Job Corp Centers” exclusion.

<sup>12-14</sup> Effective October 1, 1995, section 112(a) of P.L. 103-448, 108 Stat. 4708, Nov. 2, 1994, amended this paragraph by striking clause (C) and making conforming amendments.

<sup>12-15</sup> Section 808 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, changed the definition of “non-profit” to exclude private schools whose average yearly tuition exceeds \$1,500.00 per child. Section 325(a) of P.L. 99-500, 100 Stat. 1783-361, Oct. 18, 1986, and section 325(a) of P.L. 99-591, 100 Stat. 3341-364, Oct. 30, 1986, deleted the phrase “except private schools whose average yearly tuition exceeds \$1,500 per child”. This provision was effective July 1, 1987, under section 325(c) of both acts. Section 4205(a) of P.L. 99-661, 100 Stat. 4072, Nov. 14, 1986, substituted “2,000” for “1,500” and added after the first sentence the following: “On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.” Title I, chapter X, P.L. 100-71, 101 Stat. 429, July 11, 1987, substantially revised this section, removing the tuition limitation and the sentence added by P.L. 99-661. P.L. 100-71 also substituted “Corp” for “Corp” in subsection (B) and “nonprofit” for “non-profit” in subsection (C).

Section 306(b)(2) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended paragraph (5) by striking “Internal Revenue Code of 1954” and inserting “Internal Revenue Code of 1986”.

Section 13(3)(A) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) defines “recipient agency”, for purposes of such Act, to include a school authorized under the Richard B. Russell National School Lunch Act to operate lunch programs or similar programs and to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase.

<sup>12-16</sup> This definition added by section 12(b) of P.L. 95-627, 92 Stat. 3624, Nov. 10, 1978, and the paragraph changed from (7) to (6) by section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981. For redesignation, see note 12-7.

<sup>12-17</sup> This definition added by section 373(a) of P.L. 99-500, 100 Stat. 1783-369, Oct. 18, 1986. For redesignation, see note 12-7. Section 373(a) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4503(a) of P.L. 99-661, 100 Stat. 4081, Nov. 14, 1986, made the same addition.

Section 306(a)(1) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8)), as similarly added first by section 373(a) of the School

Continued

(6)<sup>12-18</sup> “State” means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(7)<sup>12-19</sup> “State educational agency” means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(8)<sup>12-20</sup> **DISABILITY.**—The term ‘disability’ has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(e)<sup>12-21</sup> The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.<sup>12-22</sup>

(f)<sup>12-23</sup> In providing assistance for breakfasts, lunches, suppers, and supplements<sup>12-24</sup> served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States,<sup>12-25</sup> and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4, 11, 13, and 17<sup>12-26</sup> of this Act and section 4 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773)], to reflect the differences between the costs of providing meals and supplements<sup>12-27</sup> in those States and the costs of providing meals and supplements<sup>12-27</sup> in all other States.

(g)<sup>12-28</sup> Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject

Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-369), later by section 373(a) of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-372), and later by section 4503(a) of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if only the latest amendment was enacted.

<sup>12-18</sup> Amended by section 5 of P.L. 82-518, 66 Stat. 591, July 12, 1952, to include Guam; by section 3 of P.L. 87-688, 76 Stat. 587, Sept. 25, 1962, to include American Samoa; by section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962, to recognize Alaskan and Hawaiian statehood; by section 9(b) of P.L. 94-105, 89 Stat. 514, Oct. 7, 1975, to include the Trust Territory of the Pacific Islands; and by section 705(c)(1) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, to strike “the Trust Territory of the Pacific Islands” and insert “the Commonwealth of the Northern Mariana Islands”. For redesignation, see note 12-7.

<sup>12-19</sup> Section 5 of P.L. 87-823, 76 Stat. 945, Oct. 15, 1962, deleted an exception applicable to the District of Columbia and obsolete language. For redesignation, see note 12-7.

<sup>12-20</sup> This definition added by section 107(j)(3)(A)(ii) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998.

<sup>12-21</sup> This subsection added by section 9(d) of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975.

<sup>12-22</sup> Section 245A(h)(4)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(A)) exempts assistance provided under the Richard B. Russell National School Lunch Act from the temporary disqualification of newly legalized aliens from receiving certain public welfare assistance.

<sup>12-23</sup> This subsection added by section 10(a) of P.L. 95-627, 92 Stat. 3623, Nov. 10, 1978.

<sup>12-24</sup> Section 104(a)(1) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this subsection by striking “school breakfasts and lunches” and inserting “breakfasts, lunches, suppers, and supplements”.

<sup>12-25</sup> Section 705(d) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this subsection by striking “the Trust Territory of the Pacific Islands.”.

<sup>12-26</sup> Section 104(a)(2) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this subsection by striking “sections 4 and 11” and inserting “sections 4, 11, 13, and 17”.

<sup>12-27</sup> Section 104(a)(3) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this subsection by striking “lunches and breakfasts” each place it appears and inserting “meals and supplements”.

<sup>12-28</sup> This subsection added by section 10(a) of P.L. 95-627, 92 Stat. 3623, Nov. 10, 1978.

Section 17(p) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(p)) authorizes a court to order a person that is convicted of a violation of this subsection, with respect to food

of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal<sup>12-29</sup> use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000<sup>12-30</sup> or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.<sup>12-31</sup>

(h)<sup>12-32</sup> No provision of this Act or of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] shall require any school receiving funds under this Act and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs.

(i)<sup>12-33</sup> Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966<sup>12-34</sup> [(42 U.S.C. 1771 et seq.)] may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965<sup>12-35</sup> [(42 U.S.C. 3001 et seq.)].

(j)<sup>12-36</sup>(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

instruments (including any item described in section 17(o)(1)(A) of that Act issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States certain property.

<sup>12-29</sup> Section 306(b)(3) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (g) by striking “his” and inserting “personal”.

<sup>12-30</sup> Section 104(b) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this subsection by striking “\$10,000” and inserting “\$25,000”.

<sup>12-31</sup> Section 3803(c)(2)(C)(xiii) of title 31, United States Code, provides administrative remedies for false claims and statements relating to benefits under this Act.

The first sentence of section 16(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1785(b)) permits the Secretary of Agriculture to determine, settle, and adjust any claim arising under such Act and the Richard B. Russell National School Lunch Act.

<sup>12-32</sup> This subsection added by section 6(a)(1) of P.L. 95-627, 92 Stat. 3620, Nov. 10, 1978, and amended by section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, to eliminate the requirement that reimbursement to school food authorities not exceed the cost of operating the lunch and breakfast programs.

<sup>12-33</sup> This subsection added by section 326 of P.L. 99-500, 100 Stat. 1783-361, Oct. 18, 1986. Section 326 of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4206 of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made the same addition.

Section 306(a)(2) of P.L. 101-147, 103 Stat. 914, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 12(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(i)), as similarly added first by section 326 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-361), later by section 326 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-365), and later by section 4206 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if only the latest amendment was enacted.

<sup>12-34</sup> Section 306(b)(4)(A) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (i) by striking “(42 U.S.C. 1771 et seq.)”.

<sup>12-35</sup> Section 306(b)(4)(B) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (i) by striking “(42 U.S.C. 3001 et seq.)”.

<sup>12-36</sup> This subsection added by section 112(b) of P.L. 103-448, 108 Stat. 4708, Nov. 2, 1994.

(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

(B) the final program operations report for the month is submitted to the Secretary not later than 90 days after the last day of the month.

(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.

(k)<sup>12-37</sup>(1) Not later than June 1, 1995, the Secretary shall issue final regulations to conform the nutritional requirements of the school lunch and breakfast programs with the guidelines contained in the most recent “Dietary Guidelines for Americans” that is published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).<sup>12-38</sup> The final regulations shall include—

(A) rules permitting the use of food-based menu systems; and

(B) adjustments to the rule on nutrition objectives for school meals published in the Federal Register on June 10, 1994 (59 Fed. Reg. 30218).

(2) No school food service authority shall be required to implement final regulations issued pursuant to this subsection until the regulations have been final for at least 1 year.

(l)<sup>12-39</sup>(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for a State or eligible service provider that requests a waiver if—

(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

(2)(A)<sup>12-40</sup> To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

<sup>12-37</sup>This subsection added by section 112(c) of P.L. 103-448, 108 Stat. 4708, Nov. 2, 1994. Section 705(e)(1) and (2) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this subsection by striking former paragraphs (1), (2), and (5), and by redesignating former paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

<sup>12-38</sup>Section 705(e)(3) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this paragraph by striking “Guidelines” and inserting “guidelines contained in the most recent ‘Dietary Guidelines for Americans’ that is published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341)”.

<sup>12-39</sup>This subsection added by section 112(d) of P.L. 103-448, 108 Stat. 4709, Nov. 2, 1994.

<sup>12-40</sup>Section 705(f)(1) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this subparagraph in clause (iii), by adding “and” at the end of clause (iii), by striking the semi-

(i) identifies the statutory or regulatory requirements that are requested to be waived;

(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted; and

(iv) includes a description of the impediments to the efficient operation and administration of the program.

(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

(3)<sup>12-41</sup> The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

(4)<sup>12-42</sup> The Secretary may not grant a waiver under this subsection that increases Federal costs or that relates<sup>12-43</sup> to—

(A) the nutritional content of meals served;

(B) Federal reimbursement rates;

(C) the provision of free and reduced price meals;

(D) limits on the price charged for a reduced price meal;

(E) maintenance of effort;

(F) equitable participation of children in private schools;

(G) distribution of funds to State and local school food service authorities and service institutions participating in a program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(H) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

(I) prohibiting the operation of a profit producing program;

(J) the sale of competitive foods;

(K) the commodity distribution program under section 14;

(L) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or<sup>12-44</sup>

(M) enforcement of any constitutional or statutory right of an individual, including any right under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

colon at the end of clause (iv) and inserting a period, and by striking former clauses (v) through (vii).

<sup>12-41</sup> Section 705(f)(2) of P.L. 104-193, 110 Stat. 2290, Aug. 22, 1996, amended this paragraph by striking “(A)”, and by striking former subparagraphs (B) through (D).

<sup>12-42</sup> Section 705(f)(3)(B) and (C) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this paragraph by striking former subparagraph (D) and by redesignating former subparagraphs (E) through (N) as subparagraphs (D) through (M), respectively.

<sup>12-43</sup> Section 705(f)(3)(A) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this paragraph by striking “of any requirement relating” and inserting “that increases Federal costs or that relates”.

<sup>12-44</sup> Section 705(f)(3)(D) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this subparagraph by striking “and” at the end and inserting “or”.

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the increase has not been paid for in accordance with paragraph (1)(A)(iii).

(6)<sup>12-45</sup> The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

(A) summarizing the use of waivers by the State and eligible service providers;

(B) describing whether the waivers resulted in improved services to children;

(C) describing the impact of the waivers on providing nutritional meals to participants; and

(D) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

(7) As used in this subsection, the term “eligible service provider” means—

(A) a local school food service authority;

(B) a service institution or private nonprofit organization described in section 13; or

(C) a family or group day care home sponsoring organization described in section 17.

(m)<sup>12-46</sup>(1) The Secretary, acting through the Administrator of the Food and Nutrition Service or through the Extension Service, shall award on an annual basis grants to a private nonprofit organization or educational institution in each of 3 States to create, operate, and demonstrate food and nutrition projects that are fully integrated with elementary school curricula.

(2) Each organization or institution referred to in paragraph (1) shall be selected by the Secretary and shall—

(A) assist local schools and educators in offering food and nutrition education that integrates math, science, and verbal skills in the elementary grades;

(B) assist local schools and educators in teaching agricultural practices through practical applications, like gardening;

(C) create community service learning opportunities or educational programs;

(D) be experienced in assisting in the creation of curriculum-based models in elementary schools;

(E) be sponsored by an organization or institution, or be an organization or institution, that provides information, or con-

<sup>12-45</sup> Section 705(f)(4) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this paragraph by striking “(A)(i)” and all that follows through “(B)” and by redesignating former clauses (i) through (iv) as subparagraphs (A) through (D), respectively.

<sup>12-46</sup> This subsection added by section 113 of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994.

ducts other educational efforts, concerning the success and productivity of American agriculture and the importance of the free enterprise system to the quality of life in the United States; and

(F) be able to provide model curricula, examples, advice, and guidance to schools, community groups, States, and local organizations regarding means of carrying out similar projects.

(3) Subject to the availability of appropriations to carry out this subsection, the Secretary shall make grants to each of the 3 private organizations or institutions selected under this subsection in amounts of not less than \$100,000, nor more than \$200,000, for each of fiscal years 1995 through 2003.<sup>12-47</sup>

(4) The Secretary shall establish fair and reasonable auditing procedures regarding the expenditure of funds under this subsection.

(5) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 1995 through 2003.<sup>12-48</sup>

(n)<sup>12-49</sup> BUY AMERICAN.—

(1) DEFINITION OF DOMESTIC COMMODITY OR PRODUCT.—In this subsection, the term “domestic commodity or product” means—

(A) an agricultural commodity that is produced in the United States; and

(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) REQUIREMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(B) LIMITATIONS.—Subparagraph (A) shall apply only to—

(i) a school food authority located in the contiguous United States; and

(ii) a purchase of a domestic commodity or product for the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(3) APPLICABILITY TO HAWAII.—Paragraph (2)(A) shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(4)<sup>12-49A</sup> APPLICABILITY TO PUERTO RICO.—Paragraph (2)(A) shall apply to a school food authority in the Commonwealth of Puerto Rico with respect to domestic commodities or products that are produced in the Commonwealth of Puerto Rico in suffi-

<sup>12-47</sup> Section 104(c) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this subsection by striking “1998” each place it appears and inserting “2003”.

<sup>12-48</sup> See note 12-47.

<sup>12-49</sup> This subsection added by section 104(d) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998.

<sup>12-49A</sup> Para. (4) added by sec. 4304 of P.L. 107-171, 116 Stat. 331, May 13, 2002.

cient quantities to meet the needs of meals provided under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(o)<sup>12-50</sup> **PROCUREMENT CONTRACTS.**—In acquiring a good or service for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), a State, State agency, school, or school food authority may enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring such good or service.

(p)<sup>12-51</sup> **GRANT FOR DEMONSTRATION PROJECT.**—

(1) **USE OF FUNDS FOR WIC DEMONSTRATION PROJECT.**—

(A) **IN GENERAL.**—The Secretary shall make grants of funds under this subsection to a State—

(i) for purposes that include carrying out the demonstration project under section 17(r) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(r)); and

(ii) for the purpose described in clause (i), in amounts not to exceed \$10,000 for each fiscal year for each site in the State.

(B) **APPORTIONMENT.**—A State that receives a grant under subparagraph (A) shall apportion the funds received to ensure that each site in the State receives not more than \$10,000 for any fiscal year.

(2) **EVALUATIONS OF DEMONSTRATION PROJECT.**—The Secretary shall conduct an evaluation of the demonstration project and grant program for identification and enrollment efforts funded under this subsection that include a determination of—

(A) the number of children enrolled as a result of the enactment of this subsection;

(B) the income levels of the families of enrolled children;

(C) the cost of identification and enrollment assistance services provided under the project or grant program;

(D) the effect on the caseloads of local agencies that carry out the special supplemental nutrition program for woman, infants, and children established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); and

(E) such other factors as the Secretary determines to be appropriate.

(3) **FUNDING.**—

(A) **IN GENERAL.**—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary to carry out this subsection \$1,000,000 for the period of fiscal years 2001 through 2004, to remain available until expended but not later than September 30, 2004.

(B) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive the funds and shall accept the funds provided under subparagraph (A), without further appropriation.

<sup>12-50</sup>This subsection added by section 104(e) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998.

<sup>12-51</sup>Effective October 1, 2000, subsection (p) added by section 242(b)(3) of P.L. 106-224, 114 Stat. 412, June 20, 2000.

## SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

SEC. 13.<sup>13-1</sup> [42 U.S.C. 1761] (a)(1) The Secretary is authorized to carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain<sup>13-2</sup> nonprofit food service programs for children in service institutions. For purposes of this section, (A) “program” means the summer food service program for children authorized by this section; (B) “service institutions” means public or private nonprofit school food authorities, local, municipal, or county governments,<sup>13-3</sup> public or private nonprofit higher education institutions participating in the National Youth Sports Program,<sup>13-4</sup> and residential public or private nonprofit summer camps, that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)]<sup>13-5</sup>; (C) “areas in which poor economic conditions exist” means areas in which at least 50 percent<sup>13-6</sup> of the children are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program; (D) “children” means individuals who are eighteen years of age and under, and individuals who are older than eighteen who are (i) de-

<sup>13-1</sup> Original section establishing the Special Food Service Program for Children added by section 3 of P.L. 90-302, 82 Stat. 117, May 8, 1968. Additional amendments were made by section 6 (c) and (d) of P.L. 91-248, 84 Stat. 210, May 14, 1970; section 7 of P.L. 92-32, 85 Stat. 86, June 30, 1971; sections 1 and 2 of P.L. 92-433, 86 Stat. 724, Sept. 26, 1972; and P.L. 94-20, 89 Stat. 82, May 2, 1975. Section 13 of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975, replaced original section with a new section establishing the Summer Food Service Program for Children. This section completely revised by section 2 of P.L. 95-166, 91 Stat. 1325, Nov. 10, 1977.

Section 19(d)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(d)(1)(C)) permits the Secretary to formulate and carry out a nutrition information and education program, through a system of grants to State educational agencies, to provide for the conduct of nutrition education activities in institutions offering summer food service programs under this section.

Section 114(h) of P.L. 103-448, 108 Stat. 4713, Nov. 2, 1994, requires the Secretary to (1) not later than 180 days after the date of enactment of P.L. 103-448, in consultation with the heads of other Federal agencies, identify sources of Federal funds that may be available from other Federal agencies for service institutions under the summer food service program for children established under this section to carry out all-day educational and recreational activities for children at feeding sites under the program, and (2) notify through State agencies, as determined appropriate by the Secretary, the service institutions of the sources.

<sup>13-2</sup> Section 706(a)(1)(A) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this sentence by striking “initiate, maintain, and expand” and inserting “initiate and maintain”.

<sup>13-3</sup> Section 809 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, replaced the words “nonresidential public or private nonprofit institutions” with “public or private nonprofit school food authorities, local, municipal, or county governments.”

<sup>13-4</sup> Section 213(a) of P.L. 100-435, 102 Stat. 1658, Sept. 19, 1988, added the words “, public or private nonprofit higher education institutions participating in the National Youth Sports Program.”

<sup>13-5</sup> Section 13(3)(A) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) defines “recipient agency”, for purposes of such Act, to include a school authorized under the Richard B. Russell National School Lunch Act to operate summer food service programs and to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase.

<sup>13-6</sup> Section 809 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981, substituted “50 percent” for “33½ percent”.

terminated by a State educational agency or a local public educational agency of a State, in accordance with regulations prescribed by the Secretary, to have a disability,<sup>13-7</sup> and (ii) participating in a public or nonprofit private<sup>13-8</sup> school program established for individuals who have a disability;<sup>13-9</sup> and (E) “State” means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa,<sup>13-10</sup> and the Northern Mariana Islands.

(2) To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools. The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

(3) Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C)<sup>13-11</sup>(i) conduct a regularly scheduled food service for children from areas in which poor economic conditions exist; or  
(ii) qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

(4)<sup>13-12</sup> The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(A) Local schools.

(B) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

(C) New public institutions.

<sup>13-7</sup>Section 107(j)(3)(B)(i) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this clause by striking “to be mentally or physically handicapped” and inserting “to have a disability”.

<sup>13-8</sup>The phrase “or nonprofit private” added by section 10(d)(2) of P.L. 95-627, 92 Stat. 3624, Nov. 10, 1978.

<sup>13-9</sup>Section 107(j)(3)(B)(ii) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this clause by striking “the mentally or physically handicapped” and inserting “individuals who have a disability”.

<sup>13-10</sup>Section 706(a)(1)(B) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this subparagraph by striking “the Trust Territory of the Pacific Islands.”

<sup>13-11</sup>This paragraph amended in its entirety by section 102(a)(1)(A) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989. Effective July 1, 1999, section 107(j)(2)(A) of P.L. 105-336, 112 Stat. 3152, Oct. 31, 1998, amended this paragraph by inserting “or” at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

<sup>13-12</sup>Section 114(a) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994, amended this paragraph by striking former subparagraphs (A) through (F) and inserting new subparagraphs (A) through (D). Former subparagraph (F) was added by section 102(a)(1)(B) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989.

(D) New private nonprofit organizations eligible under paragraph (7).

The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

(5) Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligibility requirements for free or reduced price meals, as determined under this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)].

(6)<sup>13-13</sup> Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this section only if such programs are operated directly by such governments.

(7)<sup>13-14</sup>(A)<sup>13-15</sup> Private<sup>13-16</sup> nonprofit organizations, as defined in subparagraph (B) (other than organizations eligible under paragraph (1)), shall be eligible for the program under the same terms and conditions as other service institutions.

(B) As used in this paragraph, the term “private nonprofit organizations” means those organizations that—

(i)<sup>13-17</sup> operate—

(I) not more than 25 sites, with not more than 300 children being served at any one site; or

(II) with a waiver granted by the State agency under standards developed by the Secretary, with not more than 500 children being served at any one site;

(ii)<sup>13-18</sup> exercise full control and authority over the operation of the program at all sites under their sponsorship;

(iii)<sup>13-19</sup> provide ongoing year-around activities for children or families<sup>13-20</sup>;

(iv)<sup>13-21</sup> demonstrate that such organizations have adequate management and the fiscal capacity to operate a program under this section; and

(v)<sup>13-22</sup> meet applicable State and local health, safety, and sanitation standards.

(b)<sup>13-23</sup> SERVICE INSTITUTIONS.—

<sup>13-13</sup>This paragraph added by section 809 of P.L. 97-35, 95 Stat. 527, Aug. 13, 1981.

<sup>13-14</sup>This paragraph added by section 213(b) of P.L. 100-435, 102 Stat. 1658, 1659, Sept. 19, 1988. Former subparagraph (C) of this paragraph was added by section 102(a)(1)(C)(iii) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989, and repealed by section 114(b) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994.

<sup>13-15</sup>This subparagraph amended to read as provided above by section 102(a)(1)(C)(i) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989.

<sup>13-16</sup>Section 706(a)(2) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this subparagraph by striking “Except as provided in subparagraph (C), private” and inserting “Private”.

<sup>13-17</sup>This clause amended to read as provided above by section 105(a) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998. This clause earlier amended in its entirety by section 102(a)(1)(C)(ii)(I) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989.

<sup>13-18</sup>Section 105(b)(1) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998, amended this subparagraph by striking former clauses (ii) and (iii) and by redesignating former clauses (iv) through (vii) as clauses (ii) through (v), respectively. Previously, section 102(a)(1)(C)(ii)(II) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989, amended former clause (ii).

<sup>13-19</sup>See note 13-18.

<sup>13-20</sup>The phrase “or families” was added by section 102(a)(1)(C)(ii)(III) of P.L. 101-147, 103 Stat. 879, Nov. 10, 1989.

<sup>13-21</sup>See note 13-18.

<sup>13-22</sup>See note 13-18.

<sup>13-23</sup>Effective January 1, 1997, section 706(b) of P.L. 104-193, 110 Stat. 2291, Aug. 22, 1996, amended this subsection by striking “(b)(1)” and all that follows through the end

Continued

(1) PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations (which cost shall include the costs of obtaining, preparing, and serving food, but shall not include administrative costs).

(B) MAXIMUM AMOUNTS.—Subject to subparagraph (C), payments to any institution under subparagraph (A) shall not exceed—

- (i) \$1.97 for each lunch and supper served;
- (ii) \$1.13 for each breakfast served; and
- (iii) 46 cents for each meal supplement served.

(C) ADJUSTMENTS.—Amounts specified in subparagraph (B) shall be adjusted on January 1, 1997, and each January 1 thereafter, to the nearest lower cent increment to reflect changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.

(2)<sup>13-24</sup> Any service institution may only serve lunch and either breakfast or a meal supplement during each day of operation, except that any service institution that is a camp or that serves meals primarily to migrant children may serve up to 3 meals, or 2 meals and 1 supplement,<sup>13-25</sup> during each day of operation, if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap.<sup>13-26</sup>

(3) Every service institution, when applying for participation in the program, shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State. Payment to service institutions for administrative costs shall equal the full amount of State approved administrative costs incurred, except that such payment to service institutions may not exceed the maximum allowable levels determined by the Secretary pursuant to the study prescribed in paragraph (4) of this subsection.

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

- (i) an evaluation of meal quality as related to costs; and
- (ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-re-

of paragraph (1) and inserting “(b)” and all that follows through the end of paragraph (1). In the previous text, the phrase “for All Urban Consumers” was added by section 5(d) of P.L. 95-627, 92 Stat. 3620, Nov. 10, 1978, effective July 1, 1979.

<sup>13-24</sup> This paragraph amended by section 206 of P.L. 96-499, 94 Stat. 2601, Dec. 5, 1980, to limit meal service to a lunch and either breakfast or a meal supplement, except in camps or institutions serving primarily migrants.

<sup>13-25</sup> Section 706(c)(1) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this sentence by striking “four meals” and inserting “3 meals, or 2 meals and 1 supplement.”

<sup>13-26</sup> Section 706(c)(2) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, struck the second sentence of this paragraph.

lated costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

(c)<sup>13-27</sup>(1) Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.<sup>13-28</sup>

(2)<sup>13-29</sup> Children participating in National Youth Sports Programs operated by higher education institutions<sup>13-30</sup> shall be eligible to participate in the program under this paragraph on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program.<sup>13-31</sup>

(d) Not later than April 15, May 15, and July 1<sup>13-32</sup> of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

(e)(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service

<sup>13-27</sup> Section 102(a)(2) of P.L. 101-147, 103 Stat. 880, Nov. 10, 1989, inserted "(1)" after "(c)" and added paragraph (2).

<sup>13-28</sup> Section 114(c) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994, amended this subsection by inserting "or that" and all that follows through "similar cause".

<sup>13-29</sup> Section 706(d)(1) and (2) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking former subparagraphs (A), (C), (D), and (E), and by striking "(B)".

<sup>13-30</sup> Section 706(d)(3) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking ", and such higher education institutions,".

<sup>13-31</sup> Section 706(d)(4) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking "without application" and inserting "on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program".

<sup>13-32</sup> Section 307(1) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (d) by striking "July 1," and inserting "July 1".

institution. The<sup>13-33</sup> State shall not release the second month's advance program payment to any service institution (excluding a school)<sup>13-34</sup> that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities. No<sup>13-35</sup> advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or \$40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.

(f)<sup>13-36</sup> (1) Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research.

(2)<sup>13-37</sup> The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection.

<sup>13-33</sup> Section 706(e)(1) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking "institution: *Provided*, That (A) the" and inserting "institution. The".

<sup>13-34</sup> Section 706(e)(2) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by inserting "(excluding a school)" after "any service institution".

<sup>13-35</sup> Section 706(e)(3) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking "responsibilities, and (B) no" and inserting "responsibilities. No".

<sup>13-36</sup> Section 706(f)(1), (2), and (5) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this subsection by redesignating the first through seventh sentences as paragraphs (1) through (7), respectively, by striking paragraph (3), and by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

<sup>13-37</sup> See note 13-36. This sentence and the former preceding sentence added by section 105(b)(1) of P.L. 103-448, 108 Stat. 4702, Nov. 2, 1994.

(3)<sup>13-38</sup> Meals described in paragraph (1) shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section.

(4)<sup>13-39</sup> To assure meal quality, States shall, with the assistance of the Secretary, prescribe model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State.

(5)<sup>13-40</sup> Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) conformance with standards set by local health authorities.<sup>13-41</sup>

(6)<sup>13-42</sup> Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7)<sup>13-43</sup> OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child<sup>13-44</sup> to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

(g) The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications and handbooks by February 1 of each fiscal year.<sup>13-45</sup> In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

<sup>13-38</sup> See note 13-36. Section 105(b)(2) of P.L. 103-448, 108 Stat. 4702, Nov. 2, 1994, amended this sentence by striking “Such meals” and inserting “Meals described in the first sentence”. Section 706(f)(3) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this sentence by striking “the first sentence” and inserting “paragraph (1)”.

<sup>13-39</sup> See note 13-36. Section 307(2) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended this sentence by striking “prescribed” and inserting “prescribe”.

<sup>13-40</sup> See note 13-36.

<sup>13-41</sup> Section 706(f)(4) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking “that bacteria levels” and all that follows through the period at the end and inserting “conformance with standards set by local health authorities.”.

<sup>13-42</sup> See note 13-36.

<sup>13-43</sup> Paragraph (7) added by section 706(g) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996.

<sup>13-44</sup> Section 105(c) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, amended this paragraph by striking “attending a site on school premises operated directly by the authority”.

<sup>13-45</sup> Section 307(3) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended the first sentence of subsection (g) by striking an obsolete proviso relating to printing certain regulations for fiscal year 1978.

(h) Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 416 of the Agricultural Act of 1949<sup>13-46</sup> [(7 U.S.C. 1431)], or purchased under section 32 of the Act of August 24, 1935<sup>13-47</sup> [(7 U.S.C. 612c)] or section 709 of the Food and Agriculture Act of 1965<sup>13-48</sup> [(7 U.S.C. 1446a-1)]. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

[(i) Repealed<sup>13-49</sup>]

(j) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(k)(1)<sup>13-50</sup> The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first \$50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next \$100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next \$250,000 in funds distributed to that State for the program in the preceding fiscal year, and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs or 1 percent of program funds, shall be made available by the Secretary to

<sup>13-46</sup>Section 307(4)(A) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (h) by striking "(7 U.S.C. 1431)".

<sup>13-47</sup>Section 307(4)(B) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (h) by striking "(7 U.S.C. 612c)".

<sup>13-48</sup>Section 307(4)(C) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (h) by striking "(7 U.S.C. 1446a-1)".

<sup>13-49</sup>Section 817(b) of P.L. 97-35, 95 Stat. 532, Aug. 13, 1981, eliminated subsection (i) concerning the Secretary's authority to directly administer the program.

<sup>13-50</sup>Section 7(b) of P.L. 95-627, 92 Stat. 3622, Nov. 10, 1978, substituted "\$100,000" for "\$50,000" in clause (B), "\$250,000" for "\$100,000" in clause (C), and "2½ percent" for "2 percent" in clause (D).

Section 7(a)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(6)) provides that funds available to a State under this section 7(a) of that Act and under section 13(k)(1) of this Act may be used by the State for the costs of administration of the programs authorized under this Act (except for the programs authorized under sections 17 and 21 of the Child Nutrition Act of 1966) and this Act without regard to the basis on which the funds were earned and allocated.

Section 7(a)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(9)(A)) permits the Secretary to withhold from a State funds allocated to a State under this paragraph if the Secretary determines that the administration of any program by a State under such Act (other than section 17 of such Act) or under this Act is seriously deficient and the State fails to correct the deficiency within a specified period of time.

States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

(1)(1) Service institutions<sup>13-51</sup> may contract on a competitive basis with food service management companies<sup>13-52</sup> for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity.<sup>13-53</sup>

(2) Each State may<sup>13-54</sup> provide for the registration of food service management companies.<sup>13-55</sup>

(3)<sup>13-56</sup> In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(4)<sup>13-57</sup> Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of \$100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

(m) States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time<sup>13-58</sup> for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

<sup>13-51</sup> The parenthetical phrase “(other than private nonprofit organizations eligible under subsection (a)(7))” was added by section 102(a)(3) of P.L. 101-147, 103 Stat. 881, Nov. 10, 1989, and struck by section 105(b)(2)(A)(i)(I) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998.

<sup>13-52</sup> Section 105(b)(2)(A)(i)(II) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998, amended this sentence by striking “only with food service management companies registered with the State in which they operate” and inserting “with food service management companies”.

<sup>13-53</sup> Section 105(b)(2)(A)(ii) of P.L. 105-336, 112 Stat. 3148, Oct. 31, 1998, amended this paragraph by striking the former last sentence.

<sup>13-54</sup> Section 105(b)(2)(B)(i) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, amended this sentence by striking “shall” and inserting “may”.

<sup>13-55</sup> Section 105(b)(2)(B)(ii) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, amended this paragraph by striking the former second and third sentences.

<sup>13-56</sup> Section 105(b)(2)(C) and (D) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, struck former paragraph (3) and redesignated former paragraphs (4) and (5) as paragraphs (3) and (4), respectively. Previously, section 114(d) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994, amended former paragraph (3).

<sup>13-57</sup> See note 13-56.

<sup>13-58</sup> Section 706(h) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this sentence by striking “at all times be available” and inserting “be available at any reasonable time”.

(n)<sup>13-59</sup> Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February 15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children;<sup>13-60</sup> (3) the State's plans<sup>13-61</sup> for providing technical assistance and training eligible service institutions; (4) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (5) the State's plan for timely and effective action against program violators; and (6) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary.

(o)(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over \$200, then the penalty shall be a

<sup>13-59</sup> Section 114(e) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994, struck former paragraphs (5), (6), (8), and (10), redesignated former paragraphs (7), (9), and (11) as paragraphs (5), (6), and (7), respectively, and made conforming amendments.

Section 706(j)(2) and (4) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this subsection by striking paragraph (3) and by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

<sup>13-60</sup> Section 706(j)(1) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this paragraph by erroneously striking “, including the State's methods of assessing need” (rather than “, including the State's methods for assessing need”). Effective January 1, 1997, section 105(e) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, corrected this error by amending section 706(j)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 110 Stat. 2293) by striking “methods of assessing” and inserting “methods for assessing”. Section 706(i) of P.L. 104-193, 110 Stat. 2292, Aug. 22, 1996, amended this paragraph by striking “, and its plans and schedule for informing service institutions of the availability of the program”.

<sup>13-61</sup> Section 706(j)(3) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this paragraph by striking “and schedule”.

fine or not more than \$1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons to any act to effect the object of the conspiracy or collusion, each shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(p)<sup>13-62</sup>(1) In addition to the normal monitoring of organizations receiving assistance under this section, the Secretary shall establish a system under which the Secretary and the States shall monitor the compliance of private nonprofit organizations with the requirements of this section and with regulations issued to implement this section.

(2)<sup>13-63</sup> In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1)<sup>13-64</sup> not more than ½ of 1 percent of amounts appropriated for purposes of carrying out this section.

(q)<sup>13-65</sup> For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2003,<sup>13-66</sup> there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

[TEMPORARY EMERGENCY ASSISTANCE TO PROVIDE NUTRITIOUS MEALS  
TO NEEDY CHILDREN IN SCHOOLS]

[SEC. 13A.<sup>13A-1</sup> [42 U.S.C. 1762]]

<sup>13-62</sup> Section 102(a) (4) and (5) of P.L. 101-147, 103 Stat. 881, Nov. 10, 1989, redesignated former subsection (p) as subsection (r) and inserted new subsections (p) and (q).

Section 706(l) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this section by striking former subsection (p) and by redesignating former subsections (q) and (r) as subsections (p) and (q), respectively.

Section 114(f) of P.L. 103-448, 108 Stat. 4712, Nov. 2, 1994, amended this subsection by striking former paragraph (2), by redesignating former paragraphs (3) through (5) as paragraphs (2) through (4), respectively, and, in paragraph (3) (as so redesignated), by striking “paragraphs (1) and (3)” and inserting “paragraphs (1) and (2)”.

Section 706(k) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this subsection by striking former paragraphs (2) and (4) and by redesignating former paragraph (3) as paragraph (2).

<sup>13-63</sup> See note 13-62.

<sup>13-64</sup> Section 706(k)(2) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this paragraph by striking “paragraphs (1) and (2) of this subsection” and inserting “paragraph (1)”.

<sup>13-65</sup> See note 13-62.

<sup>13-66</sup> Section 207 of P.L. 96-499, 94 Stat. 2602, Dec. 5, 1980, substituted “September 30, 1984” for “September 30, 1980”.

Section 311 of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986, substituted “1989” for “1984”. Section 311 of P.L. 99-591, 100 Stat. 3341-363, Oct. 30, 1986, and section 4101 of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986, made the same substitution.

Section 101(a)(6) of P.L. 101-147, 103 Stat. 881, Nov. 10, 1989, struck “For” and all that follows through “1989,” and inserted “For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994.”

Section 114(g) of P.L. 103-448, 108 Stat. 4713, Nov. 2, 1994, struck “1994” and inserted “1998”.

Section 105(d) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, struck “1998” and inserted “2003”.

<sup>13A-1</sup> This section added by P.L. 91-207, 84 Stat. 51, Mar. 12, 1970, and repealed by section 308 of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989.

## COMMODITY DISTRIBUTION PROGRAM

SEC. 14.<sup>14-1</sup> [42 U.S.C. 1762a] (a) Notwithstanding any other provision of law, the Secretary, during the period beginning July 1, 1974, and ending September 30, 2003,<sup>14-2</sup> shall—

(1) use funds available to carry out the provisions of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their products),<sup>14-3</sup> for donation to maintain the annually programmed level of assistance for programs carried on under this Act, the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], and title III<sup>14-4</sup> of the Older Americans Act of 1965 [(42 U.S.C. 3021 et seq.)]; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), for such donation.

(b)<sup>14-5</sup> (1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

(c)<sup>14-6</sup> The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4) of the Older Americans Act of 1965 (42 U.S.C. 3030(a)(4)) or for cash payments in lieu of such donations under section 311(b)(1) of such Act (42 U.S.C. 3030(b)(1)).<sup>14-7</sup> There

<sup>14-1</sup>This section added by section 2 of P.L. 93-326, 88 Stat. 286, June 30, 1974.

See note 6-1.

<sup>14-2</sup>Originally expired on June 30, 1975. Extended to Sept. 30, 1977, by section 10 of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975; Sept. 30, 1982, by section 6 of P.L. 95-166, 91 Stat. 1334, Nov. 10, 1977; Sept. 30, 1984, by section 202 of P.L. 96-499, 94 Stat. 2600, Dec. 5, 1980; and September 30, 1989, by section 312 of P.L. 99-500, 100 Stat. 1783-360, Oct. 18, 1986. Section 312 of P.L. 99-591, 100 Stat. 3341-363, Oct. 30, 1986, and section 4102 of P.L. 99-661, 100 Stat. 4071, Nov. 14, 1986, also extended the expiration date to September 30, 1989. Extended to September 30, 1994, by section 103(a) of P.L. 101-147, 103 Stat. 882, Nov. 10, 1989. Extended to September 30, 1998, by section 115(1) of P.L. 103-448, 108 Stat. 4713, Nov. 2, 1994. Extended to September 30, 2003, by section 106 of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998.

<sup>14-3</sup>Language in parentheses added by section 12(b) of P.L. 95-627, 92 Stat. 3625, Nov. 10, 1978.

<sup>14-4</sup>Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, substituted "title III" for "title VII".

<sup>14-5</sup>This subsection added by section 10 of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975. Section 115(2) of P.L. 103-448, 108 Stat. 4713, Nov. 2, 1994, inserted "(1)" after "(b)" and added paragraphs (2) and (3). Section 707(a) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this subsection by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

<sup>14-6</sup>This subsection added by section 6 of P.L. 95-166, 91 Stat. 1334, Nov. 10, 1977.

<sup>14-7</sup>Section 819 of P.L. 97-35, 95 Stat. 533, Aug. 13, 1981, corrected the citations to the Older Americans Act from the old title VII references to the current title III references.

are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d)<sup>14-8</sup> In providing assistance under this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] for school lunch and breakfast programs, the Secretary shall establish procedures which will—

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately reflected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this Act and the Child Nutrition Act of 1966.

Within eighteen months after the date of the enactment of this subsection [enacted on November 10, 1977], the Secretary shall report to Congress on the impact of procedures established under this subsection, including the nutritional, economic, and administrative benefits of such procedures. In purchasing commodities for programs carried out under this Act and the Child Nutrition Act of 1966, the Secretary shall establish procedures to ensure that contracts for the purchase of such commodities shall not be entered into unless the previous history and current patterns of the contracting party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption are taken into account.

(e)<sup>14-9</sup> Each State agency that receives food assistance payments under this section for any school year shall consult with representatives of schools in the State that participate in the school lunch program with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

(f)<sup>14-10</sup> Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average value of donated foods established under section 6(c)<sup>14-11</sup> of this

Section 801(a) of P.L. 98-459, 98 Stat. 1792, Oct. 9, 1984, substituted “section 311(b)(1) of such Act (42 U.S.C. 3030(b)(1))” for “section 311(c)(1) of such Act (42 U.S.C. 3030(c)(1))”.

Citation to 42 U.S.C. 3030(b)(1) probably should be to 42 U.S.C. 3030a(b)(1).

<sup>14-8</sup>This subsection added by section 6 of P.L. 95-166, 91 Stat. 1335, Nov. 10, 1977.

<sup>14-9</sup>This subsection added by section 6 of P.L. 95-166, 91 Stat. 1335, Nov. 10, 1977. Section 707(b) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this subsection in its entirety.

<sup>14-10</sup>This subsection added by section 813 of P.L. 97-35, 95 Stat. 530, Aug. 13, 1981.

<sup>14-11</sup>Section 101(b) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998, amended this subsection by striking “section 6(e)” and inserting “section 6(c)”.

Act and the national average payment established under section 4 of this Act. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 9(a) of this Act, and shall represent the four basic food groups, including a serving of fluid milk.

(g)<sup>14-12</sup>(1) As used in this subsection, the term “eligible school district” has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.<sup>14-13</sup>

[NATIONAL ADVISORY COUNCIL]

[SEC. 15.<sup>15-1</sup> [42 U.S.C. 1763] Repealed.]

ELECTION TO RECEIVE CASH PAYMENTS<sup>16-1</sup>

SEC. 16.<sup>16-2</sup> [42 U.S.C. 1765] (a) Notwithstanding any other provision of law, where a State phased out its commodity distribution facilities prior to June 30, 1974, such State may, for purposes of the programs authorized by this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], elect to receive cash payments in lieu of donated foods. Where such an election is made, the Secretary shall make cash payments to such State in an amount equivalent in value to the donated foods that the State would otherwise have received if it had retained its commodity distribution facilities. The amount of cash payments in the case of lunches shall be governed by section 6(c)<sup>16-3</sup> of this Act.

(b) When such payments are made, the State educational agency shall promptly and equitably disburse any cash it receives in lieu of commodities to eligible schools and institutions, and such dis-

<sup>14-12</sup>This subsection added by section 363 of P.L. 99-500, 100 Stat. 1783-368, Oct. 18, 1986. Section 363 of P.L. 99-591, 100 Stat. 3341-371, Oct. 30, 1986, and section 4403, P.L. 99-661, 100 Stat. 4079, Nov. 14, 1986, made the same addition.

Section 103(b)(1) of P.L. 101-147, 103 Stat. 882, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 14(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(g)), as similarly added first by section 363 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-368), later by section 363 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-371), and later by section 4403 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), and as then amended by section 2 of Public Law 100-356, is amended to read as if only the amendment made by section 4403 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987, was enacted.

Section 707(c) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, struck former paragraph (3). Previously, paragraph (3) was amended by section 2 (a), (b), and (c) of P.L. 100-356, 102 Stat. 669, June 28, 1988; section 103(b) of P.L. 101-147, 103 Stat. 882, Nov. 10, 1989; and section 103(c) of P.L. 101-147, 103 Stat. 882, Nov. 10, 1989.

<sup>14-13</sup>Section 1581 of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1594) extends through June 30, 1987, the school lunch pilot project involving cash or commodity letters of credit assistance and requires the Secretary of Agriculture to provide bonus commodities to participating school districts.

<sup>15-1</sup>Section 15, which established a National Advisory Council, repealed by section 104 of P.L. 101-147, 103 Stat. 883, Nov. 10, 1989.

<sup>16-1</sup>Section heading added by section 309 of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989.

<sup>16-2</sup>This section added by section 12 of P.L. 94-105, 89 Stat. 515, Oct. 7, 1975.

<sup>16-3</sup>Section 101(b) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998, amended this subsection by striking “section 6(e)” and inserting “section 6(c)”.

bursements shall be used by such schools and institutions to purchase United States agricultural commodities and other foods for their food service programs.

**SEC. 17. [42 U.S.C. 1766] CHILD AND ADULT CARE FOOD PROGRAM.**<sup>17-1</sup>

(a) GRANT AUTHORITY AND INSTITUTION ELIGIBILITY.—

(1) GRANT AUTHORITY.—The Secretary<sup>17-3</sup> may carry out a program to assist States through grants-in-aid and other means to initiate and maintain<sup>17-4</sup> nonprofit food service programs for children in institutions providing child care.

(2)<sup>17-5</sup> DEFINITION OF INSTITUTION.—In this section, the term “institution” means—

(A) any public or private nonprofit organization providing nonresidential child care or day care outside school hours for school children, including any child care center, settlement house, recreational center, Head Start center, and institution providing child care facilities for children with disabilities;

(B)<sup>17-5A</sup> any other private organization providing nonresidential child care or day care outside school hours for school children, if—

(i) during the period beginning on the date of enactment of this clause and ending on September 30, 2002,<sup>17-5B</sup> at least 25 percent of the children served by the organization meet the income eligibility criteria es-

<sup>17-1</sup>This section added by section 16 of P.L. 94-105, 89 Stat. 522, Oct. 7, 1975, and completely revised by section 2 of P.L. 95-627, 92 Stat. 3603, Nov. 10, 1978.

The heading amended to read as provided above by section 307(c)(1)(A) of P.L. 106-472, 114 Stat. 2073, November 9, 2000. Previously, the heading was amended by section 105(a) of P.L. 101-147, 103 Stat. 883, Nov. 10, 1989.

See note 6-1.

Section 7(a)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(9)(A)) permits the Secretary to withhold from a State funds allocated to a State under this section if the Secretary determines that the administration of any program by a State under such Act (other than section 17 of such Act) or under this Act is seriously deficient and the State fails to correct the deficiency within a specified period of time.

Section 13(3)(A) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) defines “recipient agency”, for purposes of such Act, to include an agency authorized under the Richard B. Russell National School Lunch Act to operate child care food programs and to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase.

Section 708(l) of P.L. 104-193, 110 Stat. 2300, Aug. 22, 1996, requires the Secretary of Agriculture to conduct a study and report to Congress on the impact of the amendments made by section 708 of P.L. 104-193 on specified issues relating to program participation and family day care licensing not later than Aug. 22, 1998.

<sup>17-3</sup>Section 243(a)(1) of P.L. 106-224, 114 Stat. 413, June 20, 2000, amended this subsection by striking “(a) The Secretary” and inserting “(a) GRANT” and all that follows through “AUTHORITY.—The Secretary”.

<sup>17-4</sup>Section 708(a) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996, amended this sentence by striking “initiate, maintain, and expand” and inserting “initiate and maintain”.

<sup>17-5</sup>Section 243(a)(2) of P.L. 106-224, 114 Stat. 413, June 20, 2000, amended this subsection by striking the former second and third sentences and inserting paragraph (2). Previously, the second and third sentences were amended by section 207 of P.L. 96-499, 94 Stat. 2602, Dec. 5, 1980; section 810 of P.L. 97-35, 95 Stat. 528, Aug. 13, 1981; section 107(j)(3)(C) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998; section 310(a)(1) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989; section 202 of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992; and section 107(j)(2)(B) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998.

<sup>17-5A</sup>Section 101(a) of division B of the Miscellaneous Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763, 2763A-214, Dec. 21, 2000), amended this subparagraph by striking “children for which the” and inserting “children, if—” and all that follows through “(ii) the”.

<sup>17-5B</sup>Sec. 743 of P.L. 107-76, 115 Stat. 738, Nov. 28, 2001, amended this subparagraph by striking “2001” and inserting “2002”.

tablished under section 9(b) for free or reduced price meals; or

(ii) the organization receives compensation from amounts granted to the States under title XX of the Social Security Act (42 U.S.C. 1397 et seq.) (but only if the organization receives compensation under that title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less);

(C) any public or private nonprofit organization acting as a sponsoring organization for one or more of the organizations described in subparagraph (A) or (B) or for an adult day care center (as defined in subsection (o)(2));

(D) any other private organization acting as a sponsoring organization for, and that is part of the same legal entity as, one or more organizations that are—

(i) described in subparagraph (B); or

(ii) proprietary title XIX or title XX centers (as defined in subsection (o)(2));

(E) any public or private nonprofit organization acting as a sponsoring organization for one or more family or group day care homes; and

(F) any emergency shelter (as defined in subsection (t)).

(3)<sup>17-6</sup> AGE LIMIT.—Except as provided in subsection (r), reimbursement may be provided under this section only for meals or supplements served to children not over 12 years of age (except that such age limitation shall not be applicable for children of migrant workers if 15 years of age or less or for children with disabilities).<sup>17-7</sup>

(4)<sup>17-8</sup> ADDITIONAL GUIDELINES.—The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours.

(5)<sup>17-9</sup> LICENSING.—In order to be eligible, an institution (except a school or family or group day care home sponsoring organization) or family or group day care home shall—

(A)(i) be licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority; or

(ii) be in compliance with appropriate procedures for renewing participation in the program, as prescribed by the Secretary, and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

<sup>17-6</sup>Section 243(a)(3) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subsection by striking “Except as provided in subsection (r),” and inserting “(3) AGE LIMIT.—” and all that follows through “subsection (r).” Previously, section 107(a)(1) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998, amended this sentence by striking “Reimbursement” and inserting “Except as provided in subsection (r), reimbursement”.

<sup>17-7</sup>The age limitation for children eligible to receive meals added by section 810 of P.L. 97-35, 95 Stat. 528, Aug. 13, 1981. See note 17-5.

<sup>17-8</sup>Section 243(a)(4) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subsection by striking “The Secretary may establish separate guidelines” and inserting “(4) ADDITIONAL GUIDELINES.—” and all that follows through “separate guidelines”.

<sup>17-9</sup>Section 243(a)(5) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subsection by striking “For purposes of determining” and all that follows through “an institution” and inserting “(5) LICENSING.—” and all that follows through “an institution”. Previously, this sentence was amended by section 372(a) of P.L. 99-500, 100 Stat. 1783-369, Oct. 18, 1986; section 372(a) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986; section 4502(a) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986; and section 107(a)(2) of P.L. 105-336, 112 Stat. 3149, Oct. 31, 1998.

(B) if Federal, State, or local licensing or approval is not available—

(i) meet any alternate approval standards established by the appropriate State or local governmental agency; or

(ii) meet any alternate approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; or

(C) if the institution provides care to school children outside of school hours and Federal, State, or local licensing or approval is not required for the institution, meet State or local health and safety standards.<sup>17-10</sup>

(6)<sup>17-11</sup> ELIGIBILITY CRITERIA.—No institution shall be eligible to participate in the program unless it satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child care food program, or any other program under this Act or the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program,<sup>17-12</sup> for a period of time specified by the Secretary;

(C)(i)<sup>17-13</sup> will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program; and

(ii)<sup>17-13</sup> in the case of a sponsoring organization, the organization shall employ an appropriate number of monitoring personnel based on the number and characteristics of child care centers and family or group day care homes sponsored by the organization, as approved by the State (in accordance with regulations promulgated by the Secretary), to ensure effective oversight of the operations of the child care centers and family or group day care homes;<sup>17-14</sup>

(D)<sup>17-15</sup> in the case of a family or group day care home sponsoring organization that employs more than one employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited;

(E)<sup>17-16</sup> in the case of a sponsoring organization, the organization has in effect a policy that restricts other employment by employees that interferes with the responsibil-

<sup>17-10</sup>Section 243(a)(6) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subsection by striking “standards; and” and inserting “standards.”

<sup>17-11</sup>Section 243(a)(7) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subsection “(2) no institution” and inserting “(6) ELIGIBILITY CRITERIA.—No institution”.

<sup>17-12</sup>Section 243(a)(8)(A) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subparagraph by inserting “, or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program” before “, for a period”.

<sup>17-13</sup>Section 243(a)(8)(B) of P.L. 106-224, 114 Stat. 414, June 20, 2000, amended this subparagraph by inserting “(i)” after “(C)” and by adding clause (ii).

<sup>17-14</sup>Section 307(c)(1)(B) of P.L. 106-472, 114 Stat. 2073, November 9, 2000, amended this clause by striking “and” at the end.

<sup>17-15</sup>Subparagraph (D) added by section 708(b) of P.L. 104-193, 110 Stat. 2293, Aug. 22, 1996.

<sup>17-16</sup>Subparagraphs (E) and (F) added by section 243(a)(8)(D) of P.L. 106-224, 114 Stat. 414, June 20, 2000.

ities and duties of the employees of the organization with respect to the program; and

(F)<sup>17-16</sup> in the case of a sponsoring organization that applies for initial participation in the program on or after the date of the enactment of this subparagraph and that operates in a State that requires such institutions to be bonded under State law, regulation, or policy, the institution is bonded in accordance with such law, regulation, or policy.

(b) For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals as provided in subsection (f)<sup>17-17</sup> of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [(42 U.S.C. 1779)].

(c)<sup>17-18</sup>(1) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free lunches and suppers, the national average payment rate for reduced price lunches and suppers, and the national average payment rate for paid lunches and suppers shall be the same as the national average payment rates for free lunches, reduced price lunches, and paid lunches, respectively, under sections 4 and 11 of this Act as appropriate (as adjusted pursuant to section 11(a) of this Act).

(2) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free breakfasts, the national average payment rate for reduced price breakfasts, and the national average payment rate for paid breakfasts shall be the same as the national average payment rates for free breakfasts, reduced price breakfasts, and paid breakfasts, respectively, under section 4(b) of the Child Nutrition Act of 1966 [(42 U.S.C. 1773(b)] (as adjusted pursuant to section 11(a) of this Act).<sup>17-19</sup>

(3) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free supplements shall be 30 cents, the national average payment rate for reduced price supplements shall be one-half the rate for free supplements, and the national average payment rate for paid supplements shall be 2.75 cents (as adjusted pursuant to section 11(a) of this Act).

<sup>17-17</sup>Section 810 of P.L. 97-35, 95 Stat. 528, Aug. 13, 1981, changed the reference from subsection (c) to subsection (f).

<sup>17-18</sup>This subsection completely revised by section 810 of P.L. 97-35, 95 Stat. 528, Aug. 13, 1981.

Effective July 1, 1997, section 708(e)(4) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this subsection by inserting "except as provided in subsection (f)(3)," after "For purposes of this section," each place it appears in paragraphs (1), (2), and (3) of this subsection. Section 708(k)(3) of P.L. 104-193, 110 Stat. 2300, Aug. 22, 1996, requires the Secretary to issue interim regulations not later than January 1, 1997, to implement the amendments made by paragraphs (1), (3), and (4) of section 708(e) of P.L. 104-193 and section 17(f)(3)(C) of this Act and to issue final regulations not later than July 1, 1997, to implement the specified provisions.

<sup>17-19</sup>Section 4(b)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) requires the Secretary to increase by 3 cents the annually adjusted payment for each breakfast served under such Act and this section and requires the funds to be used to improve the nutritional quality of the breakfasts. Section 4210(a) of Public Law 99-661 added paragraph (3) of such section (effective October 1, 1986). In an earlier enactment, section 330(a) of Public Law 99-591 added the identical paragraph (effective July 1, 1987).

(4) Determinations with regard to eligibility for free and reduced price meals and supplements shall be made in accordance with the income eligibility guidelines for free lunches and reduced price lunches, respectively, under section 9 of this Act.

(5)<sup>17-20</sup> A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).

(6)<sup>17-21</sup> A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).

(d)<sup>17-22</sup> INSTITUTION APPROVAL AND APPLICATIONS.—

(1) INSTITUTION APPROVAL.—

(A) ADMINISTRATIVE CAPABILITY.—Subject to subparagraph (B) and except as provided in subparagraph (C), the State agency shall approve an institution that meets the requirements of this section for participation in the child and adult care food program if the State agency determines that the institution—

(i) is financially viable;

(ii) is administratively capable of operating the program (including whether the sponsoring organization has business experience and management plans appropriate to operate the program) described in the application of the institution; and

(iii) has internal controls in effect to ensure program accountability.

(B) APPROVAL OF PRIVATE INSTITUTIONS.—

(i) IN GENERAL.—In addition to the requirements established by subparagraph (A) and subject to clause (ii), the State agency shall approve a private institution that meets the requirements of this section for participation in the child and adult care food program only if—

(I) the State agency conducts a satisfactory visit to the institution before approving the participation of the institution in the program; and

(II) the institution—

<sup>17-20</sup> Effective September 25, 1995, this paragraph added by section 109(b) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994. Although such section 109 amended this subsection “by adding at the end” paragraph (5) and delayed the amendment until after paragraph (6) was added, paragraph (5) was inserted before paragraph (6) to effectuate the probable intent of Congress.

<sup>17-21</sup> This paragraph added by section 116(a) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994. See note 17-20. Section 107(b) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998, amended this paragraph by striking “(A)” and by striking subparagraph (B).

<sup>17-22</sup> Section 243(b)(1) of P.L. 106-224, 114 Stat. 415, June 20, 2000, amended this subsection by striking the subsection designation and all that follows through the end of paragraph (1) and inserting “(d)” and all that follows through the end of paragraph (1). Previously, this text was amended by sections 204(a) and 310(a)(2) of P.L. 101-147, 103 Stat. 909, 915, Nov. 10, 1989; section 708(c) of P.L. 104-193, 110 Stat. 2294, Aug. 22, 1996; and section 107 of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998.

(aa) has tax exempt status under the Internal Revenue Code of 1986;

(bb) is operating a Federal program requiring nonprofit status to participate in the program; or

(cc) is described in subsection (a)(2)(B).

(ii) EXCEPTION FOR FAMILY OR GROUP DAY CARE HOMES.—Clause (i) shall not apply to a family or group day care home.

(C) EXCEPTION FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—The State agency may approve an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program only if the State agency determines that—

(I) the institution meets the requirements established by subparagraphs (A) and (B); and

(II) the participation of the institution will help to ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(ii) CRITERIA FOR SELECTION.—The State agency shall establish criteria for approving an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program for the purpose of determining if the participation of the institution will help ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(D) NOTIFICATION TO APPLICANTS.—Not later than 30 days after the date on which an applicant institution files a completed application with the State agency, the State agency shall notify the applicant institution whether the institution has been approved or disapproved to participate in the child and adult care food program.

(2) <sup>17-23</sup>(A) The Secretary shall develop a policy that—

(i) <sup>17-24</sup> allows institutions providing child care that participate in the program under this section, at the option of the State agency, to reapply for assistance under this section at 3-year intervals; <sup>17-25</sup>

(ii) <sup>17-26</sup>(I) requires periodic unannounced site visits at not less than 3-year intervals to sponsored child care centers and

<sup>17-23</sup> See note 17-22.

<sup>17-24</sup> Section 107(c)(2)(A) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998, amended this subparagraph by striking “that allows” and inserting “that—” and all that follows through “(i) allows”.

<sup>17-25</sup> Section 116(b) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, amended paragraph (2) by striking “2-year intervals” and inserting “3-year intervals”. Section 107(c)(2)(B) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998, amended this subparagraph by striking the period at the end and inserting “; and”. Section 243(b)(2)(A) of P.L. 106-224, 114 Stat. 416, June 20, 2000, amended this clause by striking “; and” and inserting a semicolon.

<sup>17-26</sup> Section 243(b)(2) of P.L. 106-224, 114 Stat. 416, June 20, 2000, amended this subparagraph by redesignating former clause (ii) as clause (iii) and inserting a new clause (ii).

family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program;

(II) requires at least one scheduled site visit each year to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(III) requires at least one scheduled site visit at not less than 3-year intervals to sponsoring organizations and nonsponsored child care centers to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(iii)<sup>17-27</sup> requires periodic site visits to private institutions that the State agency determines have a high probability of program abuse.

(B) Each State agency that exercises the option authorized by subparagraph (A) shall confirm on an annual basis that each such institution is in compliance with the licensing or approval provisions of subsection (a)(5).<sup>17-28</sup>

(3)<sup>17-29</sup> PROGRAM INFORMATION.—

(A) IN GENERAL.—On enrollment of a child in a sponsored child care center or family or group day care home participating in the program, the center or home (or its sponsoring organization) shall provide to the child's parents or guardians—

(i) information that describes the program and its benefits; and

(ii) the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program.

(B) FORM.—The information described in subparagraph (A) shall be in a form and, to the maximum extent practicable, language easily understandable by the child's parents or guardians.

(4)<sup>17-30</sup> ALLOWABLE ADMINISTRATIVE EXPENSES FOR SPONSORING ORGANIZATIONS.—In consultation with State agencies and sponsoring organizations, the Secretary shall develop, and provide for the dissemination to State agencies and sponsoring organizations of, a list of allowable reimbursable administrative expenses for sponsoring organizations under the program.

(5)<sup>17-31</sup> TERMINATION OR SUSPENSION OF PARTICIPATING ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary shall establish procedures for the termination of participation by institutions and family or group day care homes under the program.

<sup>17-27</sup> This clause added by section 107(c)(2)(C) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998. For redesignation, see note 17-26.

<sup>17-28</sup> Section 243(b)(3) of P.L. 106-224, 114 Stat. 416, June 20, 2000, amended this subparagraph by striking "subsection (a)(1)" and inserting "subsection (a)(5)".

<sup>17-29</sup> Paragraph (3) added by section 243(b)(4)(A) of P.L. 106-224, 114 Stat. 416, June 20, 2000. Section 243(b)(4)(B) of P.L. 106-224, 114 Stat. 417, June 20, 2000, provides that, in the case of a child that is enrolled in a sponsored child care center or family or group day care home participating in the child and adult care food program under this section before June 20, 2000, the center or home shall provide information to the child's parents or guardians pursuant to this paragraph not later than 90 days after June 20, 2000.

<sup>17-30</sup> Paragraph (4) added by section 243(b)(5) of P.L. 106-224, 114 Stat. 417, June 20, 2000.

<sup>17-31</sup> Paragraph (5) added by section 243(c) of P.L. 106-224, 114 Stat. 417, June 20, 2000.

(B) STANDARDS.—Procedures established pursuant to subparagraph (A) shall include standards for terminating the participation of an institution or family or group day care home that—

(i) engages in unlawful practices, falsifies information provided to the State agency, or conceals a criminal background; or

(ii) substantially fails to fulfill the terms of its agreement with the State agency.

(C) CORRECTIVE ACTION.—Procedures established pursuant to subparagraph (A)—

(i) shall require an entity described in subparagraph (B) to undertake corrective action; and

(ii) may require the immediate suspension of operation of the program by an entity described in subparagraph (B), without the opportunity for corrective action, if the State agency determines that there is imminent threat to the health or safety of a participant at the entity or the entity engages in any activity that poses a threat to public health or safety.

(D) <sup>17-31A</sup> HEARING.—

(i) IN GENERAL.—Except as provided in clause (ii), an institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) prior to any determination to terminate participation by the institution or family or group day care home under the program.

(ii) <sup>17-31B</sup> EXCEPTION FOR FALSE OR FRAUDULENT CLAIMS.—

(I) IN GENERAL.—If a State agency determines that an institution has knowingly submitted a false or fraudulent claim for reimbursement, the State agency may suspend the participation of the institution in the program in accordance with this clause.

(II) REQUIREMENT FOR REVIEW.—Prior to any determination to suspend participation of an institution under subclause (I), the State agency shall provide for an independent review of the proposed suspension in accordance with subclause (III).

(III) REVIEW PROCEDURE.—The review shall—

(aa) be conducted by an independent and impartial official other than, and not accountable to, any person involved in the determination to suspend the institution;

(bb) provide the State agency and the institution the right to submit written documentation relating to the suspension, including State agency documentation of the alleged false or fraudulent claim for reimbursement and the response of the institution to the documentation;

<sup>17-31A</sup> Section 307(c)(2)(A) of P.L. 106-472, 114 Stat. 2073, November 9, 2000, amended this subparagraph by striking “(D) HEARING.—An institution” and inserting “(D) HEARING.—” through “(i) IN GENERAL.—Except as provided in clause (ii), an institution”.

<sup>17-31B</sup> Clause (ii) added by section 307(c)(2)(B) of P.L. 106-472, 114 Stat. 2073, November 9, 2000.

(cc) require the reviewing official to determine, based on the review, whether the State agency has established, based on a preponderance of the evidence, that the institution has knowingly submitted a false or fraudulent claim for reimbursement;

(dd) require the suspension to be in effect for not more than 120 calendar days after the institution has received notification of a determination of suspension in accordance with this clause; and

(ee) require the State agency during the suspension to ensure that payments continue to be made to sponsored centers and family and group day care homes meeting the requirements of the program.

(IV) HEARING.—A State agency shall provide an institution that has been suspended from participation in the program under this clause an opportunity for a fair hearing on the suspension conducted in accordance with subsection (e)(1).

(E) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(i) IN GENERAL.—The Secretary shall maintain a list of institutions, sponsored family or group day care homes, and individuals that have been terminated or otherwise disqualified from participation in the program.

(ii) AVAILABILITY.—The Secretary shall make the list available to State agencies for use in approving or renewing applications by institutions, sponsored family or group day care homes, and individuals for participation in the program.

(e)<sup>17-32</sup>(1) Except as provided in paragraph (2), the State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section.

(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.

<sup>17-32</sup>Section 361 of P.L. 99-500, 100 Stat. 1783-367, Oct. 18, 1986, substituted “(1) Except as provided in paragraph (2), the” for “The” and added paragraphs (2) and (3). Section 361 of P.L. 99-591, 100 Stat. 3341-370, Oct. 30, 1986, and section 4401 of P.L. 99-661, 100 Stat. 4079, Nov. 14, 1986, made the same substitution and additions.

Section 310(b) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, eliminated the duplicate provisions by providing that section 17(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(e)), as similarly amended first by section 361 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-500 (100 Stat. 1783-367), later by section 361 of the School Lunch and Child Nutrition Amendments of 1986, as contained in Public Law 99-591 (100 Stat. 3341-370), and later by section 4401 of the Child Nutrition Amendments of 1986, as contained in the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661), is amended to read as if only the latest amendment was enacted.

(f)<sup>17-33</sup> STATE DISBURSEMENTS TO INSTITUTIONS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in providing meals to children attending institutions, or in family or group day care<sup>17-34</sup> homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(B)<sup>17-35</sup> FRAUD OR ABUSE.—

(i) IN GENERAL.—The State may recover funds disbursed under subparagraph (A) to an institution if the State determines that the institution has engaged in fraud or abuse with respect to the program or has submitted an invalid claim for reimbursement.

(ii) PAYMENT.—Amounts recovered under clause (i)—

(I) may be paid by the institution to the State over a period of one or more years; and

(II) shall not be paid from funds used to provide meals and supplements.

(iii) HEARING.—An institution shall be provided a fair hearing in accordance with subsection (e)(1) prior to any determination to recover funds under this subparagraph.

(2)<sup>17-36</sup>(A) Subject to subparagraph (B) of this paragraph, the disbursement for any fiscal year to any State for disbursement to institutions, other than family or group day care home sponsoring organizations, for meals provided under this section shall be equal to the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch, or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rate for each such type of meal, as determined under subsection (c).

(B) No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3) of this subsection, for more than two meals and one supplement per day per child, or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), 2 meals and 1 supplement<sup>17-37</sup> per

<sup>17-33</sup> Section 243(d)(1) of P.L. 106-224, 114 Stat. 418, June 20, 2000, amended this subsection by striking “(f)(1) Funds paid” and inserting “(f)” and all that follows through “Funds paid”.

<sup>17-34</sup> Section 310(a)(3)(A) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended subsection (f)(1) by striking “day-care” and inserting “day care”.

<sup>17-35</sup> Subparagraph (B) added by section 243(d)(2) of P.L. 106-224, 114 Stat. 418, June 20, 2000.

<sup>17-36</sup> Remainder of subsection completely revised by section 810 of P.L. 97-35, 95 Stat. 528, Aug. 13, 1981.

<sup>17-37</sup> Section 708(d) of P.L. 104-193, 110 Stat. 2294, Aug. 22, 1996, amended this subparagraph by striking “two meals and two supplements or three meals and one supplement” and inserting “2 meals and 1 supplement”.

day per child, for children that are maintained in a child care setting for eight or more hours per day.<sup>17-38</sup>

(C)<sup>17-39</sup> LIMITATION ON ADMINISTRATIVE EXPENSES FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a sponsoring organization of a day care center may reserve not more than 15 percent of the funds provided under paragraph (1) for the administrative expenses of the organization.

(ii) WAIVER.—A State may waive the requirement in clause (i) with respect to a sponsoring organization if the organization provides justification to the State that the organization requires funds in excess of 15 percent of the funds provided under paragraph (1) to pay the administrative expenses of the organization.

(3)<sup>17-40</sup> REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(A) REIMBURSEMENT FACTOR.—

(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

(I) DEFINITION OF TIER I FAMILY OR GROUP DAY CARE HOME.—In this paragraph, the term ‘tier I family or group day care home’ means—

(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9;

(bb) a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free

<sup>17-38</sup> Comma and language after “child” to period added by section 211 of P.L. 100-435, 102 Stat. 1657, Sept. 19, 1988, effective July 1, 1989. Additional period struck by section 310(a)(3)(B) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989.

<sup>17-39</sup> Subparagraph (C) added by section 243(e) of P.L. 106-224, 114 Stat. 418, June 20, 2000.

<sup>17-40</sup> Effective July 1, 1997, section 708(e)(1) of P.L. 104-193, 110 Stat. 2294, Aug. 22, 1996, amended in its entirety “(3)(A) Institutions” and all that follows through the end of subparagraph (A). For regulations, see note 17-18. Previously, this paragraph was amended by section 810 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981.

or reduced price meals under section 9 and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 9.

(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors applied to a home referred to in subclause (II) shall be the factors in effect on July 1, 1996.

(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

(I) IN GENERAL.—

(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements.

(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the

children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 9.

(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

(III) INFORMATION AND DETERMINATIONS.—

(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals under section 9 to be a child who is a member of a household whose income meets the income eligibility guidelines under section 9.

(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item

(bb) if the home elects not to have income statements collected from parents or other caretakers.

(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and reporting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 9, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

(cc) Such other simplified procedures as the Secretary may prescribe.

(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any minimum verification requirements that are necessary to carry out this clause.

(B) Family or group day care home sponsoring organizations shall also receive reimbursement for their administrative expenses in amounts not exceeding the maximum allowable levels prescribed by the Secretary. Such levels shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for all items for the most recent 12-month period for which such data are available.<sup>17-41</sup>

(C)<sup>17-42</sup> (i)<sup>17-43</sup> Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural

<sup>17-41</sup>Section 708(f)(1)(A) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this subparagraph by striking the third and fourth sentences.

<sup>17-42</sup>This sentence designated as clause (C) by section 810 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981.

Section 105(b)(1) of P.L. 101-147, 103 Stat. 883, Nov. 10, 1989, made multiple amendments to this subparagraph to require reimbursement for expansion funds.

<sup>17-43</sup>Section 116(c) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, amended this subparagraph by inserting "(i)" after "(C)" and by adding clause (ii).

areas. Institutions that have received start-up funds may also apply at a later date for expansion funds. Such start-up funds and expansion funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds and expansion funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds and expansion funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds and expansion funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

(ii)<sup>17-44</sup> Funds for administrative expenses may be used by family or group day care home sponsoring organizations assist unlicensed family or group day care homes in becoming<sup>17-45</sup> licensed.

(D)<sup>17-46</sup> LIMITATIONS ON ABILITY OF FAMILY OR GROUP DAY CARE HOMES TO TRANSFER SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Subject to clause (ii), a State agency shall limit the ability of a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year.

(ii) GOOD CAUSE.—The State agency may permit or require a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year for good cause (as determined by the State agency), including circumstances in which the sponsoring organization of the family or group day care home ceases to participate in the child and adult care food program.

(E)<sup>17-47</sup> PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child and adult care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

(ii) SCHOOL DATA.—

(I) IN GENERAL.—A State agency administering the school lunch program under this Act

<sup>17-44</sup> See note 17-43.

<sup>17-45</sup> Section 708(f)(1)(B) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this clause by striking "conduct outreach" and all that follows through "may become" and inserting "assist unlicensed family or group day care homes in becoming".

<sup>17-46</sup> Section 243(f) of P.L. 106-224, 114 Stat. 419, June 20, 2000, amended subparagraph (D) in its entirety. Previously, subparagraph (D) added by section 708(e)(2) of P.L. 104-193, 110 Stat. 2297, Aug. 22, 1996.

<sup>17-47</sup> Subparagraph (E) added by section 708(e)(3) of P.L. 104-193, 110 Stat. 2298, Aug. 22, 1996.

or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than  $\frac{1}{2}$  of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group day care home sponsoring organization, shall use the most current available data at the time of the determination.

(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 3 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.

(4)<sup>17-48</sup> By the first day of each month of operation, the State may<sup>17-49</sup> provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g)(1)(A)<sup>17-50</sup> Meals served by institutions participating in the program under this section shall consist of a combination of foods

<sup>17-48</sup> Section 810 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981, redesignated former paragraph (5) as paragraph (4).

<sup>17-49</sup> Section 708(f)(2) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this sentence by striking "shall" and inserting "may".

<sup>17-50</sup> Section 105(c)(1) of P.L. 103-448, 108 Stat. 4702, Nov. 2, 1994, inserted "(A)" after "(1)".

that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.<sup>17-51</sup>

(B)<sup>17-52</sup> The Secretary shall provide technical assistance to those institutions participating in the program under this section to assist the institutions and family or group day care home sponsoring organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A).<sup>17-53</sup>

(2)<sup>17-54</sup> No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

(3) Each institution shall, insofar as practicable, use in its food service foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

(h)(1)<sup>17-55</sup>(A) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section.

(B) The value of the commodities donated under subparagraph (A) (or cash in lieu of commodities) to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities or cash in lieu of commodities established under section 6(c)<sup>17-56</sup> for the school year concerned.

(C) After the end of each school year, the Secretary shall—

(i) reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served by participating institutions in each State during the preceding school year; and

<sup>17-51</sup> Section 708(g)(1) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, struck the second sentence of this subparagraph.

Section 330(b) of Public Law 99-591 and section 4210(b) of Public Law 99-661 (42 U.S.C. 1766 note) require the Secretary of Agriculture to review and revise the nutrition requirements for meals served under the breakfast program authorized under this section to improve the nutritional quality of the meals and to promulgate regulations to implement the revisions.

<sup>17-52</sup> This subparagraph added by section 105(c)(2) of P.L. 103-448, 108 Stat. 4702, Nov. 2, 1994.

<sup>17-53</sup> Section 708(g)(2) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, struck the second sentence of this subparagraph.

<sup>17-54</sup> Section 810 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981, deleted paragraph (2) and renumbered paragraphs (3) and (4) as (2) and (3), respectively.

<sup>17-55</sup> Paragraph (1) completely revised by section 131(b) of P.L. 101-147, 103 Stat. 907, Nov. 10, 1989.

In former text, "(1)" inserted after "(h)" by section 214 of P.L. 100-435, 102 Stat. 1659, Sept. 19, 1988.

Section 4(b)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(4)) requires the Secretary, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, to make such commodities available to school food authorities and eligible institutions serving breakfasts under such Act in a quantity equal in value to not less than 3 cents for each breakfast served under such Act and this section. Section 4210(a) of Public Law 99-661 added paragraph (4) of such section (effective October 1, 1986). In an earlier enactment, section 330(a) of Public Law 99-591 added the identical paragraph (effective July 1, 1987).

<sup>17-56</sup> Section 101(b) of P.L. 105-336, 112 Stat. 3144, Oct. 31, 1998, amended this subparagraph by striking "section 6(e)" and inserting "section 6(c)".

(ii) based on such reconciliation, increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(D) Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(2)<sup>17-57</sup> The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act, to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimbursement from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs.

(i)<sup>17-58</sup> The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent)<sup>17-59</sup> of the funds used by each State in the program under this section, during the second preceding fiscal year.

(j) The Secretary may issue regulations directing States to develop and provide for the use of a standard form of agreement between each family or group day care sponsoring organization and the family or group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

[(k)<sup>17-60</sup>]

(k)<sup>17-61</sup> TRAINING AND TECHNICAL ASSISTANCE.—A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.

<sup>17-57</sup>This paragraph added by section 214 of P.L. 100-435, 102 Stat. 1659, Sept. 19, 1988.

<sup>17-58</sup>Former subsections (i), (m), and (n) repealed and former subsections (j), (k), (l), (o), (p), (q), (r), and (s) redesignated as (i) through (o), respectively, by section 817 of P.L. 97-35, 95 Stat. 532, Aug. 13, 1981.

<sup>17-59</sup>Section 107(e) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998, amended this subsection by striking "2 percent" and inserting "1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent)".

<sup>17-60</sup>Section 310(a)(4) of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989, amended section 17 by striking (k) (relating to certain executed studies) and redesignating the succeeding subsections accordingly.

<sup>17-61</sup>Section 708(h) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this subsection in its entirety. Previously, this subsection was amended by section 810 of P.L. 97-35, 95 Stat. 529, Aug. 13, 1981; section 105(b)(2) and 310(a)(4) of P.L. 101-147, 103 Stat. 883, Nov. 10, 1989; and section 116(d) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994.

(l)<sup>17-62</sup> Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(m)<sup>17-63</sup> States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at any reasonable time<sup>17-64</sup> for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n)<sup>17-65</sup> There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

(o)<sup>17-66</sup>(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately  $\frac{1}{3}$  of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.<sup>17-67</sup>

(2) For purposes of this subsection—

(A) the term “adult day care center” means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes, or a group living arrangement,<sup>17-68</sup> on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term “proprietary title XIX or title XX center” means any private, for-profit center providing adult day care

<sup>17-61</sup> For redesignation, see note 17-60.

<sup>17-63</sup> For redesignation, see note 17-60.

<sup>17-64</sup> Section 708(i) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996, amended this sentence by striking “at all times” and inserting “at any reasonable time”.

<sup>17-65</sup> For redesignation, see note 17-60.

<sup>17-66</sup> Subsection (p) added by section 401 of P.L. 100-175, 101 Stat. 972, Nov. 29, 1987. For redesignation, see note 17-60.

<sup>17-67</sup> The last two sentences of paragraph (1) added by section 105(b)(3)(A) of P.L. 101-147, 103 Stat. 884, Nov. 10, 1989.

<sup>17-68</sup> Section 811(a) of the Older Americans Act Amendments of 1992 (Public Law 102-375) amended this clause by inserting “, or a group living arrangement,” after “homes”. Section 811(b) of such Act provided that the amendment shall take effect as if the amendment had been included in the Older Americans Act Amendments of 1987.

services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act [(42 U.S.C. 1396 et seq.)] and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

(3)(A) The Secretary, in consultation with the Assistant Secretary for Aging,<sup>17-69</sup> shall establish, within 6 months of enactment [enacted on October 1, 1988], separate guidelines for reimbursement of institutions described in this subsection. Such reimbursement shall take into account the nutritional requirements of eligible persons, as determined by the Secretary on the basis of tested nutritional research, except that such reimbursement shall not be less than would otherwise be required under this section.

(B) The guidelines shall contain provisions designed to assure that reimbursement under this subsection shall not duplicate reimbursement under part C of title III of the Older Americans Act of 1965 [(42 U.S.C. 3030e et seq.)], for the same meal served.

(4)<sup>17-70</sup> For the purpose of establishing eligibility for free or reduced price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act (42 U.S.C. 1381 et seq.).

(6)<sup>17-71</sup> The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.

(p)<sup>17-72</sup>(1) From amounts appropriated or otherwise made available for purposes of carrying out this section, the Secretary shall carry out State-wide demonstration projects in three States<sup>17-73</sup> under which private for-profit organizations providing nonresidential day care services shall qualify as institutions for the purposes of this section. An organization may participate in a demonstration project described in the preceding sentence if—

<sup>17-69</sup> Sec. 3(b)(4) of P.L. 103-171, 107 Stat. 1991, Dec. 2, 1993, amended paragraph (3)(A) by striking “Commissioner of Aging” and inserting “Assistant Secretary for Aging”.

<sup>17-70</sup> Paragraphs (4) and (5) added by section 641 (a) and (b) of P.L. 100-460, 101 Stat. 2265, Oct. 1, 1988.

<sup>17-71</sup> Paragraph (6) added by section 105(b)(3)(B) of P.L. 101-147, 103 Stat. 884, Nov. 10, 1989.

<sup>17-72</sup> This subsection added by section 105(b)(4) of P.L. 101-147, 103 Stat. 884, Nov. 10, 1989.

For redesignation, see note 17-60.

Section 107(f) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998, struck former paragraphs (4) and (5). Previously, section 116(e)(2) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, amended former paragraph (4)(B) by striking “1992” and inserting “1998”. Previously, former paragraph (5) added by section 203 of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992, and amended by section 116(e)(3) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, which struck “1994” and inserted “1998”.

<sup>17-73</sup> Section 243(g)(1)(A) of P.L. 106-224, 114 Stat. 419, June 20, 2000, amended this sentence by striking “2 statewide demonstration projects” and inserting “State-wide demonstration projects in three States”.

(A) at least 25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less,<sup>17-74</sup> meet the income eligibility criteria established under section 9(b) for free or reduced price meals; and

(B) as a result of the participation of the organization in the project—

(i) the nutritional content or quality of meals and snacks served to children under the care of such organization will be improved; or

(ii) fees charged by such organization for the care of the children described in subparagraph (A) will be lowered.

(2) Under each such project, the Secretary shall examine—

(A) the budgetary impact of the change in eligibility being tested;

(B) the extent to which, as a result of such change, additional low-income children can be reached; and

(C) which outreach methods are most effective.

(3) The Secretary shall choose to conduct demonstration projects under this subsection in—<sup>17-75</sup>

(A) 1 State that—

(i) has a history of participation of for-profit organizations in the child care food program;

(ii) allocates a significant proportion of the amounts it receives for child care under title XX of the Social Security Act in a manner that allows low-income parents to choose the type of child care their children will receive;

(iii) has other funding mechanisms that support parental choice for child care;

(iv) has a large, State-regulated for-profit child care industry that serves low-income children; and

(v) has large sponsors of family or group day care homes that have a history of recruiting and sponsoring for-profit child care centers in the child care food program;

(B) 1 State in which—

(i) the majority of children for whom child care arrangements are made are being cared for in center-based child care facilities;

(ii) for-profit child care centers and preschools are located throughout the State and serve both rural and urban populations;

(iii) at least  $\frac{1}{3}$  of the licensed child care centers and preschools operate as for-profit facilities;

(iv) all licensed facilities are subject to identical nutritional requirements for food service that are similar to those required under the child care food program; and

(v) less than 1 percent of child care centers participating in the child care food program receive assistance under title XX of the Social Security Act; and

<sup>17-74</sup> Section 116(e)(1) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, amended this subparagraph by striking “25 percent of the children served by such organization” and inserting “25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less.”

<sup>17-75</sup> Section 243(g)(1)(B)(i) of P.L. 106-224, 114 Stat. 419, June 20, 2000, amended this paragraph by inserting “in” after “subsection”.

(C)<sup>17-76</sup> one other State—

(i) with fewer than 60,000 children below 5 years of age;

(ii) that serves more than the national average proportion of children potentially eligible for assistance provided under the Child Care and Development Fund (as indicated in data published by the Department of Health and Human Services in October 1999);

(iii) that exempts all low-income families<sup>17-76A</sup> from cost sharing requirements under programs funded by the Child Care and Development Fund; and

(iv) in which State spending represents more than 50 percent of total expenditures reported for fiscal year 1998<sup>17-76B</sup> under the Child Care and Development Fund.

(q)<sup>17-77</sup> MANAGEMENT SUPPORT.—

(1) TECHNICAL AND TRAINING ASSISTANCE.—In addition to the training and technical assistance that is provided to State agencies under other provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

(2)<sup>17-78</sup> TECHNICAL AND TRAINING ASSISTANCE FOR IDENTIFICATION AND PREVENTION OF FRAUD AND ABUSE.—As part of training and technical assistance provided under paragraph (1), the Secretary shall provide training on a continuous basis to State agencies, and shall ensure that such training is provided to sponsoring organizations, for the identification and prevention of fraud and abuse under the program and to improve management of the program.

(3)<sup>17-78</sup> FUNDING.—For each of fiscal years 1999 through 2003, the Secretary shall reserve to carry out paragraph (1) \$1,000,000 of the amounts made available to carry out this section.

(r)<sup>17-79</sup> PROGRAM FOR AT-RISK SCHOOL CHILDREN.—

(1) DEFINITION OF AT-RISK SCHOOL CHILD.—In this subsection, the term “at-risk school child” means a school child who—

(A) is not more than 18 years of age, except that the age limitation provided by this subparagraph shall not apply to a child described in section 12(d)(1)(A); and

(B) participates in a program authorized under this section operated at a site located in a geographical area

<sup>17-76</sup> Section 243(g)(1)(B) of P.L. 106-224, 114 Stat. 419, June 20, 2000, added subparagraph (C) and made conforming amendments to subparagraphs (A) and (B). Section 243(g)(2) of P.L. 106-224, 114 Stat. 419, June 20, 2000, provides that the Secretary may carry out demonstration projects in the State described in subparagraph (C) beginning not earlier than October 1, 2001.

<sup>17-76A</sup> Section 307(c)(3)(A) of P.L. 106-472, 114 Stat. 2073, November 9, 2000, amended this clause by striking “all families” and inserting “all low-income families”.

<sup>17-76B</sup> Section 307(c)(3)(B) of P.L. 106-472, 114 Stat. 2073, November 9, 2000, amended this clause by striking “made” and inserting “reported for fiscal year 1998”.

<sup>17-77</sup> This subsection added by section 107(g) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998. Previously, former subsection (q) added by section 116(f) of P.L. 103-448, 108 Stat. 4714, Nov. 2, 1994, and struck by section 708(j) of P.L. 104-193, 110 Stat. 2299, Aug. 22, 1996.

<sup>17-78</sup> Section 243(h) of P.L. 106-224, 114 Stat. 420, June 20, 2000, redesignated former paragraph (2) as paragraph (3) and inserted a new paragraph (2).

<sup>17-79</sup> This subsection added by section 107(h) of P.L. 105-336, 112 Stat. 3150, Oct. 31, 1998.

served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) PARTICIPATION IN CHILD AND ADULT CARE FOOD PROGRAM.—An institution may participate in the program authorized under this section only if the institution provides meals or<sup>17-80</sup> supplements under a program—

(A) organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

(B) with an educational or enrichment purpose.

(3) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

(4) MEAL AND SUPPLEMENT REIMBURSEMENT.—<sup>17-81</sup>

(A) LIMITATIONS.—An institution may claim reimbursement under this subsection only for one meal per child per day and one supplement per child per day<sup>17-82</sup> served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year.<sup>17-83</sup>

(B)<sup>17-84</sup> RATES.—

(i) MEALS.—A meal shall be reimbursed under this subsection at the rate established for free meals under subsection (c).

(ii) SUPPLEMENTS.—A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3).

(C) NO CHARGE.—A meal or<sup>17-85</sup> supplement claimed for reimbursement under this subsection shall be served without charge.

(5)<sup>17-86</sup> LIMITATION.—The Secretary shall limit reimbursement under this subsection for meals served under a program to institutions located in seven<sup>17-87</sup> States, of which five<sup>17-88</sup> States shall be Illinois,<sup>17-89</sup> Pennsylvania, Missouri, Delaware, and Michigan and two States shall be approved by the Secretary through a competitive application process.

<sup>17-80</sup> Section 243(i)(1) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this paragraph by inserting “meals or” before “supplements”.

<sup>17-81</sup> Section 243(i)(2)(A) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this heading by striking “SUPPLEMENT” and inserting “MEAL AND SUPPLEMENT”.

<sup>17-82</sup> Section 243(i)(2)(B)(i) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this subparagraph by striking “only for” and all that follows through “(i) a supplement” and inserting “only for one meal per child per day and one supplement per child per day”.

<sup>17-83</sup> Section 243(i)(2)(B)(ii) and (iii) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this subparagraph by striking “; and” and inserting a period and by striking former clause (ii).

<sup>17-84</sup> Section 243(i)(2)(C) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this subparagraph by striking by striking “RATE.—A supplement” and inserting “RATES.—” and all that follows through “(ii) SUPPLEMENTS.—A supplement”.

<sup>17-85</sup> Section 243(i)(2)(D) of P.L. 106-224, 114 Stat. 420, June 20, 2000, amended this subparagraph by inserting “meal or” before “supplement”.

<sup>17-86</sup> This paragraph added by section 243(i)(3) of P.L. 106-224, 114 Stat. 420, June 20, 2000.

<sup>17-87</sup> Sec. 771(1) of P.L. 107-76, 115 Stat. 745, Nov. 28, 2001, amended paragraph (5) by striking “six” and inserting “seven”.

<sup>17-88</sup> Sec. 771(2) of P.L. 107-76, 115 Stat. 745, Nov. 28, 2001, amended paragraph (5) by striking “four” and inserting “five”.

<sup>17-89</sup> Sec. 771(3) of P.L. 107-76, 115 Stat. 745, Nov. 28, 2001, amended paragraph (5) by inserting “Illinois,” after the first instance of “States shall be”.

(s) <sup>17-90</sup> INFORMATION CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—

(1) IN GENERAL.—The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(2) REQUIREMENTS FOR STATE AGENCIES.—Each State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—

(A) receives materials that include—

(i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;

(ii) the maximum State income eligibility standards, according to family size, for the program; and

(iii) information concerning how benefits under the program may be obtained;

(B) receives periodic updates of the information described in subparagraph (A); and

(C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.

(t) <sup>17-91</sup> PARTICIPATION BY EMERGENCY SHELTERS.—

(1) DEFINITION OF EMERGENCY SHELTER.—In this subsection, the term “emergency shelter” means—

(A) an emergency shelter (as defined in section 321 of the Stewart B. McKinney Homeless Assistance Act <sup>17-92</sup> (42 U.S.C. 11351)); or

(B) a site operated by the shelter.

(2) ADMINISTRATION.—Except as otherwise provided in this subsection, an emergency shelter shall be eligible to participate in the program authorized under this section in accordance with the terms and conditions applicable to eligible institutions described in subsection (a).

(3) LICENSING REQUIREMENTS.—The licensing requirements contained in subsection (a)(1) shall not apply to an emergency shelter.

(4) HEALTH AND SAFETY STANDARDS.—To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State or local health and safety standards.

(5) MEAL OR SUPPLEMENT REIMBURSEMENT.—

(A) LIMITATIONS.—An emergency shelter may claim reimbursement under this subsection—

(i) only for a meal or supplement served to children residing at an emergency shelter, if the children are—

(I) not more than 12 years of age;

<sup>17-90</sup>This subsection added by section 107(i) of P.L. 105-336, 112 Stat. 3151, Oct. 31, 1998.

<sup>17-91</sup>Effective July 1, 1999, this subsection added by section 107(j)(1) of P.L. 105-336, 112 Stat. 3152, Oct. 31, 1998.

<sup>17-92</sup>Sec. 2 of P.L. 106-400, 114 Stat. 1675, Oct. 30, 2000, provides that any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the “McKinney-Vento Homeless Assistance Act”.

(II) children of migrant workers, if the children are not more than 15 years of age; or

(III) children with disabilities; and

(ii) for not more than 3 meals, or 2 meals and a supplement, per child per day.

(B) RATE.—A meal or supplement eligible for reimbursement shall be reimbursed at the rate at which free meals and supplements are reimbursed under subsection (c).

(C) NO CHARGE.—A meal or supplement claimed for reimbursement shall be served without charge.

**SEC. 17A.** <sup>17A-1</sup> [42 U.S.C. 1766a] MEAL SUPPLEMENTS FOR CHILDREN IN AFTERSCHOOL CARE.

(a) GENERAL AUTHORITY.—

(1) GRANTS TO STATES.—The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide meal supplements under a program organized primarily to provide care for <sup>17A-2</sup> children in afterschool care in eligible elementary and secondary schools.

(2) ELIGIBLE SCHOOLS.—For the purposes of this section, the term “eligible elementary and secondary schools” means schools that—

(A) operate school lunch programs under this Act;

(B) sponsor afterschool care programs; and

(C) <sup>17A-3</sup> operate afterschool programs with an educational or enrichment purpose.

(b) ELIGIBLE CHILDREN.—Reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 12(d)(1)(A). <sup>17A-4</sup>

(c) <sup>17A-5</sup> REIMBURSEMENT.—

(1) AT-RISK SCHOOL CHILDREN.—In the case of an eligible child who is participating in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a supplement provided under this section to the child shall be—

(A) reimbursed at the rate at which free supplements are reimbursed under section 17(c)(3); and

(B) served without charge.

(2) OTHER SCHOOL CHILDREN.—In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the

<sup>17A-1</sup> Section 17A added by section 106(a) of P.L. 101-147, 103 Stat. 885, Nov. 10, 1989.

<sup>17A-2</sup> Section 108(a)(1) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this paragraph by striking “supplements to” and inserting “supplements under a program organized primarily to provide care for”.

<sup>17A-3</sup> Section 108(a)(2) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this subparagraph in its entirety.

<sup>17A-4</sup> Section 108(b) of P.L. 105-336, 112 Stat. 3154, Oct. 31, 1998, amended this subsection by striking “served to children” and all that follows and inserting “served to school children” and all that follows.

<sup>17A-5</sup> Section 108(c) of P.L. 105-336, 112 Stat. 3154, Oct. 31, 1998, amended this subsection by striking “(c) REIMBURSEMENT.—For” and inserting “(c) REIMBURSEMENT.—” and all that follows through “paragraph (1), for” in paragraph (2).

purposes of this section, the national average payment rate for supplements shall be equal to those established under section 17(c)(3) (as adjusted pursuant to section 11(a)(3)).

(d) CONTENTS OF SUPPLEMENTS.—The requirements that apply to the content of meal supplements served under child care food programs operated with assistance under this Act shall apply to the content of meal supplements served under programs operated with assistance under this section.

**[SEC. 17B. <sup>17B-1</sup> [42 U.S.C. 1766b] HOMELESS CHILDREN NUTRITION PROGRAM.]**

PILOT PROJECTS

SEC. 18. <sup>18-1</sup> [42 U.S.C. 1769] (a)<sup>18-2</sup> The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 <sup>18-3</sup> [(42 U.S.C. 1771 et seq.)] for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 <sup>18-4</sup> [(42 U.S.C. 1774)].

(b)<sup>18-5</sup>(1) Upon request to the Secretary, any school district that on January 1, 1987, was receiving all cash payments or all

<sup>17B-1</sup> Section 17B added by section 117(a)(1) of P.L. 103-448, 108 Stat. 4715, Nov. 2, 1994. Effective July 1, 1999, section 107(j)(2)(C)(i) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, repealed section 17B.

<sup>18-1</sup> This section added as section 20 by section 10 of P.L. 95-166, 91 Stat. 1336, Nov. 10, 1977. Former section 18, which authorized a study to determine State utilization of Federal funds authorized by this Act and the Child Nutrition Act of 1966, repealed by section 371(a)(1) of P.L. 99-500, 100 Stat. 1783-368, Oct. 18, 1986. Section 371(a)(1) of P.L. 99-591, 100 Stat. 3341-371, Oct. 30, 1986, and section 4501(a)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, repealed the same section. Then-section 20 renumbered as section 18 by section 371(c)(1) of P.L. 99-500, 100 Stat. 1783-368, 1783-369, Oct. 18, 1986. Section 371(c)(1) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4501(c)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the identical change.

Section 311 of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, struck former subsections (a), (b), and (c) (relating to executed pilot projects) and redesignated the succeeding subsections accordingly.

Section 109(a) of P.L. 105-336, 112 Stat. 3154, Oct. 31, 1998, struck former subsections (c), (e), (g), and (h). Section 109(c)(1) of P.L. 105-336, 112 Stat. 3156, Oct. 31, 1998, redesignated former subsections (d), (f), and (i) as subsections (c), (d), and (e), respectively.

Former subsection (c) added by section 117(b) of P.L. 103-448, 108 Stat. 4717, Nov. 2, 1994. Previously, former subsection (c) added by section 107(2) of P.L. 101-147, 103 Stat. 886, Nov. 10, 1989; redesignated by section 311(1) of P.L. 101-147, 103 Stat. 886, Nov. 10, 1989; amended by section 101(a) of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992 and section 102 of P.L. 102-512, Oct. 24, 1992; and struck by section 117(a)(2)(A) of P.L. 103-448, 108 Stat. 4717, Nov. 2, 1994.

Former subsection (e) added by section 118(b) of P.L. 103-448, 108 Stat. 4719, Nov. 2, 1994, and amended by section 709(b) of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996.

Former subsection (g) added by section 118(d) of P.L. 103-448, 108 Stat. 4721, Nov. 2, 1994.

Former subsection (h) added by section 118(e) of P.L. 103-448, 108 Stat. 4722, Nov. 2, 1994.

Section 101(b) of P.L. 102-342 (42 U.S.C. 1769 note) permits the Secretary of Agriculture to conduct demonstration projects to identify effective means of providing food assistance to homeless children residing in temporary shelters.

<sup>18-2</sup> Former subsection (d) dealing with the same subject matter completely revised by section 327(a) of P.L. 99-500, 100 Stat. 1783-362, Oct. 18, 1986. Section 327(a) of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4207(a) of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made same revision.

Section 311(1) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, redesignated this subsection as subsection (a).

<sup>18-3</sup> Section 311(2) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended this subsection by striking “(42 U.S.C. 1771 et seq.)”.

<sup>18-4</sup> Section 311(2) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, amended this subsection by striking “(42 U.S.C. 1774)”.

<sup>18-5</sup> This subsection added by section 5 of P.L. 100-237, 101 Stat. 1739, Jan. 8, 1988.

commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program beginning July 1, 1987.<sup>18-6</sup> The Secretary, directly or through contract, shall administer the project under this subsection.<sup>18-7</sup>

(2) Any school district that elects under paragraph (1) to receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive bonus commodities in the same manner as if such school district was receiving all entitlement commodities for its school lunch program.

(c)<sup>18-8</sup>(1)(A) The Secretary shall carry out a pilot program for purposes of identifying alternatives to—

(i) daily counting by category of meals provided by school lunch programs under this Act; and

(ii) annual applications for eligibility to receive free meals or reduced price meals.

(B) For the purposes of carrying out the pilot program under this paragraph, the Secretary may waive requirements of this Act relating to counting of meals provided by school lunch programs and applications for eligibility.

(C) For the purposes of carrying out the pilot program under this paragraph, the Secretary shall solicit proposals from State educational agencies and local educational agencies for the alternatives described in subparagraph (A).

(2)(A) The Secretary shall carry out a pilot program under which a limited number of schools participating in the special assistance program under section 11(a)(1) that have in attendance children at least 80 percent of whom are eligible for free lunches or reduced price lunches shall submit applications for a 3-year period.

(B) Each school participating in the pilot program under this paragraph shall have the option of determining the number of free meals, reduced price meals, and paid meals provided daily under the school lunch program operated by such school by applying percentages determined under subparagraph (C) to the daily total student meal count.

(C) The percentages determined under this subparagraph shall be established on the basis of the master roster of students enrolled in the school concerned, which—

(i) shall include a notation as to the eligibility status of each student with respect to the school lunch program; and

Section 311(1) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, redesignated this subsection as subsection (b).

<sup>18-6</sup>Section 107(1)(A) of P.L. 101-147, 103 Stat. 886, Nov. 10, 1989, amended this paragraph by striking “for the duration beginning July 1, 1987, and ending December 31, 1990” and inserting “beginning July 1, 1987, and ending September 30, 1992”. Section 301 of P.L. 102-342, 106 Stat. 911, Aug. 14, 1992, amended this paragraph by striking “September 30, 1992” and inserting “September 30, 1994”. Section 118(a) of P.L. 103-448, 108 Stat. 4719, Nov. 2, 1994, amended this paragraph by striking “, and ending September 30, 1994”.

<sup>18-7</sup>This sentence added by section 107(1)(B) of P.L. 101-147, 103 Stat. 886, Nov. 10, 1989.

<sup>18-8</sup>This subsection added by section 205(a) of P.L. 101-147, 103 Stat. 910, Nov. 10, 1989, and redesignated by section 109(c)(1) of P.L. 105-336, 112 Stat. 3156, Oct. 31, 1998.

Section 311(1) of P.L. 101-147, 103 Stat. 916, Nov. 10, 1989, redesignated this subsection as subsection (d).

(ii) shall be updated not later than September 30 of each year.

(3)<sup>18-9</sup> In addition to the pilot projects described in this subsection, the Secretary may conduct other pilot projects to test alternative counting and claiming procedures.

(4) Each pilot program carried out under this subsection shall be evaluated by the Secretary after it has been in operation for 3 years.

(d)<sup>18-10</sup>(1) Subject to the availability of appropriations to carry out this subsection, the Secretary shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this Act.

(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

(A) all whole milk in final package form for beverage use shall contain not less than—

(i) 3.25 percent milk fat; and

(ii) 8.7 percent milk solids not fat;

(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot project.

(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

(5) Not later than 2 years after the establishment of the first pilot project under this subsection, the Secretary shall report to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on—

(A) the acceptability of fortified whole, lowfat, and skim milk products to participating children;

(B) the impact of offering the milk on milk consumption;

(C) the views of the school food service authorities on the pilot projects; and

(D) any increases or reductions in costs attributed to the pilot projects.

(6) The Secretary shall—

(A) obtain copies of any research studies or papers that discuss the impact of the fortification of milk pursuant to standards established by the States; and

<sup>18-9</sup>Section 709(a) of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996, amended this subsection by striking former paragraph (3) and by redesignating former paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

<sup>18-10</sup>This subsection added by section 118(c) of P.L. 103-448, 108 Stat. 4720, Nov. 2, 1994, and redesignated by section 109(c)(1) of P.L. 105-336, 112 Stat. 3156, Oct. 31, 1998.

(B) on request, make available to State agencies and the public—

- (i) the information obtained under subparagraph (A); and
- (ii) information about where to obtain milk described in paragraph (3).

(7)(A) Each pilot project established under this subsection shall terminate on the last day of the third year after the establishment of the pilot project.

(B) The Secretary shall advise representatives of each district participating in a pilot project that the district may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates.

(e)<sup>18-11</sup> BREAKFAST PILOT PROJECTS.—

(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (10), for a period of 3 successive school years, the Secretary shall make grants to State agencies to conduct pilot projects in elementary schools under the jurisdiction of not more than 6 school food authorities approved by the Secretary to—

(A) reduce paperwork, simplify meal counting requirements, and make changes that will increase participation in the school breakfast program; and

(B) evaluate the effect of providing free breakfasts to elementary school children, without regard to family income, on participation, academic achievement, attendance and tardiness, and dietary intake over the course of a day.

(2) NOMINATIONS.—A State agency that seeks a grant under this subsection shall submit to the Secretary nominations of school food authorities to participate in a pilot project under this subsection

(3) APPROVAL.—The Secretary shall approve for participation in pilot projects under this subsection elementary schools under the jurisdiction of not more than 6 nominated school food authorities selected so as to—

(A) provide for an equitable distribution of pilot projects among urban and rural elementary schools;

(B) provide for an equitable distribution of pilot projects among elementary schools of varying family income levels; and

(C) permit the evaluation of pilot projects to distinguish the effects of the pilot projects from other factors, such as changes or differences in educational policies or programs.

(4) GRANTS TO SCHOOL FOOD AUTHORITIES.—A State agency receiving a grant under paragraph (1) shall make grants to school food authorities to conduct the pilot projects described in paragraph (1).

(5) DURATION OF PILOT PROJECTS.—Subject to the availability of funds made available to carry out this subsection, a school food authority receiving amounts under a grant to conduct a pilot project described in paragraph (1) shall conduct the project during a period of 3 successive school years.

<sup>18-11</sup> This subsection amended in its entirety by section 109(b) of P.L. 105-336, 112 Stat. 3154, Oct. 31, 1998, and redesignated by section 109(c)(1) of P.L. 105-336, 112 Stat. 3156, Oct. 31, 1998. Former subsection (i) added by section 118(f) of P.L. 103-448, 108 Stat. 4723, Nov. 2, 1994.

(6) WAIVER AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive the requirements of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) relating to counting of meals, applications for eligibility, and related requirements that would preclude the Secretary from making a grant to conduct a pilot project under paragraph (1).

(B) NONWAIVABLE REQUIREMENTS.—The Secretary may not waive a requirement under subparagraph (A) if the waiver would prevent a program participant, a potential program participant, or a school from receiving all of the benefits and protections of this Act, the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a Federal law (including a regulation) that protects an individual constitutional right or a statutory civil right.

(7) REQUIREMENTS FOR PARTICIPATION IN PILOT PROJECT.—  
To be eligible to participate in a pilot project under this subsection—

(A) a State agency—

(i) shall submit an application to the Secretary at such time and in such manner as the Secretary shall establish to meet criteria the Secretary has established to enable a valid evaluation to be conducted; and

(ii) shall provide such information relating to the operation and results of the pilot project as the Secretary may reasonably require; and

(B) a school food authority—

(i) shall agree to serve all breakfasts at no charge to all children enrolled in participating elementary schools;

(ii) shall not have a history of violations of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(iii) shall have, under the jurisdiction of the school food authority, a sufficient number of elementary schools that are not participating in the pilot projects to permit a valid evaluation of the effects of the pilot projects; and

(iv) shall meet all other requirements that the Secretary may reasonably require.

(8) EVALUATION OF PILOT PROJECTS.—

(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the pilot projects conducted by the school food authorities selected for participation.

(B) CONTENT.—The evaluation shall include—

(i) a determination of the effect of participation in the pilot project on the academic achievement, attendance and tardiness, and dietary intake over the course of a day of participating children that is not attributable to changes in educational policies and practices; and

(ii) a determination of the effect that participation by elementary schools in the pilot project has on the

proportion of students who eat breakfast and on the paperwork required to be completed by the schools.

(C) REPORT.—On completion of the pilot projects and the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation of the pilot projects required under subparagraph (A).

(9) REIMBURSEMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive a total Federal reimbursement under the school breakfast program in an amount that is equal to the total Federal reimbursement for the school for the prior year under the program (adjusted to reflect changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor and adjusted for fluctuations in enrollment).

(B) EXCESS NEEDS.—Funds required for the pilot project in excess of the level of reimbursement received by the school for the prior year (adjusted to reflect changes described in subparagraph (A) and adjusted for fluctuations in enrollment) may be taken from any non-Federal source or from amounts provided under this subsection.

(10) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(B) REQUIREMENT.—No amounts may be provided under this subsection unless specifically provided in appropriations Acts.

(f) <sup>18-12</sup> SUMMER FOOD PILOT PROJECTS.—

(1) DEFINITION OF ELIGIBLE STATE.—In this subsection, the term “eligible State” means a State in which (based on data available in July 2000)—

(A) the percentage obtained by dividing—

(i) the sum of—

(I) the average daily number of children attending the summer food service program in the State in July 1999; and

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 1999; by

(ii) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 1999; is less than 50 percent of

(B) the percentage obtained by dividing—

(i) the sum of—

(I) the average daily number of children attending the summer food service program in all States in July 1999; and

<sup>18-12</sup>This subsection added by section 102(a) of division B of the Miscellaneous Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763, 2763A-215, Dec. 21, 2000).

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 1999; by (ii) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 1999.

(2) PILOT PROJECTS.—During the period of fiscal years 2001 through 2003, the Secretary shall carry out a summer food pilot project in each eligible State to increase the number of children participating in the summer food service program in the State.

(3) SUPPORT LEVELS FOR SERVICE INSTITUTIONS.—

(A) FOOD SERVICE.—Under the pilot project, a service institution (other than a service institution described in section 13(a)(7)) in an eligible State shall receive the maximum amounts for food service under section 13(b)(1) without regard to the requirement under section 13(b)(1)(A) that payments shall equal the full cost of food service operations.

(B) ADMINISTRATIVE COSTS.—Under the pilot project, a service institution (other than a service institution described in section 13(a)(7)) in an eligible State shall receive the maximum amounts for administrative costs determined by the Secretary under section 13(b)(4) without regard to the requirement under section 13(b)(3) that payments to service institutions shall equal the full amount of State-approved administrative costs incurred.

(C) COMPLIANCE.—A service institution that receives assistance under this subsection shall comply with all provisions of section 13 other than subsections (b)(1)(A) and (b)(3) of section 13.

(4) MAINTENANCE OF EFFORT.—Expenditures of funds from State and local sources for maintenance of a summer food service program shall not be diminished as a result of assistance from the Secretary received under this subsection.

(5) EVALUATION OF PILOT PROJECTS.—

(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the pilot project.

(B) CONTENT.—An evaluation under this paragraph shall describe—

(i) any effect on participation by children and service institutions in the summer food service program in the eligible State in which the pilot project is carried out;

(ii) any effect of the pilot project on the quality of the meals and supplements served in the eligible State in which the pilot project is carried out; and

(iii) any effect of the pilot project on program integrity.

(6) REPORTS.—

(A) INTERIM REPORT.—Not later than December 1, 2002, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the status of, and any progress made by, each pilot project being car-

ried out under this subsection as of the date of submission of the report.

(B) FINAL REPORT.—Not later than April 30, 2004, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that includes—

- (i) the evaluations completed by the Secretary under paragraph (5); and
- (ii) any recommendations of the Secretary concerning the pilot projects.

(g)<sup>18-13</sup> FRUIT AND VEGETABLE PILOT PROGRAM.—

(1) IN GENERAL.—In the school year beginning July 2002, the Secretary shall carry out a pilot program to make available to students in 25 elementary or secondary schools in each of 4 States, and in elementary or secondary schools on 1 Indian reservation, free fresh and dried fruits and fresh vegetables throughout the school day in 1 or more areas designated by the school.

(2) PUBLICITY.—A school that participates in the pilot program shall widely publicize within the school the availability of free fruits and vegetables under the pilot program.

(3) REPORT.—Not later than May 1, 2003, the Secretary, acting through the Administrator of the Economic Research Service, shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the results of the pilot program.

(4) FUNDING.—The Secretary shall use not more than \$6,000,000 of funds made available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to carry out this subsection (other than paragraph (3)).

**[SEC. 19.<sup>19-1</sup> [42 U.S.C. 1769a] REDUCTION OF PAPERWORK.]**

DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

**SEC. 20.<sup>20-1</sup> [42 U.S.C. 1769b]** (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provi-

<sup>18-13</sup>Subsec. (g) added by sec. 4305(a) of P.L. 107-171, 116 Stat. 332, May 13, 2002.

<sup>19-1</sup>This section added as section 21 by P.L. 95-166, 91 Stat. 1338, Nov. 10, 1977, completely revised by section 108 of P.L. 101-147, 103 Stat. 887, Nov. 10, 1989, amended by section 119 of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994, and repealed by section 710 of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996. Former section 19, which authorized appropriations for the Trust Territory of the Pacific Islands to conduct developmental and experimental projects under this Act and the Child Nutrition Act of 1966, was repealed by section 371(a)(1) of P.L. 99-500, 100 Stat. 1783-368, Oct. 18, 1986. Section 371(a) of P.L. 99-591, 100 Stat. 3341-371, Oct. 30, 1986, and section 4501(a)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the identical change. Then-section 21 renumbered as section 19 by section 371(c)(1) of P.L. 99-500, 100 Stat. 1783-368, 1783-369, Oct. 18, 1986. Section 371(c)(1) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4501(c)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the identical change.

<sup>20-1</sup>This section added as section 22 by section 1408(a) of P.L. 95-561, 92 Stat. 2368, Nov. 1, 1978. Former section 20 renumbered section 18. See note 18-1. Then-section 22 renumbered as section 20 by section 371(c)(1) of P.L. 99-500, 100 Stat. 1783-368, 1783-369, Oct. 18, 1986. Section 371(c)(1) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4501(c)(1) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the identical change.

Section 2243(b) of title 10, United States Code, provides authority to use appropriated funds to support student meal programs in Department of Defense overseas dependent schools, but provides that the authority may be used only if the Secretary of Defense determines that Federal payments and commodities provided under this section and section

Continued

sion of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

(b) The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.<sup>20-2</sup>

(e) The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

**SEC. 21.<sup>21-1</sup> [42 U.S.C. 1769b-1] TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.**

(a) GENERAL AUTHORITY.—The Secretary—

(1) subject to the availability of, and from,<sup>21-2</sup> amounts appropriated pursuant to subsection (e)(1), shall conduct training activities and provide technical assistance to improve the skills of individuals employed in—

(A) food service programs carried out with assistance under this Act;

(B) school breakfast programs carried out with assistance under section 4 of the Child Nutrition Act of 1966; and

(C) as appropriate, other federally assisted feeding programs; and

(2)<sup>21-3</sup> from amounts appropriated pursuant to subsection (e)(2), is authorized to provide financial and other assistance to

<sup>20</sup> of the Child Nutrition Act of 1966 (42 U.S.C. 1789) to support an overseas meal program are insufficient to meet a specified standard.

<sup>20-2</sup> Remainder of subsection deleted by section 328(a) of P.L. 99-500, 100 Stat. 1783-362, Oct. 19, 1986. Section 328(a) of P.L. 99-591, 100 Stat. 3341-365, Oct. 30, 1986, and section 4208(a) of P.L. 99-661, 100 Stat. 4073, Nov. 14, 1986, made the same change.

<sup>21-1</sup> Section 21 added by section 109 of P.L. 101-147, 103 Stat. 887, Nov. 10, 1989. Former section 21 renumbered as section 19. See note 19-1.

Section 19(d)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(d)(4)) requires the Secretary to make nutrition information and training grants to certain organizations and agencies, for the training of educational and school food service personnel, in coordination with activities authorized under this section.

<sup>21-2</sup> Section 120(c)(1) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994, amended this paragraph by striking "from" and inserting "subject to the availability of, and from,".

<sup>21-3</sup> Section 19(d)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(d)(1)(B)) permits the Secretary to formulate and carry out a nutrition information and education program, through a system of grants to State educational agencies, to provide for training school food service personnel in the principles and practices of food service management,

the University of Mississippi, in cooperation with the University of Southern Mississippi,<sup>21-4</sup> to establish and maintain a food service management institute.

(b) **MINIMUM REQUIREMENTS.**—The activities conducted and assistance provided as required by subsection (a)(1) shall at least include activities and assistance with respect to—

- (1) menu planning;
- (2) implementation of regulations and appropriate guidelines; and
- (3) compliance with program requirements and accountability for program operations.

(c) **DUTIES OF FOOD SERVICE MANAGEMENT INSTITUTE.**—

(1) **IN GENERAL.**—Any food service management institute established as authorized by subsection (a)(2) shall carry out activities to improve the general operation and quality of—

- (A) food service programs assisted under this Act;
- (B) school breakfast programs assisted under section 4 of the Child Nutrition Act of 1966; and
- (C) as appropriate, other federally assisted feeding programs.

(2) **REQUIRED ACTIVITIES.**—Activities carried out under paragraph (1) shall include—

(A) conducting research necessary to assist schools and other organizations that participate in such programs in providing high quality, nutritious, cost-effective meal service to the children served;

(B) providing training and technical assistance with respect to—

- (i) efficient use of physical resources;
- (ii) financial management;
- (iii) efficient use of computers;
- (iv) procurement;
- (v) sanitation;
- (vi) safety;
- (vii) food handling;
- (viii) meal planning and related nutrition activities;<sup>21-5</sup>
- (ix)<sup>21-5</sup> culinary skills; and
- (x)<sup>21-5</sup> other appropriate activities;

(C) establishing a national network of trained professionals to present training programs and workshops for food service personnel;

(D) developing training materials for use in the programs and workshops described in subparagraph (C);<sup>21-6</sup>

(E) acting as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs, including activities carried out with as-

in cooperation with materials developed at any food service management institute established as authorized by this paragraph.

<sup>21-4</sup>Section 1 of P.L. 102-337, Aug. 7, 1992, amended section 21(a)(2) by inserting after “is authorized” the following: “to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi.”

<sup>21-5</sup>Section 120(a)(1) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994, amended this subparagraph by striking “and” at the end of clause (viii), by redesignating former clause (ix) as clause (x), and inserting new clause (ix).

<sup>21-6</sup>Paragraphs (2) through (4) of section 120(a)(2) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994, amended this paragraph by striking “and” at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a semicolon, and by adding subparagraphs (F) through (H).

assistance provided under section 19 of the Child Nutrition Act of 1966;<sup>21-6</sup>

(F)<sup>21-6</sup> training food service personnel to comply with the nutrition guidance and objectives established by the Secretary<sup>21-7</sup> through a national network of instructors or other means;

(G)<sup>21-8</sup> preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

(H)<sup>21-8</sup> assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives established by the Secretary.<sup>21-9</sup>

(d) COORDINATION.—

(1) IN GENERAL.—The<sup>21-10</sup> Secretary shall coordinate activities carried out and assistance provided as required by subsection (b) with activities carried out by any food service management institute established as authorized by subsection (a)(2).

(2)<sup>21-11</sup> USE OF INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—The Secretary shall use any food service management institute established under subsection (a)(2) to assist in carrying out dietary and nutrition activities of the Secretary.

(e)<sup>21-12</sup> AUTHORIZATION OF APPROPRIATIONS.—

(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.— There are authorized to be appropriated to carry out subsection (a)(1) \$3,000,000 for fiscal year 1990, \$2,000,000 for fiscal year 1991, and \$1,000,000 for each of fiscal years 1992 through 2003.<sup>21-13</sup>

(2) FOOD SERVICE MANAGEMENT INSTITUTE.—

(A) FUNDING.—In addition to any amounts otherwise made available for fiscal year 1995, out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary \$147,000 for fiscal year 1995, \$2,000,000 for each of fiscal years 1996 through 1998, and \$3,000,000 for fiscal year 1999 and each subsequent fiscal year,<sup>21-14</sup> to carry out subsection (a)(2). The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.<sup>21-15</sup>

<sup>21-7</sup> Section 110(a) of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this paragraph by striking “of section 24” each place it appears in subparagraphs (F) and (H) and inserting “established by the Secretary”.

<sup>21-8</sup> See note 21-6.

<sup>21-9</sup> See note 21-7.

<sup>21-10</sup> Section 120(b)(1) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994, amended this subsection by striking “(d) COORDINATION.—The” and inserting “(d)” and all that follows through “(1) IN GENERAL.—The”.

<sup>21-11</sup> This paragraph added by section 120(b)(2) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994.

<sup>21-12</sup> This subsection completely revised by section 120(c)(2) of P.L. 103-448, 108 Stat. 4726, Nov. 2, 1994.

<sup>21-13</sup> Section 110(b) of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this paragraph by striking “1998” and inserting “2003”.

<sup>21-14</sup> Section 110(c) of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this sentence by striking “and \$2,000,000 for fiscal year 1996 and each subsequent fiscal year,” and inserting “\$2,000,000 for each of fiscal years 1996 through 1998, and \$3,000,000 for fiscal year 1999 and each subsequent fiscal year.”

<sup>21-15</sup> Section 103(c)(2) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this sentence by inserting at the end before the period “, without further appropriation”.

(B) ADDITIONAL FUNDING.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out subsection (a)(2) such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2), in addition to the activities funded under subparagraph (A), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

(C) FUNDING FOR EDUCATION, TRAINING, OR APPLIED RESEARCH OR STUDIES.—In addition to amounts made available under subparagraphs (A) and (B), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.

**SEC. 22.**<sup>22-1</sup> [42 U.S.C. 1769c] COMPLIANCE AND ACCOUNTABILITY.

(a) UNIFIED ACCOUNTABILITY SYSTEM.—There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this Act comply with the provisions of this Act. Such system shall be established through the publication of regulations and the provision of an opportunity for public comment, consistent with the provisions of section 553 of title 5, United States Code.

(b) FUNCTIONS OF SYSTEM.—

(1) IN GENERAL.—Under the system described in subsection (a), each State educational agency shall—

(A) require that local food service authorities comply with the provisions of this Act; and

(B) ensure such compliance through reasonable audits and supervisory assistance reviews.

(2) MINIMIZATION OF ADDITIONAL DUTIES.—Each State educational agency shall coordinate the compliance and accountability activities described in paragraph (1) in a manner that minimizes the imposition of additional duties on local food service authorities.

(c) ROLE OF SECRETARY.—In carrying out this section, the Secretary shall—

(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and

(2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of carrying out the compliance and ac-

<sup>22-1</sup> Section 22 added by section 110(a) of P.L. 101-147, 103 Stat. 889, Nov. 10, 1989. Former section 22 renumbered section 20. See note 20-1. Another section titled section 22, which required the Secretary to study the cost and feasibility of requiring a choice of menu items, added by section 9 of P.L. 95-627, 92 Stat. 3623, Nov. 10, 1978. This section repealed by section 371(b) of P.L. 99-500, 100 Stat. 1783-368, Oct. 18, 1986. Section 371(b) of P.L. 99-591, 100 Stat. 3341-372, Oct. 30, 1986, and section 4501(b) of P.L. 99-661, 100 Stat. 4080, Nov. 14, 1986, made the same change.

countability activities referred to in subsection (c) \$3,000,000 for each of the fiscal years 1994 through 2003.<sup>22-2</sup>

**[SEC. 23.<sup>23-1</sup> [42 U.S.C. 1769d] INFORMATION ON INCOME ELIGIBILITY.]**

**[SEC. 24.<sup>24-1</sup> [42 U.S.C. 1769e] NUTRITION GUIDANCE FOR CHILD NUTRITION PROGRAMS.]**

**SEC. 25.<sup>25-1</sup> [42 U.S.C. 1769f] DUTIES OF THE SECRETARY RELATING TO NONPROCUREMENT DEBARMENT.**

(a) **PURPOSES.**—The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

(2) providing training, technical advice, and guidance in identifying and preventing the activities.

(b) **DEFINITIONS.**—As used in this section:

(1)<sup>25-2</sup> **CHILD NUTRITION PROGRAM.**—The term “child nutrition program” means—

(A) the school lunch program established under this Act;

(B) the summer food service program for children established under section 13;

(C) the child and adult care food program established under section 17;

(D) the special milk program established under section 3 of the Child Nutrition Act of 1966 (42 U.S.C. 1772);

(E) the school breakfast program established under section 4 of such Act (42 U.S.C. 1773); and

(F) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786).

(2) **CONTRACTOR.**—The term “contractor” means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

(3) **LOCAL AGENCY.**—The term “local agency” means a school, school food authority, child care center, sponsoring orga-

<sup>22-2</sup> Section 121 of P.L. 103-448, 108 Stat. 4727, Nov. 2, 1994, amended this subsection by striking “1990, 1991, 1992, 1993, and 1994” and inserting “1994 through 1996”. Section 111 of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this subsection by striking “1996” and inserting “2003”.

<sup>23-1</sup> Section 23 added by section 111 of P.L. 101-147, 103 Stat. 890, Nov. 10, 1989, and repealed by section 711 of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996.

<sup>24-1</sup> Section 24 added by section 112 of P.L. 101-147, 103 Stat. 890, Nov. 10, 1989, and repealed by section 712 of P.L. 104-193, 110 Stat. 2301, Aug. 22, 1996.

<sup>25-1</sup> Section 25 added by section 122(a) of P.L. 103-448, 108 Stat. 4727, Nov. 2, 1994. Section 122(b) of P.L. 103-448, 108 Stat. 4730, Nov. 2, 1994, provides that this section shall not apply to a cause for debarment as described in subsection (d)(2) that is based on an activity that took place prior to the effective date of this section.

Section 122(c) of P.L. 103-448, 108 Stat. 4731, Nov. 2, 1994, provides that the authority of the Secretary that exists on the day before the date of enactment of P.L. 103-448 to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by this section.

<sup>25-2</sup> Effective July 1, 1999, section 107(j)(2)(C)(ii) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, amended this paragraph by striking former subparagraph (D) and by redesignating former subparagraphs (E) through (G) as subparagraphs (D) through (F), respectively.

nization, or other entity authorized to operate a child nutrition program at the local level.

(4) **NONPROCUREMENT DEBARMENT.**—The term “nonprocurement debarment” means an action to bar a person from programs and activities involving Federal financial and non-financial assistance, but not including Federal procurement programs and activities.

(5) **PERSON.**—The term “person” means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

(c) **ASSISTANCE TO IDENTIFY AND PREVENT FRAUD AND ANTI-COMPETITIVE ACTIVITIES.**—The Secretary shall—

(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

(d) **NONPROCUREMENT DEBARMENT.**—

(1) **IN GENERAL.**—Except as provided in paragraph (3) and subsection (e), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

(2) **CAUSES FOR DEBARMENT.**—Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

(A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;

(B) fraud, bribery, theft, forgery, or embezzlement;

(C) knowingly receiving stolen property;

(D) making a false claim or statement; or

(E) any other obstruction of justice.

(3) **EXCEPTION.**—If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

(4) **MANDATORY CHILD NUTRITION PROGRAM DEBARMENT PERIODS.**—

(A) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

(B) PREVIOUS DEBARMENT.—If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

(C) SCOPE.—At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

(D) REVERSAL, REDUCTION, OR EXCEPTION.—Nothing in this section shall restrict the ability of the Secretary to—

- (i) reverse a debarment decision;
- (ii) reduce the period or scope of a debarment;
- (iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or
- (iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e).

(5) INFORMATION.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

(6) RELATIONSHIP TO OTHER AUTHORITIES.—A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

(7) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection.

(e) MANDATORY DEBARMENT.—Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2)), unless the action—

- (1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;
- (2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;
- (3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not

involved in the improper activity that would otherwise result in the debarment;

(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

(f) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

(1) exhaust all administrative procedures prescribed by the Secretary; and

(2) receive notice of the final determination of the Secretary.

(g) INFORMATION RELATING TO PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anti-competitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

**SEC. 26.**<sup>26-1</sup> [42 U.S.C. 1769g] INFORMATION CLEARINGHOUSE.

(a) IN GENERAL.—The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

(b) NONGOVERNMENTAL ORGANIZATION.—The nongovernmental organization referred to in subsection (a) shall be selected on a competitive basis and shall—

(1) be experienced in the gathering of first-hand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

<sup>26-1</sup> Section 26 added by section 123 of P.L. 103-448, 108 Stat. 4731, Nov. 2, 1994.

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States;

and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

(c) AUDITS.—The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

(d) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, \$200,000 for each of fiscal years 1995 and 1996, \$150,000 for fiscal year 1997, \$100,000 for fiscal year 1998, and \$166,000 for each of fiscal years 1999 through 2003.<sup>26-2</sup> The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.<sup>26-3</sup>

**SEC. 27.<sup>27-1</sup> [42 U.S.C. 1769h] ACCOMMODATION OF THE SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.**

(a) DEFINITIONS.—In this section:

(1) COVERED PROGRAM.—The term “covered program” means—

(A) the school lunch program authorized under this Act;

(B) the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(C) any other program authorized under this Act or the Child Nutrition Act of 1966 (except for section 17) that the Secretary determines is appropriate.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means a school food authority, institution, or service institution that participates in a covered program.

(b) ACTIVITIES.—The Secretary may carry out activities to help accommodate the special dietary needs of individuals with disabili-

<sup>26-2</sup> Section 112 of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this sentence by striking “and \$100,000 for fiscal year 1998” and inserting “\$100,000 for fiscal year 1998, and \$166,000 for each of fiscal years 1999 through 2003”.

<sup>26-3</sup> Section 103(c)(2) of P.L. 105-336, 112 Stat. 3147, Oct. 31, 1998, amended this sentence by inserting at the end before the period “, without further appropriation”.

<sup>27-1</sup> Section 27 added by section 124 of P.L. 103-448, 108 Stat. 4732, Nov. 2, 1994, and amended by section 414(d) of P.L. 105-220, 112 Stat. 1242, Aug. 7, 1998. Section 113 of P.L. 105-336, 112 Stat. 3157, Oct. 31, 1998, amended this section in its entirety.

ities who are participating in a covered program. The activities may include—

(1) developing and disseminating to State agencies guidance and technical assistance materials;

(2) conducting training of State agencies and eligible entities; and

(3) providing grants to State agencies and eligible entities.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1999 through 2003.

GENERAL NOTES

Section 17 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100-237) permits surplus commodities acquired by the Commodity Credit Corporation and commodities acquired under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to be used for any program authorized to be carried out by the Secretary that involves the acquisition of commodities for use in a domestic feeding program, including a program authorized by this Act.

Section 5(1)(2)(D) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93-86) permits the use of approved food safety technology in acquiring commodities for distribution under this Act.

Section 403(c)(2)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(c)(2)(C)) provides that the 5-year limited eligibility of qualified aliens for Federal means-tested public benefits does not apply to assistance or benefits under this Act.

Section 422(b)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1632(b)(3)) provides that the authority for States to provide for attribution of sponsors income and resources to aliens does not apply to programs comparable to assistance or benefits under this Act.

Section 423(d)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 8 U.S.C. 1183a note) provides that the requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1138a) do not apply to assistance or benefits under this Act.

Section 404B(g)(1)(A) of the Higher Education Act of 1965 (20 U.S.C. 1070a-22(g)(1)(A)) requires the Secretary of Education to provide services under chapter 2 of subpart 2 of part A of title IV of that Act (20 U.S.C. 1070a-21 et seq.) to certain students of schools in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under this Act.

Section 404D(c)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a-24(c)(2)) requires an eligible entity to treat as priority students certain students who are eligible, inter alia, for free or reduced price meals under this Act.

Section 404F(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a-26(a)(2)) authorizes the Secretary of Education to ensure that 21st Century Scholar Certificates are provided to certain students who attend schools at which at least 50 percent of the students enrolled are eligible for a free or reduced price lunch under this Act.

Section 231(d)(3)(A)(i) of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2341(d)(3)(A)(i)) provides that a State may determine the number of economically disadvantaged students attending vocational education programs on the basis of eligibility for, inter alia, free or reduced-price meals under the Richard B. Russell National School Lunch Act.

Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5)) requires a local educational agency to use a measure of poverty that is based, inter alia, on the number of children eligible for free and reduced priced lunches under this Act.

Section 1707(3) of the Elementary and Secondary Education Act of 1965 defines a "low-income individual" as an individual who is determined by a State educational agency or local educational agency to be a child, ages 5 through 17, from a low-income family, on the basis of, inter alia, data on children eligible for free or reduced-price lunches under this Act.

Section 1397E(d)(4)(A)(iv)(II) of the Internal Revenue Code of 1986 provides a credit to holders of qualified zone bonds and includes in the definition of "qualified zone academy" a factor relating to the number of students who are eligible for free or reduced-cost lunches under this Act.

Section 254(b)(2)(B) of the Job Training Partnership Act (29 U.S.C. 1633(b)(2)(B)) provides that an individual shall be eligible to participate in the program assisted under part B of title II of such Act (relating to the summer youth employment and training program) if the individual (1) is age 14 through 21, and (2)(A) is economically disadvantaged, or (B) has been determined to meet the eligibility requirements for free meals under this Act during the most recent school year.

Section 263(a)(2)(C) of the Job Training Partnership Act (29 U.S.C. 1643(a)(2)(C)) provides, with certain exceptions, that an individual who is in school shall be eligible to participate in the program under part C of title II of such Act (relating to the youth training program) if the individual, inter alia, has been determined to meet the eligibility requirements for free meals under this Act during the most recent school year.

Section 602(d)(9)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474(d)(9)(A)) provides that nothing in such Act shall impair or affect any authority of the Secretary of Agriculture under the Richard B. Russell National School Lunch Act.

Section 7(a)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(8)) requires each State, in accordance with regulations issued by the Secretary, to ensure that the State agency administering the distribution of commodities under programs authorized under this Act is provided, from funds made available to the State under section 7(a) of the Child Nutrition Act of 1966, an appropriate amount of funds for administrative costs incurred in distributing such commodities, and permits the Secretary, in developing such regulations, to consider the value of commodities provided to the State under this Act.

Section 10(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1779(a)) requires the Secretary of Agriculture to prescribe such regulations as he deems necessary to carry out such Act and the Richard B. Russell National School Lunch Act.

Section 10405(a)(2)(H) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) provides that payments made from the Agent Orange Settlement Fund or a similar fund shall not be considered income or resources in determining eligibility for the amount of benefits under the Richard B. Russell National School Lunch Act.

The matter under the heading "CHILD NUTRITION PROGRAMS" under "FOOD AND NUTRITION SERVICE" of chapter I of title XI of Public Law 102-368 provides that the Secretary may waive the requirements of this Act as they pertain to schools and institutions only to the degree the Secretary determines necessary to ensure nutrition benefits for program participants in the areas directly affected by natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar.

Section 2(4) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448; 42 U.S.C. 1751 note) provides a congressional finding that supplemental nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) can help to offset threats posed to a child's capacity to learn and perform in school that result from inadequate nutrient intake.

Section 3(1) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448) provides that it is the sense of Congress that funds should be made available for child nutrition programs to remove barriers to the participation of needy children in the school lunch program, school breakfast program, summer food service program for children, and the child and adult care food program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448; 42 U.S.C. 1751 note) requires the Secretary, not later than 18 months after the date of enactment of such Act, to develop and implement regulations to consolidate the school lunch program and the school breakfast program into a comprehensive meal program and prescribes certain requirements for establishing the program.

Section 741 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 42 U.S.C. 1751 note) requires the Secretary of Agriculture to develop proposed changes to the regulations under the school lunch program under this Act, the summer food service program under section 13 of this Act, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), for the purpose of simplifying and coordinating those programs into a comprehensive meal program, and to submit a report containing the proposed changes to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Economic and Educational Opportunities of the House of Representatives not later than November 1, 1997.

Section 6580(b)(3) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m(b)(3)) provides a definition of "school lunch factor" that is based, inter alia, on the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under this Act.

Section 1404(b) of the Children's Health Act of 2000 (42 U.S.C. 9859c(b)) provides an allotment formula for child care safety and health grants that is based, inter alia, on a school lunch factor.

Subsection (b) of the first section of Public Law 87-688 (48 U.S.C. 1666(b)) provides that the Secretary may extend to American Samoa the benefits of this Act.

Section 742 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 8 U.S.C. 1615) provides that—

(1) an individual who is eligible to receive free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school lunch program under this Act on the basis of citizenship, alienage, or immigration status; and

(2) nothing in the Act shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien benefits under programs established under this Act (other than the school lunch program).