

Attachment 5-

Sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973

AGRICULTURE AND CONSUMER PROTECTION ACT OF 1973

[As Amended Through P.L. 115-334, Enacted December 20, 2018]

[Currency: This publication is a compilation of the text of Public Law 93-86. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

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COMMODITY DISTRIBUTION PROGRAM

SEC. 4.² [7 U.S.C. 612c note] (a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 2008 through 2023, purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions (including hospitals and facilities caring for needy infants and children), supplemental feeding programs serving women, infants, and children or elderly persons, or both, wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food and Nutrition Act of 2008 (section 2013(b) of this title). In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities)

¹ This table of contents is not part of the Act but is included for user convenience.
² P.L. 93-86, 87 Stat. 249, August 10, 1973.

provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or the Emergency Food Assistance Act of 1983, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

COMMODITY SUPPLEMENTAL FOOD PROGRAM

SEC. 5. [7 U.S.C. 612c note] (a) GRANTS PER ASSIGNED CASELOAD SLOT.

(1) IN GENERAL.—In carrying out the program under section 4 (referred to in this section as the “commodity supplemental food program”), for each of fiscal years 2008 through 2023, the Secretary shall provide to each State agency from funds made available to carry out that section (including any such funds remaining available from the preceding fiscal year), a grant per assigned caseload slot for administrative costs incurred by the State agency and local agencies in the State in operating the commodity supplemental food program.

(2) AMOUNT OF GRANTS.—

(A) FISCAL YEAR 2003.—For fiscal year 2003, the amount of each grant per assigned caseload slot shall be equal to the amount of the grant per assigned caseload slot for administrative costs in 2001, adjusted by the percentage change between—

(i) the value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) the value of that index for the 12-month period ending June 30, 2002.

(B) SUBSEQUENT FISCAL YEARS.—For each of fiscal years 2004 through 2023, the amount of each grant per assigned caseload slot shall be equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between—

(i) the value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(b) During the first three months of any commodity supplemental food program, or until such program reaches its projected

caseload level, whichever comes first, the Secretary shall pay those administrative costs necessary to commence the program successfully: *Provided*, That in no event shall administrative costs paid by the Secretary for any fiscal year exceed the limitation established in subsection (a) of this section.

(c) Administrative costs for the purposes of the commodity supplemental food program shall include, but not be limited to, expenses for information and referral, operation, monitoring, nutrition education, start-up costs, and general administration, including staff, warehouse and transportation personnel, insurance, and administration of the State or local office.

(d)(1) During each fiscal year the commodity supplemental food program is in operation, the types and varieties of commodities and their proportional amounts shall be determined by the Secretary, but, if the Secretary proposes to make any significant changes in the types, varieties, or proportional amounts from those that were available or were planned at the beginning of the fiscal year (or as were available during the fiscal year ending June 30, 1976, whichever is greater) the Secretary shall report such changes before implementation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) Notwithstanding any other provision of law, the Commodity Credit Corporation inventory levels permit, provide not less than 9,000,000 pounds of cheese and not less than 4,000,000 pounds of nonfat dry milk in each of fiscal years 2008 through 2023 to the Secretary of Agriculture. The Secretary shall use such amounts of cheese and nonfat dry milk to carry out the commodity supplemental food program before the end of each fiscal year.

(e) The Secretary of Agriculture is authorized to issue such regulations as may be necessary to carry out the commodity supplemental food program.

(f) The Secretary shall, in any fiscal year, approve applications of additional sites for the program, including sites that serve only elderly persons, in areas in which the program currently does not operate to the full extent that this can be done within the appropriations available for the program for the fiscal year and without reducing actual participation levels (including participation of elderly persons under subsection (g)) in areas in which the program is in effect.

(g) ELIGIBILITY.—

(1) IN GENERAL.—Except as provided in subsection (m), the States shall only provide assistance under the commodity supplemental food program to low-income persons aged 60 and older.

(2) CERTIFICATION.—

(A) DEFINITION OF CERTIFICATION PERIOD.—In this paragraph, the term “certification period” means the period during which a participant in the commodity supplemental food program in a State may continue to receive benefits under the commodity supplemental food program without a formal review of the eligibility of the participant.

(B) **MINIMUM CERTIFICATION PERIOD.**—Subject to subparagraphs (C) and (D), a State shall establish for the commodity supplemental food program of the State a certification period of—

- (i) not less than 1 year; but
- (ii) not more than 3 years.

(C) **TEMPORARY CERTIFICATION.**—An eligible applicant for the commodity supplemental food program in a State may be provided with a temporary monthly certification to fill any caseload slot resulting from nonparticipation by certified participants.

(D) **APPROVALS.**—A certification period of more than 1 year established by a State under subparagraph (B) shall be subject to the approval of the Secretary, who shall approve such a certification period on the condition that, with respect to each participant receiving benefits under the commodity supplemental food program of the State, the local agency in the State administering the commodity supplemental food program, on an annual basis during the certification period applicable to the participant—

- (i) verifies the address and continued interest of the participant; and
- (ii) has sufficient reason to determine that the participant still meets the income eligibility standards under paragraph (1), which may include a determination that the participant has a fixed income.

(h) Each State agency administering a commodity supplemental food program serving women, infants, and children shall—

(1) ensure that written information concerning the supplemental nutrition assistance program, the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and the child support enforcement program under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.) is provided on at least one occasion to each adult who applies for or participates in the commodity supplemental food program;

(2) provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 6 under the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (hereinafter referred to in this section as the “medicaid program”) which materials may be identical to those provided under section 17(e)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(e)(3)); and

(3) ensure that local agencies provide to pregnant, breast feeding and post partum women, and adults applying on behalf of infants or children, who apply to the commodity supplemental food program, or who reapply to such program, written information about the medicaid program and referral to the program or to agencies authorized to determine presumptive eligibility for the medicaid program, if the individuals are not participating in the medicaid program.

(i) Each State agency administering a commodity supplemental food program serving elderly persons shall ensure that written information is provided on at least one occasion to each elderly participant in or applicant for the commodity supplemental food program for the elderly concerning—

(1) supplemental nutrition assistance benefits provided under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(2) the supplemental security income benefits provided under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); and

(3) medical assistance provided under title XIX of such Act (42 U.S.C. 1396 et seq.) (including medical assistance provided to a qualified medicare beneficiary (as defined in section 1905(p) of such Act (42 U.S.C. 1396d(5)))).

(j)(1) If the Secretary must pay a significantly higher than expected price for one or more types of commodities purchased under the commodity supplemental food program, the Secretary shall promptly determine whether the price is likely to cause the number of persons that can be served in the program in a fiscal year to decline.

(2) If the Secretary determines that such a decline would occur, the Secretary shall promptly notify the State agencies charged with operating the program of the decline and shall ensure that a State agency notify all local agencies operating the program in the State of the decline.

(k)(1) The Secretary or a designee of the Secretary shall have the authority to—

(A) determine the amount of, settle, and adjust any claim arising under the commodity supplemental food program; and

(B) waive such a claim if the Secretary determines that to do so will serve the purposes of the program.

(2) Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28, United States Code, to conduct litigation on behalf of the United States.

(1) USE OF APPROVED FOOD SAFETY TECHNOLOGY.—

(1) IN GENERAL.—In acquiring commodities for distribution through a program specified in paragraph (2), the Secretary shall not prohibit the use of any technology to improve food safety that—

(A) has been approved by the Secretary; or

(B) has been approved or is otherwise allowed by the Secretary of Health and Human Services.

(2) PROGRAMS.—A program referred to in paragraph (1) is a program authorized under—

(A) this Act;

(B) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(C) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.);

(D) the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); or

(E) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(m) PHASE-OUT.—Notwithstanding any other provision of law, an individual who receives assistance under the commodity supplemental food program on the day before the date of enactment of this subsection shall continue to receive that assistance until the date on which the individual is no longer eligible for assistance under the eligibility requirements for the program in effect on the day before the date of enactment of this subsection.

SHORT TITLE

SEC. 6. [7 U.S.C. 612c note] This Act may be cited as the “Agriculture and Consumer Protection Act of 1973”.