

Attachment C: Richard B. Russell
National School Lunch Act
(42 U.S.C. 1751 et seq .)

RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

[Chapter 281 of the 79th Congress, Approved June 4, 1946, 60 Stat. 230]

[As Amended Through P.L. 116–6, Enacted February 15, 2019]

【Currency: This publication is a compilation of the text of Chapter 281 of the 79th Congress. 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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¹This table of contents is not part of the Act but is included for user convenience. The numbers in brackets refer to section numbers in title 42, United States Code.

to the total revenue of the school food service account shall be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

(B) ACCRUAL.—All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

(C) EFFECTIVE DATE.—This subsection shall be effective beginning on July 1, 2011.

(r) DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.—Any school, institution, service institution, facility, or individual that has been terminated from any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and is on a list of disqualified institutions and individuals under section 13 or section 17(d)(5)(E) of this Act may not be approved to participate in or administer any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

SEC. 13. [42 U.S.C. 1761] SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) AREA IN WHICH POOR ECONOMIC CONDITIONS EXIST.—

(i) IN GENERAL.—Subject to clause (ii), the term “area in which poor economic conditions exist”, as the term relates to an area in which a program food service site is located, means—

(I) the attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) a geographic area, as defined by the Secretary based on the most recent census data available, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(III) an area—

(aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and

(bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(IV) a geographic area, as defined by the Secretary based on information provided from a department of welfare or zoning commission, in

which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(V) an area for which the program food service site demonstrates through other means approved by the Secretary that at least 50 percent of the children enrolled at the program food service site are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(ii) DURATION OF DETERMINATION.—A determination that an area is an “area in which poor economic conditions exist” under clause (i) shall be in effect for—

(I) in the case of an area described in clause

(i)(I), 5 years;

(II) in the case of an area described in clause (i)(II), until more recent census data are available;

(III) in the case of an area described in clause (i)(III), 1 year; and

(IV) in the case of an area described in subclause (IV) or (V) of clause (i), a period of time to be determined by the Secretary, but not less than 1 year.

(B) CHILDREN.—The term “children” means—

(i) individuals who are 18 years of age and under;

and

(ii) individuals who are older than 18 years of age who are—

(I) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations promulgated by the Secretary, to have a disability, and

(II) participating in a public or nonprofit private school program established for individuals who have a disability.

(C) PROGRAM.—The term “program” means the summer food service program for children authorized by this section.

(D) SERVICE INSTITUTION.—The term “service institution” means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp, that develops special summer or school vacation programs providing food service similar to food service 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.).

(E) STATE.—The term “State” means—

(i) each of the several States of the United States;

(ii) the District of Columbia;

- (iii) the Commonwealth of Puerto Rico;
- (iv) Guam;
- (v) American Samoa;
- (vi) the Commonwealth of the Northern Mariana Islands; and
- (vii) the United States Virgin Islands.

(2) PROGRAM AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit summer food service programs for children in service institutions.

(B) PREPARATION OF FOOD.—

(i) IN GENERAL.—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.

(ii) INFORMATION AND TECHNICAL ASSISTANCE.—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.—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)(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) PRIORITY.—

(A) IN GENERAL.—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:

(i) Local schools.

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

(iii) New public institutions.

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

(B) RURAL AREAS.—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.—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) GOVERNMENT INSTITUTIONS.—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) PRIVATE NONPROFIT ORGANIZATIONS.—

(A) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—In this paragraph, the term “private nonprofit organization” means an organization that—

(i) exercises full control and authority over the operation of the program at all sites under the sponsorship of the organization;

(ii) provides ongoing year-round activities for children or families;

(iii) demonstrates that the organization has adequate management and the fiscal capacity to operate a program under this section;

(iv) is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

(v) meets applicable State and local health, safety, and sanitation standards.

(B) ELIGIBILITY.—Private nonprofit organizations (other than organizations eligible under paragraph (1)) shall be eligible for the program under the same terms and conditions as other service institutions.

(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(9) EXEMPTION.—

(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining “areas in which poor economic conditions exist” under paragraph (1)(C) shall be 40 percent.

(B) EVALUATION.—

(i) **IN GENERAL.**—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

(ii) **IMPACT.**—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

(I) the number of sponsors offering meals through the summer food service program;

(II) the number of sites offering meals through the summer food service program;

(III) the geographic location of the sites;

(IV) services provided to eligible children; and

(V) other factors determined by the Secretary.

(iii) **REPORT.**—Not later than January 1, 2008, 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 under this subparagraph.

(iv) **FUNDING.**—

(I) **IN GENERAL.**—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph \$400,000, to remain available until expended.

(II) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.

(10) **SUMMER FOOD SERVICE RURAL TRANSPORTATION.**—

(A) **IN GENERAL.**—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

(B) **ELIGIBILITY.**—To be eligible to receive a grant under this paragraph—

(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

(C) **DURATION.**—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2006.

(D) **REPORTS.**—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, 2008, an interim report that describes—

(I) the use of funds made available under this paragraph; and

(II) any progress made by using funds from each grant provided under this paragraph; and

(ii) not later than January 1, 2009, a final report that describes—

(I) the use of funds made available under this paragraph;

(II) any progress made by using funds from each grant provided under this paragraph;

(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

(E) FUNDING.—

(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

(I) on October 1, 2005, \$2,000,000; and

(II) on October 1, 2006, and October 1, 2007, \$1,000,000.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(11) OUTREACH TO ELIGIBLE FAMILIES.—

(A) IN GENERAL.—The Secretary shall require each State agency that administers the national school lunch program under this Act to ensure that, to the maximum extent practicable, school food authorities participating in the school lunch program under this Act cooperate with participating service institutions to distribute materials to inform families of—

(i) the availability and location of summer food service program meals; and

(ii) the availability of reimbursable breakfasts served under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(B) INCLUSIONS.—Informational activities carried out under subparagraph (A) may include—

(i) the development or dissemination of printed materials, to be distributed to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals;

(ii) the development or dissemination of materials, to be distributed using electronic means to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals; and

(iii) such other activities as are approved by the applicable State agency to promote the availability and location of summer food service program meals to school children and the families of school children.

(C) MULTIPLE STATE AGENCIES.—If the State agency administering the program under this section is not the same State agency that administers the school lunch program under this Act, the 2 State agencies shall work cooperatively to implement this paragraph.

(12) SUMMER FOOD SERVICE SUPPORT GRANTS.—

(A) IN GENERAL.—The Secretary shall use funds made available to carry out this paragraph to award grants on a competitive basis to State agencies to provide to eligible service institutions—

(i) technical assistance;

(ii) assistance with site improvement costs; or

(iii) other innovative activities that improve and encourage sponsor retention.

(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a State agency shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

(C) PRIORITY.—In making grants under this paragraph, the Secretary shall give priority to—

(i) applications from States with significant low-income child populations; and

(ii) State plans that demonstrate innovative approaches to retain and support summer food service programs after the expiration of the start-up funding grants.

(D) USE OF FUNDS.—A State and eligible service institution may use funds made available under this paragraph to pay for such costs as the Secretary determines are necessary to establish and maintain summer food service programs.

(E) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$20,000,000 for fiscal years 2011 through 2015.

(b) SERVICE INSTITUTIONS.—

(1) PAYMENTS.—

(A)⁹ IN GENERAL.—Subject to subparagraph (B) and in addition to amounts made available under paragraph (3), payments to service institutions shall be—

(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.

(B) ADJUSTMENTS.—Amounts specified in subparagraph (A) 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.

(C) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this Act (other than subparagraphs (A) and (B) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.

(2) 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, 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.

(3) PERMANENT OPERATING AGREEMENTS AND BUDGET FOR ADMINISTRATIVE COSTS.—

(A) PERMANENT OPERATING AGREEMENTS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the program, a service institution that meets the conditions of eligibility described in this section and in regulations promulgated by the Secretary, shall be required to enter into a permanent agreement with the applicable State agency.

(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the service institution is in compliance with all requirements established in this section or by the Secretary.

(iii) TERMINATION.—A permanent agreement described in clause (i)—

⁹ Effective Jan. 1, 2008, sec. 738(a)(1)(C) of division A of P.L. 110-161, Dec. 26, 2007, amended this subpara. by striking “(B)” and all that follows through “shall not exceed” and inserting “(A)” and all that follows through “shall be”. Although this subpara. was already previously redesignated as subparagraph (A) by sec. 738(a)(1)(B) of division A of P.L. 110-161, the amendment was executed to effectuate the probable intent of Congress.

(I) may be terminated for convenience by the service institution and State agency that is a party to the permanent agreement; and

(II) shall be terminated—

(aa) for cause by the applicable State agency in accordance with subsection (q) and with regulations promulgated by the Secretary; or

(bb) on termination of participation of the service institution in the program.

(B) BUDGET FOR ADMINISTRATIVE COSTS.—

(i) IN GENERAL.—When applying for participation in the program, and not less frequently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.

(ii) AMOUNT.—Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study required in paragraph (4).

(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-related 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)(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.

(2) Children participating in National Youth Sports Programs operated by higher education institutions 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.

(d) Not later than April 15, May 15, and July 1 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 institution. The State shall not release the second month's advance program payment to any service institution (excluding a school) 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 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)(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) 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.

(3) 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) 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) 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.

(6) Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child 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. 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.

(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 au-

thorized to donate to States, for distribution to service institutions, food available under section 416 of the Agricultural Act of 1949 [(7 U.S.C. 1431)], or purchased under section 32 of the Act of August 24, 1935 [(7 U.S.C. 612c)] or section 709 of the Food and Agriculture Act of 1965 [(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) Repealed¹⁰]

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

(l)(1) Service institutions may contract on a competitive basis with food service management companies 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.

¹⁰Section 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.

(2) Each State may provide for the registration of food service management companies.

(3) 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) 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 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.

(n) 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; (3) the State's plans 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 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)(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) In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1) not more than $\frac{1}{2}$ of 1 percent of amounts appropriated for purposes of carrying out this section.

(q) TERMINATION AND DISQUALIFICATION OF PARTICIPATING ORGANIZATIONS.—

(1) IN GENERAL.—Each State agency shall follow the procedures established by the Secretary for the termination of participation of institutions under the program.

(2) FAIR HEARING.—The procedures described in paragraph (1) shall include provision for a fair hearing and prompt determination for any service institution aggrieved by any action of the State agency that affects—

(A) the participation of the service institution in the program; or

(B) the claim of the service institution for reimbursement under this section.

(3) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(A) IN GENERAL.—The Secretary shall maintain a list of service institutions and individuals that have been terminated or otherwise disqualified from participation in the program under the procedures established pursuant to paragraph (1).

(B) AVAILABILITY.—The Secretary shall make the list available to States for use in approving or renewing applications by service institutions for participation in the program.

(r) For the period beginning October 1, 1977, and ending September 30, 2015, 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.¹¹ [42 U.S.C. 1762]]

COMMODITY DISTRIBUTION PROGRAM

SEC. 14. **[42 U.S.C. 1762a]** (a) Notwithstanding any other provision of law, the Secretary 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), 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 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)(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) 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)).¹² There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d) 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—

¹¹This section repealed by section 308 of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989.

¹²Citation to 42 U.S.C. 3030(b)(1) probably should be to 42 U.S.C. 3030a(b)(1).