

# COMMODITY DISTRIBUTION REFORM ACT AND WIC AMENDMENTS OF 1987

[As Amended Through P.L. 108-269, July 2, 2004]

## TABLE OF CONTENTS

|  | Page |
|--|------|
| Sec. 1. Short title .....  | 7-2  |
| Sec. 2. Statement of purpose; sense of Congress .....  | 7-2  |
| Sec. 3. Commodity distribution program reforms .....   | 7-2  |
| Sec. 3A. Advance funding for State option contracts .....  | 7-8  |
| Sec. 4. Food bank project .....  | 7-9  |
| Sec. 5. Extension of eligibility of certain school districts to receive cash<br>or commodity letters of credit assistance for school<br>lunch programs ..... | 7-9  |
| Sec. 6. Extension of national donated commodity processing programs .....  | 7-9  |
| Sec. 7. Assessment and report to Congress .....  | 7-9  |
| Sec. 8. Funds for nutrition services and administration .....  | 7-10 |
| Sec. 9. Coordination of WIC program with medicaid counseling .....   | 7-10 |
| Sec. 10. Study of medicaid savings for newborns from WIC program .....   | 7-10 |
| Sec. 11. Supplying infant formula for the WIC program .....  | 7-11 |
| Sec. 12. Overspending and underspending under the WIC program .....  | 7-11 |
| Sec. 13. Authority to transfer commodities between programs .....  | 7-11 |
| Sec. 14. Authority to resolve claims .....   | 7-11 |
| Sec. 15. Payment of costs associated with removal of commodities that<br>pose a health or safety risk .....  | 7-11 |
| Sec. 16. Authority to accept commodities donated by Federal sources .....  | 7-12 |
| Sec. 17. Commodity donations .....   | 7-12 |
| Sec. 18. Definitions .....   | 7-13 |
| Sec. 19. General effective date .....  | 7-14 |

Public Law 100-237

## AN ACT

To improve the distribution procedures for agricultural commodities and their products donated for the purposes of assistance through the Department of Agriculture, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. [7 U.S.C. 612c note] SHORT TITLE.**<sup>1-1</sup>

This Act may be cited as the “Commodity Distribution Reform Act and WIC Amendments of 1987”.

### **SEC. 2. [7 U.S.C. 612c note] STATEMENT OF PURPOSE; SENSE OF CONGRESS.**

(a) **STATEMENT OF PURPOSE.**—It is the purpose of this Act to improve the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies, the quality of the commodities that are distributed, and the degree to which such distribution reponds<sup>2-1</sup> to the needs of the recipient agencies.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the distribution of commodities and products—

(1) should be improved as an effective means of removing agricultural surpluses from the market and providing nutritious high-quality foods to recipient agencies;

(2) is inextricably linked to the agricultural support and surplus removal programs; and

(3) is an important mission of the Secretary of Agriculture.

### **SEC. 3. [7 U.S.C. 612c note] COMMODITY DISTRIBUTION PROGRAM REFORMS.**

(a) **COMMODITIES SPECIFICATIONS.**—

(1) **DEVELOPMENT.**—In developing specifications for commodities acquired through price support, surplus removal, and direct purchase programs of the Department of Agriculture that are donated for use for programs or institutions described in paragraph (2), the Secretary shall—

(A) consult with the advisory council established under paragraph (3);

(B) consider both the results of the information received from recipient agencies under subsection (f)(2) and the results of an ongoing field testing program under subsection (g) in determining which commodities and products, and in which form the commodities and products, should be provided to recipient agencies; and

(C) give significant weight to the recommendations of the advisory council established under paragraph (3) in ensuring that commodities and products are—

(i) of the quality, size, and form most usable by recipient agencies; and

(ii) to the maximum extent practicable, consistent with the Dietary Guidelines for Americans published

<sup>1-1</sup> P.L. 100-237, 101 Stat. 1733, January 8, 1988.

<sup>2-1</sup> So in original. Probably should be “respond”.

by the Secretary of Agriculture and the Secretary of Health and Human Services.

(2) APPLICABILITY.—Paragraph (1) shall apply to—

(A) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note);

(B) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

(C) 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);

(D) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(E) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a); and

(F) to the extent practicable—

(i)<sup>3-1</sup> the emergency food assistance program established under the Emergency Food Assistance Act of 1983 (Public Law 100-237; 7 U.S.C. 612c note); and

(ii) programs under which food is donated to charitable institutions.

(3) ADVISORY COUNCIL.—(A) The Secretary shall establish an advisory council on the distribution of donated commodities to recipient agencies. The Secretary shall appoint not less than nine and not more than 15 members to the council, including—

(i) representatives of recipient agencies, including food banks;<sup>3-2</sup>

(ii) representatives of food processors and food distributors;

(iii) representatives of agricultural organizations;

(iv) representatives of State distribution agency directors; and

(v) representatives of State advisory committees.

(B) The council shall meet not less than semiannually with appropriate officials of the Department of Agriculture and shall provide guidance to the Secretary on regulations and policy development with respect to specifications for commodities.

(C) Members of the council shall serve without compensation but shall receive reimbursement for necessary travel and subsistence expenses incurred by them in the performance of the duties of the committee.

(D) The council shall report annually to the Secretary of Agriculture, the Committee on Education and Labor<sup>3-3</sup> and the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

<sup>3-1</sup> Sec. 1772(h)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3809, Nov. 28, 1990, amended clause (i) in its entirety.

<sup>3-2</sup> Sec. 1773(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3810, Nov. 28, 1990, amended clause (i) by inserting “, including food banks” after “recipient agencies”.

<sup>3-3</sup> So in original. Probably should be “Committee on Education and the Workforce”.

(E) The council shall expire on September 30, 1996.<sup>3-4</sup>

(b) DUTIES OF SECRETARY WITH RESPECT TO PROVISION OF COMMODITIES.— With respect to the provision of commodities to recipient agencies, the Secretary shall—

(1) before the end of the 270-day period beginning on the date of the enactment of this Act [Jan. 8, 1988]—

(A) implement a system to provide recipient agencies with options with respect to package sizes and forms of such commodities, based on information received from such agencies under subsection (f)(2), taking into account the duty of the Secretary—

(i) to remove surplus stocks of agricultural commodities through the Commodity Credit Corporation;

(ii) to purchase surplus agriculture commodities through section 32 of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);<sup>3-5</sup> and

(iii) to make direct purchases of agricultural commodities and other foods for distribution to recipient agencies under—

(I) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note);

(II) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

(III) 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);

(IV) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(V) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a); and

(B) implement procedures to monitor the manner in which State distribution agencies carry out their responsibilities;

(2) provide technical assistance to recipient agencies on the use of such commodities, including handling, storage, and menu planning and shall distribute to all recipient agencies suggested recipes for the use of donated commodities and products (the recipe cards shall be distributed as soon as practicable after the date of enactment of this Act [Jan. 8, 1988] and updated on a regular basis taking into consideration the Dietary Guidelines for Americans published by the Secretary of Agriculture and the Secretary of Health and Human Services, as in effect at the time of the update of the recipe files);

(3) before the end of the 120-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], implement a system under which the Secretary shall—

<sup>3-4</sup> Sec. 401 of the Child Nutrition Amendments of 1992, P.L. 102-342, 106 Stat. 914, Aug. 14, 1992, amended subpara. (E) by striking “1992” and inserting “1996”.

<sup>3-5</sup> So in original. Probably should be “section 32 of the Act of August 24, 1935 (7 U.S.C. 612c)”.

(A) make available to State agencies summaries of the specifications with respect to such commodities and products; and

(B) require State agencies to make such summaries available to recipient agencies on request;

(4) implement a system for the dissemination to recipient agencies and to State distribution agencies—

(A) not less than 60 days before each distribution of commodities by the Secretary is scheduled to begin, of information relating to the types and quantities of such commodities that are to be distributed; or

(B) in the case of emergency purchases and purchases of perishable fruits and vegetables, of as much advance notification as is consistent with the need to ensure that high-quality commodities are distributed;

(5) before the expiration of the 90-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], establish procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with the specifications developed under subsection (a)(1), including a requirement that the appropriate State distribution agency be notified promptly of the receipt of commodities that are stale, spoiled, out of condition, or not in compliance with the specifications developed under subsection (a)(1);

(6) monitor the condition of commodities designated for donation to recipient agencies that are being stored by or for the Secretary to ensure that high quality is maintained;

(7) establish a value for donated commodities and products to be used by State agencies in the allocation or charging of commodities against entitlements; and

(8) require that each State distribution agency shall receive donated commodities not more than 90 days after such commodities are ordered by such agency, unless such agency specifies a longer delivery period.

(c) QUALIFICATIONS FOR PURCHASE OF COMMODITIES.—

(1) OFFERS FOR EQUAL OR LESS POUNDAGE.—Subject to compliance by the Secretary with surplus removal responsibilities under other provisions of law, the Secretary may not refuse any offer in response to an invitation to bid with respect to a contract for the purchase of entitlement commodities (provided in standard order sizes) solely on the basis that such offer provides less than the total amount of poundage for a destination specified in such invitation.

(2) OTHER QUALIFICATIONS.—The Secretary may not enter into a contract for the purchase of entitlement commodities unless the Secretary considers the previous history and current patterns of the bidding party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption.

(d) DUTIES OF STATE DISTRIBUTION AGENCIES.—On or before July 1, 1992,<sup>3-6</sup> the Secretary shall by regulation require each State distribution agency to—

(1)<sup>3-7</sup> evaluate its system for warehousing and distributing donated commodities to recipient agencies designated in subparagraphs (A) and (B) of section 13(3) (hereafter referred to in this Act as “child and elderly nutrition program recipient agencies”);

(2)<sup>3-7</sup> in the case of State distribution agencies that require payment of fees by child and elderly nutrition program recipient agencies for any aspect of warehousing or distribution, implement the warehousing and distribution system that provides donated commodities to such recipient agencies in the most efficient manner, at the lowest cost to such recipient agencies, and at a level that is not less than a basic level of services determined by the Secretary;

(3)<sup>3-7</sup> in determining the most efficient and lowest cost system, use commercial facilities for providing warehousing and distribution services to such recipient agencies, unless the State applies to the Secretary for approval to use other facilities demonstrating that, when both direct and indirect costs incurred by such recipient agencies are considered, such other facilities are more efficient and provide services at a lower total cost to such recipient agencies;

(4) consider the preparation and storage capabilities of recipient agencies when ordering donated commodities, including capabilities of such agencies to handle commodity product forms, quality, packaging, and quantities; and

(5) in the case of any such agency that enters into a contract with respect to processing of agricultural commodities and their products for recipient agencies—

(A) test the product of such processing with the recipient agencies before entering into a contract for such processing; and

(B) develop a system for monitoring product acceptability.

(e) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall provide by regulation for—

(A) whenever fees are charged to local recipient agencies, the establishment of mandatory criteria for such fees based on national standards and industry charges (taking into account regional differences in such charges) to be used by State distribution agencies for storage and deliveries of commodities;

(B) minimum performance standards to be followed by State agencies responsible for intrastate distribution of donated commodities and products;

(C) procedures for allocating donated commodities among the States; and

<sup>3-6</sup>Sec. 1773(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3810, Nov. 28, 1990, amended subsec. (d) by striking “Before the expiration of the 270-day period beginning on the date of the enactment of this Act,” and inserting the following: “On or before July 1, 1992,”

<sup>3-7</sup>Sec. 1773(c)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3809, Nov. 28, 1990, amended paras. (1), (2), and (3) in their entirety.

(D) 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—

(i) to remove surplus stocks of agricultural commodities through the Commodity Credit Corporation;

(ii) to purchase surplus agricultural commodities through section 32 of the Act entitled “An Act to amend the Agricultural Adjustment Act, and for other purposes”, approved August 24, 1935 (7 U.S.C. 612c); and

(iii) to make direct purchases of agricultural commodities and other foods for distribution to recipient agencies under—

(I) the commodity distribution and commodity supplemental food programs established under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note);

(II) the program established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

(III) 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);

(IV) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(V) the donation of surplus commodities to provide nutrition services under section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a).

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary shall promulgate—

(A) regulations as required by paragraph (1)(D) before the end of the 90-day period beginning on the date of enactment of this Act [Jan. 8, 1988]; and

(B) regulations as required by subparagraphs (A), (B), and (C) of paragraph (1) before the end of the 270-day period beginning on such date.

(f) REVIEW OF PROVISION OF COMMODITIES.—

(1) IN GENERAL.—Before the expiration of the 270-day period beginning on the date of the enactment of this Act [Jan. 8, 1988], the Secretary shall establish procedures to provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of recipient agencies.

(2)<sup>3-8</sup> INFORMATION FROM RECIPIENT AGENCIES.—

(A) IN GENERAL.—The Secretary shall ensure that information with respect to the types and forms of commodities that are most useful to persons participating in pro-

<sup>3-8</sup>Sec. 301 of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3167, Oct. 31, 1988, amended para. (2) in its entirety. Previously, sec. 1773(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3810, Nov. 28, 1990, amended para. (2) by striking “semiannually” and inserting “annually”.

grams described in subsection (a)(2) is collected from recipient agencies operating the programs.

(B) FREQUENCY.—The information shall be collected at least once every 2 years.

(C) ADDITIONAL SUBMISSIONS.—The Secretary shall provide the recipient agencies a means for voluntarily submitting customer acceptability information.

(g) TESTING FOR ACCEPTABILITY.—The Secretary shall establish an ongoing field testing program for present and anticipated commodity and product purchases to test product acceptability with program participants. Test results shall be taken into consideration in deciding which commodities and products, and in what form the commodities and products, should be provided to recipient agencies.

(h) BUY AMERICAN PROVISION.—

(1) IN GENERAL.—The Secretary shall require that recipient agencies purchase, whenever possible, only food products that are produced in the United States.

(2) WAIVER.—The Secretary may waive the requirement established in paragraph (1)—

(A) in the case of recipient agencies that have unusual or ethnic preferences in food products; or

(B) for such other circumstances as the Secretary considers appropriate.

(3) EXCEPTION.—The requirement established in paragraph (1) shall not apply to recipient agencies in Alaska,<sup>3-9</sup> Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands. The requirement established in paragraph (1) shall apply to recipient agencies in Hawaii only with respect to the purchase of pineapples.<sup>3-10</sup>

(i) UNIFORM INTERPRETATION.—The Secretary shall take such actions as are necessary to ensure that regional offices of the Department of Agriculture interpret uniformly across the United States policies and regulations issued to implement this section.

(j) PER MEAL VALUE OF DONATED FOODS.—<sup>3-11</sup>

(k) REPORT.—Not later than January 1, 1989, the Secretary shall submit to the Committee on Education and Labor<sup>3-12</sup> and the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the implementation and operation of this section.

**SEC. 3A. [7 U.S.C. 612c note] ADVANCE FUNDING FOR STATE OPTION CONTRACTS.**<sup>3A-1</sup>

(a) IN GENERAL.—The Secretary may use the funds of the Commodity Credit Corporation and funds made available to carry out section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) to pay for all or a portion of the cost, as agreed on with the State distribution agency, of food or the processing or packaging of food on behalf of a State distribution agency.

(b) REIMBURSEMENT.—In such cases, the State distribution agency shall reimburse the Secretary for the agreed on cost. Any

<sup>3-9</sup> Sec. 303(1) of the Healthy Meals for Healthy Americans Act of 1994, P.L. 103-448, 108 Stat. 4750, Nov. 2, 1994, amended para. (3) by striking "Hawaii".

<sup>3-10</sup> This sentence added by sec. 303(2) of the Healthy Meals for Healthy Americans Act of 1994, P.L. 103-448, 108 Stat. 4750, Nov. 2, 1994.

<sup>3-11</sup> Sec. 3(j) added sec. 6(e)(2) of the National School Lunch Act (42 U.S.C. 1755(e)(2)).

<sup>3-12</sup> So in original. Probably should be "Committee on Education and the Workforce".

<sup>3A-1</sup> Sec. 3A added by sec. 1773(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3810, Nov. 28, 1990.

funds received by the Secretary as reimbursement shall be deposited to the credit of the Commodity Credit Corporation or section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as appropriate. If the State distribution agency fails, within 150 days of delivery, to make the required reimbursement in full, the Secretary shall, within 30 days, offset any outstanding amount against the appropriate account.

**SEC. 4. [7 U.S.C. 612c note] FOOD BANK PROJECT.**<sup>4-1</sup>

(a)<sup>4-2</sup> **COMMUNITY FOOD BANKS.**—The Secretary shall carry out no less than one demonstration project to provide and redistribute agricultural commodities and food products thereof as authorized under section 32 of the Act entitled “An Act to amend the Agricultural Adjustment Act, and for other purposes”, approved August 24, 1935 (7 U.S.C. 612c), to needy individuals and families through community food banks. The Secretary may use a State agency or any other food distribution system for such provision or redistribution of section 32 agricultural commodities and food products through community food banks under a demonstration project.

(b) **RECORDKEEPING AND MONITORING.**—Each food bank participating in the demonstration projects under this section shall establish a recordkeeping system and internal procedures to monitor the use of agricultural commodities and food products provided under this section. The Secretary shall develop standards by which the feasibility and effectiveness of the projects shall be measured, and shall conduct an ongoing review of the effectiveness of the projects.

(c) **DETERMINATION OF QUANTITIES, VARIETIES, AND TYPES OF COMMODITIES.**—The Secretary shall determine the quantities, varieties, and types of agricultural commodities and food products to be made available under this section.

(d) **EFFECTIVE PERIOD.**—This section shall be effective for the period beginning on the date of enactment of this Act [Jan. 8, 1988].<sup>4-3</sup>

[(e) **PROGRESS REPORTS.**—<sup>4-4</sup>]

**SEC. 5. EXTENSION OF ELIGIBILITY OF CERTAIN SCHOOL DISTRICTS TO RECEIVE CASH OR COMMODITY LETTERS OF CREDIT ASSISTANCE FOR SCHOOL LUNCH PROGRAMS.**<sup>5-1</sup>

**SEC. 6. EXTENSION OF NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.**<sup>6-1</sup>

**SEC. 7. [7 U.S.C. 612c note] ASSESSMENT AND REPORT TO CONGRESS.**

(a) **ASSESSMENT.**—The Comptroller General of the United States shall monitor and assess the implementation by the Secretary of the provisions of this Act.

<sup>4-1</sup> Sec. 1773(e)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3811, Nov. 28, 1990, amended the sec. heading by striking “~~DEMONSTRATION~~”.

<sup>4-2</sup> Sec. 1773(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3811, Nov. 28, 1990, amended subsec. (a) by striking “~~DEMONSTRATION PROJECT~~” and inserting “~~COMMUNITY FOOD BANKS~~”.

<sup>4-3</sup> Sec. 1773(e)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3811, Nov. 28, 1990, amended subsec. (d) by striking “and ending on December 31, 1990”.

<sup>4-4</sup> Sec. 1773(e)(4) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3811, Nov. 28, 1990, struck “paragraph” (e).

<sup>5-1</sup> Sec. 5 added sec. 18(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(e)).

<sup>6-1</sup> Sec. 6 amended sec. 1114(a)(2)(A) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)(A)).

(b) REPORT.—Before the expiration of the 18-month period beginning on the date of the enactment of this Act [Jan. 8, 1988], the Comptroller General shall submit to the Committee on Education and Labor<sup>7-1</sup> and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the findings of the assessment conducted as required by subsection (a).

**SEC. 8. FUNDS FOR NUTRITION SERVICES AND ADMINISTRATION.**

(a) IN GENERAL.—<sup>8-1</sup>

(b) STATE PLAN OR PLAN AMENDMENT.—<sup>8-2</sup>

(c) STUDY OF NUTRITION SERVICES AND ADMINISTRATION FUNDING.—The Secretary shall conduct a study of the appropriateness of the percentage of the annual appropriation for the program required by paragraph (h)(1) of this section to be made available for State and local agency costs for nutrition services and administration, and shall report the results of this study to the Congress not later than March 1, 1989. Such study shall include an analysis of the impact in future years on per participant administrative costs if a substantial number of States implement competitive bidding, rebate, direct distribution, or home delivery systems and shall examine the impact of the percentage provided for nutrition services and administration on the quality of such services.

(d) EFFECTIVE DATE.—The amendment made by subsections (a), (b), and (c) shall take effect October 1, 1987.

**SEC. 9. COORDINATION OF WIC PROGRAM WITH MEDICAID COUNSELING.**<sup>9-1</sup>

**SEC. 10. [42 U.S.C. 1786 note] STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM.**

(a) STUDY.—The Secretary of Agriculture in consultation with the Secretary of Health and Human Services shall conduct a national study of savings in the amount of assistance provided to families with newborns under State plans for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and State indigent health care programs, during the first 60-day period after birth, as the result of the participation of mothers of newborns before birth in the special supplemental food program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(b) REPORT.—Not later than February 1, 1990, the Secretary shall submit to Congress a report that describes the results of the study conducted under subsection (a).

(c) FUNDING.—This section shall be carried out using funds made available under section 17(g)(3) of the Child Nutrition Act of 1966.

<sup>7-1</sup> So in original. Probably should be “Committee on Education and the Workforce”.

<sup>8-1</sup> Sec. 8(a) added sec. 17(h)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(5)).

<sup>8-2</sup> Sec. 8(b) added sec. 17(f)(1)(C)(viii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(viii)).

<sup>9-1</sup> Sec. 9 amended sec. 17(f)(1)(C)(iii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(iii)).

**SEC. 11. SUPPLYING INFANT FORMULA FOR THE WIC PROGRAM.**<sup>11-1</sup>

**SEC. 12. OVERSPENDING AND UNDERSPENDING UNDER THE WIC PROGRAM.**<sup>12-1</sup>

**SEC. 13. [7 U.S.C. 612c note] AUTHORITY TO TRANSFER COMMODITIES BETWEEN PROGRAMS.**<sup>13-1</sup>

(a) **TRANSFER.**—Subject to subsection (b), the Secretary may transfer any commodities purchased with appropriated funds for a domestic food assistance program administered by the Secretary to any other domestic food assistance program administered by the Secretary if the transfer is necessary to ensure that the commodities will be used while the commodities are still suitable for human consumption.

(b) **REIMBURSEMENT.**—The Secretary shall, to the maximum extent practicable, provide reimbursement for the value of the commodities transferred under subsection (a) from accounts available for the purchase of commodities under the program receiving the commodities.

(c) **CREDITING.**—Any reimbursement made under subsection (b) shall—

(1) be credited to the accounts that incurred the costs when the transferred commodities were originally purchased; and

(2) be available for the purchase of commodities with the same limitations as are provided for appropriated funds for the reimbursed accounts for the fiscal year in which the transfer takes place.

**SEC. 14. [7 U.S.C. 612c note] AUTHORITY TO RESOLVE CLAIMS.**<sup>14-1</sup>

(a) **IN GENERAL.**—The Secretary may determine the amount of, settle, and adjust all or part of a claim arising under a domestic food assistance program administered by the Secretary.

(b) **WAIVER.**—The Secretary may waive a claim described in subsection (a) if the Secretary determines that a waiver would serve the purposes of the program.

(c) **AUTHORITY OF THE ATTORNEY GENERAL.**—Nothing in this section diminishes the authority of the Attorney General under section 516 of title 28, United States Code, or any other provision of law, to supervise and conduct litigation on behalf of the United States.

**SEC. 15. [7 U.S.C. 612c note] PAYMENT OF COSTS ASSOCIATED WITH REMOVAL OF COMMODITIES THAT POSE A HEALTH OR SAFETY RISK.**<sup>15-1</sup>

(a) **IN GENERAL.**—The Secretary may use funds available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), that are not otherwise committed, for the purpose of reimbursing States for State and local costs associated with the removal of commodities distributed under any domestic food assistance program administered by the Secretary if the Secretary determines that the commodities pose a health or safety risk.

<sup>11-1</sup> Sec. 11 added sec. 17(f)(16) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(16)).

<sup>12-1</sup> Sec. 12 added sec. 17(i)(3)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(C)).

<sup>13-1</sup> Sec. 13 added by sec. 302(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3168, Oct. 31, 1988. For execution of subsequent amendment to sec. 17 (vs. this section), see footnote 17-2.

<sup>14-1</sup> Sec. 14 added by sec. 302(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3168, Oct. 31, 1988.

<sup>15-1</sup> Sec. 15 added by sec. 302(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3168, Oct. 31, 1988.

(b) ALLOWABLE COSTS.—The costs—

(1) may include costs for storage, transportation, processing, and destruction of the commodities described in subsection (a); and

(2) shall be subject to the approval of the Secretary.

(c) REPLACEMENT COMMODITIES.—

(1) IN GENERAL.—The Secretary may use funds described in subsection (a) for the purpose of purchasing additional commodities if the purchase will expedite replacement of the commodities described in subsection (a).

(2) RECOVERY.—Use of funds under paragraph (1) shall not restrict the Secretary from recovering funds or services from a supplier or other entity regarding the commodities described in subsection (a).

(d) CREDITING OF RECOVERED FUNDS.—Funds recovered from a supplier or other entity regarding the commodities described in subsection (a) shall—

(1) be credited to the account available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, ch. 641; 7 U.S.C. 612c), to the extent the funds represent expenditures from that account under subsections (a) and (c); and

(2) remain available to carry out the purposes of section 32 of that Act until expended.<sup>15-2</sup>

**SEC. 16. [7 U.S.C. 612c note] AUTHORITY TO ACCEPT COMMODITIES DONATED BY FEDERAL SOURCES.**<sup>16-1</sup>

(a) IN GENERAL.—The Secretary may accept donations of commodities from any Federal agency, including commodities of another Federal agency determined to be excess personal property pursuant to section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)).

(b) USE.—The Secretary may donate the commodities received under subsection (a) to States for distribution through any domestic food assistance program administered by the Secretary.

(c) PAYMENT.—Notwithstanding section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)), the Secretary shall not be required to make any payment in connection with the commodities received under subsection (a).

**SEC. 17. COMMODITY DONATIONS.**<sup>17-1</sup>

(a) IN GENERAL.—Notwithstanding any other provision of law concerning commodity donations, any commodities acquired in the conduct of the operations of the Commodity Credit Corporation and any commodities acquired under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to the extent that the commodities are in excess of the quantities of commodities that are essential to carry out other authorized activities of the Commodity Credit Corporation and the Secretary (including any quantity specifically reserved for a specific purpose), may be used for any program authorized to be carried out by the Secretary that involves the acquisition of com-

<sup>15-2</sup>Section 301 of P.L. 108-265, 118 Stat. 788, June 30, 2004, struck former subsection (e) (providing a termination date for this section of July 1, 2004). Previously, the former subsection (e) was amended by sec. 307(a) of the Grain Standards and Warehouse Improvement Act of 2000, P.L. 106-472, 114 Stat. 2073, Nov. 9, 2000; section 3 of P.L. 108-134, 117 Stat. 1389, Nov. 22, 2003; and section 3 of P.L. 108-211, March 31, 2004.

<sup>16-1</sup>Sec. 16 added by sec. 302(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3168, Oct. 31, 1988.

<sup>17-1</sup>Sec. 17 added by sec. 4202(a)(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 329, May 13, 2002.

modities for use in a domestic feeding program, including any program conducted by the Secretary that provides commodities to individuals in cases of hardship.

(b) PROGRAMS.—A program described in subsection (a) includes a program authorized by—

- (1) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.);
- (2) the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);
- (3) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);
- (4) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); or
- (5) such other laws as the Secretary determines to be appropriate.

**SEC. 18. [7 U.S.C. 612c note] DEFINITIONS.**<sup>18-1</sup>

For purposes of this Act:

(1) The term “donated commodities” means agricultural commodities and their products that are donated by the Secretary to recipient agencies.

(2) The term “entitlement commodities” means agricultural commodities and their products that are donated and charged by the Secretary against entitlements established under programs authorized by statute to receive such commodities.

(3) The term “recipient agency” means—

(A) a school, school food service authority, or other agency authorized under the Richard B. Russell National School Lunch Act<sup>18-2</sup> [(42 U.S.C. 1751 et seq.)] or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to operate breakfast programs, lunch programs, child care food programs, summer food service 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;

(B) a nutrition program for the elderly authorized under title III of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq.) to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase;

(C) an agency or organization distributing commodities under the commodity supplemental food program established in section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note);

(D) any charitable institution, summer camp, or assistance agency for the food distribution program on Indian reservations authorized under section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)

<sup>18-1</sup> Sec. 302(1) of the William F. Goodling Child Nutrition Reauthorization Act of 1988, P.L. 105-336, 112 Stat. 3168, Oct. 31, 1988, redesignated former secs. 13 and 14 as secs. 17 and 18, respectively, and added new secs. 13 through 16. Sec. 4202(a)(1) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 329, May 13, 2002, redesignated former secs. 17 and 18 as secs. 18 and 19, respectively, and inserted new sec. 17.

<sup>18-2</sup> Sec. 752(b)(1) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, P.L. 106-78, 113 Stat. 1169, Oct. 22, 1999, amended “Section 3 and 13(3)(A)” of this Act by striking “National School Lunch Act” and inserting “Richard B. Russell National School Lunch Act”. The amendment was executed to sec. 17(3)(A) as the probably intent of Congress, since no sec. 13(3)(A) existed.

to receive donations of agricultural commodities and their products acquired by the Secretary through price support, surplus removal, or direct purchase; or

(E) an agency or organization distributing commodities under a program established in section 202 of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note).<sup>18-3</sup>

(4) The term “State distribution agency” means a State agency responsible for the intrastate distribution of donated commodities.

(5) The term “Secretary” means Secretary of Agriculture, unless the context specifies otherwise.

**SEC. 19. [7 U.S.C. 612c note] GENERAL EFFECTIVE DATE.**<sup>19-1</sup>

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act [Jan. 8, 1988].

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<sup>18-3</sup> So in original. Probably should be “(7 U.S.C. 7502)”.

<sup>19-1</sup> See redesignation of this sec., see footnote 18-1.