

Stat. 531; Pub. L. 104-193, title VII, §728, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 106-78, title VII, §752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

## REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

## AMENDMENTS

1999—Subsec. (b). Pub. L. 106-78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act” in two places.

1996—Subsec. (a). Pub. L. 104-193 substituted “be available at any reasonable time” for “at all times be available”.

1981—Pub. L. 97-35 designated existing provisions as subsec. (a) and added subsec. (b).

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 820(a)(7)(C), of Pub. L. 97-35, set out as a note under section 1753 of this title.

## STUDY OF COST ACCOUNTING REQUIREMENTS

Secretary prohibited from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per meal costs on the basis of non-compliance with full cost accounting procedure unless and until the Secretary has studied additional personnel and training needs of States, local school districts and schools resulting from imposition of requirement to implement full cost accounting procedures, see section 21 of Pub. L. 94-105, set out as a note under section 1760 of this title.

### § 1786. Special supplemental nutrition program for women, infants, and children

#### (a) Congressional findings and declaration of purpose

Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education, including breastfeeding promotion and support, through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons.

#### (b) Definitions

As used in this section—

(1) “Breastfeeding women” means women up to one year postpartum who are breastfeeding their infants.

(2) “Children” means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) “Competent professional authority” means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated

by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) “Costs of nutrition services and administration” or “nutrition services and administration” means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, breastfeeding support and promotion, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) “Infants” means persons under one year of age.

(6) “Local agency” means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) NUTRITION EDUCATION.—The term “nutrition education” means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

(8) “Nutritional risk” means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, (D) conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse, or (E) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

(9) “Plan of operation and administration” means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) “Postpartum women” means women up to six months after termination of pregnancy.

(11) “Pregnant women” means women determined to have one or more fetuses in utero.

(12) “Secretary” means the Secretary of Agriculture.

(13) “State agency” means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by

the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) "Homeless individual" means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation of not more than 365 days in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(16) "Drug abuse education" means—

(A) the provision of information concerning the dangers of drug abuse; and

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals.

(17) "Competitive bidding" means a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought for use in the program authorized by this section.

(18) "Rebate" means the amount of money refunded under cost containment procedures to any State agency from the manufacturer or other supplier of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each such agency's program established under this section.

(19) "Discount" means, with respect to a State agency that provides program foods to participants without the use of retail grocery stores (such as a State that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other

supplier of the particular food product as the result of the purchase of program food by each such State agency, or its representative, from the supplier.

(20) "Net price" means the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency.

(21) REMOTE INDIAN OR NATIVE VILLAGE.—The term "remote Indian or Native village" means an Indian or Native village that—

(A) is located in a rural area;

(B) has a population of less than 5,000 inhabitants; and

(C) is not accessible year-around by means of a public road (as defined in section 101 of title 23).

(22) PRIMARY CONTRACT INFANT FORMULA.—The term "primary contract infant formula" means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

(23) STATE ALLIANCE.—The term "State alliance" means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.

**(c) Grants-in-aid; cash grants; ratable reduction of amount an agency may distribute; affirmative action; regulations relating to dual receipt of benefits under commodity supplemental food program**

(1) The Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods, nutrition education, and breastfeeding support and promotion to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the supplemental nutrition assistance program;

(B) any program under which foods are distributed to needy families in lieu of supplemental nutrition assistance program benefits; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g) of this section—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably

the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

**(d) Eligible participants**

(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 1758(b) of this title for free and reduced price meals;

(ii)(I) receives supplemental nutrition assistance program benefits under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; or

(II) is a member of a family that receives assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995; or

(iii)(I) receives medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) any basic allowance—

(I) for housing received by military service personnel residing off military installations; or

(II) provided under section 403 of title 37 for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 or any related provision of law; and

(ii) any cost-of-living allowance provided under section 475 of title 37 to a member of a

uniformed service who is on duty outside the contiguous States of the United States.

(C) **COMBAT PAY.**—For the purpose of determining income eligibility under this section, a State agency shall exclude from income any additional payment under chapter 5 of title 37, or otherwise designated by the Secretary to be appropriate for exclusion under this subparagraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

(i) is the result of deployment to or service in a combat zone; and

(ii) was not received immediately prior to serving in a combat zone.

(D) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3) **CERTIFICATION.**—

(A) **PROCEDURES.**—

(i) **IN GENERAL.**—Subject to clause (ii), a person shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(ii) **BREASTFEEDING WOMEN.**—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.

(iii) **CHILDREN.**—A State may elect to certify participant children for a period of up to 1 year, if the State electing the option provided under this clause ensures that participant children receive required health and nutrition assessments.

(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

(C) **PHYSICAL PRESENCE.**—

(i) **IN GENERAL.**—Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 794 of title 29, each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

(ii) **WAIVERS.**—If the agency determines that the requirement of clause (i) would present an unreasonable barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

(I) an infant or child who—  
 (aa) was present at the initial certification visit; and  
 (bb) is receiving ongoing health care;

(II) an infant or child who—  
 (aa) was present at the initial certification visit;  
 (bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and  
 (cc) has one or more parents who work; and

(III) an infant under 8 weeks of age—  
 (aa) who cannot be present at certification for a reason determined appropriate by the local agency; and  
 (bb) for whom all necessary certification information is provided.

(D) INCOME DOCUMENTATION.—

(i) IN GENERAL.—Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.

(ii) WAIVERS.—A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

(E) ADJUNCT DOCUMENTATION.—In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.

(F) PROOF OF RESIDENCY.—An individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may, under standards established by the Secretary, establish proof of residency under this section by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village.

**(e) Nutrition education and drug abuse education**

(1) The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. A local agency participating in the program shall provide education or educational materials relating to the

effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.

(2) The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education, including breastfeeding support and education, under this section.

(3) NUTRITION EDUCATION MATERIALS.—

(A) IN GENERAL.—The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(B) SHARING OF MATERIALS WITH OTHER PROGRAMS.—

(i) COMMODITY SUPPLEMENTAL FOOD PROGRAM.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program established under section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93-86) at no cost to that program.

(ii) CHILD AND ADULT CARE FOOD PROGRAM.—A State agency may allow the local agencies or clinics under the State agency to share nutrition educational materials with institutions participating in the child and adult care food program established under section 1766 of this title at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.

(4) The State agency—

(A) shall 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 5 under the medical assistance program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (in this section referred to as the “medicaid program”);

(B) shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program; and

(C) may provide a local agency with materials describing other programs for which a participant in the program may be eligible.

(5) Each local agency shall maintain and make available for distribution a list of local resources for substance abuse counseling and treatment.

**(f) Plan of operation and administration by State agency**

(1)(A) Each State agency shall submit to the Secretary, by a date specified by the Secretary,

an initial plan of operation and administration for a fiscal year. After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program at any of the authorized retail stores under the program, to be administered in accordance with standards developed by the Secretary, including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section;

(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;

(iii) a description of the financial management system of the State agency;

(iv) a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program;

(v) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;

(vi) a plan to expend funds to carry out the program during the relevant fiscal year;

(vii) a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas), if sufficient funds are available to carry out this clause;

(viii) a plan for reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;

(ix) a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally;

(x) a plan to provide nutrition education and promote breastfeeding; and

(xi) such other information as the Secretary may reasonably require.

(D) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. 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.

(6)(A) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(B) State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education and breastfeeding counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.

(7)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment

offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in such program.

(8)(A) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B) Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant.

(9) If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of eligibility shall remain valid for the period for which the individual was originally certified.

(10) The Secretary shall establish standards for the proper, efficient, and effective administration of the program. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(11) SUPPLEMENTAL FOODS.—

(A) IN GENERAL.—The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section.

(B) APPROPRIATE CONTENT.—To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate.

(C) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the

Secretary to be necessary to reflect the most recent scientific knowledge, but not less than every 10 years, the Secretary shall—

(i) conduct a scientific review of the supplemental foods available under the program; and

(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.

(12) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(13) The State agency may (A) provide nutrition education, breastfeeding promotion, and drug abuse education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(14) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(15) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(16) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.

(17) Notwithstanding subsection (d)(2)(A)(i) of this section, not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(18) Each local agency participating in the program under this section may provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.

(19) The State agency shall adopt policies that—

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification.

(20) Each State agency shall conduct monitoring reviews of each local agency at least biennially.

(21) USE OF CLAIMS FROM LOCAL AGENCIES, VENDORS, AND PARTICIPANTS.—A State agency may use funds recovered from local agencies, vendors, and participants, as a result of a claim arising under the program, to carry out the program during—

(A) the fiscal year in which the claim arises;

(B) the fiscal year in which the funds are collected; and

(C) the fiscal year following the fiscal year in which the funds are collected.

(22) The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.

(23) INDIVIDUALS PARTICIPATING AT MORE THAN ONE SITE.—Each State agency shall implement a system designed by the State agency to identify individuals who are participating at more than one site under the program.

(24) HIGH RISK VENDORS.—Each State agency shall—

(A) identify vendors that have a high probability of program abuse; and

(B) conduct compliance investigations of the vendors.

(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.

(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial vio-

lation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

**(g) Authorization of appropriations**

(1) IN GENERAL.—

(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2010 through 2015.

(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized by section 1752 of this title, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.

(2)(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(3) Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than  $\frac{1}{3}$  of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than  $\frac{1}{4}$  of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legis-

lation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).

(4) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5) Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed \$15,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing reports on program participant characteristics, providing technical assistance to improve State agency administrative systems, administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations, and carrying out technical assistance and research evaluation projects of the programs under this section.

**(h) Funds for nutrition services and administration**

(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) of this section and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among State agencies for costs of nutrition services and administration incurred by State and local agencies for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued for the preceding fiscal year, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the preceding fiscal year to reflect the percentage change between—

(I) the value of the index for State and local government purchases, 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 best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

**(C) REMAINING AMOUNTS.—**

(i) IN GENERAL.—Except as provided in clause (ii), in any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) of this section and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to

carry out the purposes of subsections (g)(4) and (g)(5) of this section.

(ii) BREAST PUMPS.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps.

(2)(A) The Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula—

(i) shall be designed to take into account—

(I) the varying needs of each State;

(II) the number of individuals participating in each State; and

(III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;

(ii) shall provide for each State agency—

(I) an estimate of the number of participants for the fiscal year involved; and

(II) a per participant grant for nutrition services and administration for such year;

(iii) shall provide for a minimum grant amount for State agencies; and

(iv) may provide funds to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(B)(i) Except as provided in clause (ii) and subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).

(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 10 percent (except that the Secretary may establish a higher percentage for State agencies that are small) higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.

(C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the Secretary may provide additional amounts to, or recover amounts from, any State agency.

(3)(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—

(i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—

(I)  $\frac{1}{6}$  of the amounts expended by the State for costs of nutrition services and administration; and

(II) except as otherwise provided in subparagraphs (F) and (G), an amount equal to a proportionate share of the national mini-



num breastfeeding promotion expenditure, as described in subparagraph (E), with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and

(ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).

(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of breastfeeding promotion and support activities if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(E) For each fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

(i) equal to \$21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and

(ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

(4) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall—

(i) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;

(ii) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;

(iii) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration;

(iv) require the State agency to provide training on the promotion and management

of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding;

(v) not later than 1 year after November 2, 1994, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program;

(vi) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People initiative; and

(vii) annually compile and publish breastfeeding performance measurements based on program participant data on the number of partially and fully breast-fed infants, including breastfeeding performance measurements for—

(I) each State agency; and

(II) each local agency;

(viii) in accordance with subparagraph (B), implement a program to recognize exemplary breastfeeding support practices at local agencies or clinics participating in the special supplemental nutrition program established under this section; and

(ix) in accordance with subparagraph (C), implement a program to provide performance bonuses to State agencies.

(B) EXEMPLARY BREASTFEEDING SUPPORT PRACTICES.—

(i) IN GENERAL.—In evaluating exemplary practices under subparagraph (A)(viii), the Secretary shall consider—

(I) performance measurements of breastfeeding;

(II) the effectiveness of a peer counselor program;

(III) the extent to which the agency or clinic has partnered with other entities to build a supportive breastfeeding environment for women participating in the program; and

(IV) such other criteria as the Secretary considers appropriate after consultation with State and local program agencies.

(ii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the activities described in clause (viii) of subparagraph (A) such sums as are necessary.

(C) PERFORMANCE BONUSES.—

(i) IN GENERAL.—Following the publication of breastfeeding performance measurements under subparagraph (A)(vii), the Secretary shall provide performance bonus payments to not more than 15 State agencies that demonstrate, as compared to other State agencies participating in the program—

(I) the highest proportion of breast-fed infants; or

(II) the greatest improvement in proportion of breast-fed infants.

(ii) CONSIDERATION.—In providing performance bonus payments to State agencies

under this subparagraph, the Secretary shall consider the proportion of fully breast-fed infants in the States.

(iii) USE OF FUNDS.—A State agency that receives a performance bonus under clause (i)—

(I) shall treat the funds as program income; and

(II) may transfer the funds to local agencies for use in carrying out the program.

(iv) IMPLEMENTATION.—The Secretary shall provide the first performance bonuses not later than 1 year after December 13, 2010, and may subsequently revise the criteria for awarding performance bonuses; and<sup>1</sup>

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary, convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term “acceptable measures” includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(D) REMOTE INDIAN OR NATIVE VILLAGES.—For noncontiguous States containing a significant number of remote Indian or Native villages, a State agency may convert amounts allocated for food benefits for a fiscal year to the costs of nutrition services and administration to the extent that the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in remote Indian or Native villages.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

- (A) local agency staffing needs;
- (B) density of population;
- (C) number of individuals served; and
- (D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

- (A) a new local agency;
- (B) a new cost containment measure; or
- (C) a significant change in an existing cost containment measure.

(8)(A)(i) Except as provided in subparagraphs (B) and (C)(iii), any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

- (I) a competitive bidding system; or
- (II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels change), such as—

- (I) the number of infants who would not be expected to receive the primary contract infant formula under a competitive bidding system;
- (II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and
- (III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system).

(iii) COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award contracts to bidders offering the lowest net price for a specific infant formula for which manufacturers submit a bid unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

(iv) SIZE OF STATE ALLIANCES.—

(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the

<sup>1</sup> So in original. The “; and” probably should be a period.

alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on June 30, 2004, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Except as provided in paragraph (9)(B)(i)(II), any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting 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 written report that describes the cost-containment and competitive benefits of the proposed waiver.

(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.

(vi) REBATE INVOICES.—Effective beginning October 1, 2004, each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.

(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.

(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.

(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

(I) infant formula wholesalers, distributors, and retailers licensed in the State in accord-

ance with State law (including regulations); and

(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).

(B)(i) The Secretary shall waive the requirement of subparagraph (A) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (A) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information on a timely basis to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(C)(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (A) in the case of any Indian State agency that has not more than 1,000 participants.

(D) No State may enter into a cost containment contract (in this subparagraph referred to as the “original contract”) that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(E) The Secretary shall offer to solicit bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula manufacturers and State agencies. The Secretary shall make the offer to State agencies once every 12 months. Each such bid solicitation shall only take place if two or more State agencies request the Secretary to perform the solicitation. For such State agencies, the Secretary shall solicit bids and select the winning bidder for a cost containment contract to be entered into by State agencies and infant formula manufacturers or suppliers.

(F) In soliciting bids for contracts for infant formula for the program authorized by this section, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates or discounts are solicited

for milk-based and soy-based infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the program.

(G) To reduce the costs of any supplemental foods, the Secretary may make available additional funds to State agencies out of the funds otherwise available under paragraph (1)(A) for nutrition services and administration in an amount not exceeding one half of 1 percent of the amounts to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(H)(i) Any person, company, corporation, or other legal entity that submits a bid to supply infant formula to carry out the program authorized by this section and announces or otherwise discloses the amount of the bid, or the rebate or discount practices of such entities, in advance of the time the bids are opened by the Secretary or the State agency, or any person, company, corporation, or other legal entity that makes a statement (prior to the opening of bids) relating to levels of rebates or discounts, for the purpose of influencing a bid submitted by any other person, shall be ineligible to submit bids to supply infant formula to the program for the bidding in progress for up to 2 years from the date the bids are opened and shall be subject to a civil penalty of up to \$100,000,000, as determined by the Secretary to provide restitution to the program for harm done to the program. The Secretary shall issue regulations providing such person, company, corporation, or other legal entity appropriate notice, and an opportunity to be heard and to respond to charges.

(ii) The Secretary shall determine the length of the disqualification, and the amount of the civil penalty referred to in clause (i) based on such factors as the Secretary by regulation determines appropriate.

(iii) Any person, company, corporation, or other legal entity disqualified under clause (i) shall remain obligated to perform any requirements under any contract to supply infant formula existing at the time of the disqualification and until each such contract expires by its terms.

(I) Not later than the expiration of the 180-day period beginning on October 24, 1992, the Secretary shall prescribe regulations to carry out this paragraph.

(J) A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.

(K) REPORTING.—Effective beginning October 1, 2011, each State agency shall report rebate payments received from manufacturers in the month in which the payments are received, rather than in the month in which the payments were earned.

(9) COST CONTAINMENT MEASURE.—

(A) DEFINITION OF COST CONTAINMENT MEASURE.—In this subsection, the term “cost containment measure” means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in the approved State plan of op-

eration and administration of the State agency.

(B) SOLICITATION AND REBATE BILLING REQUIREMENTS.—Any State agency instituting a cost containment measure for any authorized food, including infant formula, shall—

(i) in the bid solicitation—

(I) identify the composition of State alliances for the purposes of a cost containment measure; and

(II) verify that no additional States shall be added to the State alliance between the date of the bid solicitation and the end of the contract;

(ii) have a system to ensure that rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section;

(iii) open and read aloud all bids at a public proceeding on the day on which the bids are due; and

(iv) unless otherwise exempted by the Secretary, provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due.

(C) STATE ALLIANCES FOR AUTHORIZED FOODS OTHER THAN INFANT FORMULA.—Program requirements relating to the size of State alliances under paragraph (8)(A)(iv) shall apply to cost containment measures established for any authorized food under this section.

(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

(A) IN GENERAL.—For each of fiscal years 2010 through 2015, the Secretary shall use for the purposes specified in subparagraph (B) \$139,000,000 (as adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B)).

(B) PURPOSES.—Subject to subparagraph (C), of the amount made available under subparagraph (A) for a fiscal year—

(i) \$14,000,000 shall be used for—

(I) infrastructure for the program under this section;

(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

(III) special State projects of regional or national significance to improve the services of the program;

(ii) \$35,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program, of which up to \$5,000,000 may be used for Federal administrative costs; and

(iii) \$90,000,000 shall be used for special nutrition education (such as breastfeeding peer counselors and other related activities), of which not more than \$10,000,000 of any funding provided in excess of \$50,000,000 shall be used to make performance bonus payments under paragraph (4)(C).

(C) ADJUSTMENT.—Each of the amounts referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B).

(D) PROPORTIONAL DISTRIBUTION.—The Secretary shall distribute funds made available under subparagraph (A) in accordance with the proportional distribution described in subparagraphs (B) and (C).

(11) VENDOR COST CONTAINMENT.—

(A) PEER GROUPS.—

(i) IN GENERAL.—The State agency shall—

(I) establish a vendor peer group system;

(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I); or

(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

(II) a State agency—

(aa) in which the sale of supplemental foods that are obtained with food instru-

ments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(B) COMPETITIVE PRICING.—

(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

(II) consider—

(aa) the shelf prices of the vendor for all buyers; or

(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

(C) ALLOWABLE REIMBURSEMENT LEVELS.—

(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

(ii) vendors—

(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

(II) that are nonprofit.

(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after June 30, 2004.

(12) ELECTRONIC BENEFIT TRANSFER.—

(A) DEFINITIONS.—In this paragraph:

(i) ELECTRONIC BENEFIT TRANSFER.—The term “electronic benefit transfer” means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.

(ii) PROGRAM.—The term “program” means the special supplemental nutrition program established by this section.

(B) REQUIREMENTS.—

(i) IN GENERAL.—Not later than October 1, 2020, each State agency shall be required to implement electronic benefit transfer systems throughout the State, unless the Secretary grants an exemption under subparagraph (C) for a State agency that is facing unusual barriers to implement an electronic benefit transfer system.

(ii) RESPONSIBILITY.—The State agency shall be responsible for the coordination and management of the electronic benefit transfer system of the agency.

(C) EXEMPTIONS.—

(i) IN GENERAL.—To be eligible for an exemption from the statewide implementation requirements of subparagraph (B)(i), a State agency shall demonstrate to the satisfaction of the Secretary 1 or more of the following:

(I) There are unusual technological barriers to implementation.

(II) Operational costs are not affordable within the nutrition services and administration grant of the State agency.

(III) It is in the best interest of the program to grant the exemption.

(ii) SPECIFIC DATE.—A State agency requesting an exemption under clause (i) shall

specify a date by which the State agency anticipates statewide implementation described in subparagraph (B)(i).

(D) REPORTING.—

(i) IN GENERAL.—Each State agency shall submit to the Secretary electronic benefit transfer project status reports to demonstrate the progress of the State toward statewide implementation.

(ii) CONSULTATION.—If a State agency plans to incorporate additional programs in the electronic benefit transfer system of the State, the State agency shall consult with the State agency officials responsible for administering the programs prior to submitting the planning documents to the Secretary for approval.

(iii) REQUIREMENTS.—At a minimum, a status report submitted under clause (i) shall contain—

(I) an annual outline of the electronic benefit transfer implementation goals and objectives of the State;

(II) appropriate updates in accordance with approval requirements for active electronic benefit transfer State agencies; and

(III) such other information as the Secretary may require.

(E) IMPOSITION OF COSTS ON VENDORS.—

(i) COST PROHIBITION.—Except as otherwise provided in this paragraph, the Secretary may not impose, or allow a State agency to impose, the costs of any equipment or system required for electronic benefit transfers on any authorized vendor in order to transact electronic benefit transfers if the vendor equipment or system is used solely to support the program.

(ii) COST-SHARING.—The Secretary shall establish criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system that is not solely dedicated to transacting electronic benefit transfers for the program.

(iii) FEES.—

(I) IN GENERAL.—A vendor that elects to accept electronic benefit transfers using multifunction equipment shall pay commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the electronic benefit transfer system of the State.

(II) INTERCHANGE FEES.—No interchange fees shall apply to electronic benefit transfer transactions under this paragraph.

(iv) STATEWIDE OPERATIONS.—After completion of statewide expansion of a system for transaction of electronic benefit transfers—

(I) a State agency may not be required to incur ongoing maintenance costs for vendors using multifunction systems and equipment to support electronic benefit transfers; and

(II) any retail store in the State that applies for authorization to become a program vendor shall be required to demonstrate the capability to accept program benefits electronically prior to authoriza-

tion, unless the State agency determines that the vendor is necessary for participant access.

(F) MINIMUM LANE COVERAGE.—

(i) IN GENERAL.—The Secretary shall establish minimum lane coverage guidelines for vendor equipment and systems used to support electronic benefit transfers.

(ii) PROVISION OF EQUIPMENT.—If a vendor does not elect to accept electronic benefit transfers using its own multifunction equipment, the State agency shall provide such equipment as is necessary to solely support the program to meet the established minimum lane coverage guidelines.

(G) TECHNICAL STANDARDS.—The Secretary shall—

(i) establish technical standards and operating rules for electronic benefit transfer systems; and

(ii) require each State agency, contractor, and authorized vendor participating in the program to demonstrate compliance with the technical standards and operating rules.

(13) UNIVERSAL PRODUCT CODES DATABASE.—

(A) IN GENERAL.—Not later than 2 years after December 13, 2010, the Secretary shall establish a national universal product code database to be used by all State agencies in carrying out the requirements of paragraph (12).

(B) FUNDING.—

(i) IN GENERAL.—On October 1, 2010, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this paragraph \$1,000,000, 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 paragraph the funds transferred under clause (i), without further appropriation.

(iii) USE OF FUNDS.—The Secretary shall use the funds provided under clause (i) for development, hosting, hardware and software configuration, and support of the database required under subparagraph (A).

(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.

**(i) Division of funds formula; reallocation of unspent funds; use of State allocation to buy supplemental foods; use of amounts available for succeeding fiscal year**

(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for food benefits under subsection (h)(1)(C) of this section on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's au-

thorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B)—

(i)(I) not more than 1 percent (except as provided in subparagraph (C)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(II) not more than 1 percent of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

(ii)(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than 3 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

(II) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than ½ of 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for the development of a management information system, including an electronic benefit transfer system, during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the

formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7) In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) of this section may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.

(8) TEMPORARY SPENDING AUTHORITY.—During each of fiscal years 2012 and 2013, the Secretary may authorize a State agency to expend more than the amount otherwise authorized under paragraph (3)(C) for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that—

(A) there has been a significant reduction in reported infant formula cost containment savings for the preceding fiscal year due to the implementation of subsection (h)(8)(K); and

(B) the reduction would affect the ability of the State agency to serve all eligible participants.

**(j) Initiative to provide program services at community and migrant health centers**

(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the "Secretaries") shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

(2) The initiative shall also include—

(A) activities to improve the coordination of the provision of supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program.

(3) The initiative may include—

(A) outreach and technical assistance for State and local agencies and the facilities de-

scribed in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

(B) demonstration projects in selected State or local areas; and

(C) such other activities as the Secretaries find are appropriate.

(4) As used in this subsection:

(A) The term "community health center" has the meaning given the term in section 254c(a)<sup>2</sup> of this title.

(B) The term "migrant health center" has the meaning given the term in section 254b(a)(1)<sup>2</sup> of this title.

**(k) National Advisory Council on Maternal, Infant, and Fetal Nutrition; establishment; membership; term; officers; meetings; quorum; technical assistance by Secretary**

(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the "Council") composed of 24 members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental nutrition program; one member shall be a person involved at the retail sales level of food in the special supplemental nutrition program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1 member shall be an expert in the promotion of breast feeding; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of

<sup>2</sup> See References in Text note below.



parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Council shall elect a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(5) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

**(l) Donation of foods by Secretary**

Foods available under section 1431 of title 7, including, but not limited to, dry milk, or purchased under section 612c of title 7, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

**(m) Women, infants, and children farmers' market nutrition program; establishment, grants, etc.**

(1) Subject to the availability of funds appropriated for the purposes of this subsection, and as specified in this subsection, the Secretary shall award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance under subsection (c) of this section, or those who are on the waiting list to receive the assistance, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets and (at the option of a State) roadside stands, as defined in the State plans submitted under this subsection.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) ensure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless the State agrees to provide State, local, or private funds for the program in an amount that is equal to not less than 30 percent of the administrative cost of the program, which may be satisfied

from program income or State contributions that are made for similar programs. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.

(4) Subject to paragraph (6), the Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which a State plan is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary shall rank order the State plans according to the criteria of operation set forth in this subsection, and award grants accordingly. The Secretary shall take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits a State plan.

(5) Each State that receives a grant under this subsection shall ensure that the program for which the grant is received complies with the following requirements:

(A) Individuals who are eligible to receive Federal benefits under the program shall only be individuals who are receiving assistance under subsection (c) of this section, or who are on the waiting list to receive the assistance.

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefits received by any recipient under the program may not be—

(i) less than \$10 per year; or

(ii) more than \$30 per year.

(D) The coupon issuance process under the program shall be designed to ensure that coupons are targeted to areas with—

(i) the highest concentration of eligible individuals;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary and that maximize the availability of benefits to eligible individuals.

(E) The coupon redemption process under the program shall be designed to ensure that the coupons may be—

(i) redeemed only by producers authorized by the State to participate in the program; and

(ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may use for administration of the program in any fiscal year not more than 17 percent of the total amount of program funds.

(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(iii) The provisions of clauses (i) and (ii) with respect to the use of program funds shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements of paragraph (3).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the program.

(6)(A) The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year.

(B)(i) Subject to the availability of appropriations, if a State provides the amount of matching funds required under paragraph (3), the State shall receive assistance under this subsection in an amount that is not less than the amount of such assistance that the State received in the most recent fiscal year in which it received such assistance.

(ii) If amounts appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under paragraph (6) the amount that the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced, except that (if sufficient funds are available) each State shall receive at least \$75,000 or the amount that the State received for the prior fiscal year if that amount is less than \$75,000.

(C) In providing funds to a State that received assistance under this subsection in the previous fiscal year, the Secretary shall consider—

(i) the availability of any such assistance not spent by the State during the program year for which the assistance was received;

(ii) documentation that demonstrates that—

(I) there is a need for an increase in funds; and

(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;

(iii) demonstrated ability to satisfactorily operate the existing program; and

(iv) whether, in the case of a State that intends to use any funding provided under subparagraph (G)(i)<sup>2</sup> to increase the value of the Federal share of the benefits received by a re-

ipient, the funding provided under subparagraph (G)(i)<sup>2</sup> will increase the rate of coupon redemption.

(D)(i) A State that desires to receive a grant under this subsection shall submit, for each fiscal year, a State plan to the Secretary by November 15 of each year.

(ii) Each State plan submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by the program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(iii) The criteria developed by the State as required by clause (ii)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the program.

(E) The Secretary shall establish objective criteria for the approval and ranking of State plans submitted under this paragraph.

(F)(i) An amount equal to 75 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States participating in the program whose State plan is approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans, the unallocated amount shall be applied toward satisfying any unmet need of States that have not participated in the program in the prior fiscal year, and whose State plans have been approved.

(ii) An amount equal to 25 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States that have not participated in the program in the prior fiscal year, and whose State plans have been approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans for new States, the unallocated amount shall be applied toward satisfying any unmet need of States whose State plans have been approved.

(iii) In any fiscal year, any funds that remain unallocated after satisfying the requirements of clauses (i) and (ii) shall be reallocated in the following fiscal year according to procedures established pursuant to paragraph (10)(B)(ii).

(7)(A) The value of the benefit received by any recipient under any program for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under other Federal or State programs.

(B) Any programs for which a grant is received under this subsection shall be supplementary to the supplemental nutrition assistance program carried out under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of supplemental nutrition assistance program benefits.

(8) For each fiscal year, the Secretary shall collect from each State that receives a grant under this subsection information relating to—

(A) the number and type of recipients served by both Federal and non-Federal benefits under the program for which the grant is received;

(B) the rate of redemption of coupons distributed under the program;

(C) the average amount distributed in coupons to each recipient;

(D) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

(E) the effects of the program on farmers' markets, if the information is available; and

(F) any other information determined to be necessary by the Secretary.

(9) FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.— There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2010 through 2015.

(B)(i)(I) Each State shall return to the Secretary any funds made available to the State that are unobligated at the end of the fiscal year for which the funds were originally allocated. The unexpended funds shall be returned to the Secretary by February 1st of the following fiscal year.

(II) Notwithstanding any other provision of this subsection, a total of not more than 5 percent of funds made available to a State for any fiscal year may be expended by the State to reimburse expenses incurred for a program assisted under this subsection during the preceding fiscal year.

(ii) The Secretary shall establish procedures to reallocate funds that are returned under clause (i).

(10) For purposes of this subsection:

(A) The term "coupon" means a coupon, voucher, or other negotiable financial instrument by which benefits under this section are transferred.

(B) The term "program" means—

(i) the State farmers' market coupon nutrition program authorized by this subsection (as it existed on September 30, 1991); or

(ii) the farmers' market nutrition program authorized by this subsection.

(C) The term "recipient" means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits.

(D) The term "State agency" has the meaning provided in subsection (b)(13) of this section, except that the term also includes the agriculture department of each State and any other agency approved by the chief executive officer of the State.

**(n) Disqualification of vendors who are disqualified under supplemental nutrition assistance program**

**(1) In general**

The Secretary shall issue regulations providing criteria for the disqualification under this section of an approved vendor that is disqualified from accepting benefits under the supple-

mental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

**(2) Terms**

A disqualification under paragraph (1)—

(A) shall be for the same period as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) shall not be subject to judicial or administrative review.

**(o) Disqualification of vendors convicted of trafficking or illegal sales**

**(1) In general**

Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21) in exchange for food instruments (including any item described in subparagraph (A) issued in lieu of a food instrument under this section).

**(2) Notice of disqualification**

The State agency shall—

(A) provide the vendor with notification of the disqualification; and

(B) make the disqualification effective on the date of receipt of the notice of disqualification.

**(3) Prohibition of receipt of lost revenues**

A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

**(4) Exceptions in lieu of disqualification**

**(A) In general**

A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to participate in the program if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

(ii)(I) the vendor had, at the time of the violation under paragraph (1), an effective policy and program in effect to prevent violations described in paragraph (1); and

(II) the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

**(B) Civil penalty**

If a State agency under subparagraph (A) permits a vendor to continue to participate in the program in lieu of disqualification, the State agency shall assess the vendor a

civil penalty in an amount determined by the State agency, in accordance with criteria established by the Secretary, except that—

- (i) the amount of the civil penalty shall not exceed \$10,000 for each violation; and
- (ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed \$40,000.

**(p) Criminal forfeiture**

**(1) In general**

Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (o)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

**(2) Applicable laws**

A provision of law described in this paragraph is—

- (A) section 1760(g) of this title; and
- (B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (o)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property.

**(3) Property subject to forfeiture**

The following property shall be subject to forfeiture under paragraph (1):

- (A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).
- (B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

**(4) Procedures; interest of owner**

Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 853 of title 21, other than subsection (d) of that section.

**(5) Proceeds**

The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

- (A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;
- (B) second, to reimburse the Office of Inspector General of the Department of Agri-

culture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

**(q) Provision of technical assistance to Secretary of Defense**

The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the overseas special supplemental food program established under section 1060a(a) of title 10.

(Pub. L. 89-642, §17, as added Pub. L. 92-433, §9, Sept. 26, 1972, 86 Stat. 729; amended Pub. L. 93-150, §6, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93-326, §6, June 30, 1974, 88 Stat. 287; Pub. L. 94-28, May 28, 1975, 89 Stat. 96; Pub. L. 94-105, §14, Oct. 7, 1975, 89 Stat. 518; Pub. L. 95-166, §§18, 20(6), Nov. 10, 1977, 91 Stat. 1345, 1346; Pub. L. 95-627, §3, Nov. 10, 1978, 92 Stat. 3611; Pub. L. 96-108, title III, §301, Nov. 9, 1979, 93 Stat. 838; Pub. L. 96-499, title II, §203(d), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97-35, title VIII, §815, Aug. 13, 1981, 95 Stat. 531; Pub. L. 99-500, title III, §§314, 341, 342(a), 343, 344(a), 345-348(a), 349-353(a), 372(b)(1), Oct. 18, 1986, 100 Stat. 1783-360, 1783-364 to 1783-367, 1783-369, and Pub. L. 99-591, title III, §§314, 341, 342(a), 343, 344(a), 345-348(a), 349-353(a), 372(b)(1), Oct. 30, 1986, 100 Stat. 3341-363, 3341-367 to 3341-370, 3341-372; Pub. L. 99-661, div. D, title I, §4104, title III, §§4301, 4302(a), 4303, 4304(a), 4305-4308(a), 4309-4313(a), title V, §4502(b)(1), Nov. 14, 1986, 100 Stat. 4071, 4075-4078, 4080; Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 425; Pub. L. 100-237, §§8(a), (b), 9, 11, 12, Jan. 8, 1988, 101 Stat. 1740, 1741; Pub. L. 100-356, §3, June 28, 1988, 102 Stat. 669; Pub. L. 100-435, title II, §212, title V, §501(b), Sept. 19, 1988, 102 Stat. 1657, 1668; Pub. L. 100-690, title III, §3201, Nov. 18, 1988, 102 Stat. 4246; Pub. L. 101-147, title I, §123(a), title II, §213(a), title III, §326, Nov. 10, 1989, 103 Stat. 894, 912, 917; Pub. L. 101-330, July 12, 1990, 104 Stat. 311; Pub. L. 102-314, §3, July 2, 1992, 106 Stat. 280; Pub. L. 102-342, title II, §204, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102-512, title II, §§203-207, Oct. 24, 1992, 106 Stat. 3364-3368; Pub. L. 103-448, title II, §204(a)-(o)(1), (p)-(v)(11), (w)(1), Nov. 2, 1994, 108 Stat. 4738-4745; Pub. L. 104-66, title I, §1011(l), Dec. 21, 1995, 109 Stat. 710; Pub. L. 104-193, title I, §109(h), title VII, §729(a)-(g)(1), (h)-(j), Aug. 22, 1996, 110 Stat. 2171, 2303-2305; Pub. L. 105-336, title II, §203(a)-(f)(1), (g)-(l), (m)-(p)(1), (q), Oct. 31, 1998, 112 Stat. 3158-3165; Pub. L. 105-362, title I, §101(i), Nov. 10, 1998, 112 Stat. 3281; Pub. L. 106-65, div. A, title VI, §674(e), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106-78, title VII, §752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 106-224, title II, §§242(b)(1), (2), 244(a)-(e), June 20, 2000, 114 Stat. 411, 412, 421; Pub. L. 106-472, title III, §307(b), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 107-171, title IV, §§4306(a), 4307(a), May 13, 2002, 116 Stat. 332; Pub. L. 108-265, title II, §203(a)-(c)(2)(A), (3), (4)(A), (5), (d), (e)(1)-(4)(A), (5), (6)(A), (7)(A), (B), (8)-(13), (f)-(i)(1), June 30,

2004, 118 Stat. 771-780; Pub. L. 108-447, div. A, title VII, § 788(d), (e), Dec. 8, 2004, 118 Stat. 2851; Pub. L. 110-234, title IV, § 4002(b)(1)(A), (B), (E), (J), (2)(AA), May 22, 2008, 122 Stat. 1095-1097; Pub. L. 110-246, § 4(a), title IV, § 4002(b)(1)(A), (B), (E), (J), (2)(AA), June 18, 2008, 122 Stat. 1664, 1857, 1859; Pub. L. 111-80, title VII, § 734(b), Oct. 21, 2009, 123 Stat. 2125; Pub. L. 111-296, title I, § 131, title II, §§ 231, 232, title III, §§ 351, 352, title IV, §§ 423, 424, 441(b)(2), Dec. 13, 2010, 124 Stat. 3206, 3229, 3232, 3254, 3260, 3265; Pub. L. 112-81, div. A, title VI, § 631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112-239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

## REFERENCES IN TEXT

Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, referred to in subsecs. (c)(3), (e)(3)(B)(i), and (f)(1)(D), are sections 4 and 5 of Pub. L. 93-86, which are set out as notes under section 612c of Title 7, Agriculture.

The Food and Nutrition Act of 2008, referred to in subsecs. (d)(2)(A)(ii)(I), (m)(7)(B), and (n)(1), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in subsecs. (d)(2)(A)(ii)(II), (iii)(I), (e)(4)(A), and (f)(17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV, title XIX, and title XXI of the Act are classified generally to part A (§ 601 et seq.) of subchapter IV, subchapter XIX (§ 1396 et seq.), and subchapter XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(3)(C)(i), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(15), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Sections 254b and 254c of this title, referred to in subsec. (j)(4), were in the original references to sections 329 and 330 of the Public Health Service Act, act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104-299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104-299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 1304 of the Food and Agriculture Act of 1977, referred to in subsec. (k)(1), is section 1304 of Pub. L. 95-113, title XIII, Sept. 29, 1977, 91 Stat. 980, which amended provisions set out as notes under sections 612c and 1281 of Title 7, Agriculture.

Subparagraph (G)(i), referred to in subsec. (m)(6)(C)(iv), meaning subpar. (G)(i) of subsec. (m)(6), was redesignated subpar. (F)(i) of subsec. (m)(6) by Pub. L. 105-336, title II, § 203(o)(3)(B), Oct. 31, 1998, 112 Stat. 3164.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

## AMENDMENTS

2013—Subsec. (d)(2)(B)(ii). Pub. L. 112-239, § 1076(a)(9), made technical amendment to directory language of

Pub. L. 112-81, § 631(f)(4)(B). See 2011 Amendment note below.

2011—Subsec. (d)(2)(B)(ii). Pub. L. 112-81, § 631(f)(4)(B), as amended by Pub. L. 112-239, § 1076(a)(9), substituted “475” for “405”.

2010—Subsec. (a). Pub. L. 111-296, § 231(1), substituted “supplemental foods and nutrition education, including breastfeeding promotion and support, through any eligible local agency” for “supplemental foods and nutrition education through any eligible local agency” in second sentence.

Subsec. (b)(4). Pub. L. 111-296, § 231(2), inserted “breastfeeding support and promotion,” after “nutrition education.”

Subsec. (c)(1). Pub. L. 111-296, § 231(3), substituted “supplemental foods, nutrition education, and breastfeeding support and promotion to” for “supplemental foods and nutrition education to” in first sentence of introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 111-296, § 131, added cl. (iii).

Subsec. (e)(2). Pub. L. 111-296, § 231(4), inserted “, including breastfeeding support and education,” after “providing nutrition education” in second sentence.

Subsec. (e)(3)(B). Pub. L. 111-296, § 351, which directed the amendment of section 17(e)(3) of the “Child Nutrition Act” by adding subpar. (B) and striking out former subpar. (B), was executed to this section, which is section 17 of the Child Nutrition Act of 1966, to reflect the probable intent of Congress. Prior to amendment, subpar. (B) related to sharing nutrition education materials.

Subsec. (f)(6)(B). Pub. L. 111-296, § 231(5), inserted “and breastfeeding” after “nutrition education” in first sentence.

Subsec. (f)(11)(C). Pub. L. 111-296, § 441(b)(2), redesignated subpar. (D) as (C) and struck out former subpar. (C). Prior to amendment, text read as follows: “Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.”

Subsec. (f)(11)(D). Pub. L. 111-296, § 441(b)(2)(B), redesignated subpar. (D) as (C).

Pub. L. 111-296, § 232, inserted “but not less than every 10 years,” after “scientific knowledge,” in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 111-296, § 423, substituted “each of fiscal years 2010 through 2015” for “each of fiscal years 2004 through 2009”.

Subsec. (g)(5). Pub. L. 111-296, § 352(a), substituted “\$15,000,000” for “\$5,000,000”.

Subsec. (h)(4). Pub. L. 111-296, § 231(6)(A), inserted par. heading, designated existing provisions as subpar. (A) and inserted heading, redesignated subpars. (B) to (F) as cls. (ii) to (vi), respectively, of subpar. (A), substituted “initiative; and” for “2010 initiative.” in cl. (vi), added cls. (vii) to (ix), and added subpars. (B) and (C).

Subsec. (h)(8)(A)(iv)(III). Pub. L. 111-296, § 352(c)(1), substituted “Except as provided in paragraph (9)(B)(i)(II), any” for “Any”.

Subsec. (h)(8)(K). Pub. L. 111-296, § 352(b), added subpar. (K).

Subsec. (h)(9). Pub. L. 111-296, § 352(c)(2), added par. (9) and struck out former par. (9) which read as follows: “For purposes of this subsection, the term ‘cost containment measure’ means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration.”

Subsec. (h)(10). Pub. L. 111-296, § 231(6)(B), added par. (10) and struck out former par. (10) which related to funds for infrastructure, management information systems, and special nutrition education.

Subsec. (h)(12). Pub. L. 111-296, §352(d), added par. (12) and struck out former par. (12). Prior to amendment, text read as follows: “The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.”

Subsec. (h)(13). Pub. L. 111-296, §352(e), added par. (13) and struck out former par. (13). Prior to amendment, text read as follows: “The Secretary shall—

“(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

“(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.”

Subsec. (i)(8). Pub. L. 111-296, §352(f), added par. (8).

Subsec. (j). Pub. L. 111-296, §231(7), substituted “supplemental foods, nutrition education, and breastfeeding support and promotion” for “supplemental foods and nutrition education” in par. (1) and in two places in par. (2).

Subsec. (m)(9)(A). Pub. L. 111-296, §424, added subpar. (A) and struck out former subpar. (A) which related to authorization of appropriations and mandatory funding.

2009—Subsec. (d)(2)(C), (D). Pub. L. 111-80 added subpar. (C) and redesignated former subpar. (C) as (D).

2008—Subsec. (c)(1)(A). Pub. L. 110-246, §4002(b)(1)(A), (2)(AA), substituted “supplemental nutrition assistance program” for “food stamp program”.

Subsec. (c)(1)(B). Pub. L. 110-246, §4002(b)(1)(E), (2)(AA), substituted “supplemental nutrition assistance program benefits” for “food stamps”.

Subsec. (d)(2)(A)(ii)(I). Pub. L. 110-246, §4002(b)(1)(B), (E), (2)(AA), substituted “supplemental nutrition assistance program benefits” for “food stamps” and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

Subsec. (m)(7)(B). Pub. L. 110-246, §4002(b)(1)(A), (B), (E), (2)(AA), substituted “supplemental nutrition assistance program” for “food stamp program”, “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”, and “supplemental nutrition assistance program benefits” for “food stamps”.

Subsec. (n). Pub. L. 110-246, §4002(b)(1)(J), (2)(AA), substituted “supplemental nutrition assistance program” for “food stamp program” in heading.

Subsec. (n)(1). Pub. L. 110-246, §4002(b)(1)(A), (B), (2)(AA), substituted “supplemental nutrition assistance program” for “food stamp program” and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

2004—Subsec. (b)(7). Pub. L. 108-265, §203(a)(1), added par. (7) and struck out former par. (7) which read as follows: “‘Nutrition education’ means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socioeconomic preferences.”

Subsec. (b)(14). Pub. L. 108-265, §203(a)(2), inserted “and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns” after “children”.

Subsec. (b)(22), (23). Pub. L. 108-265, §203(a)(3), added pars. (22) and (23).

Subsec. (d)(3)(A). Pub. L. 108-265, §203(b)(1), inserted par. and subpar. headings, designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii), a person” for “Persons”, and added cl. (ii).

Subsec. (d)(3)(C)(ii)(I)(bb). Pub. L. 108-265, §203(b)(2)(A), substituted semicolon for “from a provider other than the local agency; or”.

Subsec. (d)(3)(C)(ii)(II)(cc). Pub. L. 108-265, §203(b)(2)(B), substituted “; and” for period at end.

Subsec. (d)(3)(C)(ii)(III). Pub. L. 108-265, §203(b)(2)(C), added subcl. (III).

Subsec. (f)(1)(C)(i). Pub. L. 108-447, §788(d), struck out period after “subsection (h)(11) of this section”.

Pub. L. 108-265, §203(e)(10)(B), inserted before semicolon at end “, including a description of the State agency’s vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section.”

Pub. L. 108-265, §203(c)(1)(A), inserted “at any of the authorized retail stores under the program” after “foods under the program”.

Subsec. (f)(1)(C)(ii) to (xi). Pub. L. 108-265, §203(c)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) to (x) as (iii) to (xi), respectively.

Subsec. (f)(11). Pub. L. 108-265, §203(c)(2)(A), inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted headings, and added subpars. (C) and (D).

Subsec. (f)(21). Pub. L. 108-265, §203(c)(3), substituted “local agencies, vendors,” for “vendors” in heading and introductory provisions.

Subsec. (f)(25). Pub. L. 108-265, §203(c)(4)(A), added par. (25).

Subsec. (f)(26). Pub. L. 108-265, §203(c)(5), added par. (26).

Subsec. (g). Pub. L. 108-265, §203(d), inserted heading.

Subsec. (g)(1). Pub. L. 108-265, §203(d), inserted par. heading, added subpar. (A), designated second sentence as subpar. (B), inserted heading, and struck out first sentence relating to appropriations for fiscal year 1990 and fiscal years 1995 through 2003.

Subsec. (h)(2)(A). Pub. L. 108-265, §203(e)(1), substituted “The” for “For each of the fiscal years 1995 through 2003, the” in introductory provisions.

Subsec. (h)(4)(F). Pub. L. 108-265, §203(e)(2), added subpar. (F).

Subsec. (h)(8)(A)(ii). Pub. L. 108-265, §203(e)(7)(B), substituted “change” for “rise” in introductory provisions.

Subsec. (h)(8)(A)(ii)(I). Pub. L. 108-265, §203(e)(4)(A)(i), substituted “primary contract” for “contract brand of”.

Subsec. (h)(8)(A)(iii). Pub. L. 108-265, §203(e)(4)(A)(ii), inserted “for a specific infant formula for which manufacturers submit a bid” after “lowest net price”.

Subsec. (h)(8)(A)(iv). Pub. L. 108-265, §203(e)(3), added cl. (iv).

Subsec. (h)(8)(A)(v). Pub. L. 108-265, §203(e)(4)(A)(iii), added cl. (v).

Subsec. (h)(8)(A)(vi). Pub. L. 108-447, §788(e), substituted “Effective beginning October 1, 2004, each State” for “Each State”.

Pub. L. 108-265, §203(e)(5), added cl. (vi).

Subsec. (h)(8)(A)(vii). Pub. L. 108-265, §203(e)(6)(A), added cl. (vii).

Subsec. (h)(8)(A)(viii). Pub. L. 108-265, §203(e)(7)(A), added cl. (viii).

Subsec. (h)(8)(A)(ix), (x). Pub. L. 108-265, §203(e)(8), added cls. (ix) and (x).

Subsec. (h)(10). Pub. L. 108-265, §203(e)(9), added par. (10) and struck out former par. (10), which related to use of certain funds for each of fiscal years 1995 through 2003 for development of infrastructure for the program, special State projects to improve services, and special breastfeeding support and promotion projects.

Subsec. (h)(11). Pub. L. 108-265, §203(e)(10)(A), added par. (11) and struck out former par. (11), which required a State agency to consider price levels of retail stores for participation in the program and to establish procedures to ensure that selected stores would not subsequently raise prices to levels that would have made them ineligible for participation.

Subsec. (h)(12). Pub. L. 108-265, §203(e)(11), added par. (12) and struck out former par. (12), which directed the Secretary to establish a long-range plan for the development and implementation of management information systems to be used in carrying out the program, and to submit a report to the Committee on Education and the Workforce of the House of Representatives and

the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 2 years after Oct. 31, 1998.

Subsec. (h)(13), (14). Pub. L. 108-265, §203(e)(12), (13), added pars. (13) and (14).

Subsec. (i)(3)(A)(i)(I). Pub. L. 108-265, §203(f), substituted “3 percent” for “1 percent”.

Subsec. (j)(4), (5). Pub. L. 108-265, §203(g), redesignated par. (5) as (4) and struck out former par. (4), which directed the Secretaries to provide notifications to Congress concerning actions to carry out the initiative and, upon completion of such initiative, an evaluation and a plan to further its goals.

Subsec. (m)(1). Pub. L. 108-265, §203(h)(1), inserted “and (at the option of a State) roadside stands” after “farmers’ markets”.

Subsec. (m)(3). Pub. L. 108-265, §203(h)(2), substituted “administrative” for “total” in two places.

Subsec. (m)(5)(C)(ii). Pub. L. 108-265, §203(h)(3), substituted “\$30” for “\$20”.

Subsec. (m)(9)(A)(i). Pub. L. 108-265, §203(h)(4), added cl. (i) and struck out former cl. (i), which authorized to be appropriated to carry out this subsection \$8,000,000 for fiscal year 1994, \$10,500,000 for fiscal year 1995, and such sums as might be necessary for each of fiscal years 1996 through 2003.

Subsec. (r). Pub. L. 108-265, §203(i)(1), struck out subsec. (r), which provided for demonstration projects relating to use of the WIC program for identification and enrollment of children in certain health programs.

2002—Subsec. (d)(2)(B)(i). Pub. L. 107-171, §4306(a), inserted hyphen after “basic allowance” and designated remainder of cl. (i) as subcl. (I), substituted “or” for “and” after semicolon, and added subcl. (II).

Subsec. (m)(9). Pub. L. 107-171, §4307(a), inserted par. heading, subpar. (A) heading, and cl. (i) designation and heading and added cl. (ii).

2000—Subsec. (b)(4). Pub. L. 106-224, §242(b)(2)(A), substituted “(4) ‘Costs of nutrition services and administration’ or ‘nutrition services and administration’ means” for “(4) ‘Costs for nutrition services and administration’ means”.

Subsec. (b)(21). Pub. L. 106-224, §244(a), added par. (21).

Subsec. (d)(2)(B). Pub. L. 106-224, §244(b), designated part of existing provisions as cl. (i), substituted “housing” for “quarters”, and added cl. (ii).

Subsec. (d)(2)(B)(ii). Pub. L. 106-472, §307(b)(1), substituted “contiguous States of the” for “continental”.

Subsec. (d)(3)(F). Pub. L. 106-224, §244(c), added subpar. (F).

Subsec. (h)(1)(A). Pub. L. 106-224, §242(b)(2)(B), substituted “costs of nutrition services and administration incurred by State and local agencies” for “costs incurred by State and local agencies for nutrition services and administration”.

Subsec. (h)(1)(B)(i). Pub. L. 106-224, §244(d)(1), substituted “the preceding fiscal year” for “the fiscal year 1987”.

Subsec. (h)(1)(B)(ii). Pub. L. 106-224, §244(d)(2)(A), substituted “the preceding fiscal year” for “the fiscal year 1987” in introductory provisions.

Subsec. (h)(1)(B)(ii)(I). Pub. L. 106-224, §244(d)(2)(B), added subcl. (I) and struck out former subcl. (I) which read as follows: “the value of the index for State and local government purchases, using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 1986; and”.

Subsec. (h)(5)(D). Pub. L. 106-224, §244(e), added subpar. (D).

Subsec. (r). Pub. L. 106-224, §242(b)(1), added subsec. (r).

Subsec. (r)(1). Pub. L. 106-472, §307(b)(2), substituted “not more than 20 local agencies” for “at least 20 local agencies” in introductory provisions.

1999—Subsecs. (d)(2)(A)(i), (g)(1), (p)(2)(A). Pub. L. 106-78 made technical amendment to references in original act which appear in text as references to sections 1752, 1758, and 1760 of this title.

Subsec. (q). Pub. L. 106-65 added subsec. (q).

1998—Subsec. (d)(3)(C) to (E). Pub. L. 105-336, §203(a), added subpars. (C) to (E).

Subsec. (e)(1). Pub. L. 105-336, §203(b), inserted at end “A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.”

Subsec. (e)(3). Pub. L. 105-336, §203(c), inserted par. heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (f)(21). Pub. L. 105-336, §203(d), amended par. (21) generally. Prior to amendment, par. (21) read as follows: “A State agency may use funds recovered as a result of violations in the food delivery system of the program in the year in which the funds are collected for the purpose of carrying out the program.”

Subsec. (f)(23). Pub. L. 105-336, §203(e), added par. (23).  
Subsec. (f)(24). Pub. L. 105-336, §203(f)(1), added par. (24).

Subsec. (g)(1). Pub. L. 105-336, §203(g), substituted “2003” for “1998”.

Subsec. (h)(1)(C). Pub. L. 105-336, §203(h), inserted subpar. heading, designated existing provisions as cl. (i), inserted heading, substituted “Except as provided in clause (ii), in” for “In”, and added cl. (ii).

Subsec. (h)(2)(A). Pub. L. 105-336, §203(i)(1), substituted “2003” for “1998” in introductory provisions.

Subsec. (h)(2)(A)(iv). Pub. L. 105-336, §203(i)(2), struck out “, to the extent funds are not already provided under subparagraph (I)(v) for the same purpose,” after “may provide funds”.

Subsec. (h)(2)(B)(ii). Pub. L. 105-336, §203(i)(3), substituted “10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)” for “15 percent”.

Subsec. (h)(3)(E). Pub. L. 105-336, §203(i)(4)(A), in introductory provisions, substituted “For each fiscal year,” for “In the case of fiscal year 1996 (except as provided in subparagraph (G)) and each subsequent fiscal year,”.

Subsec. (h)(3)(F), (G). Pub. L. 105-336, §203(i)(4)(B), struck out subpar. (F) which provided for adjusted payments in lieu of required payments for fiscal year 1995 and subpar. (G) which provided for delay of required payments for fiscal year 1996 and for adjusted payments in lieu of required payments for fiscal year 1996.

Subsec. (h)(5)(A). Pub. L. 105-336, §203(i)(5), in introductory provisions, substituted “submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary,” for “achieves, through use of acceptable measures, participation that exceeds the participation level estimated for such State agency under paragraph (2)(A)(ii)(I), such State agency may”.

Subsec. (h)(8)(A)(iii). Pub. L. 105-336, §203(j), added cl. (iii).

Subsec. (h)(10)(A). Pub. L. 105-336, §203(k), (n)(2)(A), substituted “2003” for “1998” and inserted “and supplemental foods funds” after “nutrition services and administration funds”.

Subsec. (h)(11). Pub. L. 105-336, §203(l), added par. (11).  
Subsec. (h)(12). Pub. L. 105-336, §203(m), added par. (12).

Subsec. (i)(3)(A). Pub. L. 105-336, §203(n)(1)(A), substituted “subparagraph (B)” for “subparagraphs (B) and (C)” in introductory provisions.

Subsec. (i)(3)(A)(i), (ii). Pub. L. 105-336, §203(n)(1)(B), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) not more than 1 percent (except as provided in subparagraph (H)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; and

“(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.”

Subsec. (i)(3)(C) to (H). Pub. L. 105-336, §203(n)(2)(B), redesignated subpar. (H) as (C) and struck out former subpars. (C) to (G) which read as follows:

“(C) The total amount of funds transferred from any fiscal year under clauses (i) and (ii) of subparagraph (A) shall not exceed 1 percent of the amount of the funds allocated to a State agency for such fiscal year.

“(D) For State agencies implementing cost containment measures as defined in subsection (h)(9) of this section, not more than 5 percent of the amount of funds allocated under this section to such a State agency for supplemental foods for the fiscal year in which the system is implemented, and not more than 3 percent of the amount of funds allocated to such a State agency for the fiscal year following the fiscal year in which the system is implemented, may be expended by the State agency for expenses incurred under this section for supplemental foods during the succeeding fiscal year.

“(E) Notwithstanding any other provision in this paragraph and paragraph (2) a State agency may, subject to the approval of the Secretary under subparagraph (F), expend not more than 3 percent of the amount of funds allocated to such agency for supplemental foods for the fiscal year 1991 for expenses incurred under this section for supplemental foods during the fiscal year 1990.

“(F) Each State agency which intends to use the authority provided in subparagraph (E) shall request approval from the Secretary in advance and shall submit a plan showing how the State’s caseload will be managed to meet funding limitations. The Secretary shall review and make determinations on such plans on an expedited basis.

“(G) No State can use the authority provided under subparagraph (E) to increase the caseload level above the highest level to date in fiscal year 1990.”

Subsec. (k)(4) to (6). Pub. L. 105-362 redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: “The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.”

Subsec. (m)(3). Pub. L. 105-336, §203(o)(1), inserted “program income or” after “satisfied from” in first sentence.

Subsec. (m)(6)(C). Pub. L. 105-336, §203(o)(2)(A), struck out “serve additional recipients in” after “In providing funds to” in introductory provisions.

Subsec. (m)(6)(C)(ii). Pub. L. 105-336, §203(o)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: “documentation that justifies the need for an increase in participation; and”.

Subsec. (m)(6)(C)(iii), (iv). Pub. L. 105-336, §203(o)(2)(C), (D), substituted “; and” for period at end of cl. (iii) and added cl. (iv).

Subsec. (m)(6)(F). Pub. L. 105-336, §203(o)(3), redesignated subpar. (G) as (F) and struck out former subpar. (F) which listed criteria for Secretary to apply in approving and ranking State plans.

Subsec. (m)(6)(F)(i). Pub. L. 105-336, §203(o)(4)(A), in first sentence, substituted “whose State plan” for “that wish to serve additional recipients, and whose State plan to do so” and, in second sentence, struck out “for additional recipients” after “approved State plans”.

Subsec. (m)(6)(F)(ii). Pub. L. 105-336, §203(o)(4)(B), struck out “that desire to serve additional recipients, and” after “need of States” in second sentence.

Subsec. (m)(6)(G). Pub. L. 105-336, §203(o)(3)(B), redesignated subpar. (G) as (F).

Subsec. (m)(9)(A). Pub. L. 105-336, §203(o)(5), substituted “2003” for “1998”.

Subsec. (o). Pub. L. 105-336, §203(p)(1), added subsec. (o).

Subsec. (p). Pub. L. 105-336, §203(q), added subsec. (p). 1996—Subsec. (b)(15)(B)(iii). Pub. L. 104-193, §729(a)(1), inserted “of not more than 365 days” after “temporary accommodation”.

Subsec. (b)(16). Pub. L. 104-193, §729(a)(2), inserted “and” at end of subpar. (A), substituted a period for

“; and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “the provision of materials developed by the Secretary under subsection (n) of this section.”

Subsec. (c)(5). Pub. L. 104-193, §729(b), struck out par. (5) which read as follows: “The Secretary shall promote the special supplemental nutrition program by producing and distributing materials, including television and radio public service announcements in English and other appropriate languages, that inform potentially eligible individuals of the benefits and services under the program.”

Subsec. (d)(2)(A)(ii)(II). Pub. L. 104-193, §109(h), substituted “State program funded” for “program for aid to families with dependent children established” and inserted before semicolon “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

Subsec. (d)(4). Pub. L. 104-193, §729(c), struck out par. (4) which read as follows: “The Secretary shall report biennially to Congress and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section—

“(A) the income and nutritional risk characteristics of participants in the program;

“(B) participation in the program by members of families of migrant farmworkers; and

“(C) such other matters relating to participation in the program as the Secretary considers appropriate.”

Subsec. (e)(2). Pub. L. 104-193, §729(d)(1), struck out at end “Nutrition education and breastfeeding promotion and support shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they have received.”

Subsec. (e)(4). Pub. L. 104-193, §729(d)(2), struck out “shall” after “State agency” in introductory provisions, struck out subpar. (A), redesignated subpars. (B) and (C) as (A) and (B), respectively, inserted “shall” before “provide” in subpars. (A) and (B), and added subpar. (C). Prior to amendment, subpar. (A) read as follows: “ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program;”.

Subsec. (e)(5). Pub. L. 104-193, §729(d)(3), substituted “Each local agency” for “The State agency shall ensure that each local agency”.

Subsec. (e)(6). Pub. L. 104-193, §729(d)(4), struck out par. (6) which read as follows: “Each local agency may use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes.”

Subsec. (f)(1)(A). Pub. L. 104-193, §729(e)(1)(A), substituted “to the Secretary, by a date specified by the Secretary, an initial” for “annually to the Secretary, by a date specified by the Secretary, a” and inserted at end “After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.”

Subsec. (f)(1)(C)(iii). Pub. L. 104-193, §729(e)(1)(B)(i), added cl. (iii) and struck out former cl. (iii) which read as follows: “a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, local programs for breastfeeding promotion, prenatal care, well-child care, family planning, drug abuse education, alcohol and drug abuse counseling and treatment, child abuse counseling, and with the aid to families with dependent children, food stamp, maternal and child health care, and medicaid



programs, including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program);”.

Subsec. (f)(1)(C)(vi). Pub. L. 104-193, § 729(e)(1)(B)(ii), inserted “(including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas)” after “in the State”.

Subsec. (f)(1)(C)(vii). Pub. L. 104-193, § 729(e)(1)(B)(iii), substituted “for reaching and enrolling” for “to provide program benefits under this section to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program, with emphasis on reaching and enrolling”.

Subsec. (f)(1)(C)(ix). Pub. L. 104-193, § 729(e)(1)(B)(vii), inserted “and” at end.

Pub. L. 104-193, § 729(e)(1)(B)(iv), (vi), redesignated cl. (xi) as (ix) and struck out former cl. (ix) which read as follows: “if the State agency chooses to provide program benefits under this section to some or all eligible individuals who are incarcerated in prisons or juvenile detention facilities that do not receive Federal assistance under any program specifically established to assist pregnant women regarding their nutrition and health needs, a plan for the provision of such benefits to, and to meet the special nutrition education needs of, such individuals, which may include—

“(I) providing supplemental foods to such individuals that are different from those provided to other participants in the program under this section;

“(II) providing such foods to such individuals in a different manner than to other participants in the program under this section in order to meet the special needs of such individuals; and

“(III) the development of nutrition education materials appropriate for the special needs of such individuals;”.

Subsec. (f)(1)(C)(x). Pub. L. 104-193, § 729(e)(1)(B)(iv), (vi), redesignated cl. (xiii) as (x) and struck out former cl. (x) which read as follows: “a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers;”.

Subsec. (f)(1)(C)(xi). Pub. L. 104-193, § 729(e)(1)(B)(vi), redesignated cl. (xi) as (ix).

Subsec. (f)(1)(C)(xii). Pub. L. 104-193, § 729(e)(1)(B)(iv), struck out cl. (xii) which read as follows: “if the State agency chooses to request the funds conversion authority established in clause (h)(5) of this section, an estimate of the increased participation which will result from its cost-saving initiative, including an explanation of how the estimate was developed; and”.

Subsec. (f)(1)(C)(xiii). Pub. L. 104-193, § 729(e)(1)(B)(vi), redesignated cl. (xiii) as (x).

Pub. L. 104-193, § 729(e)(1)(B)(v), substituted “may reasonably require” for “may require”.

Subsec. (f)(1)(D), (E). Pub. L. 104-193, § 729(e)(1)(C), (D), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: “The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.”

Subsec. (f)(5). Pub. L. 104-193, § 729(e)(3), substituted “be available at any reasonable time” for “at all times be available” in second sentence.

Subsec. (f)(6). Pub. L. 104-193, § 729(e)(2), (10), redesignated par. (7) as (6) and struck out former par. (6) which

read as follows: “The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.”

Subsec. (f)(7), (8). Pub. L. 104-193, § 729(e)(10), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (f)(9). Pub. L. 104-193, § 729(e)(10), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Subsec. (f)(9)(B). Pub. L. 104-193, § 729(e)(4), struck out at end “Such notice shall include, in addition to other information required by the Secretary, the categories of participants whose benefits are being suspended or terminated due to such shortage.”

Subsec. (f)(10). Pub. L. 104-193, § 729(e)(10), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (f)(11). Pub. L. 104-193, § 729(e)(10), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Pub. L. 104-193, § 729(e)(5), struck out “, including standards that will ensure sufficient State agency staff” after “program” in first sentence.

Subsec. (f)(12). Pub. L. 104-193, § 729(e)(10), redesignated par. (13) as (12). Former par. (12) redesignated (11).

Pub. L. 104-193, § 729(e)(6), struck out at end “Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.”

Subsec. (f)(13). Pub. L. 104-193, § 729(e)(10), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Subsec. (f)(14). Pub. L. 104-193, § 729(e)(10), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Pub. L. 104-193, § 729(e)(7), substituted “State agency may” for “State agency shall”.

Subsec. (f)(15), (16). Pub. L. 104-193, § 729(e)(10), redesignated pars. (16) and (17) as (15) and (16), respectively. Former par. (15) redesignated (14).

Subsec. (f)(17). Pub. L. 104-193, § 729(e)(10), redesignated par. (18) as (17). Former par. (17) redesignated (16).

Pub. L. 104-193, § 729(e)(8), struck out “and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities” before period at end.

Subsec. (f)(18). Pub. L. 104-193, § 729(e)(10), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Subsec. (f)(19). Pub. L. 104-193, § 729(e)(10), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 104-193, § 729(e)(9), substituted “may provide information” for “shall provide information”.

Subsec. (f)(20), (21). Pub. L. 104-193, § 729(e)(10), redesignated pars. (23) and (21) as (21) and (20), respectively. Former par. (20) redesignated (19).

Subsec. (f)(22). Pub. L. 104-193, § 729(e)(10), redesignated par. (24) as (22).

Pub. L. 104-193, § 729(e)(2), struck out par. (22) which read as follows: “In the State plan submitted to the Secretary for fiscal year 1994, each State agency shall advise the Secretary regarding the procedures to be used by the State agency to reduce the purchase of low-iron infant formula for infants on the program for whom such formula has not been prescribed by a physician or other appropriate health professional, as determined by regulations issued by the Secretary.”

Subsec. (f)(23), (24). Pub. L. 104-193, § 729(e)(10), redesignated pars. (23) and (24) as (21) and (22), respectively.

Subsec. (g)(5). Pub. L. 104-193, § 729(f)(1), substituted "reports on program participant characteristics" for "the report required under subsection (d)(4) of this section".

Subsec. (g)(6). Pub. L. 104-193, § 729(f)(2), struck out par. (6) which read as follows: "Upon the completion of the 1990 decennial census, the Secretary, in coordination with the Secretary of Commerce, shall make available an estimate, by State and county (or equivalent political subdivision) of the number of women, infants, and children who are members of families that have incomes below the maximum income limit for participation in the program under this section."

Subsec. (h)(4)(E). Pub. L. 104-193, § 729(g)(1)(A), struck out "and, on development of the uniform requirements, require each State agency to report the data for inclusion in the report to Congress described in subsection (d)(4) of this section" before period at end.

Subsec. (h)(8)(A). Pub. L. 104-193, § 729(g)(1)(B)(i), (iv), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "No State may receive its allocation under this subsection unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has—

"(i) examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program under this section; and

"(ii) initiated action to implement such measures unless the State demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program."

Subsec. (h)(8)(A)(i). Pub. L. 104-193, § 729(g)(1)(B)(v), in introductory provisions substituted "subparagraphs (B) and (C)(iii)," for "subparagraphs (C), (D), and (E)(iii), in carrying out subparagraph (A)."

Subsec. (h)(8)(B). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpar. (D) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(8)(B)(i). Pub. L. 104-193, § 729(g)(1)(B)(vi), substituted "subparagraph (A)" for "subparagraph (B)" in two places.

Subsec. (h)(8)(C). Pub. L. 104-193, § 729(g)(1)(B)(i), (iv), redesignated subpar. (E) as (C) and struck out former subpar. (C) which read as follows: "In the case of any State that has a contract in effect on November 10, 1989, subparagraph (B) shall not apply to the program operated by such State under this section until the term of such contract, as such term is specified by the contract as in effect on November 10, 1989, expires. In the case of any State that has more than 1 such contract in effect on November 10, 1989, subparagraph (B) shall not apply until the term of the contract with the latest expiration date, as such term is specified by such contract as in effect on November 10, 1989, expires."

Subsec. (h)(8)(C)(iii). Pub. L. 104-193, § 729(g)(1)(B)(vii), substituted "subparagraph (A)" for "subparagraph (B)".

Subsec. (h)(8)(D) to (F). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpars. (F) to (H) as (D) to (F). Former subpars. (D) and (E) redesignated (B) and (C), respectively.

Subsec. (h)(8)(G). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpar. (I) as (G). Former subpar. (G) redesignated (E).

Pub. L. 104-193, § 729(g)(1)(B)(ii), designated cl. (i) as subpar. (G) and struck out cls. (ii) to (ix) which related to procedures for soliciting bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula and cereal manufacturers and State agencies.

Subsec. (h)(8)(H). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpar. (J) as (H). Former subpar. (H) redesignated (F).

Subsec. (h)(8)(I). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpar. (K) as (I). Former subpar. (I) redesignated (G).

Pub. L. 104-193, § 729(g)(1)(B)(iii), substituted "Secretary may" for "Secretary—

"(i) shall promote, but not require, the joint purchase of infant formula among State agencies electing not to participate under the procedures set forth in subparagraph (G);

"(ii) shall encourage and promote (but not require) the purchase of supplemental foods other than infant formula under cost containment procedures;

"(iii) shall inform State agencies of the benefits of cost containment and provide assistance and technical advice at State agency request regarding the State agency's use of cost containment procedures;

"(iv) shall encourage (but not require) the joint purchase of supplemental foods other than infant formula under procedures specified in subparagraph (B), if the Secretary determines that—

"(I) the anticipated savings are expected to be significant;

"(II) the administrative expenses involved in purchasing the food item through competitive bidding procedures, whether under a rebate or discount system, will not exceed the savings anticipated to be generated by the procedures; and

"(III) the procedures would be consistent with the purposes of the program; and

"(v) may".

Subsec. (h)(8)(J) to (L). Pub. L. 104-193, § 729(g)(1)(B)(iv), redesignated subpars. (J) to (L) as (H) to (J), respectively.

Subsec. (h)(8)(M). Pub. L. 104-193, § 729(g)(1)(B)(i), struck out subpar. (M) which read as follows:

"(M)(i) The Secretary shall establish pilot projects in at least 1 State, with the consent of the State, to determine the feasibility and cost of requiring States to carry out a system for using universal product codes to assist retail food stores that are vendors under the program in providing the type of infant formula that the participants in the program are authorized to obtain. In carrying out the projects, the Secretary shall determine whether the system reduces the incidence of incorrect redemptions of low-iron formula or brands of infant formula not authorized to be redeemed through the program, or both.

"(ii) The Secretary shall provide a notification to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding whether the system is feasible, is cost-effective, reduces the incidence of incorrect redemptions described in clause (i), and results in any additional costs to States.

"(iii) The system shall not require a vendor under the program to obtain special equipment and shall not be applicable to a vendor that does not have equipment that can use universal product codes."

Subsec. (k)(3). Pub. L. 104-193, § 729(h), substituted "Council shall elect" for "Secretary shall designate".

Subsec. (n). Pub. L. 104-193, § 729(i), (j), added heading and text of subsec. (n) and struck out former subsec. (n) which related to study of methods of drug abuse education instruction.

Subsecs. (o), (p). Pub. L. 104-193, § 729(i), struck out subsecs. (o) and (p) which related, respectively, to demonstration program for establishment of clinics at community colleges offering nursing education programs and grants for improvement and updating of information and data systems.

1995—Subsec. (m)(9) to (11). Pub. L. 104-66 redesignated pars. (10) and (11) as (9) and (10), respectively, and struck out former par. (9) which read as follows:

"(9)(A) The Secretary shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a compilation of the information collected under paragraph (8).

"(B) The compilation required by subparagraph (A) shall be submitted on or before April 1, 1994."

1994—Pub. L. 103-448, § 204(w)(1)(A), substituted "Special supplemental nutrition program for women, in-

fants, and children” for “Special supplemental food program” in section catchline.

Subsec. (b)(8)(D). Pub. L. 103-448, §204(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(8)(E). Pub. L. 103-448, §204(a)(1), (3), redesignated subpar. (D) as (E) and substituted “homelessness and migrancy” for “alcoholism and drug addiction, homelessness, and migrancy”.

Subsec. (c)(1). Pub. L. 103-448, §204(w)(1)(B), substituted “special supplemental nutrition program” for “special supplemental food program” in first sentence.

Subsec. (c)(5). Pub. L. 103-448, §204(b), added par. (5).  
Subsec. (d)(2)(C). Pub. L. 103-448, §204(c)(1), added subpar. (C).

Subsec. (d)(3). Pub. L. 103-448, §204(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(4). Pub. L. 103-448, §204(t)(1), inserted “and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section” after “Congress” in introductory provisions.

Subsec. (e)(3) to (6). Pub. L. 103-448, §204(d), redesignated par. (3) relating to State agency providing information and materials as par. (4) and former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f)(1)(C)(iii). Pub. L. 103-448, §204(e), inserted before semicolon at end “, including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program)”.

Subsec. (f)(3). Pub. L. 103-448, §204(f), inserted before period at end “and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time”.

Subsec. (f)(18). Pub. L. 103-448, §204(g), amended par. (18) generally. Prior to amendment, par. (18) read as follows:

“(18)(A) Except as provided in subparagraph (B), a State agency may implement income eligibility guidelines under this section at the time the State implements income eligibility guidelines under the medicaid program.

“(B) Income eligibility guidelines under this section shall be implemented not later than July 1 of each year.”

Subsec. (f)(23), (24). Pub. L. 103-448, §204(h), (i), added pars. (23) and (24).

Subsec. (g). Pub. L. 103-448, §204(j)(1), (k), in par. (1) substituted “fiscal years 1995 through 1998” for “fiscal years 1991, 1992, 1993, and 1994” and in par. (5) struck out “and” before “administration” and inserted before period at end “, and carrying out technical assistance and research evaluation projects of the programs under this section”.

Subsec. (h)(2)(A). Pub. L. 103-448, §204(j)(2), substituted “fiscal years 1995 through 1998” for “fiscal years 1990, 1991, 1992, 1993 and 1994”.

Subsec. (h)(3). Pub. L. 103-448, §204(l), substituted “except as otherwise provided in subparagraphs (F) and (G), an amount” for “an amount” and “the national minimum breastfeeding promotion expenditure, as described in subparagraph (E)” for “\$8,000,000” in subpar. (A)(i)(II) and added subpars. (E) to (G).

Subsec. (h)(4)(E). Pub. L. 103-448, §204(m), added subpar. (E).

Subsec. (h)(8). Pub. L. 103-448, §204(n), (o)(1), (p), (q), substituted “on a timely basis” for “at 6-month intervals” in subpar. (D)(iii) and added subpars. (G)(ix), (L), and (M).

Subsec. (h)(10). Pub. L. 103-448, §204(r), added par. (10).

Subsec. (i)(3). Pub. L. 103-448, §204(s), inserted “(except as provided in subparagraph (H))” after “1 percent” in subpar. (A)(i) and added subpar. (H).

Subsec. (j). Pub. L. 103-448, §204(t)(2), (u), added subsec. (j) and struck out former subsec. (j) which read as follows: “By October 1 of every other year, the Sec-

retary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.”

Subsec. (k)(1). Pub. L. 103-448, §204(w)(1)(C), substituted “special supplemental nutrition program” for “special supplemental food program” in two places.

Subsec. (m)(3). Pub. L. 103-448, §204(v)(1), inserted at end “The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.”

Subsec. (m)(5)(F)(i). Pub. L. 103-448, §204(v)(2)(A), substituted “17 percent” for “15 percent”.

Subsec. (m)(5)(F)(ii). Pub. L. 103-448, §204(v)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: “During the first fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i). During any fiscal year other than the first fiscal year for which a State receives assistance under this subsection, upon the showing by the State of financial need, the Secretary may permit the State to use not more than 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i).”

Subsec. (m)(5)(F)(iii). Pub. L. 103-448, §204(v)(2)(C), struck out “for the administration of the program” after “use of program funds”.

Subsec. (m)(6)(A). Pub. L. 103-448, §204(v)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Each State that received assistance under the demonstration program authorized by this subsection in a fiscal year ending before October 1, 1991, shall receive assistance under this subsection if the State complies with the requirements established by this subsection, as determined by the Secretary.”

Subsec. (m)(6)(B)(ii). Pub. L. 103-448, §204(v)(4), substituted “\$75,000” for “\$50,000” in two places.

Subsec. (m)(6)(D)(i). Pub. L. 103-448, §204(v)(5), substituted “by November 15 of each year” for “at such time and in such manner as the Secretary may reasonably require”.

Subsec. (m)(6)(G). Pub. L. 103-448, §204(v)(6), substituted “75 percent” for “45 to 55 percent” in cl. (i) and “25 percent” for “45 to 55 percent” in cl. (ii).

Subsec. (m)(8)(D), (E). Pub. L. 103-448, §204(v)(7), added subpars. (D) and (E) and struck out former subpars. (D) and (E) which read as follows:

“(D) when practicable, the impact on the nutritional status of recipients by determining the change in consumption of fresh fruits and vegetables by recipients;

“(E) the effects of the program on the use of farmers’ markets and the marketing of agricultural products at such markets and when practicable, the effects of the program on recipients’ awareness regarding farmers’ markets; and”.

Subsec. (m)(10)(A). Pub. L. 103-448, §204(v)(8), struck out “\$3,000,000 for fiscal year 1992, \$6,500,000 for fiscal year 1993, and” after “to carry out this subsection” and inserted before period at end “, \$10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 1998”.

Subsec. (m)(10)(B). Pub. L. 103-448, §204(v)(9), (10), substituted “Each” for “Except as provided in subclause (II), each” in cl. (i)(I), struck out “or may be retained by the State to reimburse expenses expected to be incurred for such a program during the succeeding fiscal year” before period at end of cl. (i)(II), and struck out “Funds that remain unexpended at the end of any demonstration project authorized by this subsection (as it existed on September 30, 1991) shall be reallocated in a similar manner.” at end of cl. (ii).

Subsec. (m)(11)(D). Pub. L. 103-448, §204(v)(11), inserted before period at end “and any other agency approved by the chief executive officer of the State”.

Subsec. (o)(1)(B). Pub. L. 103-448, §204(w)(1)(D), substituted “special supplemental nutrition program” for “special supplemental food program”.

1992—Subsec. (b)(8)(D). Pub. L. 102-342 inserted before period at end “, homelessness, and migrancy”.

Subsec. (b)(17) to (20). Pub. L. 102-512, §203, added pars. (17) to (20) and struck out former par. (17) which read as follows: “‘Competitive bidding’ means a procurement process under which the State agency selects the single source offering the lowest price, as determined by the submission of sealed bids, for the product for which bids are sought.”

Subsec. (f)(22). Pub. L. 102-512, §205, added par. (22).

Subsec. (h)(2)(A). Pub. L. 102-512, §206, struck out “shall” after “Such formula”, inserted “shall” after cl. designation in cls. (i) to (iii), and added cl. (iv).

Subsec. (h)(8)(E)(ii). Pub. L. 102-512, §207, struck out “that do not have large caseloads and” after “State agencies”.

Subsec. (h)(8)(G) to (K). Pub. L. 102-512, §204, added subpars. (G) to (K) and struck out former subpar. (G) which read as follows: “Not later than the expiration of the 120-day period beginning on November 10, 1989, the Secretary shall prescribe regulations to carry out this paragraph. Such regulations shall address issues involved in comparing savings from different cost containment measures, as provided under subparagraph (B).”

Subsec. (m). Pub. L. 102-314 amended subsec. (m) generally, substituting provisions relating to farmers’ market nutrition program to benefit women, infants, and children nutritionally at risk for provisions relating to farmers’ market food coupons demonstration project.

1990—Subsec. (i)(3)(E) to (G). Pub. L. 101-330 added subpars. (E) to (G).

1989—Subsec. (b)(17). Pub. L. 101-147, §123(a)(1), added par. (17).

Subsec. (c)(3). Pub. L. 101-147, §326(b)(1), substituted “section 4 of the Agriculture and Consumer Protection Act of 1973” for “section 1304 of the Food and Agriculture Act of 1977”.

Subsec. (c)(4). Pub. L. 101-147, §326(a)(1), amended par. (4), as added by Pub. L. 99-591, §342(a), and Pub. L. 99-661, §4302(a), to read as if the addition by Pub. L. 99-661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101-147, §123(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 1758 of this title.”

Subsec. (d)(4). Pub. L. 101-147, §326(b)(2), realigned margins of par. (4) and subpars. (A) to (C).

Pub. L. 101-147, §326(a)(2), amended par. (4), as added by Pub. L. 99-591, §343(a), and Pub. L. 99-661, §4303(a), to read as if the addition by Pub. L. 99-661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (e)(1). Pub. L. 101-147, §123(a)(3)(A), struck out at end “The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.”

Subsec. (e)(2). Pub. L. 101-147, §123(a)(3)(B), (C), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 101-147, §123(a)(3)(D), added par. (3) relating to State agency providing information and materials.

Pub. L. 101-147, §123(a)(3)(B), redesignated former par. (2), relating to Secretary issuing materials, as (3).

Subsec. (e)(4). Pub. L. 101-147, §123(a)(3)(D), added par. (4).

Subsec. (e)(5). Pub. L. 101-147, §213(a)(1), added par. (5).

Subsec. (f)(1)(C)(iii). Pub. L. 101-147, §123(a)(4)(A)(i), inserted “local programs for breastfeeding promotion,” after “immunization programs,” and “and treatment” after “alcohol and drug abuse counseling”.

Subsec. (f)(1)(C)(vii). Pub. L. 101-147, §123(a)(4)(A)(ii), amended cl. (vii) generally. Prior to amendment, cl. (vii) read as follows: “a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable;”.

Subsec. (f)(1)(C)(viii) to (xiii). Pub. L. 101-147, §123(a)(4)(A)(iii), (iv), added cls. (viii) to (xi) and redesignated former cls. (viii) and (ix) as (xii) and (xiii), respectively.

Subsec. (f)(7). Pub. L. 101-147, §213(a)(2)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(8)(A), (C). Pub. L. 101-147, §326(b)(3)(A), substituted “individuals” for “persons”.

Subsec. (f)(8)(D). Pub. L. 101-147, §123(a)(4)(B), added subpar. (D).

Subsec. (f)(9). Pub. L. 101-147, §123(a)(4)(C), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(10). Pub. L. 101-147, §326(b)(3)(B), substituted “an individual” for “a person”, “individuals” for “person’s”, and “the individual” for “the person”.

Subsec. (f)(14)(A). Pub. L. 101-147, §123(a)(4)(D), inserted “, breastfeeding promotion,” after “nutrition education”.

Subsec. (f)(17). Pub. L. 101-147, §§123(a)(4)(E), 326(b)(3)(C), realigned margin of par. (17) and inserted before period at end “and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities”.

Subsec. (f)(18) to (20). Pub. L. 101-147, §123(a)(4)(F), added pars. (18) to (20).

Subsec. (f)(21). Pub. L. 101-147, §213(a)(2)(B), added par. (21).

Subsec. (g)(1). Pub. L. 101-147, §123(a)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “There are authorized to be appropriated to carry out this section \$1,570,000,000 for the fiscal year ending September 30, 1986, and such sums as may be necessary for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.”

Subsec. (g)(2), (3). Pub. L. 101-147, §123(a)(5)(B), (C), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (g)(4). Pub. L. 101-147, §123(a)(5)(B), redesignated former par. (2) as (4).

Subsec. (g)(5). Pub. L. 101-147, §123(a)(5)(D), substituted “\$5,000,000” for “\$3,000,000”.

Pub. L. 101-147, §123(a)(5)(B), redesignated former par. (3) as (5).

Subsec. (g)(6). Pub. L. 101-147, §123(a)(5)(E), added par. (6).

Subsec. (h). Pub. L. 101-147, §123(a)(6), amended subsec. (h) generally, substituting provisions regarding the establishment and administration of national average participant grants for purposes of funding nutrition services and administration and provisions on breastfeeding promotion and procurement of infant formula, for provisions limiting funding for nutrition services and administration to 20% of the total funding for the section, providing a formula for distributing funds to States and setting forth various administrative duties.

Subsec. (i)(1). Pub. L. 101-147, §123(a)(7)(A), substituted “amounts made available for food benefits under subsection (h)(1)(C) of this section” for “funds provided in accordance with this section”.

Subsec. (i)(3)(D). Pub. L. 101-147, §123(a)(7)(B), substituted “cost containment measures as defined in subsection (h)(9)” for “approved cost-savings strategies as identified in subsection (h)(5)(A)” and “not more than

3 percent” for “at the discretion of the Secretary, up to 5 percent”.

Subsec. (i)(7). Pub. L. 101-147, §123(a)(7)(C), added par. (7).

Subsec. (j). Pub. L. 101-147, §123(a)(8), substituted “every other year” for “each year”.

Subsec. (k)(1). Pub. L. 101-147, §123(a)(9), substituted “24” for “twenty-three” and inserted “1 member shall be an expert in the promotion of breast feeding;” after “the Secretary;”.

Subsec. (m)(7)(B). Pub. L. 101-147, §326(b)(4)(A), struck out “(7 U.S.C. 2011 et seq.)” after “Food Stamp Act of 1977”.

Subsec. (m)(11)(A). Pub. L. 101-147, §326(b)(4)(B), substituted “individual” for “person”.

Subsec. (n)(1). Pub. L. 101-147, §326(b)(5), substituted “the date of enactment of the Anti-Drug Abuse Act of 1988” for “the date of enactment of this Act” in the original, which for purposes of codification was translated as “November 18, 1988”, resulting in no change in text.

Subsecs. (o), (p). Pub. L. 101-147, §123(a)(10), added subsecs. (o) and (p).

1988—Subsec. (a). Pub. L. 100-690, §3201(1), substituted “health problems, including drug abuse,” for “health problems”.

Subsec. (b)(15). Pub. L. 100-435, §212(a), added par. (15).

Subsec. (b)(16). Pub. L. 100-690, §3201(2), added par. (16).

Subsec. (c)(1). Pub. L. 100-435, §212(b), amended last sentence generally, designating existing provisions as cls. (A) and (B) and adding cl. (C).

Subsec. (e)(1). Pub. L. 100-690, §3201(3), substituted “nutrition education and drug abuse education” for “nutrition education” in first and second sentences.

Subsec. (f)(1)(C)(iii). Pub. L. 100-690, §3201(4)(A), inserted “drug abuse education,” after “family planning;”.

Pub. L. 100-237, §9, substituted “maternal and child health care, and medicaid programs” for “and maternal and child health care programs”.

Subsec. (f)(1)(C)(iv). Pub. L. 100-435, §212(c)(1), substituted “migrants, homeless individuals,” for “migrants”.

Subsec. (f)(1)(C)(vii) to (ix). Pub. L. 100-237, §8(b), struck out “and” at end of cl. (vii), added cl. (viii), and redesignated former cl. (viii) as (ix).

Subsec. (f)(8)(A). Pub. L. 100-435, §212(c)(2), inserted “organizations and agencies serving homeless individuals and shelters for victims of domestic violence,” after “Indian tribal organizations;”.

Subsec. (f)(13). Pub. L. 100-435, §212(c)(3), inserted “, and, in the case of homeless individuals, the special needs and problems of such individuals” before period at end.

Subsec. (f)(14)(A). Pub. L. 100-690, §3201(4)(B), inserted “and drug abuse education” after “education”.

Subsec. (f)(16). Pub. L. 100-237, §11, added par. (16).

Subsec. (f)(17). Pub. L. 100-435, §212(c)(4), added par. (17).

Subsec. (h)(5). Pub. L. 100-237, §8(a), added par. (5).

Subsec. (h)(5)(D), (E). Pub. L. 100-356, §3(a), added subpars. (D) and (E).

Subsec. (i)(3)(A). Pub. L. 100-237, §12(1), inserted “and subject to subparagraphs (B) and (C)” after “paragraph (2)”, and substituted “and” for “or” at end of cl. (i).

Subsec. (i)(3)(C). Pub. L. 100-237, §12(2), added subpar. (C).

Subsec. (i)(3)(D). Pub. L. 100-356, §3(b), added subpar. (D).

Subsec. (k)(1). Pub. L. 100-690, §3201(5)(A), (B), increased membership of Council to twenty-three from twenty-one members and included experts in drug abuse education and prevention and alcohol abuse education and prevention.

Subsec. (m). Pub. L. 100-435, §501(b), added subsec. (m).

Subsec. (n). Pub. L. 100-690, §3201(6), added subsec. (n).

1987—Subsec. (g)(1). Pub. L. 100-71 inserted “and” after “September 30, 1986,” and substituted “September

30, 1988, and September 30, 1989” for “and September 30, 1988, and \$1,782,000,000 for the fiscal year ending September 30, 1989”.

1986—Subsec. (b)(1) to (4). Pub. L. 99-500 and Pub. L. 99-591, §341(a), and Pub. L. 99-661, §4301(a), amended subsec. (b) identically, redesignating pars. (2) to (4) as (1) to (3), respectively, adding par. (4), and striking out former par. (1) which defined “Administrative costs”.

Subsec. (b)(6), (13). Pub. L. 99-500 and Pub. L. 99-591, §372(b)(1), and Pub. L. 99-661, §4502(b)(1), amended pars. (6) and (13) identically, substituting “Health and Human Services” for “Health, Education, and Welfare”.

Subsec. (c)(2). Pub. L. 99-500 and Pub. L. 99-591, §314(1), and Pub. L. 99-661, §4104(1), amended par. (2) identically, substituting “Subject to amounts appropriated to carry out this section under subsection (g) of this section” for “Subject to the authorization levels specified in subsection (g) of this section for the fiscal years ending September 30, 1979, and September 30, 1980, and subject to amounts appropriated for this program for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984”.

Subsec. (c)(4). Pub. L. 99-500 and Pub. L. 99-591, §342(a), and Pub. L. 99-661, §4302(a), amended subsec. (c) identically, adding par. (4).

Subsec. (d)(4). Pub. L. 99-500 and Pub. L. 99-591, §343(a), and Pub. L. 99-661, §4303(a), amended subsec. (d) identically, adding par. (4).

Subsec. (e)(2). Pub. L. 99-500 and Pub. L. 99-591, §372(b)(1), and Pub. L. 99-661, §4502(b)(1), amended par. (2) identically, substituting “Health and Human Services” for “Health, Education, and Welfare”.

Subsec. (f)(1). Pub. L. 99-500 and Pub. L. 99-591, §344(a), and Pub. L. 99-661, §4304(a), generally amended par. (1) identically, substituting subpars. (A) to (E) for former subpars. (A) to (L) and concluding provisions.

Subsec. (f)(2). Pub. L. 99-500 and Pub. L. 99-591, §345, and Pub. L. 99-661, §4305, generally amended par. (2) identically. Prior to amendment, par. (2) read as follows: “Not less than one month prior to the submission to the Governor of the plan of operation and administration required by this subsection, the State agency shall conduct hearings to enable the general public to participate in the development of the State agency plan.”

Subsec. (f)(8). Pub. L. 99-500 and Pub. L. 99-591, §346, and Pub. L. 99-661, §4306, generally amended par. (8) identically. Prior to amendment, par. (8) read as follows: “The State agency shall, in cooperation with participating local agencies, publicize the availability of program benefits, including the eligibility criteria for participation and the location of local agencies operating the program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.”

Subsec. (f)(11). Pub. L. 99-500 and Pub. L. 99-591, §341(b)(1), and Pub. L. 99-661, §4301(b)(1), amended par. (11) identically, substituting “funds for nutrition services and administration” for “administrative funds”.

Subsec. (f)(15). Pub. L. 99-500 and Pub. L. 99-591, §347, and Pub. L. 99-661, §4307, amended subsec. (f) identically, adding par. (15).

Subsec. (g)(1). Pub. L. 99-661, §4104(2), designated existing provision authorizing appropriations of \$550,000,000 for fiscal year ending Sept. 30, 1979, \$750,000,000 for fiscal year ending Sept. 30, 1980, \$900,000,000 for fiscal year ending Sept. 30, 1981, \$1,017,000,000 for fiscal year ending Sept. 30, 1982, \$1,060,000,000 for fiscal year ending Sept. 30, 1983, and \$1,126,000,000 for fiscal year ending Sept. 30, 1984 as par. (1), and substituted provision authorizing appropria-

tions of \$1,570,000,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and \$1,782,000,000 for fiscal year ending Sept. 30, 1989.

Pub. L. 99-500 and Pub. L. 99-591, §314(2), designated existing provision authorizing appropriations of \$550,000,000 for fiscal year ending Sept. 30, 1979, \$750,000,000 for fiscal year ending Sept. 30, 1980, \$900,000,000 for fiscal year ending Sept. 30, 1981, \$1,017,000,000 for fiscal year ending Sept. 30, 1982, \$1,060,000,000 for fiscal year ending Sept. 30, 1983, and \$1,126,000,000 for fiscal year ending Sept. 30, 1984, as par. (1), and in par. (1) as so designated, substituted provision authorizing appropriations of \$1,580,494,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and \$1,782,000,000 for fiscal year ending Sept. 30, 1989.

Subsec. (g)(2). Pub. L. 99-500 and Pub. L. 99-591, §348(a), and Pub. L. 99-661, §4308(a), amended subsec. (g) identically, adding par. (2).

Subsec. (g)(3). Pub. L. 99-500 and Pub. L. 99-591, §§314(2)(A), 343(b), 349, and Pub. L. 99-661, §§4104(2)(A), 4303(b), 4309, amended subsec. (g) identically, designating provisions as par. (3) and inserting "preparing the report required under subsection (d)(4) of this section, providing technical assistance to improve State agency administrative systems,".

Subsec. (h)(1). Pub. L. 99-500 and Pub. L. 99-591, §§341(b)(2), 350, and Pub. L. 99-661, §§4301(b)(2), 4310, amended par. (1) identically, substituting "costs for nutrition services and administration" for "administrative costs" in three places and inserting at end "The Secretary shall limit to a minimal level any documentation required under the preceding sentence."

Subsec. (h)(2). Pub. L. 99-500 and Pub. L. 99-591, §§314(3), 341(b)(1), and Pub. L. 99-661, §§4104(3), 4301(b)(1), amended par. (2) identically, substituting "1989" for "1984" and "funds for nutrition services and administration" for "administrative funds".

Subsec. (h)(3). Pub. L. 99-500 and Pub. L. 99-591, §§341(b), 351, and Pub. L. 99-661, §§4301(b), 4311, amended par. (3) identically, substituting "funds for nutrition services and administration" for "administrative funds" in two places and "costs for nutrition services and administration" for "administrative costs" and striking out ", which satisfy allocation guidelines established by the Secretary" after "several local agencies" and last sentence which read as follows: "These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section."

Subsec. (h)(4). Pub. L. 99-500 and Pub. L. 99-591, §352, and Pub. L. 99-661, §4312, amended par. (4) identically, substituting "may" for "shall".

Pub. L. 99-500 and Pub. L. 99-591, §341(b)(1), and Pub. L. 99-661, §4301(b)(1), amended par. (4) identically, substituting "funds for nutrition services and administration" for "administrative funds".

Subsec. (i). Pub. L. 99-500 and Pub. L. 99-591, §353(a), and Pub. L. 99-661, §4313, amended subsec. (i) identically, designating existing provisions as pars. (1), (2), and (4) to (6) and adding par. (3).

Subsec. (k)(1), (2). Pub. L. 99-500 and Pub. L. 99-591, §372(b)(1), and Pub. L. 99-661, §4502(b)(1), amended pars. (1) and (2) identically, substituting "Health and Human Services" for "Health, Education, and Welfare" in two places in par. (1) and in one place in par. (2).

1981—Subsec. (g). Pub. L. 97-35 inserted provisions setting forth specific appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1980—Subsec. (c)(2). Pub. L. 96-499, §203(d)(1), substituted "for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984" for "for the fiscal years ending September 30, 1981, and September 30, 1982".

Subsec. (g). Pub. L. 96-499, §203(d)(2), substituted "such sums as may be necessary for the three subsequent fiscal years" for "\$950,000,000 for the fiscal year ending September 30, 1982".

Subsec. (h)(2). Pub. L. 96-499, §203(d)(3), substituted "1984" for "1982".

1979—Subsec. (g). Pub. L. 96-108 substituted "\$750,000,000" for "\$800,000,000".

1978—Subsec. (a). Pub. L. 95-627 expanded provisions of this section to include postpartum and breastfeeding women.

Subsec. (b). Pub. L. 95-627 substituted provisions defining terms for purposes of this section for provisions relating to cash grants to State health departments, Indians, and other agencies for supplemental food to pregnant and lactating women and infants.

Subsec. (c). Pub. L. 95-627 substituted provisions authorizing grants-in-aid by the Secretary, prohibiting ratable reductions of amounts of food an agency may distribute, authorizing affirmative actions to institute the program where needed, and authorizing the issuance of regulations relating to dual receipt of benefits under a commodity supplemental food program for provisions authorizing appropriations to carry out the food program for each fiscal year during the period ending Sept. 30, 1978.

Subsec. (d). Pub. L. 95-627 substituted provisions specifying persons eligible to participate in the food program for provisions prescribing administrative cost limitations and calling for approval by the Secretary of the manner of expenditure by the recipient agencies.

Subsec. (e). Pub. L. 95-627 substituted provisions relating to nutrition education for program participants for provisions relating to persons eligible to participate in the program. See subsec. (d) of this section.

Subsec. (f). Pub. L. 95-627 substituted provisions relating to submittal of State operational and administrative plans, participation in the program by eligible migrants, recordkeeping, certain types of notification, hearings, certification of eligibility, withholding of funds, issuance of regulations, and use of foreign languages for provisions relating to the maintenance of adequate medical records, the establishment of an advisory committee to study methods of evaluating the health benefits of the program, and the submittal of a report to Congress based upon such study no later than June 1, 1976.

Subsec. (g). Pub. L. 95-627 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, 1981, and 1982 for provisions defining terms for purposes of this section. See subsec. (b) of this section.

Subsec. (h). Pub. L. 95-627 substituted provisions relating to allocation of funds for administrative costs for provisions relating to establishment of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Subsecs. (i) to (l). Pub. L. 95-627 added subsecs. (i) to (l).

1977—Subsec. (d). Pub. L. 95-166, §20(6), substituted "each year by not later than a date specified by the Secretary" for "by January 1 of each year (by December 1 in the case of fiscal year 1976)".

Subsec. (h)(8). Pub. L. 95-166, §18, inserted proviso respecting compensation of parent recipient members of the Council.

1975—Subsec. (a). Pub. L. 94-105 added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 94-28, §1(a), inserted "and for the period July 1, 1975, through September 30, 1975," after "1975,".

Subsec. (b)(1), (2). Pub. L. 94-105 redesignated former subsec. (a) as (b)(1), added (b)(2), and in (b)(1) as so redesignated, extended the program from Sept. 30, 1975 through the fiscal year ending Sept. 30, 1978 and made minor changes in phraseology. Former subsec. (b) redesignated (c).

Pub. L. 94-28, §1(b), inserted "and for the period July 1, 1975, through September 30, 1975," after "1975,".

Subsec. (c). Pub. L. 94-105 redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, authorized the appropriation of \$250,000,000 during each fiscal year during the period ending Sept. 30, 1977, authorized the amount of \$250,000,000 which the Secretary can use out of the funds appropriated by section 612c of Title 7

in the event that less than \$250,000,000 has been appropriated by the beginning of each fiscal year and authorized the appropriation of not to exceed \$250,000,000 during the fiscal year ending Sept. 30, 1978. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94-105 redesignated former subsec. (c) as (d), and in subsec. (d) as so redesignated, increased from 10 to 20 per centum the amount of administrative costs the Secretary is authorized to pay except that in the first 3 months or until the projected caseload level has been reached the Secretary shall pay those administrative costs necessary to commence the program successfully, inserted provision relating to submission for approval of a description of the manner in which administrative funds shall be spent, and directed the Secretary to take affirmative action to insure that programs begin in the most needy areas. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 94-105 redesignated former subsec. (d) as (e) and in subsec. (e) as so redesignated, substituted "under this section" for "under subsection (a) of this section" and inserted "or members of populations" after "residents of areas". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 94-105 redesignated former subsec. (e) as (f), and in subsec. (f) as so redesignated, substituted provisions relating to the convention of an advisory committee to study methods available to evaluate the health benefits of the program with a report to the Secretary who shall report to Congress no later than June 1, 1976, for provision that the Secretary and Comptroller General of the United States submit preliminary reports to Congress no later than Oct. 1, 1974 and submit no later than March 30, 1975 evaluations of the program and recommendations with regard to its continuation. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94-105 redesignated former subsec. (f) as (g), and in subsec. (g) as so redesignated, substituted "includes women from" for "includes mothers from", and expanded definition of lactating women who are breast feeding an infant up to one year of age and all women for a period of six months post partum, in par. (1); substituted "5 years" for "four years" wherever appearing and inserted "(at the discretion of the Secretary)" after "may also include", in par. (2); struck out "food product" before "commercially formulated", inserted "women or" before "infants" and inserted provision relating to the availability of the contents of the food package, in par. (3).

Subsec. (h). Pub. L. 94-105 added subsec. (h).

1974—Subsec. (b). Pub. L. 93-326 increased from \$40,000,000 to \$100,000,000 appropriation authorization for fiscal year ending June 30, 1975, and increased from \$40,000,000 to \$100,000,000 amount which Secretary can use out of funds appropriated by section 612c of Title 7 in event that less than \$100,000,000 has been appropriated by Aug. 1, 1974, for carrying out special supplemental food program for fiscal year ending June 30, 1975.

1973—Subsec. (a). Pub. L. 93-150, §6(a), provided for cash grants during fiscal year ending June 30, 1975, substituted in first sentence in two places "State; Indian tribe, band, or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare" for "State", and substituted in second sentence provision for operation of the program for a "three-year" rather than a "two-year" period.

Subsec. (b). Pub. L. 93-150, §6(b), authorized appropriation of \$40,000,000 for fiscal year ending June 30, 1975, and provided that in the event such sum was not appropriated by August 1, 1974, the Secretary was to use \$40,000,000, or, if any amount had been appropriated, the difference, if any, between the amount directly appropriated and \$40,000,000, out of funds appropriated by section 612c of title 7.

Subsec. (e). Pub. L. 93-150, §6(c), extended dates for submission of preliminary and final evaluation reports from Oct. 1, 1973, to Oct. 1, 1974, and from Mar. 30, 1974, to Mar. 30, 1975, respectively.

## CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

## EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112-81 as enacted.

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (E), (J), (2)(AA) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 203 of Pub. L. 108-265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 203(a)-(c)(1), (5), (e)(8), (10), (13), (f) of Pub. L. 108-265 effective Oct. 1, 2004, see section 502(b)(2) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108-265, title II, §203(c)(4)(B), June 30, 2004, 118 Stat. 773, provided that: "The amendment made by subparagraph (A) [amending this section] applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004."

Pub. L. 108-265, title II, §203(e)(4)(B), June 30, 2004, 118 Stat. 774, provided that: "The amendments made by subparagraph (A) [amending this section] apply to a contract resulting from a bid solicitation issued on or after October 1, 2004."

Pub. L. 108-265, title II, §203(e)(6)(B), June 30, 2004, 118 Stat. 775, provided that: "The amendment made by this paragraph [amending this section] applies to a bid solicitation issued on or after October 1, 2004."

Pub. L. 108-265, title II, §203(e)(7)(C), June 30, 2004, 118 Stat. 775, provided that: "The amendments made by this paragraph [amending this section] apply to a bid solicitation issued on or after October 1, 2004."

Amendment by section 203(e)(9) of Pub. L. 108-265 effective Oct. 1, 2005, see section 502(b)(5) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

## EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-171, title IV, §4306(b), May 13, 2002, 116 Stat. 332, provided that: "The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002]."

Pub. L. 107-171, title IV, §4307(b), May 13, 2002, 116 Stat. 333, provided that: "The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002]."

## EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106-472, title III, §307(b)(2), Nov. 9, 2000, 114 Stat. 2073, provided that the amendment made by section 307(b)(2) is effective Oct. 1, 2000.

Amendment by section 242(b)(1), (2) of Pub. L. 106-224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106-224, set out as a note under section 1758 of this title.

Pub. L. 106-224, title II, §244(f), June 20, 2000, 114 Stat. 422, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] take effect on the date of the enactment of this Act [June 20, 2000].

“(2) ALLOCATION OF FUNDS.—The amendments made by subsections (d) and (e) [amending this section] take effect on October 1, 2000.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(h) of Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

Pub. L. 104-193, title VII, §729(g)(2), Aug. 22, 1996, 110 Stat. 2305, provided that: “The amendments made by paragraph (1) [amending this section] shall not apply to a contract for the procurement of infant formula under section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) that is in effect on the date of enactment of this subsection [Aug. 22, 1996].”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENTS

Pub. L. 102-512, title II, §209, Oct. 24, 1992, 106 Stat. 3369, which provided that the authority provided and the amendments made by title II of Pub. L. 102-512, amending this section and enacting provisions set out as notes under this section and section 1771 of this title, would terminate on Sept. 30, 1994, except with regard to subsec. (h)(8)(J) of this section, as amended by section 204 of Pub. L. 102-512, was repealed, eff. Oct. 1, 1994, by Pub. L. 103-448, title II, §204(o)(2), title IV, §401, Nov. 2, 1994, 108 Stat. 4742, 4751.

Pub. L. 102-314, §4, July 2, 1992, 106 Stat. 285, provided that: “The amendment made by section 3 [amending this section] shall be effective as of October 1, 1991.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, title I, §123(f)(2), Nov. 10, 1989, 103 Stat. 905, provided that: “The amendments made by subsections (a)(5), (a)(6), and (a)(7) [amending this section] shall be effective as of October 1, 1989.”

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100-435, set out as a note under section 2012 of Title 7, Agriculture.

Pub. L. 100-237, §8(d), Jan. 8, 1988, 101 Stat. 1741, provided that: “The amendment made by subsections (a), (b), and (c) [amending this section and enacting provisions set out below] shall take effect October 1, 1987.”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-500, title III, §342(b), Oct. 18, 1986, 100 Stat. 1783-364, Pub. L. 99-591, title III, §342(b), Oct. 30, 1986, 100 Stat. 3341-367, and Pub. L. 99-661, div. D, title III, §4302(b), Nov. 14, 1986, 100 Stat. 4075, provided that: “The amendment made by subsection (a) [amending

this section] shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title [Oct. 18, 1986].”

Pub. L. 99-500, title III, §344(b), Oct. 18, 1986, 100 Stat. 1783-365, Pub. L. 99-591, title III, §344(b), Oct. 30, 1986, 100 Stat. 3341-368, and Pub. L. 99-661, div. D, title III, §4304(b), Nov. 14, 1986, 100 Stat. 4077, provided that: “The amendment made by subsection (a) [amending this section] shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 [subsec. (f)(1) of this section] for the fiscal year ending September 30, 1987, and each fiscal year thereafter.”

Pub. L. 99-500, title III, §347, Oct. 18, 1986, 100 Stat. 1783-366, Pub. L. 99-591, title III, §347, Oct. 30, 1986, 100 Stat. 3341-369, and Pub. L. 99-661, div. D, title III, §4307, Nov. 14, 1986, 100 Stat. 4077, provided that the amendment made by section 347 of Pub. L. 99-500 and Pub. L. 99-591 and by section 4307 of Pub. L. 99-661 is effective Oct. 1, 1986.

Pub. L. 99-500, title III, §348(a), Oct. 18, 1986, 100 Stat. 1783-366, Pub. L. 99-591, title III, §348(a), Oct. 30, 1986, 100 Stat. 3341-369, and Pub. L. 99-661, div. D, title III, §4308(a), Nov. 14, 1986, 100 Stat. 4077, provided that the amendment made by section 348(a) of Pub. L. 99-500 and Pub. L. 99-591 and by section 4308(a) of Pub. L. 99-661 is effective Oct. 1, 1986.

Pub. L. 99-500, title III, §352, Oct. 18, 1986, 100 Stat. 1783-367, Pub. L. 99-591, title III, §352, Oct. 30, 1986, 100 Stat. 3341-370, and Pub. L. 99-661, div. D, title III, §4312, Nov. 14, 1986, 100 Stat. 4078, provided that the amendment made by section 352 of Pub. L. 99-500 and Pub. L. 99-591 and by section 4312 of Pub. L. 99-661 is effective Oct. 1, 1986.

Pub. L. 99-500, title III, §353(b), Oct. 18, 1986, 100 Stat. 1783-367, Pub. L. 99-591, title III, §353(b), Oct. 30, 1986, 100 Stat. 3341-370, and Pub. L. 99-661, div. D, title III, §4313(b), Nov. 14, 1986, 100 Stat. 4078, were substantially identical in providing that: “Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 [subsec. (i)(3)(A)(i) of this section] (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title [Oct. 18, 1986].”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 820(a)(7)(B) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, §20, Nov. 10, 1977, 91 Stat. 1346, provided that the amendment made by that section is effective July 1, 1977.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-105, §14, Oct. 7, 1975, 89 Stat. 518, provided that the amendment made by that section is effective beginning with the fiscal year ending June 30, 1976.

#### TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.



## REGULATIONS

Pub. L. 108-265, title II, §203(c)(2)(B), June 30, 2004, 118 Stat. 772, provided that: "Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program."

Pub. L. 105-336, title II, §203(f)(2), Oct. 31, 1998, 112 Stat. 3160, provided that: "The Secretary of Agriculture shall promulgate—

"(A) not later than March 1, 1999, proposed regulations to carry out section 17(f)(24) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(24)), as added by paragraph (1); and

"(B) not later than March 1, 2000, final regulations to carry out section 17(f)(24) of that Act."

Pub. L. 105-336, title II, §203(l)(2), Oct. 31, 1998, 112 Stat. 3162, provided that: "The Secretary of Agriculture shall promulgate—

"(A) not later than March 1, 1999, proposed regulations to carry out section 17(h)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(11)), as added by paragraph (1); and

"(B) not later than March 1, 2000, final regulations to carry out section 17(h)(11) of that Act."

Pub. L. 105-336, title II, §203(p)(2), Oct. 31, 1998, 112 Stat. 3165, provided that: "The Secretary of Agriculture shall promulgate—

"(A) not later than March 1, 1999, proposed regulations to carry out section 17(o) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(o)), as added by paragraph (1); and

"(B) not later than March 1, 2000, final regulations to carry out section 17(o) of that Act."

Pub. L. 101-147, title I, §123(f)(1), Nov. 10, 1989, 103 Stat. 905, provided that: "Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsections (a)(2), (a)(3), and (a)(4) [amending this section]."

Pub. L. 101-147, title II, §213(b), Nov. 10, 1989, 103 Stat. 913, provided that: "Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (a) [amending this section]."

Pub. L. 95-627, §13, Nov. 10, 1978, 92 Stat. 3625, provided that:

"(a) The Secretary shall promulgate regulations to implement the provisions of section 3 of this Act [amending this section] within one hundred and twenty days of the date of enactment of this Act [Nov. 10, 1978].

"(b) The provisions of section 17 of the [Richard B. Russell] National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section], in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978], which are relevant to current regulations of the Secretary governing the child care food program and the special supplemental food program, respectively, shall remain in effect until such regulations are revoked, superseded, amended, or modified by regulations issued under those sections as amended by sections 2 and 3 of this Act.

"(c) Pending proceedings under section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall not be abated by reason of any provision of sections 2 and 3 of this Act [amending this section and section 1766 of this title], but shall be disposed of under the applicable provisions of section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978].

"(d) Appropriations made available to carry out section 17 of the National School Lunch Act [section 1766

of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall be available to carry out the provisions of sections 2 and 3 of this Act [amending this section and section 1766 of this title]."

## STUDY OF COST CONTAINMENT PRACTICES

Pub. L. 105-336, title II, §203(r), Oct. 31, 1998, 112 Stat. 3166, provided that:

"(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study on the effect of cost containment practices established by States under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) for the selection of vendors and approved food items (other than infant formula) on—

"(A) program participation;

"(B) access and availability of prescribed foods;

"(C) voucher redemption rates and actual food selections by participants;

"(D) participants on special diets or with specific food allergies;

"(E) participant use and satisfaction of prescribed foods;

"(F) achievement of positive health outcomes; and

"(G) program costs.

"(2) REPORT.—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) not later than 2 years after the date of enactment of this Act [Oct. 31, 1998], an interim report describing the results of the study conducted under paragraph (1); and

"(B) not later than 3 years after the date of enactment of this Act, a final report describing the results of the study conducted under paragraph (1)."

## STUDY OF WIC SERVICES

Pub. L. 105-336, title II, §203(s), Oct. 31, 1998, 112 Stat. 3167, provided that:

"(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study that assesses—

"(A) the cost of delivering services under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), including the costs of implementing and administering cost containment efforts;

"(B) the fixed and variable costs incurred by State and local governments for delivering the services and the extent to which those costs are charged to State agencies;

"(C) the quality of the services delivered, taking into account the effect of the services on the health of participants; and

"(D) the costs incurred for personnel, automation, central support, and other activities to deliver the services and whether the costs meet Federal audit standards for allowable costs under the program.

"(2) REPORT.—Not later than 3 years after the date of enactment of this Act [Oct. 31, 1998], the Comptroller General shall submit to the Secretary of Agriculture, 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 containing the results of the study conducted under paragraph (1)."

## REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104-299, set out as a note under section 254b of this title.

## PROMOTION BY SECRETARY OF USE OF FARMERS' MARKETS

Pub. L. 103-448, title II, §204(v)(12), Nov. 2, 1994, 108 Stat. 4745, provided that: "The Secretary of Agriculture

shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary."

REFERENCES TO SPECIAL SUPPLEMENTAL FOOD PROGRAM

Pub. L. 103-448, title II, §204(w)(3), Nov. 2, 1994, 108 Stat. 4746, provided that: "Any reference to the special supplemental food program established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under such section."

WIC INFANT FORMULA PROTECTION; FINDINGS AND PURPOSES

Pub. L. 102-512, title II, §202, Oct. 24, 1992, 106 Stat. 3364, as amended by Pub. L. 103-448, title II, §204(w)(2)(F), Nov. 2, 1994, 108 Stat. 4746, provided that:

"(a) FINDINGS.—

"(1) the domestic infant formula industry is one of the most concentrated manufacturing industries in the United States;

"(2) only three pharmaceutical firms are responsible for almost all domestic infant formula production;

"(3) coordination of pricing and marketing strategies is a potential danger where only a very few companies compete regarding a given product;

"(4) improved competition among suppliers of infant formula to the special supplemental food program [special supplemental nutrition program] for women, infants, and children (WIC) can save substantial additional sums to be used to put thousands of additional eligible women, infants, and children on the WIC program; and

"(5) barriers exist in the infant formula industry that inhibit the entry of new firms and thus limit competition.

"(b) PURPOSES.—It is the purpose of this title [amending this section and enacting provisions set out as notes under this section and section 1771 of this title] to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental nutrition program for women, infants, and children (WIC)."

STUDY OF INFANT FORMULA BID SOLICITATIONS

Pub. L. 102-512, title II, §208, Oct. 24, 1992, 106 Stat. 3368, directed Secretary of Agriculture, not later than Apr. 1, 1994, to report to Congress on State agencies that request the Secretary of Agriculture to conduct bid solicitations for infant formula under 42 U.S.C. 1786(h)(8)(G)(i), cost reductions achieved by the solicitations, and other matters the Secretary determined to be appropriate regarding title II of Pub. L. 102-512.

WOMEN, INFANTS, AND CHILDREN FARMERS' MARKET NUTRITION PROGRAM; CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 102-314, §2, July 2, 1992, 106 Stat. 280, provided that: "The purpose of this Act [amending this section and enacting provisions set out as notes under this section and section 1771 of this title] is to authorize grants to be made to State programs designed to—

"(1) provide resources to women, infants, and children who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

"(2) expand the awareness and use of farmers' markets and increase sales at such markets."

REVIEW OF PRIORITY SYSTEM; REPORTS TO CONGRESS

Pub. L. 101-147, title I, §123(b), Nov. 10, 1989, 103 Stat. 904, directed Secretary of Agriculture to review relationship between nutritional risk criteria established under this section and priority system used under special supplemental food program under this section, es-

pecially as it affected pregnant women, and to submit preliminary and final reports to Congress on results of review by Oct. 1, 1990, and by July 1, 1991, respectively.

REPORT ON WIC FOOD PACKAGE

Pub. L. 101-147, title I, §123(c), Nov. 10, 1989, 103 Stat. 904, directed Secretary of Agriculture to review appropriateness of foods eligible for purchase under special supplemental food program under this section and to submit preliminary and final reports to Congress on findings of review by June 30, 1991, and by June 30, 1992, respectively.

REPORT ON COSTS FOR NUTRITION SERVICES AND ADMINISTRATION

Pub. L. 101-147, title I, §123(d), Nov. 10, 1989, 103 Stat. 905, directed Secretary of Agriculture to review effect on costs for nutrition services and administration incurred by State and local agencies of sections 123 and 213 of Pub. L. 101-647, and the amendments made by such sections, amending this section and enacting provisions set out as notes under this section (including effect of both increases and decreases in requirements imposed on such agencies), and to report results of such review to Congress not later than one year after Nov. 10, 1989.

PAPERWORK REDUCTION

Pub. L. 101-147, title I, §123(e), Nov. 10, 1989, 103 Stat. 905, provided that: "In implementing and monitoring compliance with the provisions of the amendments made by this section [amending this section] (other than the amendment made by subsection (a)(2) to section 17(d)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)), the Secretary of Agriculture shall not impose any new requirement on a State or local agency that would require the State or local agency to place additional paperwork or documentation in a case file maintained by a local agency."

FARMERS' MARKET COUPONS DEMONSTRATION PROJECT

Pub. L. 100-435, title V, §501(a), Sept. 19, 1988, 102 Stat. 1668, provided that: "The purpose of this section is to authorize the establishment of a grant program to encourage State demonstration projects designed to—

"(1) provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

"(2) expand the awareness and use of farmers' markets and increase sales at such markets."

STUDY OF NUTRITION SERVICES AND ADMINISTRATION FUNDING

Pub. L. 100-237, §8(c), Jan. 8, 1988, 101 Stat. 1741, directed Secretary to conduct a study of appropriateness of percentage of annual appropriation for the program required by 42 U.S.C. 1786(h)(1) to be made available for State and local agency costs for nutrition services and administration, and to report results of this study to Congress not later than Mar. 1, 1989, such study to 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 to examine the impact of percentage provided for nutrition services and administration on quality of such services.

STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM

Pub. L. 100-237, §10, Jan. 8, 1988, 101 Stat. 1741, directed Secretary of Agriculture to study medicaid savings for newborns as result of prenatal participation by mothers in special supplemental food program under this section and to report study results to Congress by Feb. 1, 1990. Similar provisions were contained in Pub. L. 100-202, §101(k) [title III], Dec. 22, 1987, 101 Stat. 1329-349.

## ACCOUNTABILITY FOR MIGRANT SERVICES

Pub. L. 99-500, title III, §348(b), Oct. 18, 1986, 100 Stat. 1783-366, Pub. L. 99-591, title III, §348(b), Oct. 30, 1986, 100 Stat. 3341-369, and Pub. L. 99-661, div. D, title III, §4308(b), Nov. 14, 1986, 100 Stat. 4078, provided that: "To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 [subsec. (g)(2) of this section] (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act [Oct. 18, 1986]."

**§ 1787. Repealed. Pub. L. 104-193, title VII, § 730, Aug. 22, 1996, 110 Stat. 2305**

Section, Pub. L. 89-642, §18, as added Pub. L. 94-105, §23, Oct. 7, 1975, 89 Stat. 528, authorized appropriations and directed Secretary to make cash grants for nutrition education.

**§ 1788. Team nutrition network**

**(a) Purposes**

The purposes of the team nutrition network are—

(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 5341 of title 7;

(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

**(b) Definition of team nutrition network**

In this section, the term "team nutrition network" means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

**(c) Grants**

**(1) In general**

Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

(A) the use of team nutrition network messages and other scientifically based information; and

(B) the promotion of active lifestyles.

**(2) Form**

A portion of the grants provided under this subsection may be in the form of competitive grants.

**(3) Funds from nongovernmental sources**

In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

**(d) Allocation**

Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

(1) the product obtained by multiplying  $\frac{1}{2}$  cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

**(e) Requirements for State participation**

To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

(1) is subject to approval by the Secretary; and

(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;