

ALTERNATIVE COUNTING AND CLAIMING PROCEDURES;  
PROMULGATION OF REGULATIONS

Pub. L. 101-147, title II, §205(b), Nov. 10, 1989, 103 Stat. 911, provided that not later than July 1, 1990, Secretary of Agriculture was to issue final regulations to implement subsec. (g) of this section.

**§ 1769a. Fresh fruit and vegetable program**

**(a) In general**

For the school year beginning July 2008 and each subsequent school year, the Secretary shall provide grants to States to carry out a program to make free fresh fruits and vegetables available in elementary schools (referred to in this section as the "program").

**(b) Program**

A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day (or at such other times as are considered appropriate by the Secretary) in 1 or more areas designated by the school.

**(c) Funding to States**

**(1) Minimum grant**

Except as provided in subsection (i)(2), the Secretary shall provide to each of the 50 States and the District of Columbia an annual grant in an amount equal to 1 percent of the funds made available for a year to carry out the program.

**(2) Additional funding**

Of the funds remaining after grants are made under paragraph (1), the Secretary shall allocate additional funds to each State that is operating a school lunch program under section 4 based on the proportion that—

- (A) the population of the State; bears to
- (B) the population of the United States.

**(d) Selection of schools**

**(1) In general**

Except as provided in paragraph (2) of this subsection and section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, each year, in selecting schools to participate in the program, each State shall—

- (A) ensure that each school chosen to participate in the program is a school—
  - (i) in which not less than 50 percent of the students are eligible for free or reduced price meals under this chapter; and
  - (ii) that submits an application in accordance with subparagraph (D);
- (B) to the maximum extent practicable, give the highest priority to schools with the highest proportion of children who are eligible for free or reduced price meals under this chapter;
- (C) ensure that each school selected is an elementary school (as defined in section 7801<sup>1</sup> of title 20);
- (D) solicit applications from interested schools that include—
  - (i) information pertaining to the percentage of students enrolled in the school submitting the application who are eligi-

ble for free or reduced price school lunches under this chapter;

(ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school);

(iii) a plan for implementation of the program, including efforts to integrate activities carried out under this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and

(iv) such other information as may be requested by the Secretary; and

(E) encourage applicants to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).

**(2) Exception**

Clause (i) of paragraph (1)(A) shall not apply to a State if all schools that meet the requirements of that clause have been selected and the State does not have a sufficient number of additional schools that meet the requirement of that clause.

**(3) Outreach to low-income schools**

**(A) In general**

Prior to making decisions regarding school participation in the program, a State agency shall inform the schools within the State with the highest proportion of free and reduced price meal eligibility, including Native American schools, of the eligibility of the schools for the program with respect to priority granted to schools with the highest proportion of free and reduced price eligibility under paragraph (1)(B).

**(B) Requirement**

In providing information to schools in accordance with subparagraph (A), a State agency shall inform the schools that would likely be chosen to participate in the program under paragraph (1)(B).

**(e) Notice of availability**

If selected to participate in the program, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

**(f) Per-student grant**

The per-student grant provided to a school under this section shall be—

- (1) determined by a State agency; and
- (2) not less than \$50, nor more than \$75.

**(g) Limitation**

To the maximum extent practicable, each State agency shall ensure that in making the fruits and vegetables provided under this section available to students, schools offer the fruits and vegetables separately from meals otherwise provided at the school under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

<sup>1</sup> See References in Text note below.

**(h) Evaluation and reports****(1) In general**

The Secretary shall conduct an evaluation of the program, including a determination as to whether children experienced, as a result of participating in the program—

- (A) increased consumption of fruits and vegetables;
- (B) other dietary changes, such as decreased consumption of less nutritious foods; and
- (C) such other outcomes as are considered appropriate by the Secretary.

**(2) Report**

Not later than September 30, 2011, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under paragraph (1).

**(i) Funding****(1) In general**

Out of the funds made available under subsection (b)(2)(A) of section 612c-6 of title 7, the Secretary shall use the following amounts to carry out this section:

- (A) On October 1, 2008, \$40,000,000.
- (B) On July 1, 2009, \$65,000,000.
- (C) On July 1, 2010, \$101,000,000.
- (D) On July 1, 2011, \$150,000,000.

(E) On July 1, 2012, and each July 1 thereafter, the amount made available for the preceding fiscal year, as adjusted to reflect changes for the 12-month period ending the preceding April 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, for items other than food.

**(2) Maintenance of existing funding**

In allocating funding made available under paragraph (1) among the States in accordance with subsection (c), the Secretary shall ensure that each State that received funding under section 1769(f) of this title on the day before the date of enactment of the Food, Conservation, and Energy Act of 2008 shall continue to receive sufficient funding under this section to maintain the caseload level of the State under that section as in effect on that date.

**(3) Evaluation funding**

On October 1, 2008, out of any funds made available under subsection (b)(2)(A) of section 612c-6 of title 7, the Secretary shall use to carry out the evaluation required under subsection (h), \$3,000,000, to remain available for obligation until September 30, 2010.

**(4) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section any funds transferred for that purpose, without further appropriation.

**(5) Authorization of appropriations**

In addition to any other amounts made available to carry out this section, there are

authorized to be appropriated such sums as are necessary to expand the program established under this section.

**(6) Administrative costs****(A) In general**

Of funds made available to carry out this section for a fiscal year, the Secretary may use not more than \$500,000 for the administrative costs of carrying out the program.

**(B) Reservation of funds**

The Secretary shall allow each State to reserve such funding as the Secretary determines to be necessary to administer the program in the State (with adjustments for the size of the State and the grant amount), but not to exceed the amount required to pay the costs of 1 full-time coordinator for the program in the State.

**(7) Reallocation****(A) Among States**

The Secretary may reallocate any amounts made available to carry out this section that are not obligated or expended by a date determined by the Secretary.

**(B) Within States**

A State that receives a grant under this section may reallocate any amounts made available under the grant that are not obligated or expended by a date determined by the Secretary.

(June 4, 1946, ch. 281, §19, as added Pub. L. 110-234, title IV, §4304(a)(1), May 22, 2008, 122 Stat. 1127, and Pub. L. 110-246, §4(a), title IV, §4304(a)(1), June 18, 2008, 122 Stat. 1664, 1888.)

## REFERENCES IN TEXT

Section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (d)(1), is section 4304(a)(2) of Pub. L. 110-246, which is set out as a note below.

Section 7801 of title 20, referred to in subsec. (d)(1)(C), was in the original a reference to section 9101 of Pub. L. 89-10, which was renumbered section 8101 of Pub. L. 89-10 by Pub. L. 114-95, title VIII, §8001(a)(1), Dec. 10, 2015, 129 Stat. 2089.

The Child Nutrition Act of 1966, referred to in subsec. (g), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (i)(2), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

## PRIOR PROVISIONS

A prior section 1769a, act June 4, 1946, ch. 281, §19, formerly §21, as added Nov. 10, 1977, Pub. L. 95-166, §13, 91 Stat. 1338; renumbered §19, Oct. 18, 1986, Pub. L. 99-500, title III, §371(c)(1), 100 Stat. 1783-368, and Oct. 30, 1986, Pub. L. 99-591, title III, §371(c)(1), 100 Stat. 3341-372; renumbered §19, Nov. 14, 1986, Pub. L. 99-661, div. D, title V, §4501(c)(1), 100 Stat. 4080; Nov. 10, 1989, Pub. L. 101-147, title I, §108, 103 Stat. 887; Nov. 2, 1994, Pub. L. 103-448, title I, §119, 108 Stat. 4726, directed Secretary to

reduce paperwork required in carrying out functions under this chapter and under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), prior to repeal by Pub. L. 104-193, title VII, § 710, Aug. 22, 1996, 110 Stat. 2301.

#### 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

Enactment 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 a note under section 8701 of Title 7, Agriculture.

Section effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 2, The Congress.

#### PILOT PROJECT FOR CANNED, FROZEN, OR DRIED FRUITS AND VEGETABLES

Pub. L. 113-79, title IV, § 4214, Feb. 7, 2014, 128 Stat. 831, provided that:

“(a) IN GENERAL.—Subject to subsection (b), in the 2014-2015 school year, the Secretary [of Agriculture] shall carry out a pilot project in schools participating in the Fresh Fruit and Vegetable Program under section 19 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769a) (referred to in this section as the “Program”), in not less than 5 States, to evaluate the impact of allowing schools to offer canned, frozen, or dried fruits and vegetables as part of the Program.

“(b) REQUIREMENTS.—Not later than 60 days after the date of enactment of this Act [Feb. 14, 2014], the Secretary shall establish criteria for the conditions under which canned, frozen, or dried fruits and vegetables may be offered, which shall be in accordance with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

“(c) EVALUATION.—With respect to the pilot project, the Secretary shall evaluate—

- “(1) the impacts on fruit and vegetable consumption at the schools participating in the pilot project;
- “(2) the impacts of the pilot project on school participation in the Program and operation of the Program;
- “(3) the implementation strategies used by the schools participating in the pilot project;
- “(4) the acceptance of the pilot project by key stakeholders; and
- “(5) such other outcomes as are determined by the Secretary.

“(d) REPORTS.—

“(1) INTERIM REPORT.—Not later than January 1, 2015, the Secretary shall submit to the Committee on Education and Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under subsection (c).

“(2) FINAL REPORT.—On completion of the pilot project, the Secretary shall submit to the Committee on Education and Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under subsection (c).

“(e) NOTICE OF AVAILABILITY.—As soon as practicable after the date on which the Secretary establishes the criteria for the pilot project under subsection (b), the Secretary shall notify potentially eligible schools of the potential eligibility of the schools for participation in the pilot project.

“(f) RELATIONSHIP TO FRESH FRUIT AND VEGETABLE PROGRAM.—Nothing in this section permits a school

that is not a part of the pilot project to offer anything other than fresh fruits and vegetables through the Program.

“(g) FUNDING.—The Secretary shall use \$5,000,000 of amounts otherwise made available to the Secretary to carry out this section.”

#### TRANSITION OF EXISTING SCHOOLS

Pub. L. 110-234, title IV, § 4304(a)(2), May 22, 2008, 122 Stat. 1130, and Pub. L. 110-246, § 4(a), title IV, § 4304(a)(2), June 18, 2008, 122 Stat. 1664, 1891, provided that:

“(A) EXISTING SECONDARY SCHOOLS.—Section 19(d)(1)(C) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1769a(d)(1)(C)] (as amended by paragraph (1)) may be waived by a State until July 1, 2010, for each secondary school in the State that has been awarded funding under section 18(f) of that Act (42 U.S.C. 1769(f)) for the school year beginning July 1, 2008.

“(B) SCHOOL YEAR BEGINNING JULY 1, 2008.—To facilitate transition from the program authorized under section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act [June 18, 2008]) to the program established under section 19 of that Act [42 U.S.C. 1769a] (as amended by paragraph (1))—

“(i) for the school year beginning July 1, 2008, the Secretary [of Agriculture] may permit any school selected for participation under section 18(f) of that Act (42 U.S.C. 1769(f)) for that school year to continue to participate under section 19 of that Act [42 U.S.C. 1769a] until the end of that school year; and

“(ii) funds made available under that Act [42 U.S.C. 1751 et seq.] for fiscal year 2009 may be used to support the participation of any schools selected to participate in the program authorized under section 18(f) of that Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act [June 18, 2008]).”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

#### § 1769b. Department of Defense overseas dependents' schools

##### (a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

##### (b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

##### (c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards pre-