

Public Law 95-627
95th Congress

An Act

To extend and amend the special supplemental food program and the child care food program, and for other purposes.

Nov. 10, 1978
[S. 3085]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Nutrition Amendments of 1978".

Child Nutrition
Amendments of
1978.
42 USC 1771
note.

CHILD CARE FOOD PROGRAM

SEC. 2. Section 17 of the National School Lunch Act is amended to read as follows:

"CHILD CARE FOOD PROGRAM

"SEC. 17. (a) The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care. For purposes of this section, the term 'institution' means any public or private nonprofit organization providing non-residential child care, including, but not limited to, child care centers, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for handicapped children. In addition, the term 'institution' shall include programs developed to provide day care outside school hours for schoolchildren, and public or nonprofit private organizations that sponsor family or group day care homes. The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours. For purposes of determining eligibility—

42 USC 1766.

"Institution."

Guidelines.

Eligibility.

"(1) no institution, other than a family or group day care home sponsoring organization, or family or group day care home shall be eligible to participate in the program unless it has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives funds under title XX of the Social Security Act or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health, Education, and Welfare; and

42 USC 1397.

"(2) no institution shall be eligible to participate in the program unless it satisfies the following criteria:

"(A) accepts final administrative and financial responsibility for management of an effective food service;

"(B) has not been seriously deficient in its operation of the child care food program, or any other program under this Act or the Child Nutrition Act of 1966, for a period of time specified by the Secretary; and

42 USC 1771
note.

"(C) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program.

“(b) For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals served in the manner specified in subsection (c) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966.

42 USC 1779.

“(c) The Secretary shall provide assistance to each State in the following manner:

“(1) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where no less than two-thirds of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

42 USC 1758.

“(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

42 USC 1773.

“(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 4 of this Act, and the national average payment rate for free lunches under section 11 of this Act; and

42 USC 1759a.

“(C) (i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements served in such institutions.

National average
payment rate.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 23.75 cents. For supplements served in these institutions thereafter, the Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

“(2) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where less than two-thirds but not less than one-third of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

“(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966;

“(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 4 of this Act

42 USC 1754.

and the national average payment rate for reduced-price lunches under section 11 of this Act; and

42 USC 1759a.

“(C) (i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 18 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

National average payment rate.

“(3) For meals served to children in institutions, other than family or group day care home sponsoring organizations and institutions electing to use the optional reimbursement procedures under subsection (f) (3) of this section, where less than one-third of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

42 USC 1758.

“(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966;

42 USC 1773.

“(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the national average payment rate for lunches under section 4 of this Act; and

“(C) (i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 6 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

National average payment rate.

“(4) For meals served to children in institutions electing to use the reimbursement procedures under subsection (f) (3) of this section, each State shall receive assistance in the following manner:

“(A) for meals served to children who are members of families that satisfy the income standards for free school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

“(i) (I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

“(ii) (I) the number of lunches and suppers served by

- 42 USC 1754. (II) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for free lunches under section 11 of this Act; and
- “(iii) (I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (1) of this subsection;
- “(B) for meals served to children who are members of families that satisfy the income standards for reduced-price meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—
- 42 USC 1758. “(i) (I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966;
- 42 USC 1773. “(ii) (I) the number of lunches and suppers served by (II) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for reduced-price lunches under section 11 of this Act;
- 42 USC 1759a. “(iii) (I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (2) of this subsection; and
- “(C) for meals served to all other children in these institutions, each State shall receive an amount equal to the sum of the products obtained by multiplying—
- “(i) (I) the number of breakfasts served to such children by (II) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966;
- “(ii) (I) the number of lunches and suppers served to such children by (II) the national average payment rate for lunches under section 4 of this Act; and
- “(iii) (I) the number of supplements served to such children by (II) the national average payment rate for supplements determined under clause (C) of paragraph (3) of this subsection.
- “(5) For meals served in family or group day care homes, each State shall receive amounts sufficient to make payments for such meals under subsection (f) (4) of this section.
- “(d) Any eligible public institution shall be approved for participation in the child care food program upon its request. Any eligible private institution shall be approved for participation if it (1) has tax exempt status under the Internal Revenue Code of 1954 or, under conditions established by the Secretary, is moving toward compliance with the requirements for tax exempt status, or (2) is currently operating a Federal program requiring nonprofit status. Family or group day care homes need not have individual tax exempt certification if they are sponsored by an institution that has tax exempt status, or, under conditions established by the Secretary, such institution is moving toward compliance with the requirements for tax exempt status or
- 26 USC 1 *et seq.*

is currently operating a Federal program requiring nonprofit status. An institution applying for participation under this section shall be notified of approval or disapproval in writing within thirty days after the date its completed application is filed. If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application, and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application.

Notification.

“(e) The State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section.

Hearing.

“(f) (1) Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in financing the cost of providing meals to children attending institutions, or in family or group day-care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

Notification.

“(2) The Secretary shall establish maximum per meal reimbursement rates for each of the three categories of institutions specified in subsections (c) (1), (2), and (3) of this section. Such maximum reimbursement rates for lunches and suppers shall be equal to the maximum reimbursement rates established by the Secretary for lunches served under the national school lunch program. The disbursement to any institution for meals provided under this section shall not be less, for any fiscal year, than the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rates for States for each such type of meal at that category of institution, unless the resulting sum exceeds the cost to the institution of providing such meals.

Maximum per meal reimbursement rates.

“(3) Institutions, other than family or group day care home sponsoring organizations, may elect to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price, or paid meals under section 9 of this Act. Such reimbursement shall be based on (A) the national average payment rates for lunches under section 4 of this Act; (B) the national average payment rates for free lunches and reduced-price lunches under section 11 of this Act; (C) the national average payment rates for breakfasts, free breakfasts, and reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966; and (D) the national average payment rates for supplements under subsection (c) of this section. Reimbursements to such institutions shall be made under the same procedures for determining such reimbursement levels as were prescribed by regulations in effect on September 30, 1978.

42 USC 1758.

42 USC 1773.

“(4) Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement factor in an amount determined by the Secretary to be adequate to cover the cost

Administrative
expenses,
reimbursement.

of obtaining and preparing food and prescribed labor costs, involved in providing meals under this section, without a requirement for documentation of such costs. Such institutions shall also receive reimbursement for their administrative expenses. Reimbursement for administrative expenses shall not exceed maximum allowable levels prescribed by the Secretary. Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program. Such start-up funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

Advance
payments.

"(5) By the first day of each month of operation, the State shall provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

"(g) (1) Meals served by institutions participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served free to needy children.

"(2) No institution may be prohibited from serving breakfast, lunch, supper, and supplements to any eligible child each day, except in the case of institutions that provide care to schoolchildren outside of school hours.

"(3) No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

"(4) Each institution shall, insofar as practicable, use in its food service foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

Agricultural
commodities.

"(h) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child

care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 6(e) of this Act. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

“(i) For the child care food program, the State plan required under section 11(e) of this Act shall provide, in addition to other information required by regulation or available from regular reporting:

42 USC 1759a.

“(1) the number of institutions and the number of family or group day care homes participating in the program, together with the average daily attendance in such institutions;

“(2) the number of institutions and the number of family or group day care homes in the State that are licensed, approved, or registered or that receive funds under title XX of the Social Security Act, and the number of such institutions and homes that participate in the program authorized under this section;

“(3) the action program, the State proposes to undertake to use the Federal funds provided under this section, including the State's plans to (A) extend the program to all eligible institutions (placing priority on reaching institutions in needy areas first), (B) assist family or group day care homes in obtaining sponsoring organizations, and (C) encourage eligible institutions to participate in the program;

“(4) a plan for the conduct of audits; and

“(5) a plan to monitor program performance and measure progress in achieving program goals.

“(j) The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 2 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

“(k) The Secretary may issue regulations directing States to develop and provide for the use of a standard form of agreement between each family or group day care sponsoring organization and the family or group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

Regulations.

“(l) (1) The Secretary shall study the administrative costs of institutions participating in the program under this section, including the cost effect of such factors as the types of institutions, the number of children served, and the location of institutions in urban or rural areas. The Secretary may prescribe maximum allowable levels of administrative payments that reflect the costs of institutions participating in the program.

Studies.

“(2) The Secretary shall conduct a study of the food service operations carried out in the program under this section. Such study shall include, but not be limited to (1) an evaluation of meal quality as related to costs; and (2) a determination of whether maximum reimbursement levels should be set for food service costs, including whether different reimbursement levels should be established for self-prepared meals and vendored meals, economies of scale, and differences between food service operations in institutions and family and group day care homes.

“(3) The Secretary shall conduct a study on licensing problems faced by institutions and family or group day care homes. Such study shall include, but not be limited to, an evaluation of the licensing requirements under this section.

“(4) Of the funds appropriated for the fiscal year ending September 30, 1979, to carry out the purposes of this section, not to exceed \$2,000,000 shall be available to the Secretary for the purpose of conducting the studies required under paragraphs (1), (2), and (3) of this subsection. The Secretary shall report the results of such studies to Congress, along with any recommendations the Secretary wishes to make, not later than eighteen months after enactment of the Child Nutrition Amendments of 1978.

“(m) In any State where the State is not permitted by law or is otherwise unable to disburse the funds payable to it under this section to any institution in the State, the Secretary shall withhold all funds to which such State would be entitled and shall use such funds for the same purposes and subject to the same conditions as are required of a State.

“(n) (1) Of the sums appropriated for each fiscal year to carry out the purposes of this section, \$6,000,000 shall be available to the Secretary for the purposes of providing equipment assistance to enable institutions to establish, maintain, and expand the child care food program. The Secretary shall allocate among the States during each fiscal year the funds available under this subsection. Such allocation shall be based on the ratio of the number of children below the age of six in each State who are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act to the number of such children in all States. In making such allocation, the Secretary shall use the most recent data available.

“(2) If any State cannot use all of the funds allocated to it under this subsection, the Secretary shall make reallocations to the remaining States in the manner set forth in paragraph (1) of this subsection for allocating funds. Payments to any State of funds allocated under this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this subsection shall be financed from sources within the State, except that this condition shall not apply to equipment obtained for institutions that are especially needy, as determined by the State.

“(3) Each State shall establish criteria for determining institutions that are especially needy for purposes of this subsection and shall inform all institutions within the State of those criteria. Such criteria shall be submitted to the Secretary for approval and be included in the State plan of operation for the child care food program required by subsection (i) of this section.

“(4) Within thirty days of notification by the Secretary to the State of the amount of funds available under this subsection, the State shall

Report and
recommendations
to Congress.

Equipment
assistance.

Allocation.

Criteria.

notify institutions of the availability of funds for food service equipment. The Secretary shall establish standards to assure prompt action by States on requests by institutions for such funds and shall also prescribe a priority system to be followed by States in allocating funds under this subsection.

Standards.

“(5) The Secretary shall issue regulations authorizing the State to disburse funds under this subsection directly to a supplier of food service equipment if the funds are used to purchase equipment for an institution that (A) meets all the requirements for participation under this section, except for the licensing requirements, and (B) satisfies all the requirements for licensing, except for a requirement for food service equipment. The State shall retain legal title to such equipment until the State and the institution sign an agreement authorizing the institution to participate in the program under this section.

Regulations.

“(o) States participating in the program under this section shall provide sufficient training, technical assistance, and monitoring to facilitate expansion and effective operation of the program, and shall take affirmative action to expand the availability of benefits under this section. Such action, at a minimum, shall include annual notification to each nonparticipating institution or family or group day care home within the State that is licensed, approved, or registered, or that receives funds under title XX of the Social Security Act, of the availability of the program, the requirements for program participation, the availability of food service equipment funds under the program, and the application procedures to be followed in the program. The list of institutions so notified each year shall be available to the public upon request. The Secretary shall assist the States in developing plans to fulfill the requirements of this subsection.

42 USC 1397.

“(p) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

“(q) States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

Recordkeeping.

Inspection and audit.

“(r) There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.”

Appropriation authorization.

SPECIAL SUPPLEMENTAL FOOD PROGRAM

Sec. 3. Section 17 of the Child Nutrition Act of 1966 is amended to read as follows:

“SPECIAL SUPPLEMENTAL FOOD PROGRAM

“SEC. 17. (a) 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

42 USC 1786.

authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education 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 and improve the health status of these persons.

Definitions.

“(b) As used in this section—

“(1) ‘Administrative costs’ means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program; centrifuges, measuring boards, spectrophotometers, and scales used for such certification; food delivery; monitoring; nutrition education; outreach; start-up costs; and general administration applicable to implementation of the program under this section, such as the cost of staff, warehouse facilities, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

“(2) ‘Breastfeeding women’ means women up to one year postpartum who are breastfeeding their infants.

“(3) ‘Children’ means persons who have had their first birthday but have not yet attained their fifth birthday.

“(4) ‘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.

“(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, Education, and Welfare, 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’ 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.

“(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, or (D) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, alcoholism and drug addiction.

“(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, Education, and Welfare.

“(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, 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.

“(c) (1) The Secretary may carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education 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 the food stamp program (91 Stat. 958) and to any program under which foods are distributed to needy families in lieu of food stamps.

“(2) 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 years ending September 30, 1981, and September 30, 1982—

“(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 1304 of the Food and Agriculture Act of 1977 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.

“(d) (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.

Regulations.

7 USC 612c note,
1307 note.

Program
participation.

Income
eligibility.

"(2) 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 9 of the National School Lunch Act.

42 USC 1758.
Certification.

"(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

Nutrition
education.

"(e) (1) The State agency shall ensure that nutrition 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 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. 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.

Training.

Evaluation.

"(2) The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health, Education, and Welfare for comment, issue such materials for use in the program under this section.

State operation
and
administration
plan, submittal to
Secretary of
Agriculture.

"(f) (1) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for approval by the Secretary as a prerequisite to receiving funds under this section. The plan shall include, among such other information as the Secretary may require—

"(A) a description of how the State agency will distribute administrative funds, including start-up funds, to local agencies operating under the program;

"(B) a description of the State agency's financial management system;

"(C) a description of methods used to determine nutritional risk;

"(D) a budget for administrative funds;

"(E) the staffing pattern;

"(F) nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrants and Indians;

"(G) plans to provide program benefits under this section to eligible migrants and Indians;

"(H) a list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency, and the State agency's plans to initiate or expand operations under the program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the program and the availability of technical assistance in implementing the program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage such

agencies to implement or expand operations under the program within the following year in the neediest one-third of all areas unserved or partially served;

“(I) a description of how the State agency’s delivery system will enable low-income persons to receive supplemental foods under this program, in accordance with standards developed by the Secretary;

“(J) the State agency’s plans for informing eligible persons of the program under this section in accordance with paragraph (8) of this subsection;

“(K) a description of how the State agency plans to coordinate operations under the program with special counseling services such as, but not limited to, the expanded food and nutrition education program, family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, child abuse counseling, and with the food stamp program; and

“(L) a copy of the procedure manual developed by the State agency for the program under this section.

The Secretary shall not approve any plan that permits any person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977.

“(2) 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.

“(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. 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 at all times be available 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) 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.

“(7) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the pro-

7 USC 612c note.
Hearings.

Eligible migrants.

Recordkeeping.

Notification.

Notification.

Notification.

gram 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.

"(8) 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.

Hearing.

"(9) 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.

"(10) If a person 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 person's certification of eligibility shall remain valid for the period for which the person was originally certified.

Standards.

"(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. 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 administrative funds 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.

Regulation.

"(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate. 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.

"(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns.

"(14) The State agency shall (A) provide nutrition 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.

Appropriation authorization.

"(g) There are hereby authorized to be appropriated \$550,000,000 for the fiscal year ending September 30, 1979, \$800,000,000 for the

fiscal year ending September 30, 1980, \$900,000,000 for the fiscal year ending September 30, 1981, and \$950,000,000 for the fiscal year ending September 30, 1982, for the purpose of carrying out the program authorized by this section. Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed \$3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

“(h) (1) The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency administrative costs. When reallocating funds, the Secretary may exceed the 20 percent limitation for administrative costs if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program. Not less than one-sixth of the funds expended by each State agency for administrative costs under this subsection shall be used for nutrition education activities, unless the State agency requests that it be authorized to expend a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities.

“(2) The Secretary, for each of the fiscal years 1979 through 1982, shall allocate administrative funds to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

Administrative
funds, allocation.

“(3) Each State agency shall provide, from its allocation for administrative funds, funds to local agencies for their administrative costs. Each State agency shall distribute administrative funds to local agencies under allocation standards developed by the State agency in cooperation with the several local agencies, which satisfy allocation guidelines established by the Secretary. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources. These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.

Guidelines.

“(4) The State agency shall forward in advance to local agencies those administrative funds necessary for successful commencement of program operations under this section during the three months following approval or until a program reaches its projected caseload level, whichever comes first.

“(i) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary. Each State agency's allocation, as so determined, shall constitute the State agency's authorized 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. 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. 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. 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.

Report.

“(j) By October 1 of each year, the Secretary 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.

National
Advisory Council
on Maternal,
Infant, and Fetal
Nutrition,
establishment,
membership.
7 USC 612c note,
1307 note.

“(k) (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 twenty-one 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 food program; one member shall be a person involved at the retail sales level of food in the special supplemental food program; two members shall be officials of the Department of Health, Education, and Welfare appointed by the Secretary of Health, Education, and Welfare; and two members shall be officials of the Department of Agriculture appointed by the Secretary.

Terms.

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

Study.

“(4) 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.

Report to the
President and
Congress.

“(5) 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.

Assistance.

“(6) 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.

Travel and subsistence expenses, reimbursement.

“(1) Foods available under section 416 of the Agriculture Act of 1949, including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935, 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.”

7 USC 1431.
7 USC 612c.

REDUCED-PRICE REIMBURSEMENTS

SEC. 4. The fifth sentence of section 11(a) of the National School Lunch Act is amended by striking out “10” and inserting in lieu thereof “20”, and by inserting immediately before the period at the end thereof the following: “: *Provided*, That if in any State all schools charge students a uniform price for reduced-price lunches, and such price is less than 20 cents, the special assistance factor prescribed for reduced-price lunches in such State shall be equal to the special assistance factor for free lunches reduced by either 10 cents or the price charged for reduced-price lunches in such State, whichever is greater”.

42 USC 1759a.

USING COMMODITY PRICES FOR COMMODITY INDEXES

SEC. 5. (a) Section 3 of the Child Nutrition Act of 1966 is amended by striking out “series of food away from home of the Consumer Price Index” and inserting in lieu thereof “Producer Price Index for Fresh Processed Milk” and by amending the fifth sentence thereof to read as follows: “Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) also be eligible for free milk upon their request.”

42 USC 1772.

(b) Section 6(e) of the National School Lunch Act is amended by striking out “the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.” and inserting in lieu thereof the following: “the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics’ Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year.”

42 USC 1755.

42 USC 1759a. (c) Section 11(a) of the National School Lunch Act is amended by inserting "for All Urban Consumers" after "Consumer Price Index".

42 USC 1761. (d) Section 13(b)(1) of the National School Lunch Act is amended by inserting "for All Urban Consumers" after "Consumer Price Index".

SCHOOL BREAKFAST EXPANSION PROGRAM

Combined Allocation for Breakfast and Lunch

42 USC 1760. SEC. 6. (a) (1) Section 12 of the National School Lunch Act is amended by adding at the end thereof a new subsection (h) as follows:

42 USC 1771 note. "(h) No provision of this Act or of the Child Nutrition Act of 1966 shall require any school receiving funds under this Act and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs. In no event, however, shall reimbursement to school food authorities exceed the net cost of operating both the lunch and breakfast programs, taking into account the total costs and total incomes of both programs."

Equipment Assistance

42 USC 1774. (b) Section 5 of the Child Nutrition Act of 1966 is amended by—
(1) striking out "\$40,000,000" the second time it appears in subsection (a) and inserting in lieu thereof "\$75,000,000";

(2) inserting after "schools without a food service program" in the fourth sentence of subsection (b) the following: "; schools that do not serve both breakfasts and lunches but that will use food service equipment to initiate the service of breakfasts or lunches,";

(3) amending the last sentence of subsection (b) to read as follows: "After making funds available to such schools, the Secretary shall make the remaining funds available to eligible schools that do not meet the priority criteria, for the purpose of purchasing needed replacement equipment,";

(4) striking out "without the facilities to prepare and cook hot meals or receive hot meals" the first time that phrase appears in subsection (e) and inserting in lieu thereof "that do not serve breakfasts or lunches but that plan to use food service equipment to initiate a breakfast or lunch program";

(5) striking out "without the facilities to prepare and cook hot meals or receive hot meals" all other times that phrase appears in subsection (e) and inserting in lieu thereof "moving toward the initiation of the service of breakfasts"; and

(6) striking out "33 $\frac{1}{3}$ " in subsection (e) and inserting in lieu thereof "40".

Especially Needy

42 USC 1773. (c) The first sentence of section 4(d) of the Child Nutrition Act of 1966 is amended to read as follows: "Each State educational agency shall establish eligibility standards for providing additional assistance to schools in severe need, which shall include those schools in which the service of breakfasts is required pursuant to State law and

those schools (having a breakfast program or desiring to initiate a breakfast program) in which, during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price and in which the rate per meal established by the Secretary is insufficient to cover the costs of the breakfast program.”

ALTERNATE FOODS

(d) The Secretary shall not limit or prohibit, during the school year 1978-79, the use of formulated grain-fruit products currently approved for use in the school breakfast program. The Secretary shall consult experts in child nutrition, industry representatives, and school food service personnel and school administrators (including personnel and administrators in school systems using such products) with respect to the continued use of formulated grain-fruit products in the school breakfast program, and shall also take into account the findings and recommendations in the report on this subject of the General Accounting Office. The Secretary shall not promulgate a final rule disapproving the use of such products in the school breakfast program beyond the 1978-79 school year until the Secretary has notified the appropriate committees of Congress, and such rule shall not take effect until sixty days after such notification.

42 USC 1773
note.

Notification.

STATE ADMINISTRATIVE EXPENSES

SEC. 7. (a) Section 7(a) of the Child Nutrition Act of 1966 is amended to read as follows:

“Sec. 7. (a) (1) Each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the National School Lunch Act and 3, 4, and 5 of this Act during the second preceding fiscal year. The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

42 USC 1776.

42 USC 1754,
1759a, 1766.
42 USC
1772-1774.

“(2) The Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the National School Lunch Act or under this Act, except for the programs authorized under section 13 or 17 of the National School Lunch Act or under section 17 of this Act, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the National School Lunch Act and sections 3, 4, and 5 of this Act during the second preceding fiscal year. In no case shall the grant available to any State under this subsection be less than the amount such State was allocated in the fiscal year ending September 30, 1978, or \$100,000, whichever is larger.

42 USC 1751
note.
42 USC 1761,
1766.
Ante, p. 3611.

“(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the National School Lunch Act in any fiscal year an amount, based upon

funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first \$50,000, (B) 10 percent of the next \$100,000, (C) 5 percent of the next \$250,000, and (D) 2½ percent of any remaining funds. The Secretary may adjust any State's allocation to reflect changes in the size of its program.

"(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the National School Lunch Act and this Act, except for section 17 of this Act, including, but not limited to, improved program integrity and the quality of meals served to children.

42 USC 1751
note.
Ante, p. 3611.

"(5) Funds available to States under this subsection and under section 13(k)(1) of the National School Lunch Act shall be used for the costs of administration of the programs for which the allocations are made, except that States may transfer up to 10 percent of any of the amounts allocated among such programs.

42 USC 1761.

"(6) Where the Secretary is responsible for the administration of programs under this Act or the National School Lunch Act, the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the National School Lunch Act shall be retained by the Secretary for the Secretary's use in the administration of such programs."

State Administrative Expenses for Summer Feeding

42 USC 1761.

(b) Section 13(k)(1) of the National School Lunch Act is amended to read as follows:

"(k)(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first \$50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next \$100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next \$250,000 in funds distributed to that State for the program in the preceding fiscal year, and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year."

INCOME POVERTY GUIDELINES

42 USC 1758.

SEC. 8. Section 9(b)(1) of the National School Lunch Act is amended by—

(1) amending the second sentence to read as follows: "The income poverty guidelines shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget adjusted annually under section 625 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2971d): *Provided*, That the income poverty guidelines for the period commencing July 1, 1978, shall be made as up to date as possible by multiplying the nonfarm income poverty guidelines based on the average 1977

Consumer Price Index, by the change between the average 1977 Consumer Price Index and the Consumer Price Index of March 1978, using the most current procedures of the Office of Management and Budget. The income poverty guidelines for future periods shall be similarly adjusted.”; and

(2) amending the fifth sentence to read as follows: “The income guidelines for free lunches shall be prescribed at 25 percent above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary.”.

STUDY OF MENU CHOICE

SEC. 9. The National School Lunch Act is amended by adding at the end thereof a new section 22 as follows:

“STUDY OF MENU CHOICE

“SEC. 22. As a means of diminishing waste of foods without endangering nutritional integrity of meals served, the Secretary shall conduct a study to determine the cost and feasibility of requiring schools to offer a choice of menu items within the required meal patterns. This study shall, as a minimum, include different needs and capabilities of elementary and secondary schools for such a requirement. The Secretary shall develop regulations designed to diminish such waste based on the results of this study.”. 42 USC 1769c.

MISCELLANEOUS PROVISIONS

SEC. 10. (a) Section 12 of the National School Lunch Act is amended by adding at the end thereof new subsections (f) and (g) as follows: 42 USC 1760.

“(f) In providing assistance for school breakfasts and lunches served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4 and 11 of this Act and section 4 of the Child Nutrition Act of 1966, to reflect the differences between the costs of providing lunches and breakfasts in those States and the costs of providing lunches and breakfasts in all other States. 42 USC 1754, 1759a, 42 USC 1773.

“(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.”. Penalty. 42 USC 1771 note.

(b) Section 12(d) (7) of the National School Lunch Act is amended to read as follows:

- "School year." " (7) 'School year' means the annual period from July 1 through June 30."
- 42 USC 1784. (c) Section 15(e) of the Child Nutrition Act of 1966 is amended to read as follows:
 "(e) 'School year' means the annual period from July 1 through June 30."
- 42 USC 1757. (d) (1) Section 8 of the National School Lunch Act is amended by inserting after the second sentence the following new sentence: "The terms 'child' and 'children' as used in this Act shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to be mentally or physically handicapped and who are attending any child care institution as defined in section 17 of this Act or any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for mentally or physically handicapped: *Provided*, That no institution that is not otherwise eligible to participate in the program under section 17 of this Act shall be deemed so eligible because of this sentence."
- Ante*, p. 3611. (2) Section 13(a)(1)(D)(ii) of the National School Lunch Act is amended by inserting "or nonprofit private" after "public".
- 42 USC 1761. (3) Section 15 of the Child Nutrition Act of 1966 is amended by adding at the end thereof a new subsection as follows:
 "(f) Except as used in section 17 of this Act, the terms 'child' and 'children' as used in this Act, shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to be mentally or physically handicapped and who are attending any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for mentally or physically handicapped."
- "Child" or "children."
 42 USC 1784.
Ante, p. 3611.

SCHOOL LUNCH PROGRAM PILOT PROJECTS

- 42 USC 1769. SEC. 11. Section 20 of the National School Lunch Act is amended by—
- (1) inserting before the period at the end of the first sentence of subsection (c) the following: ", except for the pilot projects conducted under subsection (d) of this section"; and
- (2) adding at the end thereof a new subsection (d) as follows:
 "(d) (1) The Secretary may conduct pilot projects in not more than fourteen school districts (or other appropriate units), of which not more than two may be located in any administrative region of the Food and Nutrition Service of the Department of Agriculture, for the purpose of determining the feasibility, cost, and other consequences of providing lunches free to all children, without regard to the income of the children's families, during the school year beginning July 1, 1979.
 (2) The Secretary shall reimburse school food authorities participating in a pilot project under this subsection for all lunches served to children on the same basis that the Secretary normally provides for lunches served to children meeting the eligibility requirements for free lunches under section 9 of this Act."
- Reimbursement.
 42 USC 1758.

“(3) The Secretary shall submit to the appropriate committees of the Senate and the House of Representatives a report on the pilot projects conducted under this subsection not later than six months after the conclusion of such projects.”

Report to congressional committees.

“(4) There are hereby authorized to be appropriated such sums as are necessary for the fiscal year beginning October 1, 1978, for the purpose of conducting an evaluation of pilot projects conducted under this subsection and for the purpose of making additional payments for lunches served to children (beyond what the school food authorities would otherwise receive under sections 4 and 11 of this Act) to school food authorities participating in pilot projects.”

Appropriation authorization.

42 USC 1754, 1759a.

PURCHASES OF SEAFOOD PRODUCTS FOR SCHOOL LUNCHES

SEC. 12. (a) Section 6(e) of the National School Lunch Act is amended by inserting in the second sentence “(which may include domestic seafood commodities and their products)” after “alternatives”.

42 USC 1755.

(b) Section 14(a) (1) of the National School Lunch Act is amended by inserting “(which may include domestic seafood commodities and their products)” after “such section”.

42 USC 1762a.

IMPLEMENTATION

SEC. 13. (a) The Secretary shall promulgate regulations to implement the provisions of section 3 of this Act within one hundred and twenty days of the date of enactment of this Act.

Regulations.
42 USC 1786 note.

(b) The 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, 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.

Ante, pp. 3603, 3611.

(c) Pending proceedings under section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 shall not be abated by reason of any provision of sections 2 and 3 of this Act, 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.

(d) Appropriations made available to carry out section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 shall be available to carry out the provisions of sections 2 and 3 of this Act.

EFFECTIVE DATE

SEC. 14. The provisions of this Act, except sections 4, 5, and 8, shall become effective October 1, 1978. The provisions of section 4 of this Act shall become effective January 1, 1979. The provisions of sections 5 and 8 of this Act shall become effective July 1, 1979, except that the

42 USC 1755 note.

Secretary may make the necessary changes in the income poverty guidelines for the special supplemental food program under section 17 of the Child Nutrition Act of 1966 not earlier than October 1, 1978, and not later than July 1, 1979.

Approved November 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1153 accompanying H.R. 12511, Pt. I (Comm. on Education and Labor) and Pt. II (Comm. on Appropriations).

SENATE REPORTS: No. 95-884 (Comm. on Agriculture, Nutrition, and Forestry) and No. 95-1020 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 124 (1978):

July 21, considered and passed Senate.

Oct. 10, H.R. 12511 considered in House.

Oct. 15, considered and passed House, amended.

Oct. 15, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 45:

Nov. 10, Presidential statement.