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Farm and Food Support Under USDA's Section 32 Program

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Summary

"Section 32" is a permanent appropriation that since 1935 has set aside the equivalent of 30% of annual customs receipts to support the farm sector through the purchase of surplus commodities and a variety of other activities. The appropriation has totaled nearly $10 billion annually in recent years. Today, most of the appropriation (about $8.4 billion) is transferred to the U.S. Department of Agriculture's (USDA's) child nutrition account, with a separate amount (about $144 million) transferred to the Department of Commerce for fisheries activities. The Secretary of Agriculture, acting through USDA's Agricultural Marketing Service (AMS), has had broad discretion in how to spend the remaining non-transferred (unobligated and carryover) money.

The program's name stems from its authorization: Section 32 of the act of August 24, 1935 (P.L.74-320, as amended; 7 U.S.C. 612c). Funds are to be used to (1) encourage the export of farm products through producer payments or other means; (2) encourage the domestic consumption of farm products by diverting surpluses from normal channels or increasing their use by low-income groups; and (3) re-establish farmers' purchasing power. In recent years, USDA has pursued primarily the second and third objectives.

The Secretary historically has chosen to use much of the non-transferred money to purchase agricultural commodities like meats, poultry, fruits, vegetables, and fish, which are not typically covered by other mandatory farm support programs. The premise for commodity purchases is that removing products from normal marketing channels helps to limit supply and thereby increase prices and farm income. Purchased commodities are diverted to the National School Lunch Program and other domestic food assistance programs. In FY2015, $465 million was designated for planned AMS commodity purchases to fulfill the commodity assistance entitlement set by the National School Lunch Act. Another $306 million was used for "emergency removals" of surplus commodities throughout the fiscal year (primarily fruits, vegetables, and meat products). The surplus commodities are distributed as "bonuses" to domestic food assistance programs.

Over time, Congress has reduced USDA's discretion to use Section 32 authority via authorizing legislation and through appropriations. Most significantly, the 2008 farm bill (P.L. 110-246) permanently capped the amount USDA is permitted to spend after transfers for use in the child nutrition programs and to the Department of Commerce for fisheries activities. It also required minimum levels of fruit, vegetable, and nut purchases to support domestic nutrition programs and required USDA to use Section 32 to fund the Fresh Fruit and Vegetable Program, which provides snacks to participating elementary schools.

Section 32 is also used less for direct farm disaster assistance than in the past. This policy shift has occurred by the authorization and funding of "permanent" disaster programs in the 2008 and 2014 farm bills, enhancements to the federal crop insurance program, and limitations by appropriators on using Section 32 for disaster payments.

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Congress created an appropriation in 1935 to assist producers of agricultural commodities that were not supported by other mandatory farm support programs. The "Section 32" account is funded by a permanent appropriation of 30% of the previous calendar year's customs receipts, nearly $10 billion in recent years. From that appropriation, the largest transfer, over $8 billion, is for the child nutrition programs that are administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service. The remainder funds a variety of activities that support both farmers and domestic food assistance programs.

The program's name stems from its authorization: Section 32 of the act of August 24, 1935 (P.L.74-320, as amended; 7 U.S.C. 612c). The law specifies three "clauses" for the use of funds:

1. Encourage export of farm products through producer payments or other means;
2. Encourage the domestic consumption of farm products by diverting surpluses from normal channels or increasing their use by low-income groups; and
3. Re-establish farmers' purchasing power by making payments to farmers.

This report describes how the Section 32 account operates by tracing funds through the account. Second, it discusses several of the ways the account is used, including historical policies.

How the Section 32 Account Operates

Figure 1 is a snapshot of the flow of funds through Section 32 for FY2015, the most recent year with final data. The permanent appropriation in FY2015 was **$9.7 billion**, equal to 30% of prior calendar-year customs receipts from duties on both agricultural and non-agricultural products.[1] This figure was reduced by:

- **$8.4 billion**, transferred to the Food and Nutrition Service (FNS) child nutrition program account to pay for nearly 40% federal child nutrition programs that were appropriated a total $21.3 billion in FY2013.[2] (The $12.9 billion difference was provided through the annual Agriculture appropriation.)
- **$144 million**, transferred to the Commerce Department for fisheries activities. This amount equals 30% of customs receipts from fish product imports.

The remaining **$1.216 billion** is the initial amount that was available to Section 32 for the purposes of a farm bill limitation that assures a certain amount of transfers to the child nutrition programs (7 U.S.C. §612c-6). After these transfers, the Section 32 balance was further reduced by:

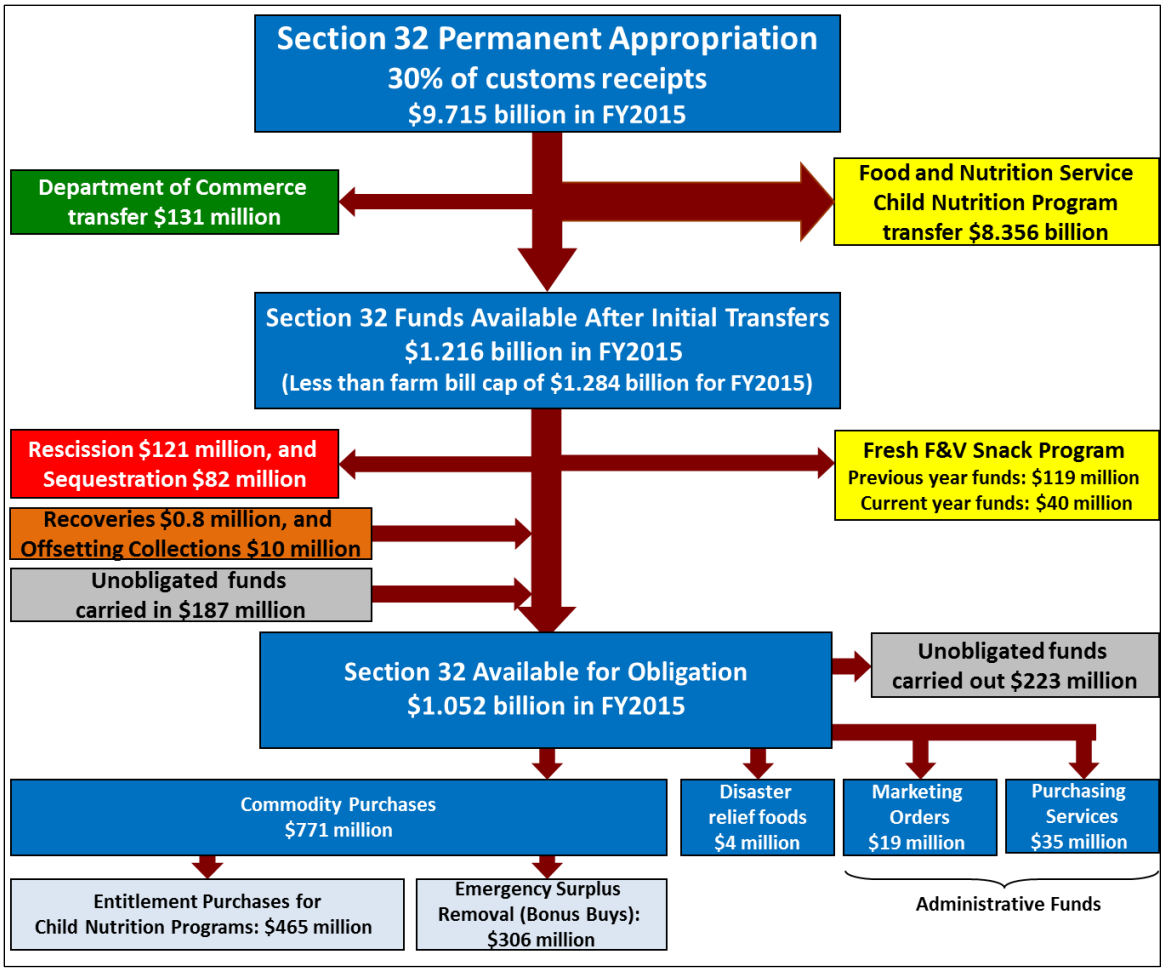
- **$40 million**, transferred to the FNS for the Fresh Fruit and Vegetable Program, plus another **$119 million** from previous-year funds.[3]
- **$121 million**, a rescission mandated in the Agriculture appropriations act that reduces money available in the program and achieves budgetary savings.
- **$82 million**, automatic sequestration pursuant to the Budget Control Act of 2011 that reduces money available in the program and achieves budgetary savings.

[1] Data for FY2015 are from USDA, *FY2017 Budget Explanatory Notes for Committee on Appropriations*, Agricultural Marketing Service, p. 70, http://www.obpa.usda.gov/21ams2017notes.pdf.

[2] USDA, Food and Nutrition Service, *FY2017 Budget Explanatory Notes for Committee on Appropriations*, p. 7, http://www.obpa.usda.gov/32fns2017notes.pdf.

[3] The mix of current and prior-year funds is the result of a scorekeeping adjustment in the appropriations act that delays the availability of funds until the beginning of the fiscal year (October 1) rather than the school year (July 1) as authorized in the farm bill.

Figure 1. Uses of Section 32 Funding in FY2015



Source: CRS, using FY2015 data from USDA, *FY2017 Budget Explanatory Notes for Committee on Appropriations,* Agricultural Market Service, pp. 70-71, http://www.obpa.usda.gov/21ams2017notes.pdf.

Additions included **$187 million** in unobligated funds that were carried into FY2015, recoveries of **$0.8 million**, and an additional **$10 million** that was committed earlier but not spent (called "offsetting collections"). The final amount available for obligation was **$1.052 billion**. From this

- **$465 million** was designated for planned AMS commodity purchases to fulfill the commodity assistance entitlement set by the National School Lunch Act (23.75 cents per meal in the 2016 school year beginning July 1, 2015).
- **$306 million** was used for contingency fund "emergency removals" of surplus commodities (primarily cranberries, tart cherries, chicken products, raisins, and canned salmon), and provided as a "bonus" to schools (over and above their "entitled" amounts) and to other designated domestic food assistance programs.
- **$4 million** went for disaster relief foods.
- **$54 million** was used for AMS administrative expenses for direct food purchasing ($35 million) and oversight of federal marketing orders ($19 million).

This spending subtotal of **$829 million** left Section 32 with a **$223 million** unobligated balance at the end of FY2015. This amount was less than the $500 million that the Section 32 statute permits to be carried into the subsequent fiscal year (7 U.S.C. §612c).

Uses of Section 32 Funds

Overview

The National School Lunch Program and other domestic food assistance programs are the primary beneficiaries of Section 32 funds.[4]

- First, much of the Section 32 permanent appropriation simply is transferred into USDA's Food and Nutrition Service (FNS) child nutrition account (approximately $8.4 billion in FY2015) to help meet the entitlement spending requirements of the National School Lunch Act (42 U.S.C. 1715 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.). This transfer is supplemented by a separate mandatory appropriation provided through the annual Agriculture appropriations act.
- Second, a smaller—but still important—amount of Section 32 funding is used to purchase commodities directly and then provide them to schools and to other domestic food assistance programs. These purchases fulfill two requirements under federal law: (1) provide commodities to the National School Lunch Program and other domestic food assistance programs; and (2) support farm prices (by buying and diverting additional "bonus" commodities to these food programs). In addition, the Secretary has chosen to provide food commodities to victims of natural disasters, among other activities.

Historically, USDA has had considerable discretionary authority to spend Section 32 funds to help the farm sector via commodity purchases, direct payments, and other activities. Over time, though, Congress has reduced the extent of this discretionary authority through new authorizing provisions and through appropriations riders: (1) the 2008 farm bill capped the amount USDA is permitted to spend after transfers for use in the child nutrition programs and to Commerce for fisheries activities,[5] (2) the farm bill set minimum levels of fruit, vegetable, and nut purchases from Section 32 to support domestic nutrition programs via the Fresh Fruit and Vegetable Program for participating elementary schools, and (3) congressional appropriators have prohibited the use of Section 32 for emergency disaster payments to farmers in each annual appropriation act since FY2012.

Commodity Purchases

Federal commodity purchases began shortly after passage of the 1935 law and continue today. Early in the program, USDA began donating its Section 32 purchases to low-income families and schools, on the premise that the donations would supplement, not displace, normal food purchases by these recipients.

In general, Section 32 pays for direct federal purchases of commodities such as meats, poultry, fruits, vegetables, and seafood that are not covered by mandatory farm programs through

[4] For an overview of the domestic food assistance programs, seeCRS CRS Report R42353, *Domestic Food Assistance: Summary of Programs*. For more details on the child nutrition programs (the primary beneficiary of Section 32 funds), see CRS Report R43783, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*.

[5] The 2008 farm bill (P.L. 110-246, §14222; 7 U.S.C. §612c-6) specifies a maximum of $1.248 billion in FY2013, $1.266 billion in FY2014, $1.284 billion in FY2015, $1.303 in FY2016, and $1.322 billion in FY2017. Subsequent amounts are adjusted for inflation.

USDA's Commodity Credit Corporation (CCC).[6] Unlike CCC support, which is normally limited to price-supported commodities (such as milk, grains and oilseeds, cotton, sugar), Section 32 is not constrained in the types of commodities that may be assisted, the levels of support, or how they may be supported (except within the three broad purposes described in statute). Such decisions are left to the Secretary of Agriculture, acting through USDA's Agricultural Marketing Service (AMS). However, in an effort to boost specialty crop purchases and limit USDA's discretion, the 2008 farm bill (P.L. 110-246) requires annual specialty crop purchases of at least $406 million under Section 32 (including $200 million required by the 2002 farm bill).

Section 32 commodity purchases are categorized as either "entitlement" or "contingency" (also known as "bonus commodities") and are made for FNS through USDA's Agricultural Marketing Service (AMS) using "post-transfer" funds.

- **Entitlement Purchases.** In planning the mandated, or entitlement, commodity purchases, USDA agencies consult with commodity organizations and devise, by early spring, a tentative purchase plan for the next school year (purchases may begin in May). The plan is based on prior year purchases, likely school needs, expectations of available funds, and any anticipated surplus or other market conditions in the coming year, among other things. AMS issues the bid specifications for purchasing the products, generally in processed form, for delivery to state drop-off points. USDA's Farm Service Agency (FSA) administers the purchase contracts and pays the vendors. For FY2015 under Section 32, AMS purchased $465 million in agricultural commodities (including farm bill specialty crop purchases), primarily to fulfill a mandate in child nutrition law. Sections 6 and 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 42 U.S.C. 1762a) "entitle" schools and other child nutrition program sponsors to commodities worth specific dollar amounts.
- **Contingency Fund Purchases of "Bonus Commodities."** Over the course of the year, USDA taps the contingency reserve for so-called emergency surplus removals, which are then distributed as "bonuses" to domestic food assistance programs. The premise is that removing products from normal marketing channels helps to limit supply and thereby increase prices. USDA may learn about these needs through its own commodity experts or be informed of surpluses or other economic problems by farm and industry organizations. Besides schools and child care centers, recipients include soup kitchens, food banks, and others serving the needy. The annual total of contingency purchases—and thus the foods provided to these outlets—has varied from a low of $54 million in FY2008 to a high of $320 million in FY2009 (**Table 1).** In FY2015, bonus purchases, including fruits, vegetables, and meat products, totaled $306 million (**Table 2**).

[6] Purchases for FNS domestic food programs are also made under CCC authority by USDA's Farm Service Agency. These include nonperishable commodities such as grain products, peanut products, dairy products (e.g., evaporated milk), and oils. U.S. Government Accountability Office, *Observations on U.S. Department of Agriculture's Food Assistance Procurement Process*, GAO-13-395R, February 5, 2013, http://www.gao.gov/assets/660/652819.pdf. A separate Dairy Product Donation Program is authorized by section 1431 of the 2014 farm bill (P.L. 113-79) for the purchase and distribution of dairy products when the milk margin (farm milk price minus feed cost) is low.

Table 1. Total Annual Contingency Purchases, FY1996-FY2015

(millions of dollars)

1996	$56.2	**2003**	$222.1	**2010**	$300.9
1997	100.9	**2004**	226.5	**2011**	60.4
1998	194.8	**2005**	149.5	**2012**	171.7
1999	144.5	**2006**	81.0	**2013**	200.0
2000	200.2	**2007**	56.9	**2014**	268.4
2001	200.2	**2008**	53.6	**2015**	306.3
2002	206.9	**2009**	319.5		

Source: USDA, *Budget Explanatory Notes for Committee on Appropriations,* Agricultural Marketing Service, various issues, http://www.obpa.usda.gov/explan_notes.html.

Table 2. Contingency Purchases, FY2015, by Commodity

(millions of dollars)

Commodity	Amount	Commodity	Amount
Cranberries	$98.6	Apple products	$18.1
Tart cherries	39.3	Grapefruit juice	10.0
Chicken products	35.8	Grape juice	9.6
Raisins	33.8	Lamb	7.6
Canned salmon	30.0	Frozen carrots	3.5
Orange juice	20.0	**Total**	**$306.3**

Source: USDA, *FY2017 Budget Explanatory Notes for Committee on Appropriations,* Agricultural Marketing Service, p. 76, http://www.obpa.usda.gov/21ams2017notes.pdf.

Farm Disaster Payments (Currently Prohibited)

Historically, USDA has had broad discretionary authority to spend Section 32 money on direct farm assistance. This type of assistance includes payments to producers, sometimes to divert production from commercial markets and usually to counter low prices. Such payments may be in exchange for destruction of a crop, or for diversion to livestock feed and/or to use as commodities for domestic feeding programs. Diversion payments were last made in FY2001 for potatoes.

Other direct payments also have been made to agricultural producers for either economic or disaster-related reasons; usually, these payments are transferred to USDA's Farm Service Agency (FSA) for disbursement. In FY1999, for example, Section 32 funded a total of $178.3 million in direct payments to smaller-sized hog producers, as part of a broader USDA effort to assist the industry during a time of historically low prices. Similar assistance continued in the 2000s as the Administration used Section 32 to pay for special disaster initiatives, including livestock drought losses in 2001-2003 and fruit trees and other specialty crop losses in 2005 caused by hurricanes.

Some producer groups and domestic food program interests had contended at the time that diverting money to these payments threatened the availability of funds needed to make bonus purchases throughout the year for fruit, vegetable, poultry, pork, and other commodity groups suffering surpluses and/or low prices. These ad hoc disaster programs led to calls for and the eventual passage of disaster programs with dedicated funding. The 2008 farm bill authorized and

funded agricultural disaster programs (for both crops and livestock) for four years. The 2014 farm bill permanently funded livestock and tree fruit disaster programs.

The development of permanent farm disaster programs and enhancements to the federal crop insurance program have reduced the pressure for funding ad hoc disaster programs through Section 32. In fact, USDA is currently prohibited from distributing emergency payments to farmers under "Section 32" authority (as well as with Commodity Credit Corporation (CCC) funds). In annual appropriations acts since FY2012 (most recently, Section 719 of FY2014 Agriculture appropriations, P.L. 113-76), Congress has prohibited the use of appropriated funds to pay for salaries and expenses needed to operate a farm disaster program under either of these two funding sources. For more information on disasters programs, see CRS Report RS21212, *Agricultural Disaster Assistance.*

Removal of Defective Commodities

To assist domestic food assistance programs, AMS budgets several million dollars annually from Section 32 funds for the removal of defective commodities, but rarely spends the full amount. The money is intended to be available in case AMS must respond quickly to remove a commodity obtained by USDA for any domestic food program that is later found to pose a health risk. For example, $50 million was spent in FY2008 for removal of defective ground beef.

Donation of Disaster Relief Foods

In many years, a portion is used to provide food commodities to victims of hurricanes and natural disasters. Section 32 funds are available each fiscal year as needed under authority of the Stafford Act. In FY2013, funded activities totaled $4 million for assistance related to Hurricane Sandy, severe weather and tornadoes in Oklahoma, and drought in the Republic of the Marshall Islands. Congress itself periodically designates other uses. For example, it provided an additional $75 million for Section 32 in a 1983 jobs law (P.L. 98-8), to purchase and distribute foods to needy families in high unemployment areas.

Administrative Expenses

A portion of Section 32 funds are used to cover two types of AMS administrative expenses. The first is the cost of food-buying operations and coordination with FNS and FSA ($35 million in FY2015). The second is for administration and oversight at the national level of federal marketing orders and agreements for milk, fruits, vegetables, and tree nuts under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. §601 et seq.), which totaled $19 million in FY2015. Program activities and administration at the local level are financed through handler assessments.

Budgetary Savings

In recent years, Agriculture appropriations acts have limited the availability of Section 32 funds to provide budgetary savings. A rescission, or cancellation of budget authority, of $121 million was imposed in FY2015. An additional amount of $82 million was sequestered, or cancelled, in FY2015 under the Budget Control Act of 2011.

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