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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 earmarked the equivalent of 30% of annual customs receipts to support the farm sector through a variety of activities. Today, most of this sizeable appropriation (totaling approximately $6 billion each year) is transferred to the U.S. Department of Agriculture's (USDA's) child nutrition account. Another portion of Section 32 is used by USDA to purchase meats, poultry, fruits, vegetables, and fish, which are diverted mainly to school lunch and other domestic food programs. Twice in recent years, the Secretary of Agriculture has drawn substantially from Section 32 to pay for special farm disaster relief. This has raised questions about how much discretion the Secretary does, or should, have in using the reserve, and whether the disaster aid has or could come at the expense of other farm and food groups that have often relied on Section 32 contingency spending for support. This report will be updated if events warrant.

What Is Section 32?

Section 32 of the Act of August 24, 1935, authorizes a permanent appropriation equal to 30% of annual U.S. customs receipts (P.L. 74-320 as amended; 7 U.S.C. 612c). This money was first available to assist Depression-era producers of non price-supported commodities. Section 32 funds, along with up to $500 million in any unobligated prior-year funds, must be used for (1) encouraging the export of farm products through producer payments or other means; (2) encouraging the domestic consumption of farm products by diverting surpluses from normal channels or increasing their use by low-income groups; and (3) reestablishing farmers' purchasing power. The Secretary of Agriculture has considerable discretion in deciding how to achieve these broad objectives.

Uses of Section 32 Funds

USDA's best-known use of Section 32 funds is direct purchases of non price-supported commodities (notably meat, poultry, fruits, vegetables, and fish). This activity began in 1938 and continues today. The Department seeks outlets for these purchases that do not disrupt private markets. Early in the program, USDA began donating its purchases to low-income families and schools, on the premise that these donations would supplement, not displace, normal food purchases by these recipients. Distribution of Section 32 commodities is credited with stimulating growth of the school lunch programs.

Today, school lunch and other domestic nutrition programs are the major users of Section 32 funds. These outlets benefit in two ways. First, much of the Section 32 permanent appropriation now simply is transferred into USDA's Food and Nutrition Service (FNS) child nutrition account, where it is supplemented by a separate direct appropriation under the annual USDA appropriation law. These commingled funds are then used to reimburse schools, child care centers, and other eligible institutions for meals served to children. These cash reimbursements are required by the separate National School Lunch Act of 1946.

Second, a smaller — but still significant — amount of Section 32 money is set aside each year to purchase non price-supported commodities directly and provide them to schools and other feeding sites. These purchases are made by USDA's Agricultural Marketing Service (AMS). The school lunch act specifies (at per-meal rates) the value of all types of commodities that must be donated to schools, and AMS-Section 32 traditionally covers about $400 million worth of these "mandated" commodities. Section 32 currently funds a number of additional programs. By law, some of the money is transferred to the Department of Commerce to support the U.S. fishing industry. Other allocations are made for USDA program administration, and for emergency commodity purchases to relieve unanticipated farm surpluses that occur throughout the fiscal year (most of these "bonus" commodities also go to domestic food programs; see below).

Fiscal Year 2004 Estimated Spending

USDA's estimated Section 32 breakout for FY2004 illustrates how the money is collected and spent.[1]

- The program's permanent appropriation was **$5.927 billion**, representing 30% of prior calendar-year customs receipts. Added to this was the unobligated Section 32 balance from the prior year of **$134 million**. Totaling the two figures, **$6.062 billion** was available for FY2004.

- **$4.67 billion** was transferred to the child nutrition program cash account. This helped pay for federal child nutrition program budget authority of about $11.4 billion in FY2004. (The difference, $6.7 billion, was funded directly through the annual, i.e, FY2004, USDA appropriation.)

- **$80 million** (30% of Customs revenue earned from fish product imports) was allocated to the Commerce Department for fisheries activities.

- After the transfers, **$1.282 billion** was available for obligation. From this:

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[1] Primary sources: USDA *2005 Budget Explanatory Notes for Committee on Appropriations*; and S.Rept. 108-340 to accompany S. 2803 (FY2005 USDA appropriation).

$400 million was set aside for planned AMS commodity purchases, to partially fill required commodity assistance mandated by Section 6(e) of the National School Lunch Act.[2]

$26 million was allocated for AMS administrative expenses for its direct food purchasing services and for oversight of federal marketing orders.

$25 million was for various other budgeted activities, including $19 million for direct payments for sheep and lamb producers, $5 million for state options contracts, and $1 million for removal of defective commodities.

- The balance, about **$831 million,** was available as a "contingency" for "emergency removals" of surplus commodities, disaster relief, or other unanticipated needs arising through the end of FY2004. By late summer 2004, AMS was estimating that **$483 million** of this reserve would be spent for emergency surplus removals through the end of FY2004.[3]

- If the above estimate was correct, an unobligated balance of **$349 million** would be carried into FY2005, and added to the $6.031 billion permanent appropriation (30% of prior-year customs receipts) for use in FY2005.

Commodity Purchases

The best known Section 32 activity is USDA's direct purchases of non price-supported commodities — those not required under separate farm legislation to be supported through Commodity Credit Corporation (CCC) price support activities. A portion of these are planned, specifically the $400 million in purchases to satisfy Section 6(e) mandated assistance under the School Lunch Act. Other purchases are of "surplus" commodities, using contingency fund balances. Both types of purchases differ from CCC price support legislation in that Section 32 does not specify which commodities must be assisted, at what levels, or how, leaving such decisions to the Secretary of Agriculture.

In planning the required commodity purchases, AMS, FNS, and other USDA agencies consult with major commodity organizations and then 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 begins to buy commodities from the food industry under an announced bidding process, repeated for animal products every two to three weeks and generally right after

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[2] This separate law requires FNS to provide commodity support — for all school lunches and child care food program lunches and dinners — at an estimated average rate of 16 cents per meal served. USDA projected total child nutrition commodity entitlements at about $842 million. To buy these commodities, $442 million was budgeted from the separate, annual child nutrition appropriation made by Congress, with Section 32 funds slated to buy the remaining $400 million.

[3] When such emergency purchases are made, the commodities are provided free of charge to schools (over and above their "entitled" amounts) and other designated nonprofit outlets.

harvest for fruits and vegetables. Although AMS does buy some fresh items, most of its purchases are of frozen and canned products or bulk commodities for further processing. AMS purchases the products to be delivered to state drop-off points, and the FSA Kansas City office administers the purchase contracts and pays the vendors.

USDA usually dips into the contingency reserve when special (emergency) purchases become necessary over the course of the year. The Department may learn about these needs through its own commodity experts or be informed of surplus or other problems by outside farm and industry organizations. These emergency purchases vary from year to year by both level and type of commodity. Moreover, schools are not the only recipients. As noted earlier, these items may also be donated to such eligible outlets as soup kitchens, camps, nursing homes, and needy families and reservations, among others.

The 2002 farm bill (P.L. 107-171, §10603) requires that not less than $200 million annually in Section 32 funds be used to buy fruits, vegetables, and other specialty crops, $50 million of it for fruits and vegetables for schools through the Defense Department Fresh Program. There has been some debate over whether the $200 million is "new" money. USDA had maintained that the Department already was spending more than this level each year, particularly when both mandatory and contingency (bonus) purchases were counted. Some lawmakers countered that language in the farm bill conference report directs that the $200 million should be in addition to such past purchases. The Senate report accompanying the pending FY2005 USDA appropriation (S.Rept. 108-340; S. 2803) reminds USDA of the instructions in the farm bill conference report.

Section 32 Commodity Purchases, FY2002 and FY2003

(million $)

Commodity	FY02	FY03	Commodity	FY02	FY03	Commodity	FY02	FY03
almonds		10.6	cranberries	16.3		potatoes	14.8	31.3
apples		0.8	eggs	15.3	2.0	raisins	23.2	21.2
apricots	7.6	13.6	mixed fruit		5.1	raspberries	1.3	0.7
asparagus	5.0	6.1	grapefruit	0.1	0.1	salsa	3.8	5.3
beans		10.4	lamb	5.0	4.6	strawberries		5.8
bison		10.0	lunchmeat	0.9		sweet potatoes	9.7	
beef	142.3	17.5	oranges	3.2	4.4	trail mix		28.2
blackberries	0.6	0.7	peaches	40.6	59.6	tomatoes	7.6	22.5
blueberries	14.2		pears	8.5	25.6	turkey	52.8	5.8
catfish	3.3	2.7	pineapple	13.4	10.4	walnuts	9.0	14.1
cherries	11.0		plums		2.8	DOD Fresh	50.0	50.0
chicken	107.1	7.8	pork/ham	16.6	32.5			

Source: Agricultural Marketing Service. Each category represents commodities and/or any foods processed from them purchased by AMS. The above figures represent both planned purchases for child nutrition entitlement commodities and surplus removals using contingency funds (see text).

Other Section 32 Uses

USDA also can, and does, use its broad discretionary authority to spend Section 32 money on activities other than surplus commodity buys. For example, in 1999 it used $54 million to make direct payments to hog producers affected by low market prices. Export subsidies and related activities also have been supported in the past. Section 32 funded a pilot food stamp program for several years in the early 1940s, paid for production and diversion payments to other producers in past years, and supported several supplemental feeding programs.

Congress itself periodically steps in to require other uses. For example, Congress appropriated $75 million for Section 32 in a 1983 jobs bill, to purchase and distribute foods to needy families in high unemployment areas. Congress earmarked $10 million for the special purchase of sunflower oil in FY1988, and $50 million for a similar program in FY1994. An emergency FY1999 appropriation (P.L. 106-31) included an extra $145 million for Section 32, to help cover the hog producer payments. One of the few longstanding constraints on USDA's use of Section 32 funds is that no more than 25% of each year's available funds can be earmarked for any one agricultural commodity (or its products). USDA indicated that it already had reached that limit for pork in 1999. However, language in P.L. 106-31 suspended the limit for 1999 only, ostensibly to enable USDA to tap more of that year's remaining contingency reserve to provide more assistance to pork producers.[4]

Special Disaster Assistance. In 2002 and again in 2004, Bush Administration officials decided to use Section 32 funds to pay for special disaster initiatives. On September 19, 2002, USDA announced a "Livestock Compensation Program" to cover 2001 and 2002 drought losses by cattle, lamb, and buffalo producers in 37 states. USDA said it would fund these payments, estimated to cost $752 million, with unobligated Section 32 funds — satisfying one Section 32 criterion, to "re-establish farmers' [i.e., livestock producers'] purchasing power." In December 2002, the Department increased the available funding to $937 million. From late FY2002 through FY2003, total Section 32 funding reached just over $1 billion, a level of Section 32 spending that appeared to be unprecedented for such a use, according to long-time observers of the program.

The announcement raised concerns among other producer groups and among domestic food program interests as to whether sufficient "unobligated" Section 32 money would be available in FY2003 and beyond. They contended that diverting some $1 billion to the disaster payments threatened the solvency of the contingency fund needed to make the many bonus purchases throughout the year for various fruit, vegetable, poultry, pork and other commodity groups suffering surpluses and/or low prices. Also, commodity recipients, especially food banks, pointed out that they rely heavily on Section 32 bonus foods (even though such foods are not entitlements) to help supplement their resources.

To both help pay for the disaster program and at the same time cover "normal" contingency fund (i.e., surplus purchasing) needs, Department officials made several

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[4] One policy question is what figure the 25% limit should be measured against. In 1999, officials indicated that it applied only to the total "available"funds, which were about $500 million after transfers. When $937 million was used in 2002 for livestock (mainly cattle) drought aid they reportedly decided the 25% could apply to the full $5.8 billion permanent appropriation.

adjustments in USDA spending accounts for FY2003. Among other things, they used only $200 million, rather than the customary $400 million, from Section 32 to make the planned AMS commodity purchases that partially fill required school lunch commodity assistance (see page 3). USDA also used "unobligated" balances in other child nutrition accounts and some money from the CCC (another agriculture account that the Administration has the authority to tap for a variety of discretionary activities) to pay for portions of the school lunch entitlement purchases. Officials also expected to draw down on unobligated FY2002 funds carried into, and otherwise available in, FY2003. Strains on the Section 32 budget were relieved somewhat when Congress approved a provision in the omnibus FY2003 appropriation (H.J.Res. 2, signed into law February 22, 2003) transferring $250 million from the CCC account to the Section 32 account "to carry out emergency surplus removal of agricultural commodities."

The Administration again turned to Section 32 in September 2004, when it announced that it would make disaster payments to producers of fruits, vegetables, and nursery crops to compensate them for hurricane losses. USDA noted that the program will cost more than $500 million. It was not immediately clear (as of late September 2004) how this would affect the Section 32 budget. Signups for the disaster payments were to begin in early FY2005, suggesting that the money would come from that year's available funds. USDA again may have to adjust its plans for spending on other Section 32 and non-Section 32 activities to cover both the disaster program and "normal" Section 32 needs. (As part of its most recent disaster request to Congress, the Administration asks for a transfer of $90 million from the CCC to Section 32.)

Conclusion

At a time when federal discretionary spending has been somewhat constrained, the Section 32 contingency fund is often viewed by farm and food groups as available, unused money. For example, lawmakers in past years proposed using Section 32 to fund the U.S. aquaculture industry and to expand food programs for disadvantaged groups. However, USDA officials and congressional appropriators had tended to protect the Section 32 contingency fund from such "nontraditional" activities, preferring that the fund be preserved for purchasing surplus commodities. In 1999, supporters of the hog industry were able to overcome such hurdles (see above) in gaining significant economic aid. Supporters of livestock producers in 2002, and now Florida crop growers in 2004, were also able draw relatively large amounts of money from Section 32.

Others continue to express concern that diverting portions of the reserve to other uses leaves less to cover surplus food purchases and other unanticipated needs that might arise during the rest of the year, which they believe is the primary Section 32 purpose. Another way to free Section 32 funds might be by transferring fewer Section 32 revenues to the child nutrition cash account. However, that would necessitate a larger annual child nutrition appropriation. Another alternative might be to shift money from traditional priorities (e.g., by buying less meat, poultry, fruits, and/or vegetables, or by changing the law to reduce the set-aside for fisheries support). Those alternatives would likely stir strong opposition. Absent further congressional guidance, the Administration will continue to have broad discretion — and the final say — in how to allocate "unobligated" Section 32 dollars.