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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 (now approximately $6.5-7 billion yearly) 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. Several times in recent years, the Secretary of Agriculture has drawn substantial amounts 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 program.

Today, school lunch and other domestic nutrition programs benefit in two ways from Section 32 funds. 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 now covers $465 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 2006 Estimated Spending

USDA's estimated Section 32 breakout for FY2006 illustrates how the money is collected and spent.[1] The program's permanent appropriation is **$6.482 billion**, representing 30% of prior calendar-year customs receipts. This figure is reduced by the following amounts:

— **$38 million**, a rescission mandated by Congress for budgetary savings.
— **$5.188 billion**, transferred to the child nutrition program cash account, to help pay for federal child nutrition programs budgeted at about $12.66 billion in FY2006. (The difference, $7.47 billion, is provided directly through the annual, i.e, FY2006, USDA appropriation.)
— **$79 million** (30% of customs revenue from fish product imports), transferred to the Commerce Department for fisheries activities.

This leaves **$1.177 billion**, to which is added **$336 million** in unobligated FY2005 money that is carried into FY2006, resulting in a total of approximately **$1.513 billion** available for obligation. From this:

- **$465 million** is designated for planned AMS commodity purchases, to partially fill required commodity assistance mandated by Section 6(e) of the National School Lunch Act. (This separate law requires FNS to provide commodity support for each meal served — in FY2006, an

[1] Primary sources: USDA *2007 Budget Explanatory Notes for Committee on Appropriations*; and S.Rept. 109-266 to accompany H.R. 5384 (FY2007 USDA appropriation).

estimated average rate of 17.8 cents for a total of $978 million in child nutrition commodity entitlements. To buy these commodities, $513 million is budgeted from the annual child nutrition account in the FY2006 USDA appropriation, with Section 32 funds buying the remaining $465 million in commodities.)

- **$650 million** is made available by USDA as direct payments mainly to compensate Florida crop producers for hurricane and disease losses.
- **$34 million** goes for disaster relief foods (e.g., for Hurricane Katrina).
- **$48 million** is allocated for AMS administrative expenses for direct food purchasing (including the expense of setting up a new web-based supply management system), and for oversight of federal marketing orders.
- **$5 million** is set aside for state options contracts to help with processed food purchases, and **$1 million** for removal of defective commodities.

The balance, about **$310 million,** is available as a "contingency" for "emergency removals" of surplus commodities, disaster relief, or other unanticipated needs arising through the end of FY2006. In early summer 2006, AMS estimated that it had already spent more than **$107 million** of this reserve, leaving nearly **$203 million** to be spent for the remainder of FY2006.[2] If any of this is unspent by September 30, the unobligated balance is to be carried into FY2007, and added to the estimated $7.029 billion permanent appropriation (30% of prior-year customs receipts).

Commodity Purchases

Overview. Section 32 pays for 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 $465 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 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.

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

Contingency Fund Purchases. Over the course of the year, USDA taps the contingency reserve for so-called emergency surplus removals. 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 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.

Table 1. Section 32 Contingency Fund Purchases, FY2003-FY2005
(million $)

Commodity	FY05	FY04	FY03	Commodity	FY05	FY04	FY03
apples	26.7		0.8	pears		2.4	6.6
apricots		8.6	13.6	pineapple	3.0	7.7	3.1
asparagus	4.5	8.0	6.1	plums		0.4	
bison			10.0	pork			30.0
black/raspberries			1.4	potatoes	21.6	9.3	10.5
catfish			2.7	poultry	3.3		
cherries		14.7		raisins			21.1
chicken	2.5			salmon	8.4	12.5	8.6
cranberries	31.4			salsa			
dates		2.4		strawberries		3.1	5.8
figs	5.6	2.7		sweet potatoes	11.5		
mixed fruit	8.0	9.5		trail mix		15.8	55.7
lamb			4.6	tomatoes		6.7	8.4
oranges/juice		50.0		turkey		9.3	0.5
peaches	23.0	36.1	32.6	walnuts		27.3	

Source: Agricultural Marketing Service. Each category represents commodities and/or any foods processed from them purchased by AMS.

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 it 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 reports accompanying the annual USDA appropriations have reminded USDA of these instructions in the farm bill conference report.

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' 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 help pay for the disaster program while covering "normal" contingency purchases, officials made several adjustments in USDA spending accounts for FY2003. Among other things, they used only $200 million, rather than the customary $400 million (now $465 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 thus 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 late 2004 (i.e., early FY2005), taking $650 million from the account to make disaster payments to producers of fruits, vegetables, and nursery crops in Florida to compensate them for hurricane and/or disease losses. In a disaster assistance package included within the FY2005 Military Construction Appropriations Act (P.L. 108-324), Congress had transferred $90 million from the CCC account to the Section 32 account to cover some of this spending.

Other Section 32 Uses

USDA also uses 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 in the early 1940s, paid for production and diversion payments to other producers in past years, and supported several supplemental feeding programs.

Congress periodically requires other uses. For example, it 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 longstanding constraint is that no more than 25% of each year's available funds can be earmarked for any one agricultural commodity (including its processed products). When USDA indicated that it had reached that limit for pork in 1999, language in P.L. 106-31 suspended the limit for 1999 only, enabling USDA to tap more of that year's remaining reserve to provide more assistance to pork producers.[3]

Conclusion

For decades, USDA officials, and appropriators, protected the Section 32 contingency fund from "nontraditional" uses, preferring that the fund be preserved for purchasing surplus commodities. Since 1999, supporters of the livestock industry and Florida crop growers have overcome these objections to draw relatively large amounts of money from the account. 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., buying less meat, poultry, fruits, and/or vegetables, or by changing the law to reduce the fisheries set-aside). Those alternatives would likely stir strong opposition.

In a 2005 assessment, the Office of Management and Budget (OMB) concluded that the program had not adequately demonstrated results due to, among other things, unclear purposes, no basic criteria for surplus commodity purchases, and lack of performance measures.[4] What OMB and other critics view as flaws, program supporters view as flexibility to address agricultural problems. Absent further congressional guidance, the Administration will continue to have broad discretion in how to allocate "unobligated" Section 32 dollars.

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[3] 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.

[4] This assessment can be accessed at [http://www.whitehouse.gov/omb/expectmore/].