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Farm and Food Support Under USDA's Section 32 Program

Geoffrey S. Becker
Specialist in Agricultural Policy
Resources, Science, and Industry Division

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. 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 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 2005 Estimated Spending

USDA's estimated Section 32 breakout for FY2005 illustrates how the money is collected and spent.¹

- The program's permanent appropriation is **\$6.052 billion**, representing 30% of prior calendar-year customs receipts. To this total, the following amount are added:
 - **\$90 million**, representing a congressionally-mandated transfer from another USDA account to partly repay Section 32 for payments sent to Florida farmers for hurricane losses (see below); and
 - **\$408 million**, representing the unobligated (unspent) Section 32 carryover from the prior year (FY2004).
- From this adjusted level (**\$6.55 billion**), Congress rescinded **\$163 million**, a budget savings provision specified in the FY2005 Consolidated Appropriations Act (P.L. 108-447).

¹ Primary sources: *USDA 2006 Budget Explanatory Notes for Committee on Appropriations*; and S.Rept. 109-92 to accompany H.R. 2744 (FY2006 USDA appropriation).

- **\$5.15 billion** was transferred to the child nutrition program cash account. This helped pay for federal child nutrition program budget authority of about \$11.8 billion in FY2005. (The difference, \$6.6 billion, was provided directly through the annual, i.e, FY2005, USDA appropriation.)
- Also **\$77.5 million** (30% of Customs revenue from fish product imports) was allocated to the Commerce Department for fisheries activities.
- This left **\$1.157 billion** available for obligation. From this:
 - \$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
 - \$422 million** was used by the Secretary of Agriculture as direct payments to agricultural producers in Florida for hurricane relief;
 - \$27 million** was allocated for AMS administrative expenses for its direct food purchasing services and for oversight of federal marketing orders;
 - \$5 million** was set aside for state options contracts, and **\$1 million** for removal of defective commodities.
- The balance, about **\$301 million**, was available as a “contingency” for “emergency removals” of surplus commodities, disaster relief, or other unanticipated needs arising through the end of FY2005. In early summer 2005, AMS estimated that it had already spent about **\$112 million** of this reserve, leaving **\$189 million** to be spent for the remainder of FY2005.³ If any of this is unspent by September 30, the unobligated balance would be carried into FY2006, and added to the estimated \$6.482 billion permanent appropriation (30% of prior-year customs receipts).

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

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 17.4 cents per meal served. USDA projected total child nutrition commodity entitlements at about \$932 million. To buy these commodities, \$532 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 to other designated nonprofit outlets.

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.

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.

Section 32 Commodity Purchases, FY2004 and FY2003 (million \$)

Commodity	FY04	FY03	Commodity	FY04	FY03	Commodity	FY04	FY03
almonds		10.6	corn	5.2		pork/ham	25.7	32.5
apples		0.8	dates	2.4		potatoes	26.2	31.3
apricots	8.6	13.6	eggs	7.1	2.0	raspberries		0.7
asparagus	8.0	6.1	figs	2.7		salmon	12.5	8.6
beans	0.7	10.4	mixed fruit	15.9	5.1	salsa	5.2	5.3
bison		10.0	grapefruit		0.1	strawberries	3.1	5.8
beef	116.2	17.5	lamb		4.6	sweet potatoes	1.7	
blackberries		0.7	oranges/juice	50.0	4.4	trail mix	15.7	28.2
carrots	1.1		peaches	47.9	59.6	tomatoes	12.0	22.5
catfish		2.7	pears	18.8	25.6	turkey	39.8	5.8
cherries	14.7		pineapple	25.4	10.4	walnuts	27.3	14.1
chicken	70.4	7.8	plums	0.4	2.8	DOD Fresh	50.0	50.0

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).

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 reports accompanying both the FY2005 and the pending FY2006 USDA appropriation remind USDA of the instructions in the farm bill conference report.

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 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). 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, 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

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.

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 while covering “normal” contingency (i.e., surplus purchase) needs, officials made several 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 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 \$422 million from the account to make disaster payments to producers of fruits, vegetables, and nursery crops in Florida to compensate them for hurricane losses. In a disaster assistance package included within the FY2005 Military Construction Appropriations Act (P.L. 108-324), Congress transferred \$90 million from the CCC account to the Section 32 account to cover some of this spending.

Conclusion

The Section 32 contingency fund has been viewed by farm and food groups as a source of “free” money. However, USDA officials and congressional appropriators had tended to protect the Section 32 contingency fund from “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 Florida crop growers in 2004, were also able 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., 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 in how to allocate “unobligated” Section 32 dollars.