

100-435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97-35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 5(d) of Pub. L. 95-627 effective July 1, 1979, and amendment by sections 7(b) and 10(d)(2) of Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-105, §13, Oct. 7, 1975, 89 Stat. 515, provided that the amendment made by that section is effective Oct. 1, 1975.

REGULATIONS

Pub. L. 101-147, title I, §102(b)(1), Nov. 10, 1989, 103 Stat. 881, provided that: “Not later than February 1, 1990, the Secretary of Agriculture shall issue regulations to implement the amendments made by paragraphs (1), (3), (4), and (5) of subsection (a) [amending this section]. Notwithstanding the provisions of section 553 of title 5, United States Code, the Secretary of Agriculture may issue such regulations without providing notice or an opportunity for public comment.”

Pub. L. 101-147, title I, §102(b)(2)(B), Nov. 10, 1989, 103 Stat. 882, provided that: “Not later than February 1, 1990, the Secretary of Agriculture shall—

“(i) issue final regulations to implement subparagraph (D)(ii) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpar. (D)(ii) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section); and

“(ii) issue final regulations under subparagraph (E) of such section.”

ALL-DAY EDUCATIONAL AND RECREATIONAL ACTIVITIES; SOURCES OF FUNDS

Pub. L. 103-448, title I, §114(h), Nov. 2, 1994, 108 Stat. 4713, directed Secretary of Agriculture, not later than 180 days after Nov. 2, 1994, in consultation with heads of other Federal agencies, to identify sources of Federal funds that might be available from other Federal agencies for service institutions under the summer food service program for children established under this section to carry out all-day educational and recreational activities for children at feeding sites under the program, and notify the service institutions of the sources.

§ 1762. Summer electronic benefits transfer for children program

(a) Program established

The Secretary shall establish a program under which States and covered Indian Tribal organizations electing to participate in such program shall, beginning with summer 2024 and annually for each summer thereafter, issue to each eligible household summer electronic benefit transfer benefits (referred to in this section as “summer EBT benefits”)—

(1) in accordance with this section; and

(2) for the purpose of providing nutrition assistance through electronic benefit transfer or methods described in clauses (ii) and (iii) of subsection (b)(2)(B) during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.

(b) Summer EBT benefits requirements

(1) Purchase options

(A) Benefits issued by states

Summer EBT benefits issued pursuant to subsection (a) by a State may only be used by the eligible household that receives such summer EBT benefits to purchase food (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) from retail food stores that have been approved for participation in the supplemental nutrition assistance program established under such Act [7 U.S.C. 2011 et seq.] and in accordance with section 7(b) of such Act (7 U.S.C. 2016(b)) or in the nutrition assistance program in American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

(B) Benefits issued by covered Indian Tribal organizations

Summer EBT benefits issued pursuant to subsection (a) by a covered Indian Tribal organization may only be used by the eligible household that receives such summer EBT benefits to purchase supplemental foods from vendors that have been approved for participation in the special supplemental nutrition program for women, infants, and children under section 1786 of this title.

(2) Amount

Summer EBT benefits issued pursuant to subsection (a)—

(A) shall be—

(i) for calendar year 2024, in an amount equal to \$40, which may be proportionately higher consistent with the adjustments established under section 1760(f) of this title for each eligible child in the eligible household per month during the summer operational period; and

(ii) for calendar year 2025 and each year thereafter, in an amount equal to the unrounded benefit amount from the prior year, adjusted to the nearest lower dollar increment to reflect changes to the cost of the diet described in section 3(u) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year and rounded to the nearest lower dollar increment; and

(B) may be issued—

(i) in the form of an EBT card;

(ii) through other electronic methods, as determined by the Secretary; or

(iii) in the case of a State that does not issue nutrition assistance program benefits electronically, using the same methods by which that State issues benefits under the nutrition assistance program of that State.

(3) Enforcement

Summer EBT benefits issued pursuant to subsection (a) shall—

(A) be subject to sections 12, 14, and 15 of the Food and Nutrition Act of 2008 (7 U.S.C. 2021, 2023, 2024) and subsections (n), (o), and (p) of section 1786 of this title, as applicable; and

(B) to the maximum extent practicable, incorporate technology tools consistent with industry standards that track or prevent theft of benefits, cloning, or other fraudulent activities.

(4) Timing

(A) In general

Except as provided in subparagraph (B), summer EBT benefits issued pursuant to subsection (a) may only be issued for the purpose of purchasing food during the summer months, with appropriate issuance and expungement timelines as determined by the Secretary (but with an expungement timeline not to exceed 4 months).

(B) Continuous school calendar

In the case of children who are under a continuous school calendar, the Secretary shall establish alternative plans for the period during which summer EBT benefits may be issued pursuant to subsection (a) and used.

(c) Enrollment in program

(1) State requirements

States that elect to participate in the program under this section shall—

(A) with respect to summer, automatically enroll each eligible child who is directly certified, is an identified student (as defined in section 1759a(a)(1)(F)(i) of this title), or is otherwise determined by a school food authority to be eligible to receive free or reduced price meals in the instructional year immediately preceding the summer or during the summer operational period in the program under this section, without further application from households;

(B) make an application available for children who do not meet the criteria described in subparagraph (A) and make eligibility determinations using the eligibility criteria for free or reduced price lunches under this chapter;

(C) establish procedures to carry out the enrollment described in subparagraph (A);

(D) establish procedures for expunging summer EBT benefits from the account of a household, consistent with the requirements under subsection (b)(4); and

(E) allow eligible households to opt out of participation in the program under this section and establish procedures for opting out of such participation.

(2) Covered Indian Tribal organization requirements

Covered Indian Tribal organizations participating in the program under this section shall, to the maximum extent practicable, meet the requirements under paragraph (1).

(d) Administrative expenses

The Secretary shall pay to each State agency and covered Indian Tribal organization an amount equal to 50 percent of the administrative expenses incurred by the State agency or covered Indian Tribal organization in operating the program under this section, including the administrative expenses of local educational

agencies and other agencies in each State or covered Indian Tribal organization relating to the operation of the program under this section.

(e) Summer EBT authority

Beginning in summer 2024, the Secretary shall not allow States to use the authority in section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80; 123 Stat. 2132), to provide access to food through electronic benefit transfer benefits to children during the summer months when schools are not in regular session.

(f) Issuance of interim final regulations

Not later than 1 year after December 29, 2022, the Secretary shall promulgate regulations (which shall include interim final regulations) to carry out this section, including provisions that—

(1) incorporate best practices and lessons learned from demonstration projects under—

(A) section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80; 123 Stat. 2132); and

(B) the pandemic EBT program under section 1101 of the Families First Coronavirus Response Act (7 U.S.C. 2011 note; Public Law 116–127);

(2) ensure timely and fair service to applicants for and recipients of benefits under this section;

(3) establish quality assurance and program integrity procedures to ensure that States and local educational agencies have adequate processes—

(A) to correctly determine the eligibility of children for benefits under this section; and

(B) to reliably enroll and issue benefits to eligible children; and

(4) allow States and covered Indian Tribal organizations to streamline program administration, including by—

(A) automatically enrolling each eligible child who is able to be directly certified; and

(B) establishing a single summer operational period.

(g) Administrative and management plan

Beginning in 2024, each State desiring to participate in the program under this section shall comply with the requirements under section 1761(n) of this title.

(h) Definitions

In this section:

(1) Covered Indian Tribal organization

The term “covered Indian Tribal organization” means an Indian Tribal organization that participates in the special supplemental nutrition program for women, infants, and children established under section 1786 of this title.

(2) Eligible child

The term “eligible child” means, with respect to a summer, a child who—

(A) was, at the end of the instructional year immediately preceding such summer or during the summer operational period—

(i) certified to receive free or reduced price lunch under the school lunch program under this chapter;

(ii) certified to receive free or reduced price breakfast under the school breakfast program under section 1773 of this title; or

(iii) able to be directly certified;

(B) was, at the end of the instructional year immediately preceding such summer—

(i) enrolled in a school described in subparagraph (B), (C), (D), (E), or (F) of section 1759a(a)(1) of this title; and

(ii)(I) an identified student (as defined in section 1759a(a)(1)(F)(i) of this title); or

(II) a child who otherwise met the requirements to receive free or reduced price meals, as determined through an application process using the eligibility criteria for free or reduced price meals under this chapter; or

(C) has been determined to be eligible for the program under this section in accordance with subsection (c)(1)(B).

(3) Eligible household

The term “eligible household” means a household that includes at least 1 eligible child.

(4) Supplemental foods

The term “supplemental foods”—

(A) means foods—

(i) containing nutrients determined by nutritional research to be lacking in the diets of children; and

(ii) that promote the health of the population served by the program under this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as determined by the Secretary; and

(B) includes foods not described in subparagraph (A) substituted by State agencies, with the approval of the Secretary, that—

(i) provide the nutritional equivalent of foods described in such subparagraph; and

(ii) allow for different cultural eating patterns than foods described in such subparagraph.

(June 4, 1946, ch. 281, §13A, as added Pub. L. 117–328, div. HH, title IV, §502(c), Dec. 29, 2022, 136 Stat. 5990.)

Editorial Notes

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsec. (b)(1)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, referred to in subsecs. (e) and (f)(1)(A), is section 749(g) of Pub. L. 111–80, Oct. 21, 2009, 123 Stat. 2132, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 1762, act June 4, 1946, ch. 281, §13A, as added Mar. 12, 1970, Pub. L. 91–207, 84 Stat. 51, related

to emergency assistance to provide nutritious meals to needy children in schools, prior to repeal by Pub. L. 101–147, title III, §308, Nov. 10, 1989, 103 Stat. 915.

Statutory Notes and Related Subsidiaries

NO DUPLICATION OF SUMMER BENEFITS

Pub. L. 117–328, div. HH, title IV, §502(e), Dec. 29, 2022, 136 Stat. 5994, provided that: “A State may not provide to a household summer EBT benefits (as described in section 13A(a) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1762(a)]) under that section and benefits under section 1101(i) of the Families First Coronavirus Response Act (7 U.S.C. 2011 note; Public Law 116–127) for the same period.”

§ 1762a. Commodity distribution program

(a) Use of funds for purchase of agricultural commodities and products for donation

Notwithstanding any other provision of law, the Secretary shall—

(1) use funds available to carry out the provisions of section 612c of title 7 which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their products), for donation to maintain the annually programmed level of assistance for programs carried on under this chapter, the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 1431 of title 7, for such donation.

(b) Nutrition quality and content information

(1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4)¹ of the Older Americans Act of 1965 or for cash payments in lieu of such donations under section 311(b)(1)¹ of such Act. There are hereby authorized to be ap-

¹ See References in Text note below.