

**§ 1772. Special program to encourage the consumption of fluid milk by children; authorization of appropriations; eligibility for special milk program; minimum rate of reimbursement; ineligibility of commodity only schools**

(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year, such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], and (B) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this chapter or the Richard B. Russell National School Lunch Act.

(3) For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as the Secretary administered the special milk program provided for by this chapter during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act shall receive the special milk program upon its request.

(6) Children who qualify for free lunches under guidelines set forth by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(10) The State educational agency shall disburse funds paid to the State during any fiscal year for purposes of carrying out the program under this section in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State. The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(b) Commodity only schools shall not be eligible to participate in the special milk program under this section. For the purposes of the preceding sentence, the term "commodity only schools" means schools that do not participate in the school lunch program under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(Pub. L. 89-642, § 3, Oct. 11, 1966, 80 Stat. 885; Pub. L. 91-295, June 30, 1970, 84 Stat. 336; Pub. L. 93-150, § 7, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93-347, § 3, July 12, 1974, 88 Stat. 341; Pub. L. 94-105, § 15(a), Oct. 7, 1975, 89 Stat. 522; Pub. L. 95-166, §§ 11, 20(1), (2), Nov. 10, 1977, 91 Stat. 1337, 1346; Pub. L. 95-627, § 5(a), Nov. 10, 1978, 92 Stat. 3619; Pub. L. 96-499, title II, § 209, Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97-35, title VIII, §§ 807, 813(c), Aug. 13, 1981, 95 Stat. 527, 530; Pub. L. 99-500, title III, § 329, Oct. 18, 1986, 100 Stat. 1783-362, and Pub. L. 99-591, title III, § 329, Oct. 30, 1986, 100 Stat. 3341-365; Pub. L. 99-661, div. D, title II, § 4209, Nov. 14, 1986, 100 Stat. 4073; Pub. L. 101-147, title II, § 211, title III, § 321, Nov. 10, 1989, 103 Stat. 911, 916; Pub. L. 104-193, title VII, § 721, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 106-78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a)(1), (2), (5) and (b), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

##### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

##### AMENDMENTS

1999—Pub. L. 106-78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act" wherever appearing.

1996—Subsec. (a)(3). Pub. L. 104-193 substituted "the Commonwealth of the Northern Mariana Islands" for "the Trust Territory of the Pacific Islands".

1989—Subsec. (a). Pub. L. 101-147, § 211(a), amended subsec. (a) as identically amended by Pub. L. 99-591, § 329, and Pub. L. 99-661, § 4209, to read as if only the

amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101-147, §321(1), substituted "the Secretary" for "he" before "may deem".

Subsec. (a)(2). Pub. L. 101-147, §321(2), struck out "(42 U.S.C. 1751 et seq.)" after "National School Lunch Act".

Subsec. (a)(4). Pub. L. 101-147, §321(3), substituted "the Secretary" for "he".

Subsec. (a)(5). Pub. L. 101-147, §321(4), substituted "its" for "their" before "request".

Subsec. (a)(10). Pub. L. 101-147, §211(b), added par. (10). 1986—Subsec. (a). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 amended subsec. (a) identically, designating existing provisions as pars. (1) and (3) to (9), in par. (1), redesignating former cls. (1) and (2) as subpars. (A) and (B) and inserting "except as provided in paragraph (2)," in subpar. (A), and adding par. (2).

1981—Subsec. (a). Pub. L. 97-35, §813(c)(1), designated existing provisions as subsec. (a).

Pub. L. 97-35, §807, inserted provisions respecting nonparticipation in a meal service program, and struck out provisions relating to rate of reimbursement per half-pint of milk served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act.

Subsec. (b). Pub. L. 97-35, §813(c)(2), added subsec. (b). 1980—Pub. L. 96-499 provided that rate of reimbursement per half-pint of milk, served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act and this chapter was to be five cents.

1978—Pub. L. 95-627 substituted "Producer Price Index for Fresh Processed Milk" for "series of food away from home of the Consumer Price Index", and inserted provision relating to eligibility for free milk.

1977—Pub. L. 95-166 provided free milk for children when milk is made available at times other than the periods of meal service in outlets that operate a food service program under sections 1753, 1766, and 1773 of this title, and substituted "school years" and "annual basis each school year" for "fiscal years" and "annual basis each fiscal year" and deleted "thereafter, beginning with the fiscal year ending June 30, 1976," before "to reflect changes".

1975—Pub. L. 94-105 added the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands to definition of "United States", and inserted provision relating to minimum rate of reimbursement to schools and institutions of the cost of milk served to children.

1974—Pub. L. 93-347 substituted "such sums as may be necessary" for " , not to exceed \$120,000,000," in provision limiting the size of appropriations authorized and inserted provisions setting a minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions and allowing for an annual adjustment of the minimum rate.

1973—Pub. L. 93-150 inserted provisions making any school or nonprofit child care institution eligible to receive the special milk program upon their request and any children that qualify for free lunches under guidelines set forth by the Secretary also eligible for free milk.

1970—Pub. L. 91-295 substituted provisions authorizing appropriations of not to exceed \$120,000,000 for fiscal year ending June 30, 1970, and for each succeeding fiscal year, for provisions authorizing appropriations of not to exceed \$110,000,000 for fiscal year ending June 30, 1967, not to exceed \$115,000,000 for fiscal year ending June 30, 1968, and not to exceed \$120,000,000 for each of two succeeding fiscal years, and provisions requiring Secretary to administer the special milk program provided for by this section in same manner as he administered the special milk program provided for by this chapter during fiscal year ending June 30, 1969, for provisions requiring the Secretary to administer such program in the same manner as he administered the spe-

cial milk program provided for by Pub. L. 85-478, as amended, during fiscal year ending June 30, 1966, and provided that Guam be subject to provisions of this section.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-661, div. D, title II, §4209, Nov. 14, 1986, 100 Stat. 4073, provided that the amendment made by that section is effective Oct. 1, 1986.

Pub. L. 99-500, title III, §329, Oct. 18, 1986, 100 Stat. 1783-362, and Pub. L. 99-591, title III, §329, Oct. 30, 1986, 100 Stat. 3341-365, provided that the amendment made by each such section is effective July 1, 1987.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 807 of Pub. L. 97-35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97-35 effective 90 days after Aug. 13, 1981, see section 820(a)(3), (5) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, §20, Nov. 10, 1977, 91 Stat. 1346, provided that the amendment made by that section is effective July 1, 1977.

### § 1773. School breakfast program

#### (a) Establishment; authorization of appropriations

There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this chapter. Appropriations and expenditures for this chapter shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.

#### (b) Breakfast assistance payments to State educational agencies; calculation; national average payments for breakfasts, free breakfasts and reduced price breakfasts; maximum price for reduced cost breakfasts; minimum daily nutrition requirements criteria; additional payments for severe need schools; maximum severe need payments

(1)(A)(i) The Secretary shall make breakfast assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in an amount equal to the product obtained by multiplying—

(I) the number of breakfasts served during such fiscal year to children in schools in such States which participate in the school breakfast program under agreements with such State educational agency; by

(II) the national average breakfast payment for free breakfasts, for reduced price breakfasts, or for breakfasts served to children not eligible for free or reduced price meals, as ap-