Commodity Purchasing/Surplus Buybacks

Overview

Every year, the U.S. government purchases billions of dollars worth of food commodities for various domestic, international, and military purposes\(^1\)—including over $1.9 billion worth of meat, poultry, fish, dairy, and eggs. A majority of U.S. government spending on food purchases comes through the U.S. Department of Agriculture (USDA), which purchases domestic foods to support agricultural markets and to supply its nutrition assistance programs, such as the National School Lunch Program. Most food purchases for nutrition assistance programs are made to meet the requirements of the programs, but a subset of the foods distributed to schools and low-income communities are “bonus” purchases—purchases made in response to market surpluses rather than to program demands. Due to USDA’s broad discretion in making bonus purchases, these purchases are the most susceptible to interest group influence and other political pressures, and also the most ripe for advocacy.

USDA Commodity Purchasing

While numerous agencies, including the departments of Defense, Justice, Labor, and Veterans Affairs, purchase food commodities, the Department of Agriculture (USDA) accounts for about 60% of all federal food purchases, worth approximately $2.2 billion per year in recent years.\(^2\) The food products purchased by USDA, known as “USDA Foods,” are distributed to schools and low-income communities through nutrition assistance programs, generally in addition to monetary supports. USDA’s commodity purchase program was first established as a part of the Agricultural Adjustment Act of 1935, a Depression-era farm bill aimed at stabilizing interstate commerce and providing financial relief to American farm workers.\(^3\)

USDA commodity purchases are largely made by USDA’s Agricultural Marketing Service (AMS) on behalf of USDA’s Food and Nutrition Service (FNS). FNS administers eight nutrition assistance programs which incorporate USDA Foods as part of the overall assistance provided, including the National School Lunch Program, the Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Emergency Food Assistance Program. Unlike providing cash supports, purchasing domestic food products for nutrition assistance programs allows USDA to simultaneously serve its dual goals of supporting American agriculture and providing food assistance.\(^4\) Namely, these purchases allow USDA to

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stabilize farm prices by removing surplus products from normal commercial channels while providing food to vulnerable people.

USDA purchases a variety of commodities, including beef, pork, fish, poultry, egg products, fruits, vegetables, grains, nuts, seeds, dairy products, and oils, for its nutrition assistance programs.\(^5\) These food purchases can broadly be categorized into “entitlement” and “bonus” purchases. Entitlement purchases are planned yearly and are determined based on the requirements of the nutrition assistance programs, but also take into account stakeholder input and anticipated surpluses or other market conditions, among other factors.\(^6\) Bonus purchases, on the other hand, are made primarily in response to market surpluses.\(^7\) In 2016, USDA’s total commodity purchases equaled $2.26 billion. The vast majority of this spending, $1.97 billion, was spent on purchasing entitlement commodities for FNS’s nutrition assistance programs, while the remaining $299 million accounted for bonus purchases.

### Entitlement Purchases

Entitlement purchases are calculated yearly to meet the commodity requirements of FNS’s nutrition assistance programs. Numerous laws relating to the nutrition assistance programs, such as the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the Child

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\(^5\) *FNS White Paper*, at 5.
\(^6\) *Id.* at 7-8.
\(^7\) *Id.*
Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), and the Food and Nutrition Act of 2008, among others, prescribe formulas for USDA to determine the dollar value of food commodities required by the nutrition assistance programs. Based on these calculations, annual appropriation acts allocate funds to FNS for its entitlement purchase requirements.

USDA's most significant food entitlement obligation comes under its Child Nutrition Program, which is comprised of the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Child and Adult Care Food Program, and the Summer Food Service Program. Section 6 of the National School Lunch Act (NSLA) establishes a guaranteed floor of federal commodity purchasing assistance, which is determined by multiplying the number of lunches served during the previous year in a given state with a designated per meal rate. In addition, the NSLA requires that at least 12% of the total assistance provided to states per the NSLA comes in the form of food commodities, rather than cash. Accordingly, the total commodity entitlement must include any dollar amount necessary to ensure that at least 12% of the total dollars spent on the school lunch program is spent on actual food purchases.

In 2016, the total commodity entitlement for the Child Nutrition Program was $1.6 billion–$720 million to satisfy the per meal commodity purchasing costs, $482 million to meet the 12% floor requirement, plus an additional $465 million entitlement from Section 32 for the National School Lunch Program. Of the total 2016 Child Nutrition Program entitlement dollars, 18% was spent on dairy purchases ($283 million), 17% on beef purchases ($259 million), 12% on chicken purchases ($195 million), 8% on turkey purchases ($130 million), 3% on pork purchases ($42 million), 1% on fish purchases ($15 million), and 1% on egg purchases ($13 million). Taken together, USDA spent more money on meat, milk, and eggs for its Child Nutrition Program than it did on all fruits, vegetables, grains, and oils combined ($936 million vs. $636 million).
Bonus Purchases

All non-entitlement purchases of food commodities by USDA constitute “bonus” purchases, also called “contingency” or “surplus” purchases. By definition, bonus commodities are not required to fulfill nutrition assistance program needs. Instead, these purchases are made in response to market surpluses, and often at the request of industry groups. For example, in 2016, USDA announced its plans to make an immediate purchase of $20 million worth of cheese at the behest of the National Farmers Union, the American Farm Bureau, and the National Milk Producers Federation. Bonus purchases are generally made using unobligated Section 32 funds, but may in the near future also be supplemented by purchases made via the Commodity Credit Corporation.

Bonus purchases are distributed to domestic food assistance programs in addition to entitlement purchases. Between 2008 and 2017, USDA spent $2.25 billion on bonus or surplus purchases. In this ten-year span, chicken made up 11% of bonus purchases ($278 million), pork made up 10% ($251 million), dairy made up 8% ($202 million), turkey made up 7% ($170 million), and fish made up 7% ($151 million). In 2012, the latest year in which bonus purchases were made, chicken made up 12% (285 million), pork made up 9% (232 million), dairy made up 8% (202 million), turkey made up 7% (170 million), and fish made up 7% (151 million).

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12 FNS White Paper, at 7-8.
15 From FY2008-FY2015, price-supported commodities, such as dairy, were purchased by the Commodity Credit Corporation through Section 416 of the Agricultural Act of 1949.
commodities were distributed to the Child Nutrition Program, 99.7% of the donated surplus was catfish purchases ($5.8 million). In 2009 and 2010, USDA distributed over $65 million worth of dairy products to schools.

Section 32

A significant source of funding for USDA food commodity purchases is “Section 32,” an account funded by a permanent appropriation of 30% of annual U.S. customs receipts. This appropriation was created by Section 32 of the Agricultural Adjustment Act of 1935 to support agricultural markets, income, and supply. In recent years, the total annual appropriation has been around $10 billion.

Every year, the bulk of the Section 32 appropriation is transferred to FNS’s child nutrition account. In 2016, $8.97 billion of the total $10.3 billion Section 32 appropriation was transferred to FNS. These transferred funds help pay for the purchase of entitlement commodities for the Child Nutrition Programs. Additionally, $465 million has been set aside from Section 32 funds in

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recent years to purchase food for the National School Lunch Program (NSLP).\(^{18}\) $415 million of entitlement funding is used to purchase non-price supported commodities for NSLP, and the Department of Defense uses the remaining $50 million to purchase fresh fruits and vegetables for NSLP on behalf of AMS.\(^{19}\)

Beyond transferred funds and the $465 million earmarked for National School Lunch Program food purchases, USDA has broad discretion regarding how to allocate Section 32 funds.\(^{20}\) Remaining Section 32 funds may be used to remove surplus commodities from the market, including those commodities which already receive other forms of government assistance, but not commodities which receive formal price supports.\(^{21}\) They may also be used to purchase commodities for disaster relief and to finance the removal of defective commodities. Although USDA has generally budgeted approximately $5 million per year for Section 32 disaster relief purchases, there are often little to no disaster relief expenditures in a given year. In 2016, USDA allocated $300,000 of Section 32 funds to food purchases for disaster relief.

Likewise, USDA has typically budgeted $2.5 million per year for removal of defective commodities, but in most years, including 2016, this allotment has gone unused. However, in one noteworthy outlier, USDA spent $49.9 million to remove over 50 million pounds of defective beef products in 2008 in connection with the Hallmark/Westland recall.\(^{22}\)

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\(^{18}\) Currently, USDA is required to allocate at least $50 million of Section 32 funds every year to purchase fresh fruits and vegetables under the Fresh Fruit and Vegetable Program. USDA is currently utilizing the Department of Defense as the procurement agent for these purchases. See **AMS 2018 Budget**, at 81.

\(^{19}\) Id.


\(^{21}\) Prior to the passage of the 2014 Farm Bill, price-supported commodities, such as dairy and grain products, were not eligible for purchase with Section 32 funds, and were instead procured through the Commodity Credit Corporation. However, currently, Section 32 funds may be used to buy both price-supported and non-price-supported foods. See Press Release, *supra* note 14.

Commodity Credit Corporation

The Commodity Credit Corporation (CCC) is a government-owned entity that exists to stabilize and support farm income and prices, assist in maintaining balanced and adequate supplies of agricultural commodities, and facilitate the distribution of acquired commodities. Section 416 of the Agricultural Act of 1949 authorizes CCC to donate commodities that are acquired under its price support activities to USDA’s nutrition assistance programs.

Although CCC is broadly charged with providing payments and loans in connection with many of USDA’s agricultural programs, and has statutory authority to remove and dispose of surplus agricultural commodities, annual appropriation acts between FY2012 and FY2017 expressly restricted CCC from engaging in discretionary surplus removal or price support activities. However, the FY2018 appropriation removed this limitation, thereby restoring CCC’s authority to make discretionary purchases for surplus removal and price support going forward.

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25 This restriction did not affect CCC’s ability to distribute bonus commodities to FNS nutrition programs pursuant to Section 416 of the Agricultural Adjustment Act of 1949. See Stubbs, supra note 24, at 9.
26 Id.