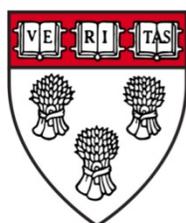


USDA FOODS IN MASSACHUSETTS SCHOOLS

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Executive Summary

The Promise of the USDA Foods Program

The **National School Lunch Program** (“NSLP”) is a federally assisted meal program intended to provide children with nutritionally balanced, low-cost or free meals throughout the school year. It serves over 100,000 schools and feeds 31 million children per school day.¹ The majority of NSLP support comes from direct cash subsidies. These cash subsidies are supplemented by the **USDA Foods Program**, which provides in-kind food donations to schools. The USDA Foods Program’s purpose is twofold: it seeks to support American farmers economically while providing low-income Americans with inexpensive food. USDA Foods products make up 15-20% of the food on school lunch plates and provide about \$1 billion in funds for NSLP annually.

Schools are provided with entitlement dollars for USDA foods based upon the number of free, reduced-price, and full-price lunches served in the previous year. In 2011-2012, Massachusetts schools were entitled to a combined \$24.5 million in USDA foods. However, school districts used only a combined 77% of the dollars they were entitled to, leaving almost \$5.6 million on the table. This report examines the challenges that prevent schools from fully realizing the benefits of the USDA Foods Program, notes areas of opportunity, and provides recommendations to improve the operation of the USDA Foods Program in Massachusetts.

How USDA Foods Operates In Massachusetts

USDA Foods Program Benefits

- USDA Foods make up about 15-20% of the food served in each school meal
- Commodities should be less expensive to schools than they would be on the commercial market
- USDA Foods are subject to more stringent safety standards
- Purchases serve to support U.S. agricultural producers

National School Lunch Program

- Feeds more than 31 million children in the U.S. every day, including 17.4 million low-income children
- Meals must meet USDA nutrition standards to qualify for reimbursements
- Provides about \$10 billion a year in cash reimbursements, including a rate of just under \$3 per free lunch served

In Massachusetts, the USDA Foods Program serves all but 9 of the state’s 400 school districts and supplements over 90 million school meals for children. The state Food Distribution Coordinator within the Department of Elementary and Secondary Education (ESE) oversees this \$24.5 million program, and most districts have a school Food Service Director who is responsible for administering USDA Foods at a local level. Ideally, these stakeholders should coordinate to utilize all of the federal dollars to which the state is entitled, freeing up state and local resources for the rest of the school lunch program. However, Food Service Directors in Massachusetts encounter barriers that prevent them from fully utilizing USDA Foods and lead them to turn away some of their USDA Foods entitlement. As a result, districts are spending some of their scarce financial resources to purchase foods in the commercial market that ideally could have been

¹ *Healthy Schools, Let’s Move!*, <http://www.letsmove.gov/healthy-schools> (last updated Feb. 10, 2012)

acquired through the USDA Foods Program.

ESE's Ordering Process

Before determining which foods will be offered in a given year, USDA surveys states to understand what foods are in high demand. It is ESE's responsibility to communicate Massachusetts' preferences to USDA. Until 2012, ESE communicated Massachusetts' preferences to USDA without formally surveying districts across the state, meaning that districts had little or no input into the foods that USDA offered as part of the program. Over the past year, ESE has taken steps to solicit feedback and participation from Food Service Directors prior to communicating state preferences to USDA, which is an exciting new development in the state.

After surveying states, USDA creates a list of foods that will be offered to states through the USDA Foods Program. ESE orders foods for the state from the USDA master list. Until 2011, ESE decided which foods to offer districts without soliciting the input of Food Service Directors. However, ESE recently reinvigorated the state USDA Foods Advisory Council, a group of Food Service Directors and other stakeholders that meet regularly to provide input to ESE. ESE also launched a survey of all participating districts in 2013 to understand what products are most in demand before placing the state order.

Brown Box Commodities

Once the school year begins, USDA delivers "brown box" commodities (foods that do not require additional processing) once a month. These deliveries are sent to four different warehouses across Massachusetts. Once the food arrives at the warehouse, ESE sends a monthly offer sheet to school districts notifying them what they are entitled to that month. Districts then choose what to order for their schools from that offer sheet, drawing down from their overall entitlement dollars. It is typical for districts to refuse some of the items offered, either because they do not have enough space to store them or because they cannot use the products. Once the districts have filled out and submitted their offer sheets, the warehouses notify the district's transportation carrier to pick up the food products and deliver them to the school districts.

USDA Foods in Massachusetts

- Massachusetts entitlement exceeds \$24 million, helping to supplement 90 million school meals served annually
- In the 2011-2012 school year, the Massachusetts utilization rate was only 77%

Direct Diversions

Because many USDA Foods items are purchased in bulk form, additional processing is often needed before the products are usable in school kitchens. Those products are known as "diversions." Diversion strategies are critical and are often instrumental in determining the bottom line in terms of school district expenses and nutritional value received by the students.

Massachusetts contracts for diversions with 45 different processors. Each winter, Massachusetts holds diversions show where the processors provide samples of their products to the school districts. Food Service Directors must then make their decisions about what percentage of each commodity they would like diverted and to which processor. Making these decisions can be challenging, as Food Service Directors do not yet know the actual availability of each commodity and have no official end price for end products. Once ESE receives school diversion survey responses, ESE releases contract bids and awards contracts to the processors based on survey data. Diverted end products are either delivered to the school districts by the processors or by a commercial distributor, and the delivery schedule generally depends on whether and when districts' orders are large enough to completely fill delivery trucks.

Challenges that Prevent Massachusetts from Fully Utilizing the USDA Foods Program

The utilization rate is the percentage of the USDA Foods entitlement dollars used by a school district or the state in a given year. Massachusetts' state-level utilization rates have varied over the past few years, with estimates ranging from 65% to 84%. For example, in 2011-2012 Massachusetts was entitled to an estimated \$24.5 million worth of USDA foods but had a 77% utilization rate, leaving about \$5.6 million on the table. Yet, at the same time, schools now have to spend more money than before to meet the new Nutrition Standards for the National School Lunch and School Breakfast Programs, which include more types and quantities of fruits and vegetables. Efficient administration and implementation of the USDA Foods Program represents a key component to assisting school districts in cost-effectively implementing these new nutrition guidelines. Some reasons for the failure of the state to capture all of its available USDA Foods entitlement include:

- *Uncertainty in the ordering process can lead to the inefficient use of already limited funds*
- *Disparities in information between districts and diversion processors often lead to inefficient allocation of funds and lack of competitive pricing.*
- *Lack of communication between ESE and Food Service Directors can lead to increased expenditures in both brown box and diverted items.*
- *Despite the potential purchasing power of Massachusetts schools in the aggregate, individual districts operate independently and remain unable to influence vendors regarding delivery prices, schedules, and end-products offered.*

ESE has recently implemented several positive reforms that promise to improve the efficiency and utility of the USDA Foods Program in Massachusetts. In addition, ESE was very responsive to preliminary recommendations made by the team preparing this report. In response to early report drafts, ESE has already begun to implement some of the report recommendations. These have all been promising reforms, and ESE is clearly on the right path. However, this report aims to help stakeholders in Massachusetts and elsewhere better understand this complex program and provide additional recommendations on program improvements that Massachusetts can undertake to improve its USDA Foods efficiency and utilization, and thus nutritional outcomes for children, as it continues down the path to reform.

Recommendations for Improving USDA Foods in Massachusetts

To address the challenges that prevent the state, school districts, and schools from utilizing USDA Foods efficiently and effectively, we recommend:

Recommendations about Ordering & Utilization

- 1. Continue to implement and improve the survey of all Massachusetts districts to inform the state-level order.** ESE should improve its brand new survey of Food Service Directors so that it is easy to understand and fill out. To that end, ESE should clearly distinguish the survey for the state-level order from the monthly survey and provide the survey in a format that is organized in a way that is easy for Food Service Directors to fill out, by sorting by either food or price. ESE should also require the Food Service Directors to commit in advance to accept the products they requested. ESE should also include the DoD-Fresh as an element of the survey, in order to assess the amount of entitlement dollars each district would like to spend in that program.
- 2. Implement Web-Based Supply Chain Management (“WBSCM”) at the District Level in Massachusetts.** In order to more accurately assess school preferences for the upcoming year,

Massachusetts should permit individual Food Service Directors to use WBSCM to place orders directly into the USDA system rather than ordering through the state agency.

- 3. Enable easier USDA Foods swapping among districts.** ESE should improve existing mechanisms to promote exchanges of food between schools that have a surplus of one food item and schools that have a shortage of that item. Optimally, ESE should implement a system whereby schools could exchange their allotment before it even reaches their local warehouse. Alternatively, ESE could expand upon the existing swapping opportunities by introducing internet tools to facilitate information sharing.

Recommendations about Direct Diversions

- 1. Utilize statewide competitive bids for processing contracts.** ESE should conduct a statewide competitive bid process to select food processors eligible for diversions and re-write the bid solicitation to include explicit competitive price terms, to ensure schools are getting the best deals.
- 2. Facilitate cooperative procurement of USDA foods processing among districts.** ESE should facilitate the formation of food procurement collaborative by hosting information and training sessions. These sessions should help schools create collaborative entities and provide information about the Commonwealth Procurement and Solicitation System (“Comm-PASS”) and BUYSMART, the free online public purchasing community available through Comm-PASS.
- 3. Allow indirect discounting (“Net-Off-Invoice” or “NOI”) for diverted products.** Massachusetts should allow FSDs to consolidate their USDA and commercial processed food orders through net-off-invoicing. This will allow districts to combine their processing orders and immediately receive the value of their USDA foods subtracted from their bill, while assisting in program efficiency overall.

In the past year ESE has begun to make significant changes to the USDA Foods program in hopes of making it more effective for school districts across the state. The push for change is a promising sign that Massachusetts is on the path to improved utilization of this federal program. We hope that the recommendations in this report will prove useful to Massachusetts as it strives to improve USDA Foods for the benefit of the state’s children.

Introduction

USDA Foods and the National School Lunch Program: Supporting Farmers while Feeding Our Children

The National School Lunch Program (“NSLP”) is a federally assisted meal program intended to provide children with nutritionally balanced, low-cost or free meals throughout the school year.² The program is a critical safety net for low-income children who rely on school meals for 50% of their daily calories.³ The NSLP is partially subsidized by commodity foods procured through the USDA Foods Program, which provides an important source of financial support for the NSLP.⁴ According to the most recent School Food Purchase Study published by the Food and Nutrition Service, USDA Foods accounted for 40 percent or more of the value of cheese, turkey, beef, and chicken acquired by school districts, and nearly one-third of the fruit.⁵ In 2011, total federal funding for the NSLP exceeded \$11 billion, with items supplied through the USDA Foods Program accounting for roughly \$1 billion of those funds.⁶ Although USDA’s commodity subsidies make up less than 10% of the funding for the NSLP, the foods themselves make up 15-20% of the food on school lunch plates, which feed more than 31 million children across the country every day.⁷ Administrative decisions made at the national, state, and local levels impact the quantity, variety, and nutritional quality of the USDA Foods included in school meals. These decisions not only impact the healthfulness of school meals, but also directly affect the amount of money school districts must set aside for the NSLP.

USDA Foods are available to schools as a result of two separate pieces of legislation, the Child Nutrition Act and the Farm Bill, which are the sources of federal funding for the NSLP.⁸ The first Child Nutrition Act was passed in 1966 as a successor to the National School Lunch Act of 1936, which originally established the NSLP.⁹ The Child Nutrition Act is reauthorized every five years and provides the regulations governing all food provided to children and youth, including foods served in schools.¹⁰ The Farm Bill is the federal government’s agricultural legislation, which is reauthorized approximately every 5-7 years,

² U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET 2 (Oct. 2011), *available at* <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>.

³ *Healthy Schools, LET’S MOVE!*, <http://www.letsmove.gov/healthy-schools> (last updated Feb. 10, 2012).

⁴ Pub. L. 396, 60 Stat. 231; see also Gordon W. Gunderson, *The National School Lunch Program Background and Development*, USDA.GOV, <http://www.fns.usda.gov/cnd/lunch/AboutLunch/ProgramHistory.htm> (last updated Nov. 30, 2011).

⁵ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, SCHOOL FOOD PURCHASE STUDY III 2 (Mar. 2012), *available at* http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/SFSP3III_Final.pdf.

⁶ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, NATIONAL SCHOOL LUNCH PROGRAM: COMMODITY COSTS, USDA.GOV (Apr. 2, 2012), [http://www.fns.usda.gov/pd/07slcomm\\$.htm](http://www.fns.usda.gov/pd/07slcomm$.htm); U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, FEDERAL COST OF SCHOOL FOOD PROGRAMS, USDA.GOV (Apr. 2, 2012), <http://www.fns.usda.gov/pd/cncosts.htm>; NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 2.

⁷ NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 1; SCHOOL FOOD FOCUS, USDA COMMODITY FOODS IN SCHOOL LUNCH 1 (Jun. 2010), *available at* <http://www.schoolfoodfocus.org/site/wp-content/uploads/2010/06/School-Food-101-USDA-Commodity-Foods-in-School-Lunch-BW-FINAL.pdf>.

⁸ The authorization to fund USDA Foods comes specifically from Section 6 of the National School Lunch Act, 42 U.S.C. A. § 1755 (2012), Section 32 of the Agricultural Act of 1935 (an amendment to the 1933 Farm Bill), 7 U.S.C. § 612c-5 (2012), and Section 416 of the Agricultural Act of 1949 (the 1949 Farm Bill), 15 U.S.C.A. § 714 (2012).

⁹ THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, LET’S MOVE! CHILD NUTRITION REAUTHORIZATION HEALTHY, HUNGER-FREE KIDS ACT OF 2010 1 (Dec. 2010), *available at* http://www.whitehouse.gov/sites/default/files/Child_Nutrition_Fact_Sheet_12_10_10.pdf.

¹⁰ *Id.*

and, among many other provisions, creates the commodity supply chain of USDA Foods flowing to schools. These two pieces of legislation establish the U.S. Department of Agriculture (“USDA”)’s authority over the NSLP.¹¹ The USDA Foods Program was originally called the Commodity Foods Program but in recent years has been renamed the USDA Foods Program. Throughout this report, the modern term “USDA Foods Program” is used more frequently, but means the same thing as the older “Commodity Foods Program.”

This discussion of USDA foods is particularly timely in light of the most recent reauthorization of the Child Nutrition Act, the “Healthy Hunger Free Kids Act of 2010” (“HHFKA”).¹² In response to the 2010 HHFKA, in January 2012, USDA issued new school nutrition guidelines, which applied to schools participating in the NSLP beginning in September 2012 and over the next few years.¹³ These new guidelines are a federal response to the growing issue of childhood obesity and its related health problems, and schools are obligated to follow them in order to receive reimbursements for meals served.¹⁴ The new guidelines require school cafeterias to increase fresh fruit and vegetable offerings, serve more whole grains, and dramatically reduce sodium levels over the course of the next decade, among other changes.¹⁵ As the market shifts to meet these new demands, school districts will likely face higher food costs, thus placing a greater strain on their ability to maximize the value of USDA Foods entitlements in order to maintain the financial sustainability of their food service departments.

The other major USDA Foods legislation, the Farm Bill, is currently under review for reauthorization this year.¹⁶ The most recent reauthorization of the Farm Bill, the “Food, Conservation, and Energy Act of 2008,” re-authorizes USDA to donate purchased food commodities to the NSLP, in continuance of the mission originally stated in Section 416 of the Agricultural Act of 1949 (the fourth edition of the Farm Bill): to prevent food waste and provide assistance to NSLP participants and other needy persons.¹⁷ As mentioned above, commodity subsidies account for over \$1 billion of federal support for the NSLP, and a large proportion of this funding is authorized through the Farm Bill.¹⁸ This report includes several recommendations for the operation of the USDA Foods Program that may be relevant to discussions regarding the upcoming Farm Bill reauthorization.

Since the initiation of the USDA Foods Program in the 1930s, government-purchased commodity foods have served the dual purpose of supporting farmers while also feeding low-income Americans. In 1946, the NSLP program was launched to confront concerns of malnutrition among U.S. military recruits. While the NSLP and other government nutrition programs and fiscal policies have made strides in addressing the daily caloric needs of our nation’s poor by making food more affordable and accessible,

¹¹ SCHOOL FOOD FOCUS, *supra* note 7 at 1.

¹² Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

¹³ U.S. DEPARTMENT OF AGRICULTURE, OFFICE OF COMMUNICATIONS, *USDA and HHS Announce New Dietary Guidelines to Help Americans Make Healthier Food Choices and Confront Obesity Epidemic*, USDA.GOV, <http://www.USDA.gov/wps/portal/USDA/USDAhome?contentidonly=true&contentid=2011/01/0040.xml> (last viewed Apr. 20, 2012).

¹⁴ THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, *supra* note 9 at 1.

¹⁵ See Appendix A for a summary of the Healthy Hunger Free Kids Act of 2010.

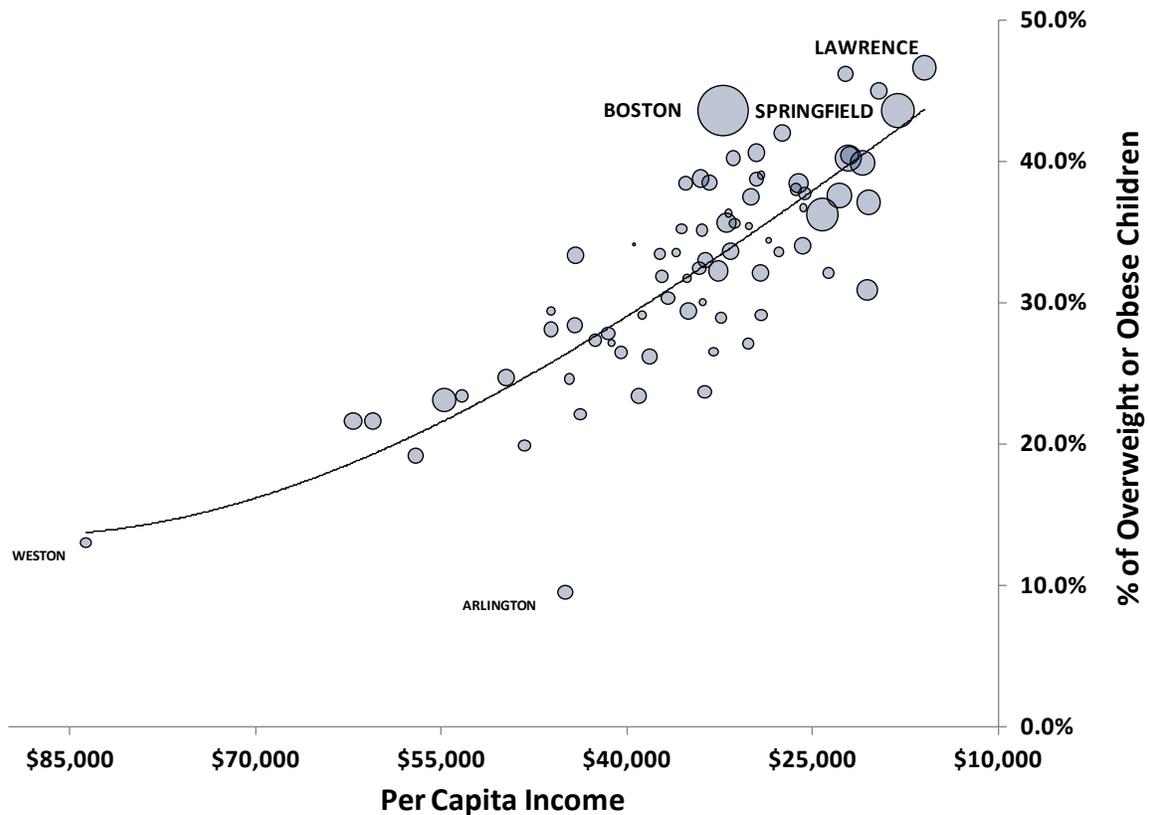
¹⁶ The Farm Bill was up for debate in 2012, but no new Farm Bill was passed in 2012, and instead the 2013 fiscal cliff legislation merely continued the 2008 Farm Bill until September 30, 2013, so the next Farm Bill reauthorization will now be debated in 2013. *Congress Includes Awful 2008 Farm Bill Extension in Fiscal Cliff Deal*, NATL SUSTAINABLE AGRIC. COAL. (Jan. 3, 2013) <http://sustainableagriculture.net/blog/farm-bill-extension-fiscal-cliff/>.

¹⁷ 7 U.S.C.A. § 612c-5 (2012); Agricultural Act of 1949, Pub. L. 81-439, 63 Stat. 1058.

¹⁸ NATIONAL SCHOOL LUNCH PROGRAM: COMMODITY COSTS, *supra* note 6; NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 2.

low-income Americans continue to struggle to access adequate amounts of *affordable healthy foods*. The result is that a growing number of low-income children now face two separate but linked nutrition crises: malnourishment and obesity. Since 1980, obesity prevalence among children and adolescents has almost tripled. As of 2011, approximately 17% (or 12.5 million) of US children and adolescents aged 2-19 years were obese.¹⁹ Obesity rates are correlated to higher rates of type 2 diabetes, cardiovascular disease, hypertension, and various types of cancer.²⁰ Malnutrition can also be a byproduct of the increased consumption of empty calories, such as soda and junk food, which have little or no nutritional value.²¹

Figure 1: Percent of Overweight or Obese Children in MA Communities v. Per Capita Income²²



NOTE: Bubble size denotes relative population size of school district

¹⁹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Overweight and Obesity Data and Statistics*, CDC.GOV, (Apr. 21, 2011) <http://www.cdc.gov/obesity/childhood/data.html>.

²⁰ Daphne Hernandez, et. al., *Study Finds National School Lunch Program Contributes to Weight Gain*, THE COLLEGE OF HEALTH AND HUMAN DEVELOPMENT (May 2011), http://www.hhdev.psu.edu/news/2011/5-6-11_school-lunch.html.

²¹ Christian Nordqvist, *American Children Consuming Too Many Empty Calories*, MEDICAL NEWS TODAY (Oct. 2010), available at <http://www.medicalnewstoday.com/articles/203276.php>.

²² Project Bread graphical representation of information from the following sources: U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY 2005-2009; National Center of Education Statistics, *Public Elementary/Secondary School Universe Survey* (2009); *The Status of Childhood Weight in Massachusetts*, *supra* note 25.

While a number of factors account for the increase in obesity rates and malnutrition, a primary cause is the wide prevalence of low-cost, calorie-dense, nutritionally-void processed foods and a lack of access to healthier, affordable foods. As a result, obesity and malnutrition rates are strongly correlated with poverty rates, and thus disproportionately impact the very population most dependent on healthy school meals. One national study of more than 40,000 children found that obesity rates increased by 10 percent for all U.S. children ages 10 to 17 year old between 2003 and 2007, but by 23 percent during the same time period for low-income children.²³ This same study also found that in 2007, children from lower income households had more than twice the odds of being obese than children from higher income households.²⁴ In Massachusetts, the statistics reflect this alarming trend (see Figure 1, below). In 2009, low-income communities such as Lawrence and Fitchburg suffered childhood obesity rates 2-3 times greater than those seen in more affluent towns like Weston and Lexington.²⁵

The HHFKA's new school nutrition guidelines are a federal response to the growing issue of childhood obesity and its related health problems. Unfortunately, providing meals that meet the new guidelines will prove difficult for many schools districts. This transition will require adeptly managing a reallocation of existing resources towards not only the purchase of higher quality foods, but also staff training and kitchen equipment that will be required to serve fresher, healthier meals that will appeal to children's palates. Efficient administration and implementation of the USDA Foods Program will be a key component to assisting school districts in cost-effectively implementing these new nutrition guidelines with meals that that children will actually eat.

The USDA Foods Program is administered at the state level by designated state Distributing Agencies ("DAs"), and the procedures used to distribute commodity foods to schools differ from state to state in terms of both process and complexity.²⁶ States have achieved varying levels of success in realizing the potential contribution of the USDA Foods Program through their varied distribution methods. Although USDA Foods are intended to offset costs and provide support for schools participating in the NSLP, many schools districts have found that the program's associated costs and administrative burdens outweigh the potential benefits, leading to low program utilization rates. Because of the program's potential to reduce the overall costs of the NSLP and free up financial resources so that schools can serve healthier, more cost-effective meals to all the students who need them, there is a compelling need to streamline the USDA Foods distribution system and enable schools to experience the full financial and nutritional benefits of this federal resource. The purpose of this report is to provide guidance to Massachusetts, and other similarly situated states, on possible ways to continue to reform its current practices and procedures to achieve these goals.

Part I of this report aims to give an overview about how the USDA Foods Program works at the federal and state levels, and outlines the key issues facing the program nationally. Part II of this report begins by describing how the USDA Foods Program is administered in Massachusetts, then evaluates the key areas for improvement in the state program. Finally, based on research and analysis of various practices from around the country, Part III proposes a set of recommendations for improvements throughout the distribution process, from the USDA to the state distributing agency to the schools themselves, as well as a few areas of recommended future research.

²³ See Gopal K. Singh, et. al., A multilevel analysis of state and regional disparities in childhood and adolescent obesity in the United States, 33 J. COMMUNITY HEALTH 90, 93 (2008).

²⁴ See *id.*

²⁵ MASSACHUSETTS DEPT. OF PUBLIC HEALTH, *The Status of Childhood Weight in Massachusetts, 2009: Preliminary Results from Body Mass Index Screening in 80 Essential School Health Districts, 2008-2009* (Sept. 2010).

²⁶ SCHOOL FOOD FOCUS, *supra* note 7 at 1.

Part I: Overview of USDA Foods Program

Background

The Federal Program

The U.S. Department of Agriculture implemented the USDA Foods Program, formerly the Commodity Foods Program, during the 1930s in response to two major problems facing the country during the Depression: underfed children and struggling farmers.²⁷ To address these issues, the federal government began to buy undervalued crops from bankrupt farmers and used the surplus to feed schoolchildren.²⁸ The initial program was a success, and after World War II, the government continued the program in part because it helped improve the physical fitness of American military recruits.²⁹ This eventually led to the passage, in 1946, of the National School Lunch Act (“NSLA”), which created the National School Lunch Program (NSLP) to provide cash reimbursements to schools in addition to in-kind commodity support.³⁰

Boston was among the first American cities to have a school meals program

A local organization, Women’s Educational and Industrial Union, began serving hot lunches to Boston’s public high schools in 1908.^a By 1910, the program had been expanded to elementary schools and was serving a total of 2,000 students.^b According to teachers, children receiving these lunches were more attentive and interested than before, and this was further supported by the improvement in their schoolwork.^b

Sources:

- (a) Marion Cronan, *The School Lunch*, Peoria, Illinois, Charles A. Bennett, Inc. (1962).
- (b) Ellen H. Richards, *Report on Boston School Committee School Meals Program*, JOURNAL OF HOME ECONOMICS (Dec. 1910).

As of 2010, the NSLP had provided food in more than 100,000 schools to over 31 million schoolchildren each day.³¹ Of these children, 17.4 million are low-income and receive either free or reduced-price meals.³² Participating schools receive cash reimbursements and commodity foods from USDA for each meal served.³³ To qualify for these subsidies, schools must serve lunches that meet USDA’s Nutrition Standards for the National School Lunch and School Breakfast Programs (which are based on the USDA Dietary Guidelines for Americans), and must offer free or reduced-price lunches to eligible students.³⁴ The basic reimbursement rate for School Year 2012-2013 was \$2.86 for each free lunch served, \$2.46 for

²⁷ FOOD RESEARCH AND ACTION CENTER, COMMODITY FOODS AND THE NUTRITIONAL QUALITY OF THE SCHOOL LUNCH PROGRAM 16 (2008).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Pub. L. 396, 60 Stat. 231; *see also* Gunderson, *supra* note 4.

³¹ NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 1.

³² FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 17.

³³ NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 1.

³⁴ *Id.* Note that breakfasts served through the National School Breakfast Program must also meet the USDA Nutrition Standards.

each reduced-price lunch, and \$0.27 per paid lunch.³⁵ In total, the NSLP provides about \$10 billion a year in cash reimbursements.³⁶

The federal government provides an additional \$1 billion of in-kind food support to schools under the USDA Foods Program.³⁷ Under this program, the USDA purchases American-grown food and provides it to NSLP-participating schools free of cost.³⁸ For the 2012-2013 school year, participating schools were eligible to receive 22.75 cents worth of in-kind commodity food for each lunch served.³⁹ This figure is known as the school's "entitlement." USDA may also provide "bonus" foods, which are offered only as they become available through agricultural surpluses. Bonus foods do not count against a school's entitlement.⁴⁰

Since its establishment, the USDA Foods Program has served a dual purpose, with ties to both agriculture and education.⁴¹ At the federal level, the USDA administers the program, determining which and how much of each food item to buy before distributing the products to the states.⁴² At the state level, the program may be implemented by a state's Department of Agriculture,⁴³ Department of Education,⁴⁴ or another state agency.⁴⁵ The state's implementing agency is known as the Distributing Agency ("DA").

Benefits

Commodity support provides certain benefits over cash subsidies spent on the open market. For example, USDA-provided foods are often less expensive to schools than their commercial market counterparts because USDA can take advantage of bulk purchases and watch the marketplace all year to purchase food at the best prices.⁴⁶ In addition, the strict federal safety and inspection requirements for

³⁵ Higher reimbursement rates are in effect for Alaska and Hawaii, and for schools with percentages of low-income students exceeding 60%. NATIONAL SCHOOL LUNCH PROGRAM FACT SHEET *supra* note 2 at 2.

³⁶ FEDERAL COST OF SCHOOL FOOD PROGRAMS, *supra* note 6.

³⁷ *Id.*; see also U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM 10 (May 2010), available at <http://www.fns.usda.gov/fdd/foods/healthy/WhitePaper.pdf>; FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 17. About half of cash reimbursements (or \$4 billion annually) is used for food; the remaining amount is used for staffing, facilities, and related purposes. Thus, when cash subsidies for personnel and operation costs are omitted, the commodity program currently makes up about one fifth of the federal resources spent on food for school lunch. See *id.* at 5.

³⁸ Note that while USDA foods are "free," there are nominal distribution and management costs incurred by districts as a result of participating in the program. Additionally, many districts opt to further process their commodities, resulting in significant costs (see "Food Processing" on page 20 of this report).

³⁹ Food Distribution Program: Value of Donated Foods From July 1, 2012 Through June 30, 2013, 77 Fed. Reg. 43232 (July 2012).

⁴⁰ CALIFORNIA FOOD POLICY ADVOCATES, THE FEDERAL CHILD NUTRITION COMMODITY PROGRAM: A REPORT ON NUTRITIONAL QUALITY 10 (Sept. 2008), available at http://cfpa.net/ChildNutrition/ChildNutrition_CFPAPublications/CommoditiesSchoolMeals-FullReport_2008.pdf.

⁴¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 16.

⁴² *Id.* at 17.

⁴³ See, e.g., *Division of Food Distribution*, KENTUCKY DEPARTMENT OF AGRICULTURE, <http://www.kyagr.com/consumer/food/index.htm> (last visited Apr. 16, 2012).

⁴⁴ The Department of Education is the most common administrator of USDA Foods at the state level. FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 17; see, e.g., *Food Distribution*, CALIFORNIA DEPARTMENT OF EDUCATION, <http://www.cde.ca.gov/ls/nu/fd/> (last visited Jan. 20, 2012); *Food Distribution Program*, MICHIGAN DEPARTMENT OF EDUCATION, <http://www.michigan.gov/mde/0,4615,7-140-43092-19567--,00.html> (last visited Jan. 20, 2012).

⁴⁵ For example, Connecticut's USDA Foods Program is run by the Department of Administrative Services. See *Connecticut Food Distribution Program*, DEPARTMENT OF ADMINISTRATIVE SERVICES, <http://das.ct.gov/cr1.aspx?page=29> (last visited Jan. 20, 2012); see also *Food Distribution Program*, USDA.ORG, <http://www.fns.usda.gov/fdd/statewebs/fdpwebs.htm> (USDA's full list of DAs).

⁴⁶ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 5.

commodity foods ensure that these foods meet safety standards that do not necessarily exist on the open market.⁴⁷ In fact, for some items, the USDA Foods Program has established more stringent standards for food safety than federal regulations for the same foods in the commercial marketplace.⁴⁸ Because USDA Foods must be produced in the United States, they may also be less susceptible to some of the food safety and food quality concerns regarding foods produced overseas. The “American Grown” requirement also helps maintain agricultural employment in the country and supports job creation, and the USDA Foods Program benefits American farmers, because USDA’s purchases protect the farming industry from market volatility. Because all meals served with federal funds through the NSLP are required to meet the USDA Nutrition Standards for the National School Lunch and School Breakfast Programs, USDA has recently improved the nutrition of its offerings, by adding wholegrain selections, and requiring that all canned fruits be packed in light syrup or water.⁴⁹

Federal Laws & Agencies

The USDA Foods Program is authorized by several federal laws: **Section 6** of the Richard B. Russell National School Lunch Act, **Section 32** of the Agricultural Act of August 24, 1935, and **Section 416** of the Agricultural Act of 1949.

Section 6 of the National School Lunch Act mandates the per-meal commodity assistance rate for schools participating in the NSLP.⁵⁰ It is the primary source of funding for entitlement purchases.⁵¹ Section 6 of the NSLA currently requires that not less than 12% of all school lunch assistance come in the form of commodities⁵² and provides appropriations for agricultural commodities to be distributed among the States in accordance with their needs.⁵³ Unlike Sections 32 and 416, Section 6 does not require direct intervention in agricultural markets. As a result, USDA has flexibility when selecting products using Section 6 funds, and can work to accommodate school preferences.⁵⁴ In Fiscal Year 2009, Section 6 provided over \$500 million in entitlement funds.⁵⁵

Section 32 of the Agricultural Act of 1935 authorizes the purchase and distribution of perishable commodities to remove surplus and stabilize farm prices.⁵⁶ Section 32 monies are divided into two funds: the 32R (“Regular”) fund for entitlement purchases, and the 32C (“Contingency”) fund for bonus purchases.⁵⁷ For 32R entitlement purchases, USDA devises a purchase plan for the upcoming school year based on prior year purchases, likely school needs, and anticipated market conditions and surplus.⁵⁸ In recent years, Section 32R has provided over \$450 million in

⁴⁷ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 10.

⁴⁸ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-376, SCHOOL MEAL PROGRAMS: MORE SYSTEMATIC DEVELOPMENT OF SPECIFICATIONS COULD IMPROVE THE SAFETY OF FOODS PURCHASED THROUGH USDA’S COMMODITY PROGRAM 8 (May 2011).

⁴⁹ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 11–12.

⁵⁰ 42 U.S.C.A. § 1755 (2012).

⁵¹ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 5.

⁵² 42 U.S.C.A. § 1755(e)(1) (2012); National Policy Memorandum from the U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Division, Determining School and Child Care Commodity Entitlements 2 (Feb. 5, 2003), *available at* http://www.fns.usda.gov/fdd/PolicyMemo/pmfd002_Sch-Entitlements.pdf.

⁵³ 42 U.S.C.A. § 1755(a) (2012).

⁵⁴ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 5.

⁵⁵ *Id.* at 8.

⁵⁶ 7 U.S.C.A. § 612c-5 (2012).

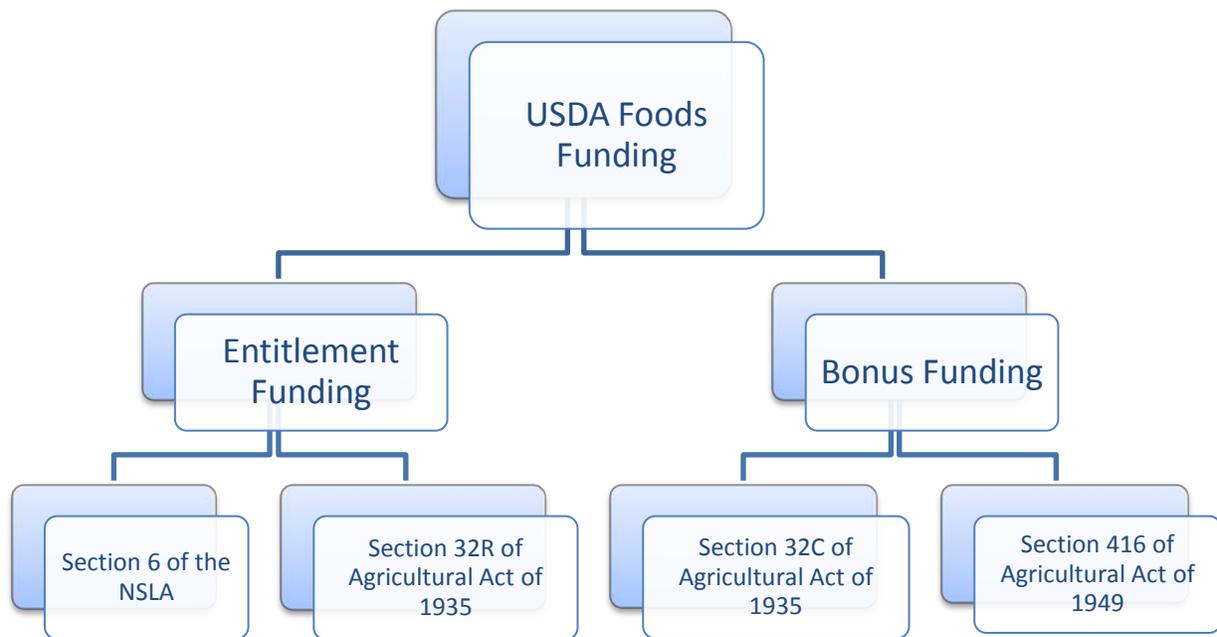
⁵⁷ 7 U.S.C.A. § 612c-5 (2012).

⁵⁸ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 5.

entitlement funds.⁵⁹ 32C bonus purchases are made as needed in the event of unanticipated surplus.⁶⁰ These purchases are made on short notice at the request of industry after USDA has determined whether market assistance is required. Because of their unpredictability, 32C bonus purchases vary widely year-to-year, and have ranged from \$11 million to \$125 million in recent years.⁶¹

Section 416 of the Agricultural Act of 1949 authorizes the purchase and distribution of non-perishable commodities for the purpose of supporting farm prices.⁶² Section 416 establishes the Commodity Credit Corporation, a semi-autonomous federal corporation, which aims to influence agricultural production and prices to support American farmers.⁶³ Under Section 416, the Corporation may donate USDA Foods that are acquired under its price support activities. Section 416 purchases are provided to schools as bonus commodities.⁶⁴ In recent years, Section 416 support has varied anywhere between \$1 million to \$52 million annually depending on the need to support prices in the marketplace.⁶⁵

Figure 2: Sources of Federal Funding for USDA Foods



At the federal level, the USDA Foods Program is primarily run by three agencies within USDA working concurrently: the **Food and Nutrition Service** (“FNS”), the **Farm Service Agency** (“FSA”), and the

⁵⁹ *Id.* at 6.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 15 U.S.C.A. § 714 (2012).

⁶³ 15 U.S.C.A. § 714 (2012).

⁶⁴ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 6.

⁶⁵ *Id.*

Agricultural Marketing Service (“AMS”).⁶⁶ While all three agencies play a role, FNS is the primary administrator of the program.⁶⁷ FNS is responsible for the regulation and administration of the USDA Foods Program, which includes calculating and tracking state entitlements, consolidating state orders, and monitoring distribution.⁶⁸ FNS then relays this information to AMS and FSA, which purchase the requested commodities from approved vendors and deliver the products to state-designated locations.⁶⁹ FNS also works with AMS and FSA to develop product specifications.⁷⁰

How It Works

Food Procurement

FNS, AMS, and FSA work together to determine the list of foods offered in the USDA Foods Program.⁷¹ This process begins a full year before the school year begins (See Figure 3, below). FNS first queries states about what foods they would like to receive and consolidates these preferences in conjunction with each state’s entitlement to roughly determine the demand. In October, AMS and FSA inform FNS of which food items they plan to buy during the coming year based on historical demand, market, and yield projections.⁷² Then, in January, FNS informs the state DAs of the kinds of items available and sends out a survey asking states to project the quantity they will need of each item.⁷³ Most states, but not all, forward this survey to individual school districts.⁷⁴ States then communicate these preferences back to FNS, which uses this information to create a plan for the year.⁷⁵ This plan will identify when products should be purchased and where they should be shipped.⁷⁶ FNS then gives this plan to AMS and FSA, and they do the actual purchasing.

In 2011, USDA offered 180 items.⁷⁷ The USDA Foods Program food items fall into two basic categories:

Group A products are perishable products that are available seasonally, such as red meat, fish, poultry, egg products, fruits, and vegetables.⁷⁸ Because they are perishable, Group A products are usually purchased as surplus removal and are generally offered to States at the time of purchase.⁷⁹ AMS is responsible for purchasing and delivering Group A foods.⁸⁰

⁶⁶ *Id.* at 16.

⁶⁷ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 22.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 9.

⁷¹ See *infra* Appendix B: USDA Foods Available for SY2012-2013 for list of products currently offered by the USDA Foods program.

⁷² See FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 26.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, STATE PROCESSING PROGRAM HANDBOOK 10 (Nov. 1999), available at <http://www.fns.usda.gov/fdd/processing/state/state-handbk.pdf>.

⁷⁶ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 26.

⁷⁷ CALIFORNIA FOOD POLICY ADVOCATES, *supra* note 40 at 9.

⁷⁸ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 22.

⁷⁹ See National Policy Memorandum from the U.S. Department of Agriculture, *supra* note 52 at 1.

⁸⁰ STATE PROCESSING PROGRAM HANDBOOK, *supra* note 75 at 17.

Group B products are nonperishable foods such as dairy products, cereals, grains, peanut products, and vegetable oil products.⁸¹ Group B products are purchased as price support rather than surplus removal. In the past, states chose the percentage of their entitlement they wanted to have applied to Group B commodities, and this remained constant for the entire school year.⁸² As USDA Foods has become more request-driven, this is no longer the case.⁸³ FSA is responsible for purchasing and delivering Group B foods.⁸⁴

Historically, a State's entitlement level has been composed of 80 to 90 percent Group A foods with the balance in Group B; this ratio varies depending on market conditions and State preferences.⁸⁵ Bonus commodities may come from either Group A or Group B.⁸⁶

For Group A Foods, FNS works with AMS to develop a purchase plan outlining how funds should be allocated among the general categories of Group A entitlement foods.⁸⁷ This plan is periodically updated during the year as market conditions change. For Group B entitlement offerings, FSA considers past state Group B orders and demand rather than creating a purchase plan with specific product allocation.⁸⁸ Product determinations are made with several factors in mind. As the USDA Foods Program is designed to serve as an agriculture support, there is a legal mandate for the Agriculture Secretary to "place an emphasis on protein and meat products,"⁸⁹ which account for about 42% of the different types of products offered in Group A and about 34.5% of the different types of food offered in Group B.⁹⁰ Because fruits and vegetables are seasonal and production yields are more difficult to predict in advance (unlike, say, meat), AMS buys mostly canned, dried, and frozen produce.⁹¹ As a result, fresh produce items only account for 10.5% of the fruits and vegetables available through USDA foods, and are limited to products with longer shelf-lives such as potatoes, apples, oranges, and pears.⁹² For this reason, USDA formed a partnership with the Department of Defense, which has a comprehensive distribution network around the nation, to allow for states to utilize some of their USDA Foods entitlement towards fresh fruits and vegetables delivered by DoD through the DoD Fresh Fruit and Vegetable Program (DoD-Fresh).⁹³ Once the purchasing plan is determined, the three agencies develop standards for each product. These product specifications include attributes such as nutrient content,

⁸¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 22; WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 4.

⁸² National Policy Memorandum from the U.S. Department of Agriculture, *supra* note 52 at 2.

⁸³ Email from Marion Browning, Food Distribution Coordinator, Mass. Dep't of Elementary and Secondary Educ., to author (Jan. 11, 2013 16:26 EST) (on file with author).

⁸⁴ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 4.

⁸⁵ STATE PROCESSING PROGRAM HANDBOOK, *supra* note 75 at 17.

⁸⁶ *Id.*

⁸⁷ *Id.* at 10.

⁸⁸ *Id.*

⁸⁹ 42 U.S.C.A. § 1755 (c)(1)(D) (2012) ("Among commodities delivered, Secretary shall give special emphasis to high protein foods, meat, and meat alternatives.")

⁹⁰ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, SY 2013 National School Lunch Foods Available List, *available at* <http://www.fns.usda.gov/fdd/foods/SY13-schfoods.pdf>. These figures are based on 2013 commodity items (not quantities) available, which show that 66 of 157 (42%) Group A foods were meat, eggs, seafood, poultry, or legumes and 30 of 87 (34.5%) of Group B products (not quantities) available were cheese or nuts.

⁹¹ GEOFFREY S. BECKER, CONG. RESEARCH SERV., RS 20235, FARM AND FOOD SUPPORT UNDER USDA'S SECTION 32 PROGRAM 3 (2006).

⁹² SY 2013 National School Lunch Foods Available List, *supra* note 90; *see infra* Appendix B: USDA Foods Available for SY2012-2013.

⁹³ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *Department of Defense Fresh Fruit and Vegetable Program*, USDA.GOV, http://www.fns.usda.gov/fdd/programs/dod/DOD_FreshFruitandVegetableProgram2011.pdf (last visited Apr. 20, 2012).

flavor, color, texture, size, weight, labeling, and inspection requirements.⁹⁴ Some examples of product specifications include fat levels in beef, and the requirement that canned fruits be packed in light syrup or water.⁹⁵

Throughout the school year, FSA and AMS issue bid specifications for the products.⁹⁶ Producers and packers submit bids that meet the specifications, quantities, delivery dates, and locations requested.⁹⁷ AMS and FSA then purchase the food and deliver it to the states, and they are sent either to warehouses to await pick up by schools or to processors for further processing into alternative end products.

Allocation

The NSLA requires USDA to provide a minimum level of commodities to each school district that participates in the NSLP.⁹⁸ Within the USDA Foods Program, school districts are known as “Recipient Agencies” or “RAs.” This minimum level of commodities is known as the RA’s “entitlement.”⁹⁹ Entitlements are determined by multiplying the estimated number of reimbursable lunches served between July 1 and June 30 of the previous year at schools participating in the NSLP by the current value of commodities assistance for each lunch (“Assistance Rate”).¹⁰⁰ This calculates the entitlement level that is guaranteed for the year and reflects the minimum value of donated foods to be offered to a school.¹⁰¹

USDA Foods Entitlement Formula

$$\text{Entitlement (\$)} = (\text{Total reimbursable lunches served in previous school year}) \times (\text{Assistance Rate})$$

The Assistance Rate is set by FNS and is adjusted annually to reflect changes in the Price Index for Food Used in Schools and Institutions, which is determined by the U.S. Bureau of Labor Statistics.¹⁰² For school year 2012-2013, the Assistance Rate was 22.75 cents.¹⁰³

USDA assigns each USDA Foods item a dollar value based on the raw commodity’s market price, preliminary food processing costs, and transportation costs.¹⁰⁴ As a Recipient Agency orders food throughout the year, the USDA dollar value of the food is subtracted from the RA’s entitlement.¹⁰⁵

⁹⁴ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 10.

⁹⁵ *Id.* at 11.

⁹⁶ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 26.

⁹⁷ *Id.*

⁹⁸ 42 U.S.C.A. § 1755(e) (2006).

⁹⁹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 22;

¹⁰⁰ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 5.

¹⁰¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 22; 7 C.F.R. § 250.3.

¹⁰² 42 U.S.C.A. § 1755(e); National Policy Memorandum from the U.S. Department of Agriculture, *supra* note 52 at 2. This value per lunch is updated annually and published in the Federal Register. *Id.* The current value per lunch for commodities is 22.25 cents. Food Distribution Program: Value of Donated Foods From July 1, 2011 Through June 30, 2012, 76 Fed. Reg. 43,256 (July 20, 2011) (to be codified at 7 C.F.R. pt. 210). To calculate the Price Index, the Bureau of Labor Statistics aggregates and averages these prices every three months. These 3-month averages are then averaged for the year to determine the value of commodities assistance per lunch. WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 5.

¹⁰³ Food Distribution Program: Value of Donated Foods From July 1, 2012 Through June 30, 2013, 77 Fed. Reg. 43232 (July 2012).

¹⁰⁴ STATE OF MAINE DEPARTMENT OF EDUCATION CHILD NUTRITION, THE USDA FOOD PROGRAM MANUAL 6 (Sept. 2009), available at http://www.maine.gov/education/sfs/handbooks/Complete_FD_%20Handbook_no_forms.pdf; WISCONSIN DEPARTMENT OF PUBLIC

In addition to the entitlement commodity offerings, as mentioned previously, USDA also provides certain “bonus commodities” which do not count against an RA’s entitlement.¹⁰⁶ These bonus commodities are offered only as they become available through agricultural surpluses, and are offered to states based upon each state’s proportional entitlement.¹⁰⁷

Schools may choose how to allocate their entitlement dollars between different types of USDA foods programs: brown box, diversion, and the Department of Defense Fresh Fruit and Vegetable Program (DoD-Fresh).¹⁰⁸ Foods offered through the “brown box” program are sent directly to warehouses while foods offered through the “diversion” program are sent to vendors to be processed into alternative end products. More information about each of these three programs is detailed in the sections below.

State Ordering Process

State Distributing Agencies (“DAs”)¹⁰⁹ decide which products to bring into the state from the master list of foods offered by USDA.¹¹⁰ States may offer all 180 products or limit the list significantly depending on their preferences.¹¹¹ Though not required, DAs often consider RA preferences when deciding which of the available foods to order for the state.¹¹² States determine their offerings with varying levels of input from individual RAs. For example, some states depend on some sort of USDA Foods Advisory Council made up of representative food service directors, in order to determine which foods to order.¹¹³ Other states survey RAs and use their preferences as guidance in their ordering process.¹¹⁴ USDA delivers food orders by the truckload, so state DAs are required to place orders by the truckload.¹¹⁵ The USDA allows trucks to make only three stops with a minimum delivery of one-quarter of the shipment at each stop. The three stops must be located either within one state or among neighboring states within the same geographic region.¹¹⁶

Once the DA determines its order from USDA, local districts order food items against their entitlement amount.¹¹⁷ The DA divides the order between the schools depending on the number of lunches they

INSTRUCTION, USDA FOOD DISTRIBUTION PROGRAM: FREQUENTLY ASKED QUESTIONS 1 (Jul. 2011), available at <http://dpi.wi.gov/fns/doc/dffaq.doc>.

¹⁰⁵ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 10.

¹⁰⁶ CALIFORNIA FOOD POLICY ADVOCATES, *supra* note 40 at 10.

¹⁰⁷ US Department of Agriculture, Food and Nutrition Service, *Schools/CN Commodity Programs Frequently Asked Questions*, USDA.GOV, http://www.fns.usda.gov/fdd/programs/schnp/schnp_faqs.htm (last visited January 20, 2012).

¹⁰⁸ Only certain school districts in Massachusetts are eligible to elect to use their entitlement dollars for the DoD-Fresh Program. Districts are required to utilize at least \$3,500 in DoD-Fresh and no more than 5% of their total entitlement dollars on the program, eliminating the possibility of participation for those schools for which \$3,500 is more than 5% of their entitlement. School districts must also be able to receive shipment of all of their DoD-Fresh order at one location and then disseminate the products to the schools that will use them. Memorandum from Marion Browning to Child Nutrition Directors, Regarding SY 12-13 Expansion of Department of Defense (DoD) Fresh Fruit and Vegetable Program – “DoD Fresh,” Oct. 4, 2012 (on file with the author); USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

¹⁰⁹ The State Distributing Agency may be the State Department of Education, Agriculture, or another state agency. *See supra*, text accompanying notes 43–45.

¹¹⁰ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 24.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Interview with Marion Browning, Food Distribution Coordinator, Massachusetts Department of Elementary and Secondary Education, in Malden, Mass. (Mar. 23, 2012).

¹¹⁶ Email correspondence with Marion Browning, *supra* note 83.

¹¹⁷ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 25.

serve and their commodity entitlement.¹¹⁸ In some states, RAs order against their entitlement using USDA’s online ordering portal, Web-Based Supply Chain Management (“WBSCM”). In this case, the state DA must still aggregate the orders to ensure that trucks are filled. However, when using WBSCM, the RAs determine how much of each item they want, rather than leaving this decision up to the state DA. RAs are also bound to utilize their WBSCM orders.

Delivery & Distribution

After the purchased food passes required food safety standards, AMS and FSA deliver the food items to the states. Once delivered, the foods are stored for further shipment by the state or another entity. USDA primarily ships food items to three types of locations: state-operated warehouses, commercial distributors, and processors.¹¹⁹ A limited number of states have state-operated storage and distribution facilities.¹²⁰ More commonly, states contract with commercial storage and distribution facilities to manage their commodity deliveries.¹²¹ Because of the limited number of deliveries per year, schools must make selections with timing in mind. For example, they must consider how long they can store a given item when they make their order.

While states are reimbursed for some of their operating expenses under the NSLP State Administrative Expense formula, states do not receive reimbursements for storage and distribution costs under the USDA Foods Program.¹²² Instead, these costs fall to the state.¹²³ In most cases, the school districts themselves are ultimately responsible for these costs because many states charge a handling fee to schools to offset some or all of the distribution costs at the state level.¹²⁴ Depending on the state’s distribution system, this fee may cover the costs of running state warehouses, the cost of a contracted private warehouse, or any state-provided delivery services. This fee only covers the state’s services, and thus is imposed in addition to any storage, delivery, and processing costs borne by school districts separate from the state distribution system.¹²⁵

¹¹⁸ Interview with Marion Browning, *supra* note 115.

¹¹⁹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 31.

¹²⁰ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 11. For example, California has two state-operated storage facilities for USDA Foods. See *Distribution Centers*, CALIFORNIA DEPARTMENT OF EDUCATION, <http://www.cde.ca.gov/ls/nu/fd/dist.asp> (last visited April 16, 2012).

¹²¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 28.

¹²² *Id.* at 31-32.

¹²³ *Id.* at 31.

¹²⁴ *Id.*

¹²⁵ *Id.* at 32.

Figure 3: The USDA Foods Procurement Process



Food Processing

Many commodity foods are offered in bulk form (e.g., a 100 lb bag of flour) and must go through additional processing into end products before they are usable by schools. More than 70 kinds of commodity foods are commonly diverted for further processing before they are delivered to RAs.¹²⁶ The products that go through this process are known as “diversions,” while the items that do not get diverted for processing are known as “brown box” commodities. For school year 2009-2010, diversions made up over 40 percent of the total USDA Foods Program food items distributed nationwide.¹²⁷ This is of critical financial and nutritional importance, because decisions made surrounding diverted products directly impact district operating costs as well as the nutritional quality of the food that ends up on students’ plates.

Commodity	Processed Commodity
Pork	Sausage Patties, Crumbles, Meatballs
Frozen Fruit	Popsicles, Turnovers
Chicken	Nuggets, Patties, Roasted Pieces

To obtain processed commodity foods, districts usually elect to send their orders directly to industry processors through a process called “direct diversions.” For direct diversions, USDA delivers states’/school districts’ orders to their selected processors, which then convert the bulk food orders into processed end-products chosen by the school districts. Direct diversions can be particularly beneficial to RAs whose schools lack full kitchens, because they allow them to utilize items that they might not be able to use in unprocessed form.¹²⁹ Processing can also reduce labor costs and cash outlays for food preparation, because the schools must only reheat rather than cook these items. At the same time, many processed commodity products, while subject to rigorous inspection requirements,¹³⁰ are by definition less fresh and tend to have added salt and preservatives that can significantly raise their sodium levels.

Historically, the processing portion of USDA Foods was left up to the states to manage.¹³¹ However, when a private USDA Foods processor operates in more than one state, the processor is required to use a National Processing Agreement (“NPA”).¹³² An NPA is a permanent agreement between USDA and that individual processor. For NPAs, FNS takes over the management of processing agreements, which

¹²⁶ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING 4 (June 2007), available at <http://www.fns.usda.gov/fdd/processing/pfs-processing.pdf>.

¹²⁷ SCHOOL FOOD PURCHASE STUDY—III, *supra* note 5 at 119 (diverted donated foods made up 42% of total value of donated foods in SY2009/10).

¹²⁸ CALIFORNIA FOOD POLICY ADVOCATES, *supra* note 40 at 10.

¹²⁹ FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 1; Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

¹³⁰ 7 C.F.R. § 250.30(g) (2002).

¹³¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 33.

¹³² FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 2.

reduces costs and paperwork for the states. Over 100 USDA Foods commodities processors use NPAs.¹³³ Approved NPA processors must still notify states to request a state processing agreement (“SPA”) before doing business in that state.¹³⁴ SPAs generally contain state-specific requirements, and approval will allow processors to conduct business within the individual state.¹³⁵ State DAs determine what processors may enter the state to solicit orders for diversions.¹³⁶ State DAs often rely primarily on multi-state processors with NPAs, though many also develop additional contracts with processors at the state level.¹³⁷

Local districts determine how much of each of their entitlement foods will be diverted for processing. Before the beginning of the school year, RAs determine the types and quantities of commodities that they will divert for processing.¹³⁸ There are two methods for states to conduct diversions. In some states, DAs do this by distributing a “diversion survey” to participating RAs.¹³⁹ This survey includes a list of commodities available for diversions as determined by the state DA.¹⁴⁰ The survey will also inform districts of the approximate size of their allocation for these commodities for the upcoming school year.¹⁴¹ On the survey, RAs indicate the percentage of each entitlement food they wish to divert for processing and select their preferred processors.¹⁴² In other states, those using WBSCM, RAs select which items they want to divert when ordering their commodities during the regular WBSCM ordering process.¹⁴³

Whether through a survey or through WBSCM, RAs determine to which processors they would like to divert these unprocessed products from a list of processors operating in the state. Later in the year, in both WBSCM and survey states, districts have the chance to order individual end products from the processors they have selected.¹⁴⁴

DoD-Fresh

Fruits and vegetables have always provided unique challenges for the USDA Foods Program. Because they are perishable, it is difficult to provide fresh produce when USDA Foods are delivered to states a limited number of times each year. As noted above, fresh produce items only account for 10.5% of the fruits and vegetables available through USDA foods because of supply chain challenges.¹⁴⁵ In response to

¹³³ *Id.* at 3.

¹³⁴ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *National Master Processing Agreement: Participant Roles and Responsibilities 1*, USDA.GOV, http://www.fns.usda.gov/fdd/processing/national/npa_ParticipantResponsibilities.pdf (revised Oct. 26, 2004).

¹³⁵ *Id.* at 1-2.

¹³⁶ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 25.

¹³⁷ *Id.*

¹³⁸ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See *infra* Implement Web-Based Supply Chain Management at the RA Level in Massachusetts for a more detailed explanation of the WBSCM ordering process.

¹⁴⁴ While over 70 of the items on the USDA’s master list of commodities might be diverted for further processing (for example, frozen fruit into pies; chicken into nuggets), Distributing Agencies limit diversions to a subset of available commodities. The most commonly diverted items include meat and cheese. See FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 4.

¹⁴⁵ SY 2013 National School Lunch Foods Available List, *supra* note 90; see *infra* Appendix B: USDA Foods Available for SY2012-2013.

this problem, FNS started to explore ways to provide more fruits and vegetables through the USDA Foods Program. In 1994, FNS began working with the U.S. Department of Defense (“DoD”) to supply fresh fruits and vegetables directly to schools alongside their produce deliveries to military sites, thus using the existing DoD infrastructure.¹⁴⁶ Schools across the country can now use their entitlement dollars toward the DoD-Fresh program, which offers over 60 varieties of fruits and vegetables.¹⁴⁷ The program currently operates in 45 states, with varying levels of participation.¹⁴⁸ In school year 2009-2010, 30% of school districts participating in the NSLP nationwide used DoD-Fresh¹⁴⁹ and the program supplied \$58 million of fresh produce to schools.¹⁵⁰ In school year 2011-2012, the program was funded at \$73.1 million and USDA projects more than \$100 million in purchases in 2012-2013.¹⁵¹

Key Issues Facing the USDA Foods Program

USDA Foods is a difficult program to implement because it requires cooperation and coordination across federal, state, and local levels of government. These government actors must coordinate with each other to facilitate the logistics of moving large quantities of food, including perishable goods, across the country. This shared responsibility for the program creates several challenges for program operation. These challenges can be divided into three general categories: Ordering & Utilization; Direct Diversions & Processing; and Delivery & Distribution.

1. Ordering & Utilization

The large number of actors involved with USDA Foods means that different participants often have different objectives for the program. At the federal level, USDA is working closely with farm agencies (AMS and FSA) to provide price support for farmers and mitigate price shocks due to unforeseen surplus or disaster.¹⁵² At the state level, DAs are trying to maximize utilization of the program across the state.¹⁵³ At the local level, RAs and school Food Service Directors (“FSDs”) seek products that meet USDA school meal nutrition requirements, are cost-effective to both purchase and prepare, and that their students will eat and enjoy.¹⁵⁴ While all three levels have rational motives, their differing perspectives

¹⁴⁶ U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *Department of Defense Fresh Fruit and Vegetable Program*, *supra* note 93.

¹⁴⁷ *Id.*

¹⁴⁸ SCHOOL FOOD PURCHASE STUDY—III, *supra* note 5 at 80.

¹⁴⁹ *Id.* at 139 t. 6-9.

¹⁵⁰ *Id.* at 80.

¹⁵¹ U.S. DEPARTMENT OF AGRICULTURE, FOOD NUTRITION SERVICE, SCHOOL PROGRAMS USDA FOODS UPDATE (Apr. 2011), *available at* <http://www.fns.usda.gov/fdd/news/schupdates0411.pdf>; *DoD Fresh Fruit and Vegetable Program*, U.S. DEPARTMENT OF AGRICULTURE (FEB. 13, 2013), <http://www.fns.usda.gov/fdd/programs/dod/>.

¹⁵² USDA Foods are purchased by the Agricultural Marketing Service (“AMS”) and the Farm Service Agency (“FSA”). In administering the program, AMS aims to “help stabilize prices in agricultural commodity markets by balancing supply and demand.” U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, *Commodity Purchasing*, USDA.GOV, <http://www.ams.USDA.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateQ&navID=CommodityPurchasing&leftNav=CommodityPurchasing&page=CommodityPurchasing&acct=AMSPW> (last visited Apr. 4, 2012). Similarly, the FSA’s mission is to “equitably serv[e] all farmers, ranchers, and agricultural partners through the delivery of effective, efficient agricultural programs.” U.S. DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY, *About FSA*, USDA.GOV, <http://www.fsa.USDA.gov/FSA/webapp?area=about&subject=landing&topic=ham> (last visited Apr. 4, 2012).

¹⁵³ Telephone Interview with State Distributing Agency Representative (Mar. 30, 2012).

¹⁵⁴ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

sometimes lead to a result where the partners want different types and quantities of food support than they are getting, causing challenges for all of the actors in the chain – DAs, RAs, and even USDA.

This multilevel partnership is further complicated by the large number of participants: 49 states participate in the program,¹⁵⁵ and the program serves more than 100,000 schools.¹⁵⁶ Even within each state, individual FSDs have divergent needs, depending on the size of their school, the type of kitchen facilities they have, staff skills, and their location.¹⁵⁷ This creates another challenge for state DAs that want to give their school districts the autonomy to choose what they need while also having a program that is streamlined and uniform enough to be administrable at the state and federal level.¹⁵⁸

2. Direct Diversions & Processing

Due to limited kitchen facilities and staff skills, many individual school districts turn to processing to make raw and bulk commodities more manageable.¹⁵⁹ This introduces a fourth component—industry processors—into the already complex USDA Foods system. Because the processors are businesses and, like all businesses, are profit-seeking, their incentive is to maximize their payment for processing USDA Foods. One way that they can ensure higher compensation is by supplying more heavily processed foods, such as foods containing various fillers and preservatives.¹⁶⁰ As a result, the variety of end products is predominantly made up of products high in added fats, sugar, and sodium.¹⁶¹ This means that diverted end products might not be meeting the nutritional needs of RAs while simultaneously costing more than the types of healthier, less processed options that RAs would prefer to purchase.

3. Delivery & Distribution

The federal-state-local partnership also causes challenges in distribution. Unlike cash reimbursements under the NSLP, the USDA Foods Program provides in-kind food items. This food requires storage, transportation, processing, and often refrigeration. Because USDA buys food from farmers across the country, this food sometimes travels a great distance, from farm to state warehouse to individual school kitchen. Moreover, the often unpredictable nature of food production makes product availability difficult to forecast and control.¹⁶² As a result, states may not receive the orders they anticipate. These delays in delivery and distribution can affect menu planning and storage at the local level, and even sometimes result in schools needing to make substitute purchases from a commercial vendor.¹⁶³ Communication and transparency across the system can help address these issues, but may not fully mitigate them.

¹⁵⁵ All the states except Kansas, which receives cash in lieu of commodities. WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 7. See *infra* Expansion of Commodity Letters of Credit/Cash in Lieu of Commodities.

¹⁵⁶ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 16.

¹⁵⁷ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

¹⁵⁸ Interview with Marion Browning, *supra* note 115.

¹⁵⁹ See generally U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *List of Approved Commodity Processors for School Year 2012–13*, USDA.GOV, http://www.fns.usda.gov/fdd/processing/national/SY2012/SY2013/NPA_Approved_Processors_SY13Dec.pdf (last updated Dec. 2011).

¹⁶⁰ CALIFORNIA FOOD POLICY ADVOCATES, *supra* note 40 at 25-27.

¹⁶¹ *Id.* at 18, 22.

¹⁶² In particular, perishable food items such as meat, dairy, and produce (Group A foods) are purchased seasonally by the Agricultural Marketing Service. See National Policy Memorandum from the U.S. Department of Agriculture, *supra* note 52 at 1.

¹⁶³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

Part II: USDA Foods in Massachusetts Schools

Introduction

In Massachusetts, the USDA Foods Program is implemented by the Massachusetts Department of Elementary and Secondary Education (“ESE”).¹⁶⁴ The Massachusetts USDA Foods Program serves 391 of the state’s 400 school districts.¹⁶⁵ As of 2012, the state’s total USDA Foods entitlement exceeded \$24.5 million¹⁶⁶ and helps to supplement 90 million school meals. While Massachusetts’ schools are collectively entitled to this amount, the utilization rate in 2011-2012 was only 77%.¹⁶⁷ This section will provide an overview of how the system currently works in Massachusetts, explain potential causes of the program’s low utilization rate, and explore opportunities and recommendations to increase the utilization and efficiency of the program in Massachusetts.

Overview

Our Research Methods

To better understand the mechanics of the USDA Foods Program in Massachusetts, we conducted interviews of Massachusetts stakeholders with various levels of involvement with the USDA Foods Program between November 2011 and April 2012, and again in early 2013.¹⁶⁸ The main purpose of these interviews was to discover (1) how the program works, (2) what challenges different stakeholders face in implementing the program, and (3) what changes they would like to see in the future. We also researched USDA Foods programs in other states, via interviews and public documents, to glean best practices from other states that could inform and support our recommendations for Massachusetts.

Stakeholders

This report is relevant to anyone involved in or impacted by school food, namely: federal, state, and local government officials, school administrators, taxpayers, farmers, food processors, food vendors, distribution/storage companies, public health advocates, parents, and, most importantly, children. The key decision makers in Massachusetts are the Food Distribution Coordinator at the state DA and the school Food Service Directors or RAs, described below.

¹⁶⁴ MASSACHUSETTS DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION, *Food Distribution*, MASS.GOV, http://www.doe.mass.edu/cnp/food_dist.html (last updated March 7, 2011).

¹⁶⁵ *Scott Richardson, et. al., Utilizing Collaborative Purchasing and DoD Produce to Improve School Meals*, Presentation at Massachusetts Farm to School Convention (Mar. 15, 2012) (based on comparing a tally of the data set posted on the ESE website, not including charter schools, YMCAs, Headstarts, private schools, and foundations, to ESE’s stated number of “Operating School Districts” (400) published on its website).

¹⁶⁶ Email correspondence with Marion Browning, *supra* note 83.

¹⁶⁷ *Id.*

¹⁶⁸ Throughout this report, data collected through individual Interviews with food service directors is cited collectively as “Interviews with Food Service Directors (Nov. 2011–Apr. 2012)” or “Interviews with Food Service Directors (Jan.–Apr. 2013).” Transcripts of these interviews are on file with the authors, however, the names of the interviewees will not be revealed in order to protect their anonymity.

The **Food Distribution Coordinator** (“FDC”) is a state-level position within ESE, the state DA for Massachusetts. The FDC is responsible for overseeing and implementing the distribution of USDA Foods to various nutrition programs in Massachusetts. Though the position falls within ESE, the FDC also oversees the distribution of USDA-donated foods through The Emergency Food Assistance Program (“TEFAP”), Elder Affairs, and the Child and Adult Care Food Program (“CACFP”), in addition to the NSLP. Overseeing the distribution of USDA foods through the NSLP is the primary role of the FDC, as most of the donated USDA food is utilized for school meal programs. Currently, the Massachusetts USDA Foods Program is in a rebuilding period, as the position of FDC was vacant for the two years leading up to the hiring of the current FDC in December 2010.

The FDC is a particularly important stakeholder because he/she has the potential to effectively address USDA Foods issues by setting goals and developing model policies, which broadly impact the school food system. FDCs are empowered to coordinate efforts across many districts and design policies to meet their specific needs. However, this power is hindered by the ever-present need to balance the objectives of the federal government, the program rules and regulations, and the needs of the state.¹⁶⁹

Each district within the state of Massachusetts has a **Food Service Director** (“FSD”) who is responsible for food purchasing, menu planning, contracting with outside vendors, implementing the NSLP, serving as the RA for the USDA Foods Program, helping to write wellness policies, and overseeing/managing various other school food-related programs. School food is generally funded separately from the rest of the school budget through NSLP reimbursements, paid lunches, and other food sales in schools.¹⁷⁰ FSDs are responsible for determining how to allocate these funds and are under a great deal of financial pressure to run an efficient, profitable, and health-promoting school food program. The program must achieve a balance between the competing interests of the state and federal governments, vendors, superintendents, principals, parents, and students. Theoretically, the USDA Foods Program should assist schools in achieving the appropriate balance by subsidizing the cost of food and freeing up financial resources for the rest of the school food program. Unfortunately, FSDs encounter many barriers to full utilization of the USDA Foods Program, leading them to turn away some, or all, of their USDA Foods entitlement and expend already scarce financial resources to purchase the same foods in the commercial market.¹⁷¹

How USDA Foods Works in Massachusetts

The following sections describe how the USDA Foods Program operates in Massachusetts. This overview will begin with an explanation of ESE’s ordering process. It will then describe how “brown box” (non-diverted) items are delivered and distributed within the state. Finally, it will explain how “direct diversions” (items diverted for processing) are handled in Massachusetts.

Ordering USDA Foods

As explained above, the state DA (in Massachusetts, ESE) is responsible for indicating the state’s USDA Foods program preferences to USDA and for determining which foods will be offered to RAs within the

¹⁶⁹ Marlo R. Miura, et. al., *Mapping School Food: A Policy Guide*, PUBLIC HEALTH ADVOCACY INSTITUTE (Nov. 2007), available at <http://www.phaionline.org/2007/11/06/mapping-school-food-a-policy-guide/>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

state. For school year 2011-2012, ESE ordered 65 of the 140 available brown box items and 13 of the 40 raw products offered for diversion.¹⁷² ESE bases this order on several factors including:¹⁷³

Past Utilization: ESE looks at what products the state offered in past years to determine what products it will order for the coming school year. ESE also considers what products “moved” in the past (e.g., which past offerings seemed popular with RAs in Massachusetts).¹⁷⁴

Experimentation: While the bulk of the decision rests on past usage, ESE will sometimes try out new product offerings from USDA. For example, USDA recently introduced new low-sodium offerings to improve the nutritional quality of the offerings, and ESE opted to try out a low-sodium cheese product.¹⁷⁵

Variety: Rather than devoting all of Massachusetts’ entitlement to one food group (e.g., meat), ESE has in the past attempted to order commodities from diverse food groups (fruits, vegetables, dairy, and meat).¹⁷⁶

Until 2012, ESE did not regularly survey individual RAs about what items they preferred or wanted from the full USDA offerings list.¹⁷⁷ Instead, ESE primarily used past orders to determine the shorter list of offerings they would provide to Massachusetts schools.¹⁷⁸ ESE has recently taken active steps to solicit feedback and participation from FSDs during the ordering process. For example, in 2011, ESE reinvigorated the USDA Foods Advisory Council, which had previously met only rarely and informally. The USDA Foods Advisory Council, made up of representative FSDs and other stakeholders, now meets regularly to aid in the ordering process and provides input to ESE.¹⁷⁹ ESE also developed a new survey in 2013 to solicit preferences from all schools across the state.¹⁸⁰ These changes will be discussed in further detail below.

ESE also uses past utilization to determine the *quantity* of each item to order. USDA delivers food into the state by the truckload and these USDA trucks will make a maximum of three stops either within the state or in Massachusetts and nearby states.¹⁸¹ As a result, ESE will only order items in quantities large enough to fill a truck, further limiting the number of different products ordered.

Once it determines selection and quantity, ESE uses USDA’s Web-Based Supply Chain Management online ordering system (“WBSCM”) to place orders with USDA.¹⁸²

¹⁷² See *infra* Appendix C: USDA Foods Requested by ESE for SY2011-2012 for the list of items ESE requested from USDA for SY2011-12. This list was subject to USDA purchasing decisions, and may differ from the foods actually delivered to Massachusetts. ESE offers products from the full range of food groups available, but does not offer all products available within each food group. For example, seventeen types of beef are offered and ESE only orders two types for Brown Box offerings and two types for diversion. Email correspondence with Marion Browning, *supra* note 83. Note that until recently, schools were not involved in the process of deciding which of the products would be offered, but under new ESE practices, all schools will be surveyed for decisions for the 2013-14 school year. *Id.*

¹⁷³ Interview with Marion Browning, *supra* note 115.

¹⁷⁴ *Id.*

¹⁷⁵ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Jan. 11, 2012).

¹⁷⁶ In 2010, Massachusetts divided its commodity spending between Dairy & Eggs (34.2% of total), Fruits & Vegetables (21.1%), Grains, Nuts, & Oils (7.1%), and Meat & Fish (37.6%). Scott Richardson, *et. al.*, *supra* note 165.

¹⁷⁷ Interview with Marion Browning, *supra* note 115; Interview with Food Service Directors (Feb. 21, 2012).

¹⁷⁸ Interview with Marion Browning, *supra* note 115.

¹⁷⁹ *Id.*

¹⁸⁰ Email correspondence with Marion Browning, *supra* note 83.

¹⁸¹ Interview with Marion Browning, *supra* note 115.

¹⁸² *Id.*

“Brown Box” Commodities

Beginning in September, and once each month throughout the school year, USDA delivers what are called “brown box” commodities to Massachusetts.¹⁸³ “Brown box” commodities are the items that are not diverted for further processing. In Massachusetts, USDA delivers brown box commodity foods to four state-contracted private warehouses.¹⁸⁴ Each individual school district is assigned to one of the warehouses based on geographical location.¹⁸⁵ ESE divides up this delivery among the four warehouses in Massachusetts based on the historical size and usage levels of the schools utilizing each warehouse.¹⁸⁶ Because USDA limits the number of stops a truck can make, ESE divides up the deliveries by truckload.¹⁸⁷

Once the food arrives at the warehouses, ESE sends a monthly offer sheet to all the RAs, indicating what they are entitled to that month.¹⁸⁸ The offer sheet lists the foods available to the school that month and how many cases of the item they may opt to receive. The quantities available on the offer sheet are a function of what is in the warehouse and the size of the receiving district, and do not necessarily reflect district preferences or needs.¹⁸⁹ As discussed in Part I of this report, federal regulations require that schools receive a minimum entitlement based on the number of reimbursable lunches they serve.¹⁹⁰ To ensure that this requirement is met, ESE divides the available food between school districts based on the school’s “allocation factor,” which is calculated using the number of reimbursable meals a school served in the previous year in relation to the number of reimbursable meals served in the state.¹⁹¹ Some items are not capped on the offer sheet, but most have a limit on the quantity that the RA may receive.¹⁹²

Each month, RAs indicate on their offer sheet how much of each item they want to accept. It is typical for RAs to refuse a significant percentage of the items, either because they do not have enough space for them on their premises, or because they cannot use the product. Certain products might be unusable because the offered item or quantity is a poor match for the school district.¹⁹³ For example, a school without a breakfast program might not be able to use an offer of eggs.¹⁹⁴ This unused offer remains in the warehouse and will be divided among school districts on the subsequent month’s offer sheet.¹⁹⁵

¹⁸³ *Id.*

¹⁸⁴ *Id.* Each district in Massachusetts is assigned to one of four state-contracted warehouses based on geographical location.

The four state-contracted private warehouses are:

1. A&D Cold Storage, 12 Southbridge Street Worcester, MA 01610, (508) 754-4426
2. Pioneer Valley Refrigerated, 149 Plainfield Street Chicopee, MA 01013, (413) 736-1976
3. Rich’s Transportation Services, Inc., 425 Constitution Drive Taunton, MA 02780, (508) 822-9100
4. Wilmington Cold Storage, 2 Industrial Way Wilmington, MA 01887, (781) 935-8670

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

¹⁸⁹ Interview with Marion Browning, *supra* note 115.

¹⁹⁰ Food Distribution Program: Value of Donated Foods From July 1, 2011 Through June 30, 2012, 76 Fed. Reg. 43,256 (July 20, 2011) (to be codified at 7 C.F.R. pt. 210).

¹⁹¹ Interview with Marion Browning, *supra* note 115.

¹⁹² *Id.*

¹⁹³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

¹⁹⁴ *Id.*

¹⁹⁵ Interview with Marion Browning, *supra* note 115; Interview with Food Service Director (Jan. 31, 2012).

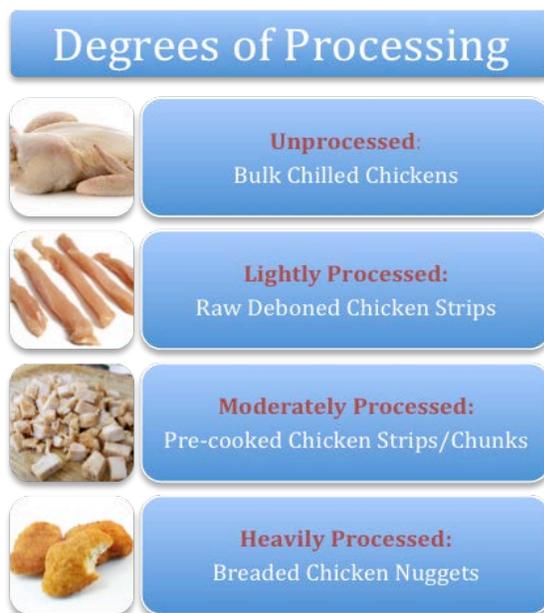
Because ESE does not necessarily shut schools off once they reach their entitlement amount,¹⁹⁶ districts that continually accept their entire offer sheets can actually exceed 100% utilization of their entitlement by the end of the school year.¹⁹⁷ For instance, in the 2011-2012 school year, Leominster Public Schools was entitled to \$158,260 in USDA foods, but was able to utilize an additional \$25,304 in unused commodities through this system, boosting their actual entitlement utilization to 116%.¹⁹⁸ Sixty-nine other charter schools and school districts were able to exceed 100% that year as well, utilizing a total of approximately \$288,000 in previously unclaimed entitlement commodities.¹⁹⁹ Even including these examples, as a state Massachusetts was only able to utilize 77% of its total \$24.5 million entitlement that year,²⁰⁰ meaning that a majority of districts left significant entitlement dollars unclaimed. Food that remains unclaimed at the end of the year is either donated, discarded, or carried over for use during the next school year, depending on its shelf life.²⁰¹

Once an RA completes an offer sheet, an on-line ticket appears at the warehouse indicating that the school has made its order for the month.²⁰³ The warehouse then notifies the school's carrier that it may schedule a time for pickup. While USDA delivers commodities to the warehouse, RAs are responsible for delivery from the warehouse to the individual

school districts. RAs contract with private delivery companies to pick up their USDA Foods orders.²⁰⁴ Once a pickup time has been scheduled, the RA's delivery company will pick up the allotment at the warehouse and deliver it to the individual districts.²⁰⁵ Pick up days and times are generally set for each school district to retrieve their food from the warehouses.²⁰⁶

While the brown box items are technically free, RAs must pay fees to facilitate the storage and delivery of these "free" foods. These fees include an administrative fee imposed by ESE, which covers its costs as well as the cost of providing 60 days of storage for the product at a warehouse,²⁰⁷ the storage costs of any products that are stored longer than 60 days, and

Figure 4: Varying Levels of Food Processing²⁰²



¹⁹⁶ Interview with Marion Browning, *supra* note 115.

¹⁹⁷ See MASSACHUSETTS DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION, *Commodity Entitlement Utilization Report 2009– 2010*, *supra* note 167.

¹⁹⁸ See Email correspondence with Marion Browning, *supra* note 83.

¹⁹⁹ See *id.*

²⁰⁰ See *id.*

²⁰¹ Interview with Marion Browning, *supra* note 115.

²⁰² See Scott Richardson, *et. al.*, *supra* note 165.

²⁰³ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Jan. 11, 2012).

²⁰⁴ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁰⁵ Interview with Marion Browning, *supra* note 115.

²⁰⁶ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁰⁷ Email correspondence with Marion Browning, *supra* note 83.

transportation fees to get the commodities from the warehouse to individual RAs.²⁰⁸ ESE administrative fees were recently raised for the 2012-2013 school year to \$2.41 per dry case of food and \$2.90 for every refrigerated or frozen case.²⁰⁹

Direct Diversions

Through what is called “direct diversion processing,” school districts participating in the USDA Foods Program may choose to divert their raw USDA foods to processors that will convert the raw commodities into processed food products, such as frozen turkey burger patties and pre-cooked chicken nuggets. Each district’s FSD is directly responsible for selecting processors, which is done in Massachusetts through a “diversion survey,” discussed in greater detail below.

In Massachusetts, direct diversion processing agreements are contracts between the state and the processors called “State Processing Agreements” that allow RAs to conduct the purchasing and ordering of particular end-products.²¹⁰ Most districts choose processors independently rather than as a collaborative group, running the risk of not meeting minimum order quantities or paying much higher prices because of their diffuse purchasing power.²¹¹ Some districts, however, choose processors collaboratively, as part of a coordinated group-purchasing plan, in order to increase order quantities and benefit from bulk discounts.²¹² This is not currently taking place with diverted USDA Foods products, but schools are using collaborative for group purchasing on the commercial market.²¹³ Regardless of the ordering strategies employed by districts, ESE ultimately consolidates the orders and executes processing contracts on behalf of the state. Once the contracts have been executed, it is up to the FSDs to interface with the processors regarding their districts’ diversion orders from then on.²¹⁴

Currently, Massachusetts only contracts for diversions with multi-state processors with National Processing Agreements (“NPAs”).²¹⁵ A multi-state processor is a processor that serves more than one state or whose product crosses a state line.²¹⁶ As described in Part I, multi-state processors commit to NPAs between the processor and USDA through which USDA (1) ensures that the processing method and final products meet certain criteria (e.g., safety, quality, and quantity) and (2) protects against damage or loss of donated commodities.²¹⁷ Massachusetts chooses to only use vendors with NPAs because of the ease of working with processors for whom regulatory requirements are overseen at the national level, though other states choose to contract with local processors only operating within their states.²¹⁸ Currently, there are 45 multi-state processors serving Massachusetts’ public schools, and many

²⁰⁸ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁰⁹ Memorandum from Kathleen C. Millett, Administrator, Office for Nutrition, Health & Safety Programs, Massachusetts Department of Elementary and Secondary Education, Increase in USDA Foods Assessment Fees (May 1, 2012),

²¹⁰ FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 1.

²¹¹ See *Scott Richardson*, *supra* note 165.

²¹² *Id.*

²¹³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²¹⁴ *Id.*

²¹⁵ Interview with Marion Browning, *supra* note 115; interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²¹⁶ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, AMERICAN COMMODITIES DISTRIBUTION ASSOCIATION RECIPIENT AGENCY COMMODITY PROCESSING HANDBOOK 31 (2010), *available at* <http://www.commodityfoods.org/files/RA%20Processing%20Handbook%20-%20FINAL%20March%202010.pdf>.

²¹⁷ *Id.*

²¹⁸ Interview with Marion Browning, *supra* note 115.

of these processors offer products similar in quality, nutrition, and taste to each other.²¹⁹ Approving additional processors at the state level would require additional staff and expertise, and would increase the cost of the program. However, other states do contract with state-specific processors.²²⁰

Each December, Massachusetts holds a USDA Diversions Show where approved USDA Foods processors provide samples of their products.²²¹ Any vendor with a USDA-approved NPA may attend the Massachusetts USDA Diversions Show as long as they sign up in time.²²² Shortly before the December USDA Diversions Show, FSDs receive the diversion survey from ESE, which lists the expected food products available for processing for the following school year. Beside each food item, FSDs must enter the percentage of that item they would like diverted and the processor to which they are diverting. At present, these decisions are predominantly based on end-products' taste, nutrition information, and FSDs' past experiences with particular processors.²²³ Even though the schools are making decisions that will impact the cost of the lunch program throughout the following year, the overall impact on the schools' budgets remains unknown because the *actual* availability of each food item has not yet been determined.

The overall *value* of a state's food allocation is determined by USDA using the simple commodity entitlement calculation (discussed in Part I), and can be fairly easily estimated based on the most recent assistance rate and number of reimbursable lunches served in the prior year. However, future allocations of particular foods cannot be accurately estimated based on historical information because the amount of each type of commodity that is available varies from year to year.²²⁴

In an effort to deduce processors' relative cost-effectiveness, FSDs sometimes refer to the prices for items sold by those processors in the general market (including commercial/retail food processing products), but this information is not always available and may not accurately predict the prices for USDA Foods processing.²²⁵ Processors with NPAs know all raw commodities' prices in advance of the USDA Diversions Show because USDA releases this information in a commodity file report on November 15th of each year.²²⁶ Therefore, processors should be able to provide prices for all processed end products at the Diversions Show in December; however, current practice in Massachusetts is not to do so formally.²²⁷ FSDs can contact each processor individually to inquire about prices but there is no official distribution of a list of prices by the state and no guarantee that the processor cites the same price to each FSD.²²⁸

Once ESE receives the schools' diversion survey responses, ESE releases contract bids and awards contracts to processors based on the survey data. Thus, in January these surveys effectively become contracts between the districts and the processors, binding districts to divert exact percentages of still-unknown quantities of food at an unknown price per pound. Because there is no reliable method for

²¹⁹ *Id.*; Interviews with Food Service Directors (Nov. 2011–Apr. 2012); *See also Scott Richardson, et. al., supra* note 165 (discusses the potential benefits of collaborative purchasing among districts, pointing out that many districts do not take advantage of group buying power by separately ordering similar products from different processors).

²²⁰ Telephone Interview with Cliff Meyers, President of K12 Services, Inc. (Feb. 20, 2012).

²²¹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²²² Interview with Marion Browning, *supra* note 115.

²²³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²²⁴ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²²⁵ *Id.*

²²⁶ *See infra* Appendix D: Sample Commodity File Report for sample page from commodity file report.

²²⁷ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²²⁸ Interviews with Food Service Directors (Jan. 2013 – Apr. 2013).

estimating these quantities, the overall cost of diversion cannot be adequately considered prior to contract formation, and schools cannot benefit from price competition between processors. After committing percentages to a particular processor, FSDs do not have to take any further actions regarding diversions until the end of the summer.²²⁹

Figure 5: Fees Charged for Diverted USDA Food Products	
Processing Fee	Sum of Processing, Handling, and Distribution fees
Storage Fee at Warehouse	(Startup Fee + Monthly Fee) per lot
Delivery Fee	Cost of Transportation From Warehouse → Schools
ESE Administrative Fee	\$2.39 per case of processed food ²³⁰

Although USDA provides ESE with the actual USDA food quantities available early in the year, common practice in Massachusetts is for ESE to release this information to the contracted processors prior to alerting FSDs to the actual quantity (lbs) of food they have diverted to those processors in May or June.²³¹ Recently, ESE has agreed to change this practice in the future by informing FSDs as soon as the information from the diversion surveys is finalized and orders have been placed with USDA.²³²

Before the upcoming school year, FSDs must commit to particular end products and a delivery schedule. If there are no delays, the first delivery of diverted products arrives in local warehouses in August.²³³

It is also important to note that even though raw USDA Foods items are technically free, the true cost of the diverted products includes processing, storage, delivery, and ESE administrative fees. Thus, over time RAs must make decisions about whether to accept food products, knowing that diverting those food products may in the end cost more than purchasing comparable items on the commercial market. The true costs of diverted food products are explained in Figure 5.

Value Pass-Through Methods

Even though USDA Foods are technically free, as described above, schools must pay a variety of fees associated with these foods. Diverted foods in particular can be expensive, as RAs need to pay for the cost of processing the foods. For commercial/retail purchases, RAs generally pay processors the “price per case” for each processed end product. For USDA food diversions, however, processors offer various value pass-through (“VPT”) billing methods, which enable RAs to obtain the value of their donated USDA foods subtracted from the final end price. While multiple VPT systems are approved by FNS, it is up to the individual states to decide whether to approve the various methods. Presently, only two methods, rebates and fee-for-service (“FFS”), have been approved in Massachusetts. The three most commonly used VPT methods are described in detail below.

²²⁹ *Id.*

²³⁰ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²³¹ *Id.*

²³² Email correspondence with Marion Browning, *supra* note 83; USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

²³³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

Under the rebate method, school districts are billed for the gross case price of processed end products, which includes the cost of the commodity food.²³⁴ To obtain the value of the processed commodities, districts must submit a refund application requesting reimbursements equivalent to the cash value of the commodity food contained in the end products.²³⁵ Processors vary in the methods they accept for submitting rebate applications, which include email requests and web forms. Use of the rebate method requires districts to expend more of their budgets up front than other methods, which may make it less appealing to districts whose programs run on tight budgets. However, rebates can be more convenient than other methods because some processors will combine districts' USDA diversion and commercial food processing orders on a single invoice, later reimbursing districts for the value of the diverted USDA food used.²³⁶

Under FFS, school districts are billed only for the cost of the services provided by the processors (processing, handling, and delivery to warehouses/schools), eliminating the need to be reimbursed for the value of the commodity. Upon delivery, school districts receive their invoices and are responsible for the costs of any product they are unable to accept for whatever reason (storage limitations, inability to pick up, etc.). If districts place orders for USDA diversions and commercial food products with the same processor, they will receive separate invoices for each.

A third type of VPT, "net-off-invoicing" or "NOI," allows RAs to arrange their commercial orders and their diversions with the same processor simultaneously.²³⁷ Processors then provide FSDs with all charges on the same invoice, and subtract on an item basis the value of raw USDA commodities used to fulfill the order from the invoice.²³⁸ This method eliminates the need for a rebate, as FSDs are never charged for the raw USDA foods. NOI was introduced in 2003 and is gaining popularity in other states, but is not currently utilized in Massachusetts.²³⁹ Table 2 highlights the differences between the three methods.

²³⁴ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, *supra* note 216 at 12, 33.

²³⁵ *Id.* at 12.

²³⁶ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²³⁷ FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 1.

²³⁸ *Id.*

²³⁹ Telephone Interview with Cliff Meyers, *supra* note 220.

Table 2. Comparison of USDA-Approved Value Pass-Through Methods²⁴⁰

	Process	Challenges for District	Benefits to District
Rebate	<pre> graph LR A[RA diverts commodity to processor] --> B[RA receives finished product directly from processor and pays full market value] B --> C[RA submits rebate request for the net value of commodities used] C --> D[Processor later reimburses RA for the value of the raw USDA commodities used to fulfill the order] </pre>	<ul style="list-style-type: none"> • RAs must initially pay full commercial price for all products ordered, including diverted end products. • RAs must perform cumbersome rebate submission process and wait to be reimbursed by processors. 	<ul style="list-style-type: none"> • Some processors may allow RAs to arrange commercial orders and diversions together.
Fee-for-Service (FFS)	<pre> graph LR A[RA diverts commodity to processor] --> B[RA receives finished product directly from processor or distributor and pays only processing and distribution costs separately] </pre>	<ul style="list-style-type: none"> • RAs must arrange diversion orders separately and independently of commercial orders. • Depending on the size of a district's order, processors may be limited in the number of deliveries that they can make throughout the school year, giving the RA very little control over the delivery schedule. • RAs that are unable to accept orders for any reason (storage limitations, bad timing, etc.) must pay for the products upon delivery even though the product cannot be accessed for some time. • RAs are responsible for any additional fees (storage, re-delivery, etc.) incurred by processors/distributors as a result of the RAs inability to accept the products. 	<ul style="list-style-type: none"> • RAs are never charged for the value of the raw USDA foods used to create the processed end products.
Net-off-Invoice (NOI)	<pre> graph LR A[RA determines what products they would like from processor for the upcoming school year] --> B[Processor sells end product to a distributor at commercial price and communicates the RA's commodity entitlement value to the distributor] B --> C[RA receives end product and pays distributor for the net value of the product, minus the value of their entitlement] C --> D[Processor later reimburses distributor for the value of the raw USDA commodities used to fulfill the order] </pre>	<ul style="list-style-type: none"> • DESE must first approve the NOI VPT method. • Processor(s) must agree to participate. • Distributor must have the required USDA food tracking capabilities. • RAs must assess any increase in service and delivery fees distributors may require to cover any associated administrative costs. • RAs are responsible for confirming receipt of NOI product AND commodity value. 	<ul style="list-style-type: none"> • Allows RAs to arrange commercial orders and diversions together. • RAs are never charged for the value of the raw USDA foods used to create the processed end products. • RAs receive all charges on the same invoice; the value of any raw USDA commodities used to fulfill the order is subtracted from the invoice's total. • RAs can achieve higher order volumes by combining commercial and diversion orders, enabling processors to cost-efficiently make more frequent deliveries and provide districts with flexible delivery schedules. • RAs can save money that would otherwise be spent on storage fees by having deliveries arrive exactly when the districts need them.

²⁴⁰ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, *supra* note 216 at 12-16, 33 (explanation of all three VPT methods); see also FOOD DISTRIBUTION FACT SHEET, COMMODITY PROCESSING, *supra* note 126 at 1 (discussing commodity processing agreements more generally).

Direct Diversion Deliveries

Diverted end products are either delivered by the processors or by a commercial distributor. The delivery schedule of raw product to the processors is agreed upon in January and predominantly depends on whether and when districts' orders are large enough to completely fill delivery trucks.²⁴¹ In Massachusetts, districts' individual diversion orders are combined at the state level to try to fill trucks either by combining orders from different districts or by splitting space in a truck with another state.²⁴² If orders cannot meet the truckload requirement, either on their own or in combination with others, they are canceled.²⁴³ Similarly, processors often have their own shipping requirements that might include minimum amount of product, minimum number of stops, and maximum distance.²⁴⁴ Thus, the need for USDA food orders to reach truckload quantities both to ship raw product to the processors and to ship processed foods to the districts means that smaller districts may not always be able to receive their desired diverted products. Additionally, because delivery schedules are dependent on whether or not there are enough orders to fill truckloads, based on varying shipping requirements set by the processor, districts are often not able to specify or tailor delivery schedules to coincide with their menu plans.

For the aforementioned reasons, it is typical in Massachusetts for diversion orders to be delivered to the state-contracted warehouses. Schools are generally allotted specific times when they are able to retrieve their food from the warehouses.²⁴⁵ Therefore, if the food is delayed and does not reach the warehouse by the date the school was planning to retrieve it, that school must wait for their next allotted pick-up time to obtain their food. Because of the limited number of pick-up times available for schools, delays in the delivery of USDA foods (both brown box and diversion orders) from the state warehouses to their respective schools are common. These delays mean that schools may not receive the food they already menued in time to serve on schedule and many need to purchase on the commercial market as a back up.²⁴⁶

DoD-Fresh

As mentioned above, DoD-Fresh is a program through which schools can use their USDA Foods entitlement dollars to purchase fresh fruits and vegetables, which the Department of Defense ("DoD") supplies directly to schools alongside their produce deliveries to military sites. For several years, ESE has operated DoD-Fresh as a "pilot" in three school districts²⁴⁷ and recently expanded the pilot to include fifteen districts during the 2012-13 school year.²⁴⁸ However, the state as a whole has allocated little of its overall entitlement dollars to DoD-Fresh and has placed limitations on the school districts that are allowed the use the program. Districts are required to utilize at least \$3,500 in DoD-Fresh and no more than 5% of their total entitlement dollars on the program, eliminating the possibility of participation for

²⁴¹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Email correspondence with Marion Browning, *supra* note 83.

²⁴⁵ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁴⁶ *Id.*

²⁴⁷ DOROTHY BRAYLEY AND KIMBERLY CLARK, KIDS FIRST AND FARM TO INSTITUTION IN NEW ENGLAND, THE "DoD FRESH" PROGRAM: UNDERSTANDING AND ADAPTING A SYSTEM TO RESPOND TO THE DEMAND FOR LOCALLY-GROWN FOODS IN NEW ENGLAND 13 (Apr. 2012).

²⁴⁸ Email correspondence with Marion Browning, *supra* note 83.

those schools for which \$3,500 is more than 5% of their entitlement.²⁴⁹ USDA, on the other hand, does not cap the amount of entitlement dollars that the state can allocate towards DoD-Fresh, and encourages districts to take advantage of the program.²⁵⁰ School districts must also be able to receive shipment of all of their DoD-Fresh order at one location and then disseminate the products to different schools in the district that will use them.

Use of DoD-Fresh thus remains limited in Massachusetts despite interest on the part of school districts in acquiring fruits and vegetables through the program.²⁵¹ ESE has announced plans to expand the entitlement dollars going to DoD-Fresh to \$1.5 million in the 2013-2014 school year, but because of the high level of interest among FSDs, demand for the program will likely still exceed that dollar amount.²⁵² Because the expansion of DoD-Fresh in Massachusetts is so new and the program still serves only a few districts and represents such a small percentage of USDA Foods in Massachusetts, this report will not go into further detail about the program. However, ESE should continue its work to expand the program because of the high levels of interest among school districts and the clear benefits of the program to helping school districts meet the new school nutrition guidelines, which require a larger quantity and variety of fresh fruits and vegetables than ever before.

Ordering Commercial Products

The School Nutrition Association's ("SNA") National Convention Retail Food Show usually occurs in July or August, just before the new school year begins. Commercial vendors seeking to do business with schools bring product samples to the convention for various school food stakeholders from around the country to taste. This is an exploratory opportunity for food service employees, allowing them to network with others in the industry and research new products that may later be included in their schools' menus.

In October, SNA of Massachusetts has its own Fall Food Show attended by FSDs from across the state. About 40 representatives from Massachusetts attend the show each year.²⁵³ FSDs sample the available foods and determine which foods they will be purchasing for the following school year. Contracts for commercial products are awarded in May.²⁵⁴ Storage, delivery, and distribution are specified in the contracts between the commercial vendor and the FSD.²⁵⁵ FSDs enjoy much more flexible delivery schedules for commercial market orders than for USDA Foods orders, and a particular benefit of

²⁴⁹ Memorandum from Marion Browning to Child Nutrition Directors, Regarding SY 12-13 Expansion of Department of Defense (DoD) Fresh Fruit and Vegetable Program – "DoD Fresh," Oct. 4, 2012 (on file with the author); USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

²⁵⁰ Presentation by Laura Castro, Director, Food Distribution Division, Food and Nutrition Service, U. S. Dep't of Agric., to School Nutrition Association, *USDA Foods: State of Affairs*, (on file with authors) (noting that "schools can use their planned assistance level to request fresh fruits and vegetables through DoD. This program has grown from \$50 million in SY 2008, to over \$100 million in SY 13. We encourage states and schools to take full advantage of DoD Fresh as a way to flexibly use entitlement throughout the entire SY."). Per student allocations to DoD-Fresh shows a wide range from state to state, with Massachusetts allocating only \$0.10 per student and Connecticut allocating as much as \$4.03. Kids First and Farm to Institution New England, *The "DoD Fresh" Program: Understanding and Adapting a System to Respond to the Demand for Locally-Grown Foods in New England* 8 (April 2012) (on file with authors).

²⁵¹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012); Interviews with Food Service Directors (Jan. - Apr. 2013); USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

²⁵² USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

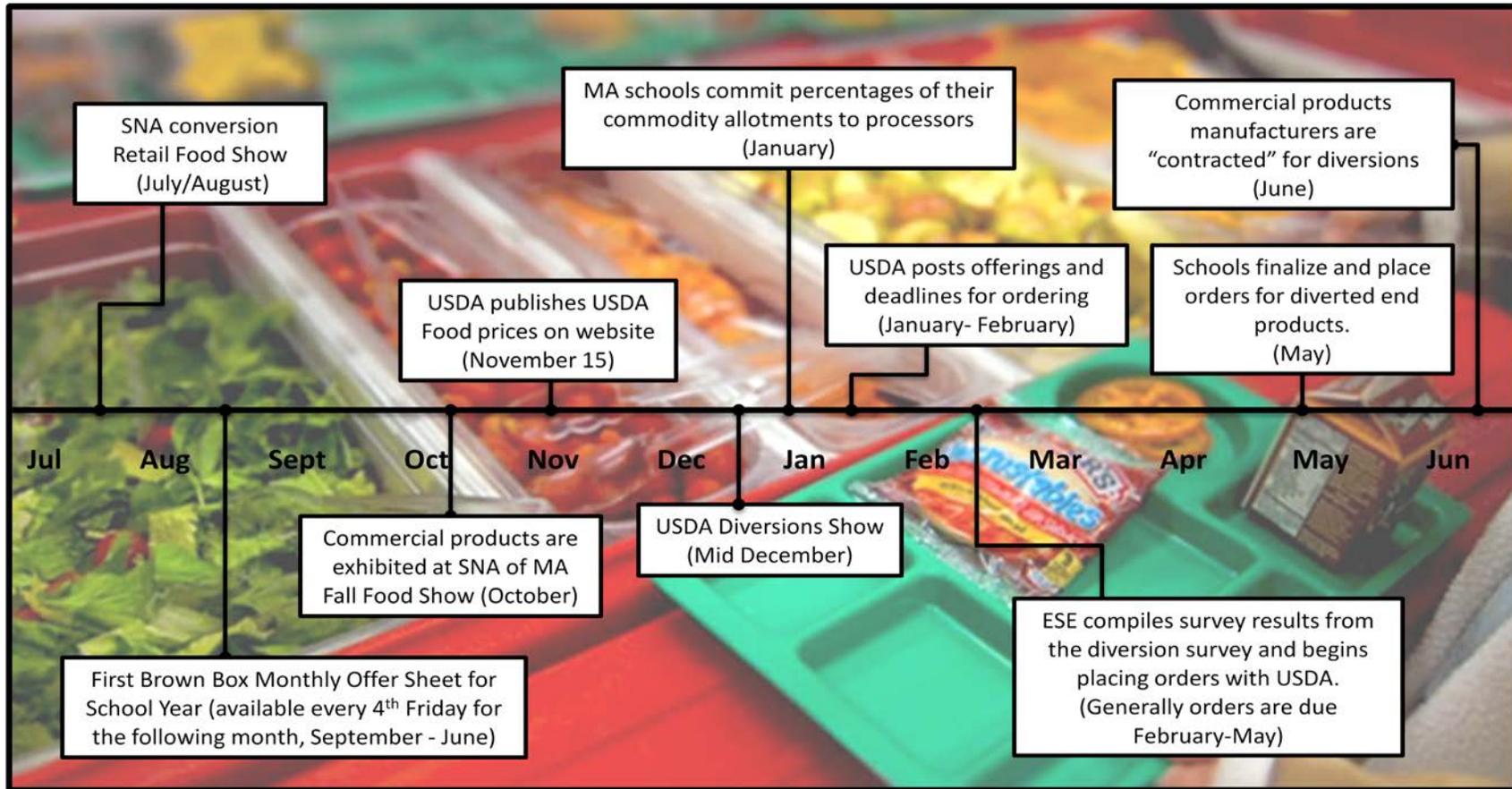
²⁵³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

commercial market orders is that they generally do not require storage because the quantity, date, and location of delivery can be specified within the contract.

Figure 6: Timeline of Important Dates in Massachusetts School Food Ordering Process²⁵⁶



²⁵⁶ *Id.*; email correspondence with Marion Browning, *supra* note 83. It is important to note that the entire timeline is currently in flux, as ESE has been working to change some of the timing and processes with regard to ordering. USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013). Photo credit: U.S. Department of Agriculture.

Overview of Challenges in the Massachusetts Program

One way to test the efficiency and effectiveness of the USDA Foods program is to look at the utilization rates for individual school districts and the state as a whole. The utilization rate is the percentage of the USDA Foods entitlement dollars used by a school district or the state in a given year. Massachusetts' statewide utilization rates have varied over the past few years, with estimates ranging from 65% to 84%.²⁵⁷ Variation within the statewide and district-level data reported by ESE makes determining an accurate utilization rate difficult, as there are discrepancies between the utilization rates that ESE has posted on its website from previous years, the utilization rate that ESE sent to the authors for those same years, and the utilization rate reported by school districts.²⁵⁸ According recent numbers provided by ESE, in the 2011-2012 school year Massachusetts was entitled to an estimated \$24.5 million worth of USDA Foods and utilized only 77% of this entitlement.²⁵⁹

While the utilization rates reported may not be precise, it is clear that many districts, and the states as a whole, are not using all of the USDA Food dollars that they are entitled to.²⁶⁰ By only utilizing 77% of its entitlement dollars in the 2011-2012 school year, Massachusetts left more than \$5.6 million on the table.²⁶¹ This is due, in large part, to various barriers throughout the food acquisition process that make utilizing in-kind entitlements of food more expensive or administratively burdensome than utilizing food purchased on the commercial market.²⁶² However, as a direct consequence of leaving USDA food dollars on the table, a greater portion of a local school district's food service budget must be dedicated to purchasing foods on the commercial market. Thus, in 2011-2012, school districts across Massachusetts spent a combined total of \$5.6 million of their general budgets on food that might have been obtained at a lower cost through the USDA Foods Program. For example, Lynn Public Schools was entitled to \$447,866 USDA Foods entitlement dollars but utilized only 61% of that, leaving \$174,349 on the table and needing to spend that money on the commercial market.²⁶³

²⁵⁷ Email correspondence with Marion Browning, *supra* note 83.

²⁵⁸ According to data for the 2009-2010 school year that has been posted on the ESE website since that time, the utilization rate in that year was only 65% for the state. MASSACHUSETTS DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION, *USDA Foods Commodity Entitlement Report 2009–2010*, MASS.GOV, http://www.doe.mass.edu/cnp/news10/USDA_valuelist.html (last updated Oct. 18, 2010). However, recent data from ESE puts the utilization rate for that same year at 84%. Email correspondence with Marion Browning, *supra* note 83. The same recent data from ESE puts the 2010-2011 utilization rate at 82% and the 2011-2012 rate at 77%. *Id.*

²⁵⁹ Email correspondence with Marion Browning, *supra* note 83.

²⁶⁰ According to the ESE data, Boston Public Schools' utilization rates have varied widely over the past few years. The original ESE data had BPS utilizing only 45% of its entitlement in 2009-2010. MASSACHUSETTS DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION, *USDA Foods Commodity Entitlement Report 2009–2010*, MASS.GOV, http://www.doe.mass.edu/cnp/news10/USDA_valuelist.html (last updated Oct. 18, 2010). ESE's new data shows BPS utilizing 94% in that year, then only 65% in 2010-2011 and 80% in 2011-2012. Email correspondence with Marion Browning, *supra* note 83.

²⁶¹ Email correspondence with Marion Browning, *supra* note 83.

²⁶² Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁶³ Email correspondence with Marion Browning, *supra* note 83.

Why would a major school district forego in-kind food entitlements only to spend real dollars on the same products?

In order to plan a menu, FSDs must know the following.²⁶⁴

- (1) **Which** foods will the district receive?
- (2) **How much** food will the district receive?
- (3) **When** will the food be received?

According to FSDs, without these three pieces of information, they cannot reasonably rely on USDA foods to supplement their school lunch program, leading to low commodity entitlement utilization rates and inefficient expenditures. If any of the above information is missing or is not reliable, school districts bear the costs of any discrepancies between their expectations and reality. These costs might include buying additional food on the commercial market when orders arrive too late or not at all and paying to store food that is received too early.

There can be as much as a three-month lag between when a product is scheduled to be delivered and when it is actually received by the state, due to issues related to USDA food procurement.²⁶⁵ As a result, Massachusetts FSDs often will not incorporate a food item into their menus until the local warehouse has received it.²⁶⁶ Even after the food has been received, there may be further delays, because each warehouse has a limited number of timeslots available for districts to pick up their orders. USDA foods that are not received according to schedule often give rise to bottlenecks at the local warehouses.²⁶⁷

Any delay in the receipt of USDA foods also requires immediate cover, so in addition to increased storage and delivery costs, schools must also incur the costs of purchasing replacement food. Because districts are not reimbursed for losses stemming from USDA Foods' delivery delays, many districts find it more cost-effective to use commercial products for which (1) the necessary information is always available, (2) foods can be ordered to arrive on an exact day, and (3) retailers, not schools, cover the costs of their mistakes or delays.²⁶⁸

In the case of Boston Public Schools, the food service staff sends menus to school cafeteria managers five weeks in advance to ensure schools are prepared to serve the items.²⁶⁹ Due to the uncertainty of the USDA Foods delivery schedule, BPS will not menu an item until it is at the warehouse.²⁷⁰ As a result,

²⁶⁴ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁶⁵ See, e.g., U.S. DEPARTMENT OF AGRICULTURE, COMMODITY FOOD NETWORK, What's New in USDA's Food Distribution Program for Schools?, 14 School Programs USDA Foods Update 1 (Oct. 2009), available at <http://opi.mt.gov/pdf/schoolfood/FDCP/09OctSchoolNewsVol14.pdf>; see also Tony Evers, PhD, State Superintendent, IMPORTANT: USDA Foods Annual Order Update, Jan. 10, 2012, http://dpi.wi.gov/fns/pdf/annual_order_update_sy1213.pdf (informing Wisconsin school food authorities that the USDA has just informed the Department of Public Instruction of delays in the shipment of bulk USDA Foods due to USDA procurement issues).

²⁶⁶ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

foods remain in the warehouse for a minimum of five weeks after receipt, taking up storage space and sometimes incurring additional storage fees.²⁷¹

USDA Foods procurement problems, districts’ limited access to their warehouses, and other inefficiencies in the food ordering process at the state level all contribute to a high level of uncertainty in the USDA Foods distribution system. The costs of this uncertainty may, in some instances, even exceed the cost of purchasing the same products on the open market. As a result, districts often use savings benchmarks (e.g. “savings from USDA Foods must be greater than 20% when compared to retail purchase”) to determine whether the risks related to utilizing USDA Foods are worth the potential savings.²⁷² The benchmark of saving at least 20% over the cost of the same “purchased” product on the commercial market before choosing the “free” product through USDA Foods is indicative of the level of risk FSDs associate with USDA orders.

Costs of Delay in USDA Food Receipt	Cost of Commercial Product
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Normal USDA Foods fees (e.g., ESE administrative fees, storage fees, and transportation fees) <input checked="" type="checkbox"/> Commercial Food Purchase (substitution for delayed USDA Food) <input checked="" type="checkbox"/> Storage fees for USDA Food during delay period (time between arrival at warehouse and distribution to schools; schools pay any amount over 60 days) <input checked="" type="checkbox"/> Re-writing menu to incorporate USDA Foods products intended for previous menu 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Commercial Food Purchase

Areas of Opportunity for the Massachusetts USDA Foods Program

Key Issues

Through the research and writing of this report, several key issues surrounding the use of USDA foods in Massachusetts Public Schools have emerged:

- (1) Uncertainty in the ordering process can lead to the inefficient use of already limited funds.
- (2) Disparities in information between districts and diversion processors can lead to inefficient allocation of funds and potentially unfair contracts.

²⁷¹ *Id.*

²⁷² *Id.*

- (3) Lack of communication between ESE and RAs can lead to utilization issues in both brown box and diverted items.
- (4) Despite the potential purchasing power of Massachusetts schools in the aggregate, individual districts ordering independently remain unable to influence vendors regarding delivery schedules, end-products offered, and prices.

These issues are described in greater detail below, separated into **Ordering and Utilization**, **Direct Diversions**, and **Storage and Delivery**.

The following changes are necessary for Massachusetts to improve ordering and utilization of USDA Foods:

- ☑ Greater consultation between ESE and RAs in ordering process
- ☑ Transparency and advance notice in ordering process
- ☑ More individualized school district allocations

Ordering & Utilization: Areas of Opportunity

Through research and interviews with stakeholders within the state and outside, we have identified several key areas of opportunity for USDA Foods ordering and utilization in Massachusetts:

Consultation between ESE and RAs in initial USDA ordering process and when placing an order for Massachusetts

FSDs expressed concern regarding the lack of consultation between ESE and individual RAs in the initial USDA Foods ordering process, when USDA solicits input from State DAs on what kinds of foods they should order for the coming year.²⁷³ Currently, State DAs are not required to solicit input from schools.²⁷⁴ Though some state DAs survey RAs, Massachusetts historically has not. As a result, Massachusetts RAs have had limited influence over the type of products USDA offers on its master list. For example, FSDs in Massachusetts conveyed an interest in more *lightly*-processed brown box items (such as diced grilled chicken) that would be usable for kitchens with limited equipment, but also healthier and less processed than most diverted offerings.²⁷⁵ However, under the current structure, it is difficult for RAs to communicate what kinds of items they would like to see offered at the USDA level.

The lack of consultation between ESE and RAs can also be a barrier when ESE orders food for Massachusetts for the year from USDA's master list. Before 2011, ESE made ordering decisions for the state without consulting the schools participating in the USDA Foods Program. This means foods were ordered that schools did not want or could not use due to storage, nutrition, or facility constraints.²⁷⁶ In addition, some foods ordered by ESE, such as canned apricots, elicited very low demand among FSDs.²⁷⁷ Many schools in Massachusetts do not claim these undesired foods from their offer sheet; as a result, these schools do not use their full entitlement and the foods often go to waste. Because schools do not select or order their commodities in the first place, they are also not held accountable to take the foods that Massachusetts brings in, which can leave a great deal of unused inventory with ESE at the end of each school year.²⁷⁸

²⁷³ *Id.*

²⁷⁴ Interview with Marion Browning, *supra* note 115.

²⁷⁵ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Interview with Marion Browning, *supra* note 115.

The new Massachusetts Food Distribution Coordinator has begun taking steps to make it easier for FSDs to indicate their preferences to USDA and to increase consultation between ESE and FSD's during the ordering process.²⁷⁹ As a first step, a USDA Foods Advisory Council (see Appendix E) consisting of representatives from USDA, ESE, industry members, and 12 Massachusetts school districts was empanelled to provide input on USDA Foods issues.²⁸⁰ School districts included on the Advisory Council are selected by ESE to include representation from all four regions of the state as well as a range of different sizes and types of settings (urban/rural).²⁸¹ The group met four times during the 2011/12 school year. Additionally, in 2013-2014 ESE is rolling out a Brown Box Food Preference Survey which will assess the preferences of all schools prior to placing the state order with USDA.²⁸²

Transparency and Advance Notice in Program Administration

The ordering process could also benefit from greater information-sharing and transparency. Currently, communication between ESE and RAs is mainly limited to the diversion survey and monthly offer sheets.²⁸³ Thus, schools do not know how many cases of each item they will collect until they receive their monthly offer sheet. This makes it difficult for schools to coordinate their USDA Foods usage (which makes up about 20% of their food spending) with their commercial bids (the remaining 80%).²⁸⁴ ESE has already begun to provide increased advance notice. Before school year 2011-2012, ESE released a list of the items they requested for the upcoming school year, along with anticipated quantities and delivery dates, to FSDs.²⁸⁵ While this list was still subject to USDA's purchasing decisions, it was a helpful way to provide an estimate of which commodities FSDs could expect to receive that year. Starting in school year 2012-2013, ESE began to update its website monthly to show when it anticipates specific products will be delivered and what month the product should be offered.²⁸⁶ FSDs expressed uniform approval for this advance notice, and suggested that it would be even more helpful if ESE could also provide a breakdown indicating the estimated quantities that each district could expect to receive.²⁸⁷

Individualized Allocation among School Districts

As described above, in Massachusetts, each item is allocated between school districts solely based on the number of reimbursable meals served.²⁸⁸ This algorithm fails to consider important distinctions between individual schools, such as facilities, equipment, school size, and location. As a result, monthly offer sheets do not reflect these diverse needs. This lack of individualization can make it difficult for schools to maximize entitlement utilization.²⁸⁹ For example, returning to an earlier hypothetical, two schools may be offered the same number of cases of eggs, even though only one school has a breakfast program and the other does not. Because the current allocation process does not take this difference into account, one school might have to repeatedly refuse the food that does not match their specific needs, leading them to miss out on utilizing their full commodity entitlement.²⁹⁰ Further, it is very

²⁷⁹ *Id.*

²⁸⁰ Email correspondence with Marion Browning, *supra* note 83.

²⁸¹ Interview with Marion Browning, *supra* note 115.

²⁸² Email correspondence with Marion Browning, *supra* note 83.

²⁸³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁸⁴ *Id.*

²⁸⁵ See *infra* Appendix C: USDA Foods Requested by ESE for SY2011-2012; Interview with Marion Browning, *supra* note 115.

²⁸⁶ Email correspondence with Marion Browning, *supra* note 83.

²⁸⁷ Interviews with Food Service Directors (Nov. 2011–Apr. 2012); Interviews with Food Service Directors (Jan. – Apr. 2013);

²⁸⁸ See *supra* note 191 and accompanying text.

²⁸⁹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

²⁹⁰ *Id.*

difficult or impossible for schools to trade commodities among themselves.²⁹¹ These limitations result in food waste and missed opportunities for schools to capitalize on available USDA Foods.

Direct Diversion: Areas of Opportunity

Through research and interviews with stakeholders within the state and outside, we have identified several key areas of opportunity for the direct diversion program in Massachusetts:

Increased Information Sharing between FSDs and Processors throughout Ordering Process

Under the current system in Massachusetts, districts desiring to divert their USDA foods must form contracts with processors without knowing the price per pound of processed food or the quantity of the product they will be contractually bound to receive.²⁹² As a consequence of contracting based on incomplete information, districts risk paying prices for diverted food products that match or exceed the prices of the same products on the commercial market.²⁹³ Because ESE finalizes the amount of food that will be diverted to each processor in January, long before districts know how much of each commodity they will receive, or commercial products' pricing information, districts do not know whether or not they are actually saving money by participating in the direct diversions program until it is too late.²⁹⁴ Even in cases where the prices of the end products are equal, it is often more economical for districts to order processed food on the commercial market because those deliveries can be scheduled to arrive on the exact date they will be used, thereby reducing the storage and delivery costs.²⁹⁵

By requiring districts to commit to processing contracts before having any price or food quantity information, Massachusetts is impeding districts' ability to get the best value for their schools through the USDA Foods Program. Conducting the diversion survey in January leads to districts' making decisions based entirely on processors' non-price attributes, leaving processors free to charge whatever price they choose. Processors have raw commodity pricing information one month in advance of the Diversion Show in December; therefore, ESE should require that processors at least provide price *ranges* for their products.²⁹⁶ This would enable FSDs to evaluate their options with respect to all relevant criteria and make the most of their commodity entitlement dollars.

Additionally, ESE should inform districts of their allocated food quantities as soon as the information becomes available. Under the current system, districts do not learn this information until they receive processors' order forms in May, despite the fact that the processors can learn the quantity of product ESE has ordered earlier in the year by accessing WBSCM.²⁹⁷ This data is critically important to districts

The following improvements are necessary for Massachusetts to realize reliable cost savings through the direct diversion process:

- ☑ Correct the imbalance of information between FSDs and processors in the ordering process
- ☑ Increase selectivity of processor procurement

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

when planning budgets and menus, particularly when food is purchased via the rebate value pass through method. ESE has agreed to change this practice by informing FSDs of their allocated food quantities by posting them online as soon as ESE finalizes and places the orders with USDA.²⁹⁸ This information would enable FSDs to make more cost-efficient decisions during the ordering process and should be shared with them as early as possible.

Increased Selectivity in the Procurement of Processors

Massachusetts permits any vendors with NPAs to participate in USDA diverted foods processing. While this policy has the potential to increase competition among vendors, the overwhelming number of available options makes it difficult for FSD's to make informed choices among the various diverted end products offered. As mentioned previously, there are currently 45 multi-state processors serving Massachusetts' public schools, many offering products similar in quality, nutrition, and taste to each other. In 2012-2013 Massachusetts school districts diverted orders to 38 of these 45 possible processors.²⁹⁹ Spreading the state's diversion orders across a much smaller group of processors with higher order volumes would increase the probability of districts' combined orders filling trucks and decrease the need for ESE to re-direct/cancel diversions. Furthermore, a selective procurement process would likely result in better prices for diverted products, as processors would face more rigorous competition for districts' business.

One of the reasons the state does not get involved in approving processors is because it would increase its administrative burden.³⁰⁰ However, it seems as though allowing *any processor* to enter the market also has administrative costs. When districts' orders are dispersed across so many vendors, it becomes highly unlikely that the districts will be able to fill trucks with their orders, resulting in more of their orders being canceled. Upon notification that a processor will not be able to fill the order, ESE's current practice is to attempt to re-route that order to another processor.³⁰¹ If no processor can be found to fill the order, those USDA foods that would have been diverted are incorporated back into the state brown box offering, and the entitlement funds can be used to order additional brown box items. All of these additional transactions have associated administrative costs, which could be avoided by choosing processors more selectively at the state level. At the same time, independent ordering means that schools are unable to maximize their purchasing power to receive preferential pricing.

A selective procurement process could reduce the overall number of processors able to do business in the state by making it more costly or difficult for vendors to enter. For example, one way to increase selectivity is to require all processors to meet specific requirements before receiving permission to do business with schools districts in the state. The requirements could address issues such as nutritional specifications, delivery capabilities, and/or pricing, as well as any other relevant bases for selecting processors. Only those vendors capable of generating enough business in the state to offset the cost of meeting the new requirements would make it through the selection process. ESE also does not allow state processors that do not have NPAs to participate, but opening the system up to allow local processors that meet the ESE criteria to compete for this business could provide benefits like increased responsiveness to specific school requests and increased economic opportunity for local businesses.

²⁹⁸ Email correspondence with Marion Browning, *supra* note 83; Phone interview with Marion Browning, Food Distribution Coordinator, Massachusetts Department of Elementary and Secondary Education (Feb. 1, 2013).

²⁹⁹ Email correspondence with Marion Browning, *supra* note 83.

³⁰⁰ *Id.*

³⁰¹ Email correspondence with Marion Browning, *supra* note 83.

Storage, Delivery, & Distribution: Areas of Opportunity

Through research and interviews with stakeholders within the state, we have identified several key areas of opportunity to improve storage, delivery and distribution of USDA foods in Massachusetts:

Streamlined Distribution Tracking and Increased Flexibility in Pick-Up Schedules

Under the current system in Massachusetts, USDA foods take a long time to reach Massachusetts RAs even after they arrive within the state. First, ESE waits until the food reaches the state-contracted warehouses to send RAs their monthly offer sheet. Then, RAs must notify ESE what they wish to receive, and ESE notifies the warehouse. Once the warehouse receives this order, the warehouse notifies RAs that their orders are ready for pickup. This all involves a great deal of paperwork and processing, which results in delays.³⁰² For example, items received by ESE into the warehouses in September are not put on the offer sheets until October and may not be delivered to school until December because of trucking and delivery issues.³⁰³ This can lead to food waste due to foods passing their expiration dates and to schools serving older foods whose nutritional value has diminished. In 2012 ESE decided to contract with new transportation vendors in an effort to improve delivery timeframes.³⁰⁴ A more streamlined tracking and ordering system could further help reduce these delays.³⁰⁵

Further, once the order is “ready for pickup,” RAs still must schedule a pickup time with the warehouse. Currently, warehouses limit the number of cases that may be picked up each day and the timeslots available for pickup.³⁰⁶ This makes it difficult for RAs to schedule pickup times, which causes further delays. Some FSDs report receiving their monthly delivery as many as six weeks after they place their order from the offer sheet—even though the food is already in Massachusetts.³⁰⁷ These delays cause significant obstacles for FSDs trying to plan menus using USDA foods, because they do not know when they will receive their monthly delivery. Moreover, it makes it difficult for Massachusetts to use the USDA Foods Program for fresh or perishable food items, because the delays can result in food expiring or even spoiling before it reaches its final destination. In fact, after a failed experiment with ordering fresh produce from the normal USDA Foods Program in the 2011-2012 school year, ESE decided not to order fresh produce for the following school year.³⁰⁸ To address these delays, ESE has worked with at least one warehouse to expand the available pickup times.³⁰⁹ Some warehouses, such as Pioneer Valley Cold Storage, also offer districts the ability to track their orders and ascertain what foods have been delivered to the warehouses through online portals.³¹⁰ Communicating via these portals, rather than by

The following adjustments are necessary to improve storage, delivery, and distribution of USDA foods within Massachusetts:

- Streamlined distribution tracking and increased flexibility in pick-up schedules
- Increased access to storage facilities

³⁰² USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Jan. 11, 2012).

³⁰³ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁰⁴ Email correspondence with Marion Browning, *supra* note 83.

³⁰⁵ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁰⁶ *Id.*

³⁰⁷ *Id.*; USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Jan. 11, 2012).

³⁰⁸ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Mar. 27, 2012).

³⁰⁹ *Id.* (noting that Wilmington Cold Storage increased its case limits on Tuesdays). Expanded use of the DoD-Fresh program in Massachusetts will also help schools to receive more fresh fruits and vegetables.

³¹⁰ Interviews with Food Service Directors (Jan. 2013 – Apr. 2013).

fax and phone, allows districts access to accurate information quickly and easily. ESE should continue this effort to maximize flexibility of pickup times for RAs as well as encourage all warehouses to offer districts an online information portal.

Increased Access to Storage to Allow Fee-For-Service Cost-Savings

As mentioned above, under the fee-for-service value pass-through method for direct diversions, school districts are invoiced for the costs of all products, less the value of the included commodities, upon receipt.³¹¹ In situations where school districts are unable to accept products from processors directly for whatever reason (lack of storage space, delivery delays, etc.), districts must pay to store product that they cannot access for some time. Providing storage space for diversions at the local warehouses would be helpful if not for the fact that local warehouses severely limit districts' access to their stored items.³¹² When these unnecessary additional storage fees are added to the other costs of direct diversions, it becomes much less likely that districts will actually realize any cost-savings from using the USDA diversions program.

The cost-effectiveness of FFS is most likely to be realized when RAs have both adequate storage and convenient, flexible access to the products they are storing. Expanding available pickup times would not only improve access to monthly brown box deliveries, but also enhance access to diversion deliveries, thereby decreasing the overall cost of diverting USDA Foods.

An additional option would be for ESE to revisit its state contracts with warehouses in order to see if there are ways to create more flexibility for schools to be able to access their items on a more regular basis. Along these lines, it might be useful for ESE to review its warehouse contracts and determine whether changes to these contracts could be made that would be more conducive to USDA Foods storage and delivery, or to consider whether opting for state-owned/operated warehouses might offer any economic or efficiency benefits as opposed to the state's current program of contracting with private companies.

Recently Implemented Improvement Strategies

ESE recently went two years without anyone filling the role of State Food Distribution Coordinator. Since hiring a new Coordinator in December 2010, ESE has implemented several positive reforms to improve the efficiency and utility of the USDA Foods Program in Massachusetts. In addition, ESE was very responsive to preliminary recommendations made by the team preparing this report. In response to early report drafts, ESE has already begun to implement some of the report recommendations.

In 2011, ESE created the USDA Foods Advisory Council to provide assistance in ordering and implementation decisions regarding the Massachusetts USDA Foods Program. This Council is made up of FSDs from around Massachusetts, including representatives from Boston Public Schools (the largest school district in the state), representatives of other smaller school districts, representatives from ESE, and representatives from USDA.³¹³ Since its formation, the USDA Foods Advisory Council has provided general advice to ESE regarding ordering decisions in Massachusetts, regarding topics such as product selection and food safety concerns.

³¹¹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³¹² *Id.*

³¹³ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Jan. 11, 2012).

In addition to providing general ordering guidance, the USDA Foods Advisory Council established three subcommittees to tackle more specific challenges within the USDA Foods Program. The Ordering and Utilization subcommittee has been investigating how to improve the ordering process at the state level to maximize utilization of USDA Foods dollars, improve district planning, and minimize inventory at warehouses.³¹⁴ This subcommittee spearheaded a pilot survey of the USDA Foods Advisory Council members on which items from the USDA master list they would like to see in Massachusetts and in what quantities, which ESE has used in its ordering process.³¹⁵ Based on this subcommittee success, ESE recently decided to use a Brown Box Food Preference Survey to incorporate preferences from all schools into its order for the 2013-2014 school year.³¹⁶ The USDA Foods Advisory Council's Storage and Transportation subcommittee aims to improve transportation efficiency and examine ways to improve upon the current storage and delivery structure. In 2012, ESE decided to contract with new transportation vendors in order to improve delivery timeframes.³¹⁷ Finally, the Processing and Diversions subcommittee is exploring statewide collaborative bidding to improve the product quality and lower the processing costs of diverted commodities.³¹⁸ ESE has worked closely with the Advisory Council, and has implemented a range of new programs at the Council's behest. Utilizing the Advisory Council has been a great way for ESE to receive feedback from FSDs about ways to improve the USDA Foods Program and for ESE to share new processes, programs and best practices with FSDs; however, there have been some concerns about ensuring that information shared at the Advisory Council meetings is also well-disseminated around the state to those FSDs who do not serve on the Council to ensure even program implementation.³¹⁹

As noted earlier, ESE also recently took action to increase the amount of advance notice provided to school districts in terms of what USDA Foods items they could expect in the coming year. In advance of school year 2011-2012, ESE disseminated a list to FSDs of the items ESE had requested from USDA, along with requested amounts and delivery periods. This list provided a way for FSDs to see which commodity foods they might expect, and indicated what foods would no longer be available. For example, because it is unavailable domestically, USDA no longer offers tuna fish through USDA Foods.³²⁰ With the request list, FSDs were able to see that ESE had not ordered tuna for the year, and could plan accordingly. ESE has also begun posting monthly Food Order Status Reports showing the anticipated delivery date of various foods and what month they will likely be offered, as well as posting diversion allocation reports showing which schools diverted a product and that school's allocated pounds.³²¹

ESE also recently implemented a pilot program in which it allowed Boston Public Schools, the largest school district in Massachusetts, to opt out of items they would not use at the beginning of the year, so that ESE could reallocate those items to other schools.³²² This opt-out option may have created some new efficiencies but it is unlikely that its impact was great. Typically, offered items that are not selected go into the entire RA offering the following month, so the only step that is saved by having Boston Public Schools opt out at the beginning of the year was the elimination of the need for ESE to reallocate these

³¹⁴ *Id.*

³¹⁵ Interview with Marion Browning, *supra* note 115; interview with Food Service Director (Feb. 21, 2012).

³¹⁶ Email correspondence with Marion Browning, *supra* note 83.

³¹⁷ *Id.*

³¹⁸ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Mar. 27, 2012).

³¹⁹ Interviews with Food Service Directors (Jan. – Apr. 2013).

³²⁰ *Id.*

³²¹ Email correspondence with Marion Browning, *supra* note 83.

³²² Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

items the following month.³²³ However, expanding on this pilot could help ensure that food does not go unused at the warehouse when one district does not order that food if demand exists for it elsewhere in the state.

In addition to these targeted reforms, ESE has made clear that they are moving towards a system where FSDs will have a lot more control and the opportunity to choose for themselves what foods they would like to receive each year and how they most want to spend their entitlement dollars.³²⁴ Rather than employing a top-down approach, the vision for the future is to let the FSDs, who know what foods are right for their schools, play the main role in making such decisions.³²⁵ These have all been promising reforms, and ESE is clearly on the right path. The rest of this report aims to provide additional recommendations on potential reforms Massachusetts can undertake to improve USDA Foods Program efficiency and utilization, and thus nutritional outcomes for children, as it continues down the path to reform.

Part III: Recommendations and Areas for Future Research

Opportunities for Innovation & Recommendations for Implementation

The authors of this Report have identified several opportunities for innovation that could help address the issues outlined above. These opportunities and recommendations are explained in detail below. To improve the efficiency of USDA Foods in Massachusetts, ESE should consider implementing all or some of the recommendations detailed herein.

Ordering and Utilization: Opportunities & Recommendations

Continue to Implement and Improve the Survey of all Massachusetts Districts to Inform the State-Level Order

Prior to 2013 Massachusetts did not survey FSDs about what kinds of USDA Foods products from the master USDA list they would prefer to be offered during the year.³²⁶ However, the state limits the products it requests from USDA. For School Year 2011-2012, ESE requested 65 of the 180 items that USDA offered on its master list.³²⁷ Many RAs expressed frustration with this system because they were often offered products they could not use or products in quantities too small to prepare a sufficient number of meals.³²⁸ In response to the concerns, ESE recently began surveying RAs about their preferences to inform their choices of USDA Foods from the master USDA list.³²⁹ This survey should

³²³ *Id.*

³²⁴ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 4, 2013).

³²⁵ *Id.*

³²⁶ *Id.*; Interview with Marion Browning, *supra* note 115.

³²⁷ See *infra* Appendix C: USDA Foods Requested by ESE for SY2011-2012.

³²⁸ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³²⁹ Email correspondence with Marion Browning, *supra* note 83.

allow ESE to take RA preferences into account so that the food ESE requests from USDA matches the needs of the RAs. In many states, state DAs perform extensive preference surveys to ascertain which products RAs want in advance of placing their order with USDA.³³⁰ We recommend that ESE continue to move forward with implementing this survey and also ensure that the survey is conducted in such a way that RAs are able to use it as an effective tool to communicate their preferences to ESE.

➤ **How It Works**

In order to effectively utilize a survey, state DAs must distribute the survey to schools in advance of the USDA Foods ordering deadlines.³³¹ DAs would provide the master list of foods offered by USDA to districts and ask them to indicate which foods they would select and in what quantities, based on their expected entitlement. DAs then would use the survey results to narrow down the list of items available to districts and inform its order with USDA. The state should also include the DoD-Fresh program on the survey in order to quantify the interest among FSD in spending their entitlement dollars to this program, especially as ESE moves forward with expanding the entitlement dollars going towards DoD-Fresh and the number of school districts able to participate.

➤ **Benefits**

Restricting the number of items offered to districts to some amount below the 180 USDA offerings, say, 25-30 items is an effective way to ensure that truckloads are filled for each item and has resulted in very high utilization rates in at least one state we spoke with.³³² By implementing a statewide survey process, districts are able to have greater choice of products and quantities that they could actually utilize, while still allowing ESE to maintain a shortened commodities list and ensure full truckloads for deliveries. In addition, ESE can use the survey process to solicit feedback on RAs' level of satisfaction with USDA's current offerings, and to indicate additional items that RAs would like to see offered.

➤ **Challenges & Recommendations**

The greatest challenge in surveying is the possibility that FSDs will not participate in the survey process or will order widely varying items in insufficient quantities, leaving ESE to resort to their current method of determining product types and volumes based on historical data. Preliminary feedback from the survey process in 2013 suggests that the surveys were complicated and burdensome to fill out, increasing the chance that FSDs will choose not to participate.³³³ For example, the survey was sorted by USDA description of the product, not by the food or by price, which made it difficult for districts to compare options.³³⁴ Moreover, the purpose of the survey was not immediately apparent because it looked like the monthly brown box surveys already distributed to FSDs.³³⁵ The survey also did not bind districts to accept any products on their offer sheets, despite the fact that if they correctly used the survey they would be offered the products for which they expressed an interest.

To reduce these risks, we recommend that ESE clearly distinguish this survey from the monthly survey and provide the survey to districts in an easily searchable format. We also recommend that ESE require

³³⁰ See, e.g., NEW YORK STATE OFFICE OF GENERAL SERVICES, *Utilizing USDA Foods in New York State*, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=stelprdc5089710>.

³³¹ USDA imposes different deadlines for different products. For example, the deadline for beef orders is in May. USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (Mar. 27, 2012). States using WBSCM may set additional deadlines on top of these USDA-mandated dates. Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³³² Telephone Interview with State Distributing Agency Representative (Mar. 30, 2012).

³³³ Interviews with Food Service Directors (Jan. 2013 – Apr. 2013).

³³⁴ *Id.*

³³⁵ *Id.*

that districts respond to the survey in order to inform ESE’s decision regarding which foods they will be offered over the coming year. The RAs should have to commit in advance to accept the products they have requested. In order to mitigate the challenge of divergent preferences and the possibility of refused items, we recommend a multi-step survey process. ESE should compile results from the survey and share these results with all districts so they can see how their order relates to the state overall. ESE should then reach back out to districts that ordered insufficient quantities of specific products to allow them to reallocate their entitlement value to products that have reached minimum acceptable quantities. ESE should also make clear to districts that they will be required to take possession of all foods ordered through the survey process. In essence, the process would work as follows:

1. ESE offers full USDA foods list to all MA districts via an online survey tool or web portal similar to the current Diversion survey
2. Districts respond with product preferences and quantities, based on expected total entitlement
3. ESE compiles and shares survey results with all districts, notifying those districts that have ordered insufficient quantities of specific products that they will be contacted for follow-up
4. ESE follows up with districts whose products were not ordered to allow them to reallocate the value of their orders to products being ordered in sufficient quantities by other districts
5. ESE finalizes and places order with USDA
6. ESE holds districts accountable to take possession of the products and quantities committed to during the survey process

Limiting the total number of items to 25-30 based on RA surveys in this way will ensure that RAs are offered adequate quantities of the items that they really want or need to improve their lunch programs, and will guarantee that RAs will accept the products once they are offered.

Along the same lines, ESE should move to a system where all schools can elect to spend as much of their entitlement as they would like on the DoD-Fresh program. Utilization of this program has been growing in Massachusetts, and ESE will expand the statewide entitlement dollars going to the program to \$1.5 million in the 2013-2014 school year.³³⁶ However, demand is likely to outstrip this value, and schools should be able to spend a larger proportion of their entitlement dollars on fresh fruits and vegetables through the DoD-Fresh program if they so choose.

Implement Web-Based Supply Chain Management at the RA Level in Massachusetts

While the statewide preference survey would help ESE order the correct items and quantities for the state as a whole, additional reforms are needed to ensure that districts receive allocations that reflect their individual needs. Based upon our research, we believe that USDA’s WBSCM system could help address this problem. In 2010, USDA implemented a new online ordering tool for USDA Foods known as Web-Based Supply Chain Management (“WBSCM”).³³⁷ WBSCM “provides an integrated commodity purchasing, tracking, and ordering system” for USDA Foods.³³⁸ Some states permit individual RAs to use

³³⁶ USDA Foods Advisory Council Meeting, in Shrewsbury, Mass. (April 3, 2013).

³³⁷ U.S. DEPARTMENT OF AGRICULTURE, WEB BASED SUPPLY CHAIN MANAGEMENT, <http://www.USDA.gov/wps/portal/USDA/USDAhome?navid=WBSCM> (last viewed Apr. 5, 2012).

³³⁸ *Id.*

WBSCM to place orders directly into the USDA system rather than ordering through State DAs.³³⁹ Even in these systems, DAs retain some control over the ordering process. For example, DAs can still limit the types of items from the USDA master list that are actually available within the state and they can alter orders before they go to USDA to ensure that trucks are filled.³⁴⁰ The benefit of individual WBSCM access by RAs is that it allows for some retained control by the state DA while permitting individual schools to play a larger role in the ordering process. Because WBSCM is still in its infancy, the program is still in a pilot stage in many states. WBSCM is currently available to all states, but states are in different stages of implementing it. Some use it 100% (e.g., Maryland), others are still rolling it out piecemeal (e.g., New York), and others are not using it yet at all (e.g., Massachusetts). In Massachusetts, ESE uses WBSCM to place its statewide order, but it has not yet authorized individual RAs to access the site.

➤ **How It Works**

In a state that allows RA-level WBSCM access, FSDs log on to the WBSCM system to make their orders for the upcoming school year.³⁴¹ The system displays what items school districts may select for the year.³⁴² The selection may be limited by the DA, which still has control over which items from the USDA's master list will be available within the state.³⁴³ From this list, individual RAs select which items they want and in what quantity for different delivery periods. State DAs aggregate the orders and modify them to ensure truckloads get filled.³⁴⁴ After the orders are combined, the DA notifies individual RAs of which items and delivery dates have been accepted.³⁴⁵ Any orders that were not accepted are credited to the school district's allocation. In addition, if a school's preferred order date was not possible, schools have the option to give up the order (which will also be credited).³⁴⁶ The state DA will then place the state's order with USDA. At this point, school districts are essentially locked into their selections for the upcoming school year.

➤ **Benefits**

WBSCM takes a lot of pressure off of State DAs to determine how much and what kinds of food items to order for the state. While DAs can use historical usage and preference surveys to approximate RA preferences, WBSCM provides a more accurate way to assess school preferences for the upcoming year.³⁴⁷ With WBSCM, RAs have more control over the type and quantity of foods that come into the state, and it allows greater individualization within the program: RAs can order items and quantities that reflect the size, location, and facilities of their schools, rather than simply selecting a percentage of what it is in the warehouse that month. WBSCM also allows for more RA influence and autonomy, as well as increased transparency in the overall program. Under WBSCM, because schools know what foods are

³³⁹ See, e.g., PENNSYLVANIA DEPARTMENT OF AGRICULTURE, *Web-Based Supply Chain Management Training Guide*, PA.GOV, http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/AgWebsite/Files/Publications/BFD%20WBSCM%20Manual.pdf (last viewed Apr. 5, 2012).

³⁴⁰ Telephone Interview with State Food Distribution Coordinator (Mar. 30, 2012).

³⁴¹ *Id.*

³⁴² Interviews with Food Service Directors (Nov. 2011–Apr. 2012). USDA imposes different ordering deadlines for different products. States using WBSCM may set additional deadlines on top of these USDA-mandated dates. *Id.*

³⁴³ Telephone Interview with State Food Distribution Coordinator (Mar. 30, 2012).

³⁴⁴ *Id.*

³⁴⁵ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁴⁶ For example, if a school orders turkey roasts for Thanksgiving and the DA notifies the school that their order will not come in until February, the school could opt out of the turkey order altogether and have it credited to its entitlement. Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁴⁷ Telephone Interview with State Food Distribution Coordinator (Mar. 30, 2012).

available in the state, what they ordered, and when it will be delivered, they are better able to forecast what items they will receive and when, which facilitates more precise menu planning using USDA Foods.

In addition, because schools order in February for the upcoming school year, schools select food before it reaches the warehouse rather than responding to a monthly offer sheet. As a result, schools can plan menus in advance and are locked in to receiving those foods, meaning that state DAs can avoid being left with high levels of unused inventory at the end of the year.

➤ **Challenges & Recommendations**

States that have made the switch to WBSCM report that the implementation process can be difficult due to the time and human resources capacity required to train FSDs to make the transition.³⁴⁸ Transitioning to WBSCM can be difficult for FSDs because the program might not be intuitive for many. However, USDA continues to improve the program in response to user concerns.³⁴⁹

To make the transition run more smoothly, State DAs should introduce the program piecemeal, rather than implementing all at once across the state. For example, some states implement WBSCM one warehouse at a time, and alter the subsequent trainings as needed based on early feedback.³⁵⁰ Alternatively, states can begin by implementing WBSCM in only a few select districts. This will allow the DA to receive feedback from these early adopters and improve the implementation and training process as it rolls out statewide.

State DAs that have implemented WBSCM at the RA level emphasize the need to commit to hands-on training.³⁵¹ This means that DAs should provide many small trainings, in order to provide the greatest individualized attention, and should schedule them in diverse geographical areas so that all RAs have access to them. USDA also has a training program that allows FSDs to log in to the system and explore how it works. Experienced DAs recommend performing the trainings shortly before the ordering begins in February. This ensures that the new system is fresh in the minds of RAs when they log on to use the system, and will allow ordering to run more smoothly. Some states have even performed the trainings the day of the first round of ordering.

Enable Easier USDA Foods Swapping Among Districts

While implementing a statewide survey of RAs and holding districts accountable for their orders should minimize a large percentage of commodity overages, ESE should also enable easier commodity swapping among districts. Under the current system, food that is left in the warehouse at the end of the school year must be either donated, discarded, or occasionally carried over for use during the next school year, depending on its shelf life.³⁵² In some cases, this has led to circumstances where one school district must refuse an item due to space or usage constraints, while at the same time, another school district needs more of that item than they are being offered on their monthly offer sheet. As a result, one school will go out to buy an item on the market while that same item sits in a warehouse elsewhere in the state, unused. Currently, ESE allows school districts to swap their unwanted commodities once they have reached their own schools, as long as schools handle the negotiation and transportation costs.³⁵³ Schools must report these exchanges in their inventory at the end of the year.³⁵⁴ In practice,

³⁴⁸ *Id.*

³⁴⁹ *Id.*; Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁵⁰ Telephone Interview with State Food Distribution Coordinator (Mar. 30, 2012).

³⁵¹ *Id.*

³⁵² Interview with Marion Browning, *supra* note 115.

³⁵³ *Id.*

this does not occur very often because schools are often unaware of any surplus in outside school districts. Some states have implemented swapping mechanisms that would allow schools to negotiate exchanges for food items they cannot use.³⁵⁵ Similarly, Massachusetts should improve upon the current structure by adding mechanisms for schools to notify each other when they want to make a swap.

➤ **How It Works**

Commodity swapping could be implemented in two different ways. The first would be to expand upon the existing system. This could be as simple as setting up a website where schools can post their surplus and express their interest in negotiating an exchange.³⁵⁶ Under this option, the burden on ESE would be minimal because swapping schools would manage their own shipment, administration fees, and storage fees. ESE would simply provide the forum to begin the process.

An even more useful, albeit more complicated, method would be to implement a system whereby schools could exchange their allotment before it even reaches their local warehouse. This way, the exchange would appear on the monthly offer sheets of the participating schools. In this case, entitlement dollars would be charged against the receiving school and credited to the transferring school. This eliminates the additional shipment fees incurred in transferring items between schools, and simplifies the swapping process from the point of view of the RAs. This method requires that the state use an online ordering system such as WBSCM, so that RAs can make changes online before their items are shipped to the warehouse.³⁵⁷ This might make sense to implement if or when Massachusetts switches to using WBSCM.

➤ **Benefits**

Like WBSCM, a swapping system is a way to provide school districts with greater individualization in their commodity allocation, because it would allow FSDs to supplement what they receive on their offer sheet. This increased individualization would help improve efficiency by preventing food from going to waste while other schools spend food dollars on the same item. A swapping system could also reduce overall inventory at warehouses and help schools maximize their commodity utilization rates overall.

➤ **Challenges & Recommendations**

Even with the added mechanism for communication between districts, schools will likely have difficulty planning and actually initiating swaps. In addition, schools might prefer to make their purchases on the commercial market rather than deal with the additional shipping and administrative fees, as well as any required paperwork of swapping. The ideal solution would be to use the second option described above, so that RAs can swap before additional shipping and administrative fees are incurred. However, this option requires that the state use an online ordering system such as WBSCM and thus would require more initial labor on ESE's part.

³⁵⁴ *Id.*

³⁵⁵ *See, e.g.*, CONNECTICUT DEPARTMENT OF ADMINISTRATIVE SERVICES, *WECAFS Swap Postings*, Ct.Gov, <http://das.ct.gov/cr1.aspx?page=29> (last viewed Apr. 16, 2012).

³⁵⁶ *See, e.g.*, Connecticut's Swap Post Website at Connecticut Department of Administrative Services, *WECAFS Swap Postings*, Ct.Gov, <http://das.ct.gov/cr1.aspx?page=29> (last viewed Apr. 16, 2012).

³⁵⁷ *See* CONNECTICUT DEPARTMENT OF ADMINISTRATIVE SERVICES, *Swap Post Rules*, document available for download at <http://das.ct.gov/cr1.aspx?page=29> (last viewed Apr. 16, 2012).

Direct Diversions: Opportunities and Recommendations

Utilize Statewide Competitive Bids for Processing Contracts

Under the current system, districts are surveyed to determine what percentage of their commodity allotments they would like to divert to each processor, but they make this decision based primarily on the taste and nutritional quality of the foods shown to them at the USDA Diversions Show in December as well as past experience they may have had with particular vendors.³⁵⁸ School districts may receive information about prices for end products through informal conversations with the vendors but the state does not produce an official list of prices and there is no guarantee the vendors cite consistent prices to each school district.³⁵⁹ ESE uses the percentages provided in the FSDs' survey responses to inform the specifications in the contracts, and then ultimately awards to the chosen processors.³⁶⁰ However, when FSDs complete these surveys, they still do not know (1) the actual amount of food they are diverting or (2) the price the processors will charge per pound of food processed.³⁶¹ As a result, FSDs are not able to compare the prices for different processors or adequately consider other purchasing options, and the prices paid for diverted food products sometimes end up being significantly higher than the prices of their commercial market equivalents.³⁶²

The latest School Food Purchase Study conducted by FNS found that formal bidding methods and formal contract price terms were most effective in achieving the lowest prices for USDA diverted food processing.³⁶³ Although ESE technically executes the processing agreements after conducting a formal statewide bid solicitation, there is no real competition between bidders because there are no prices or price terms contained within their contract bids. The contracts are essentially awarded based on noncompetitive factors and do very little to ensure that districts get the best possible prices.

ESE should conduct a true statewide competitive bidding process for the procurement of contracts by rewriting the bid solicitation specifications to include more explicit competitive price terms. This will create competition among the processors, driving down the price of USDA diversion processing and enabling districts to direct more of their general budgets, which are now spent on such processing, to the rest of their program needs. Additionally, this would enable the state to wield its combined purchasing power in order to obtain certain types of high-demand processed foods that are currently difficult to get from USDA diversion processors (e.g., lightly-processed items, such as grilled chicken breast strips, which are both nutritious and versatile).

ESE may want utilize the Operational Services Division's ("OSD") statewide contract procurement process in order to increase the transparency of the procurement process and provide districts with access to statewide contract information. OSD provides an internet-based system, the Commonwealth Procurement and Solicitation System ("Comm-PASS"), which offers free access to all public procurement information and is available for use by any eligible state entity (including cities, towns, districts, counties, and purchasing collaboratives).³⁶⁴

³⁵⁸ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁵⁹ Interviews with Food Service Directors (Jan. 2013 – Apr. 2013).

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ SCHOOL FOOD PURCHASE STUDY—III, *supra* note 5 at 7.

³⁶⁴ OPERATIONAL SERVICES DIVISION, *Statewide Contract Information Booklet*, MASS.GOV, <http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/> (last visited Apr. 10, 2012).

➤ **How It Works**

In order to implement competitive bidding, ESE should procure contracts using the competitive sealed bidding method, through which a “fixed price contract” or “fixed price contract with prospective price redetermination” is awarded to the responsive bidder offering the best value.³⁶⁵ Fixed price contracts specify an amount of payment that does not depend on the amount of resources or time expended on the contract.³⁶⁶ Fixed price contracts with prospective price redetermination afford both parties slightly more flexibility by specifying intervals during which the contract price may be adjusted for subsequent periods of performance.³⁶⁷

In the past, FSDs have had to pay excessive prices for processed USDA products, despite the fact that equivalent products on the commercial market are sometimes sold at a fraction of the price. Fixed price contracts have the effect of locking processors into a particular budget, allowing FSDs to rest assured that they will not be contractually obligated to overpay for products that could be purchased in the retail market at a fraction of the cost. If the processor cannot produce the item at the contracted price, the processor will be forced to assume the excess cost of the products, negotiate with the FSD, or pay contract termination fees.

The bid specifications provide the opportunity to list all of the other factors that will be evaluated prior to awarding the bid, such as ingredients not to be used (e.g., MSG, lean finely textured beef, etc.) and the ability to delay or cancel orders upon timely notification from the districts.³⁶⁸ Because the competitive bidding process does take additional time, procurement would need to take place early enough to ensure that there is time to evaluate and compare the contract bids before the awards are finalized.

As mentioned above, OSD administers procurement processes for all eligible entities by establishing statewide contracts using services such as Comm-PASS.³⁶⁹ Currently, ESE utilizes Comm-PASS for contracts for storage and transportation of USDA foods.³⁷⁰ ESE has not, however, used the Comm-PASS system to procure processing for USDA diverted food. OSD provides many helpful resources to facilitate use of the system and inform users of procurement and contract management strategies, making it a particularly useful resource for ESE in its development of this new competitive procurement process.

➤ **Benefits**

Implementing statewide competitive bidding would ensure that Massachusetts schools get the best price for processing of diverted foods. By procuring diverted food processing services through a statewide competitive bidding process, Massachusetts will also introduce new barriers to market entry (the bid specifications), which will reduce the overall number of processors willing and/or able to do business in the state. Ultimately, the competitive process results in fewer processors accepted for each end product, which means that more districts will order from the same processors, thereby increasing the likelihood that their cumulative orders reach the truckload quantities required by the processors. In addition, awarding contracts through competitive bidding would allow Massachusetts to include more specifications about how diverted foods should be processed and what ingredients should or should not be included. Most importantly, by including explicit price terms (e.g. requiring that diversion processing

³⁶⁵ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, *supra* note 216 at 8.

³⁶⁶ RODNEY D. STEWART, ET. AL., COST ESTIMATOR'S REFERENCE MANUAL 466 (1995).

³⁶⁷ *Id.* at 469.

³⁶⁸ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, *supra* note 216 at 8.

³⁶⁹ OPERATIONAL SERVICES DIVISION, *supra* note 364.

³⁷⁰ Email correspondence with Marion Browning, *supra* note 83.

fees per case not exceed the highest case price for an equivalent product in the commercial market), Massachusetts would eliminate any processors seeking to charge excessive prices.

Another benefit of statewide competitive contract procurement is the potential consolidation of districts' USDA and commercial food orders. Under the current system, commercial products for the NSLP are usually procured much less expensively from non-USDA processors, meaning that districts must split up their USDA and commercial market food orders in order to maximize their cost-effectiveness.³⁷¹ This increases districts' or collaboratives' administrative costs because they must perform at least two different transactions with two different processors, which requires much more cumbersome tracking and recordkeeping. Forcing USDA processors to compete for Massachusetts business in the same way as commercial vendors may cause their prices to converge, resulting in lower prices overall and more districts opting for consolidated processed food orders. Therefore, by adding both their diversions and commercial purchases to statewide processing contracts, districts would (1) avoid the administrative burden of crafting their own formal contract solicitations, (2) be able to wield the state's greater purchasing power, and (3) minimize the number of transactions performed per processed food product ordered.³⁷² This would be particularly advantageous should the state choose to allow a NOI VPT system, discussed in greater detail below.

➤ **Challenges and Recommendations**

As discussed above, the competitive bidding process does require the additional time and administrative resources of ESE in order to be effective. In addition to beginning the procurement process earlier in order to allow time for bid review, ESE may also need additional human/professional resources to draft all of the procurement documents and to effectively review bids. The earlier procurement date may also require districts to finalize some menu decisions even earlier in the year in order for ESE to include the proper specifications in its solicitations. Despite these administrative hurdles, the potential benefits (including dramatic cost savings) to all participants in the USDA Foods Program are likely to exceed these costs. By reducing costs and increasing transparency, a statewide bidding process is likely to encourage higher district participation, thereby increasing Massachusetts' overall utilization of the USDA Foods Program and freeing up resources for use other school food program needs.

Facilitate Cooperative Procurement of USDA Foods Processing Among Districts

As discussed in previous sections, because districts place their diversion orders independently, individual districts' diversion orders are often not large enough to warrant frequent or flexible delivery schedules or bulk discounts. As mentioned above, increasing the size of bids helps schools to take advantage of potential cost savings through increased purchasing power. Whether or not ESE implements a statewide bidding system for diverted food processing, schools can still take advantage of opportunities to join together with one another to consolidate their orders and increase their purchasing power. Collaborative or cooperative purchasing is the process of combining various groups' purchases together when their needs and goals are similar, enabling them to negotiate with suppliers for mutual benefit. Districts benefit from greater combined purchasing power, which fosters competition among processors and ultimately leads to lower prices, higher quality, and more consumer demand-driven products.³⁷³

³⁷¹ Interviews with Food Service Directors (Nov. 2011–Apr. 2012).

³⁷² OPERATIONAL SERVICES DIVISION, *supra* note 364.

³⁷³ Scott Richardson, *et. al.*, *supra* note 165.

Processors benefit from higher, more stable demand for their products, allowing them to manufacture and distribute items more efficiently.³⁷⁴

Currently, there are seven regional purchasing collaboratives in Massachusetts, representing 240 of the 391 districts utilizing USDA Foods in Massachusetts.³⁷⁵ These collaboratives work together to plan and purchase their commercial grocery orders to reap the benefits of greater purchasing power, however, as of yet, none of these collaboratives are working together to place diversion orders. The remaining 151 unaffiliated districts, serving nearly 602,000 students, or 63% of public school students in the state, continue to order most (if not all) of their school food independently. As a result, they likely are not getting the best possible deals from *any* of their food suppliers. By employing collaborative purchasing strategies when placing USDA diversion orders, districts could increase their purchasing power, thereby enabling them to (1) achieve the truckload quantities of raw product necessary to get the diversion products they want and (2) get the best prices possible.³⁷⁶

As an example, there are 45 processors serving Massachusetts public schools, and many of these processors offer products that could be substituted with similar products from other processors.³⁷⁷ 23 different types of meatballs were ordered in MA from 5 different companies; however 27 districts ordered a total of 880 cases of one particular product.³⁷⁸ Thus, some RAs that ordered a less popular type of meatball had their orders canceled, when instead they could have received meatballs if they had ordered with a group of schools that had an order large enough to fill a truck. By working together, these districts could reap the aforementioned benefits of increasing their purchasing power, obtaining lower costs for processing, and satisfying more of their orders by ensuring that trucks are filled.

Because of the high potential for cost savings, ESE should promote and facilitate the formation of collaboratives by hosting information sessions and/or trainings that assist schools with both (1) creating and participating in these entities, and (2) using them to increase the cost effectiveness of the diversions program. In particular, ESE should make districts and collaboratives aware of the services currently provided by OSD, such as Comm-PASS, described above, and BUYSMART, a free online public purchasing community available through Comm-PASS since 2004.³⁷⁹ both of which are designed to facilitate collaborative purchasing among public entities in Massachusetts. By making FSDs aware of the opportunity to order collaboratively and assuring FSDs that ESE will recognize their collaborative efforts when placing the statewide orders, ESE may increase overall utilization of the USDA diversions program. In particular, ESE should target those districts that (1) have historically failed to achieve the truckload-level order quantities required and/or (2) often order common school foods from the least popular processors.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ Interviews with Food Service Directors (Nov. 2011–Apr. 2012); *see also Scott Richardson, et. al., supra* note 165 (discussing the potential benefits of collaborative purchasing among districts).

³⁷⁷ Interviews with Food Service Directors (Nov. 2011–Apr. 2012); *see also Scott Richardson, et. al., supra* note 165 (discusses the potential benefits of collaborative purchasing among districts, pointing out that many districts do not take advantage of group buying power by separately ordering similar products from different processors).

³⁷⁸ *Scott Richardson, et. al., supra* note 165.

³⁷⁹ OPERATIONAL SERVICES DIVISION, Comm-PASS Procurement Access and Solicitation System, BUYSMART, MASS.GOV, https://www.ebidsourcing.com/displayBuySmartInfo.do?doValidateToken=false&menu_id=2.12 (last visited Sept. 6, 2012).

Table 3: Massachusetts Collaboratives & Unaffiliated Districts³⁸⁰

Collaborative/District Type	# of Districts	# of Students	09/10 Commodity Entitlement Value
Small Unaffiliated (< 5,000)	224	302,198	\$5,006,612
Medium Unaffiliated (5,001-10,000)	18	116,868	\$2,460,809
Large Unaffiliated (10,001-25,000)	6	78,515	\$2,017,856
Very Large Unaffiliated (>25,000)	3	104,392	\$2,685,201
Berkshire County Cooperative	13	14,991	\$338,672
Collaborative for Educational Services	22	44,260	\$1,010,597
MA Buying Group	7	24,988	\$439,158
Metro North Collaborative	17	41,115	\$642,688
South Shore Collaborative for SFS	25	78,970	\$1,417,749
The Education Cooperative	51	124,455	\$2,142,105
Urban Ring Collaborative	5	28,158	\$564,194
TOTAL	391	958,910	\$18,725,641

➤ **How It Works**

Collaborative purchasing groups can be either “informal” or “formal.” In “informal” collaboratives, districts collaborate and plan purchases together, but are not members of a legally constructed purchasing group. Improving communication between districts, as described in the section about commodity swapping, would be a first start in aiding districts to participate in cooperative buying. Instead of swapping commodities after receipt, in a purchasing collaborative, districts would share product information and purchasing preferences during the diversion survey period from December to January. The districts themselves could set up a web page or spreadsheet on a shared network, where schools could inform one another of their interest in particular products. Under this option, the administrative burden on ESE is minimal because groups of districts/schools would manage their own information sharing system and determine how to best combine and communicate their orders to ESE. Districts should make sure that their combined order quantities achieve full truckloads, and ESE should be aware that these orders are not to be split up and combined with others.

“Formal” collaboratives are created by formal agreement between two or more school committees of cities, towns, regional school districts and/or charter schools. In accordance with Massachusetts General Laws Chapter 40 § 4e, a board of directors must manage each collaborative, and the Commissioner of Education must approve the formal cooperative agreement, which binds its members and addresses financial and managerial issues.³⁸¹ Formal cooperatives benefit from being able to issue a single bid solicitation for processing contracts on behalf of all of the member committees.³⁸²

An excellent resource for implementing collaborative purchasing programs is BUYSMART. Cities, towns, public school systems (including charter schools), public higher education institutions, public and quasi-

³⁸⁰ *Id.*

³⁸¹ Mass. Gen. Laws ch. 40 § 4e (2011), <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section4e>.

³⁸² U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, WITH THE NATIONAL FOOD SERVICE MANAGEMENT INSTITUTE, FIRST CHOICE: A PURCHASING SYSTEMS MANUAL FOR SCHOOL FOOD SERVICE 183 (2002), *available at* <http://www.nfsmi.org/documentlibraryfiles/PDF/20111129111739.pdf>.

public authorities, and qualified non-profit providers are all eligible for membership.³⁸³ BUYSMART enables formal or informal purchasing groups as well as independent districts from across the state to post any of their contracts and solicitations to a state-managed website, viewable by all other members and a broad range of vendors. BUYSMART also provides members with instant access to an easy-to-use online interface for viewing, managing, and, most importantly, combining members' purchasing/procurement processes.³⁸⁴ Thus, in addition to providing a convenient and expedient information exchange between districts, BUYSMART also has the potential to serve as a statewide virtual purchasing collaborative.

➤ **Benefits**

By combining the buying power of existing collaboratives with currently unaffiliated districts, or forming new collaboratives among those districts, schools will be able to more cost-effectively obtain processed commodity products. Also, schools placing orders as a larger group are more likely to fill trucks and thus more likely to receive their food orders than if they order individually. BUYSMART can serve as an invaluable resource for increasing efficiency among Massachusetts districts as it facilitates collaborative purchasing on much broader scale enabling districts and purchasing groups of all sizes to come together and wield much greater purchasing power, get better prices, and benefit from many other efficiencies formerly enjoyed exclusively by the state.³⁸⁵ Increased purchasing power may also increase the influence Massachusetts schools

have over the types of products offered through the USDA diverted foods program. Schools working together may even be able to develop specifications for their desired diverted end products (e.g. "lightly processed" products in lieu of the currently offered "heavily processed" products) and have processors compete for their business by offering products that meet those specifications.

BUYSMART also provides additional opportunities to increase efficiency in NSLP by facilitating districts' and purchasing collaboratives' participation in statewide procurement processes during the commercial food ordering process. For example, the state purchases many processed food products for non-NSLP purposes (hospitals, prisons, etc.) which may also be used for NSLP. Through BUYSMART, districts/collaboratives are able to simply append their processed food orders to already-existing statewide contracts, rather than forming independent agreements with commercial processors. Not only does this reduce the districts' administrative burden, but it also ensures that the districts get the best possible prices for their commercial orders.

EXAMPLE:

The Education Cooperative (TEC) – Dedham, MA

TEC provides its members with a cooperative purchasing service for a variety of common annual purchases, including:

- cafeteria food and supplies
- custodial equipment and supplies
- paper, office, classroom, art and computer supplies

In 2008, TEC's paper and supply bid alone saved the member districts \$300,000.

Source: Linda Enerson, M.A., et. al., EDUCATIONAL SERVICE AGENCIES IN MASSACHUSETTS: BUILDING CAPACITY IN SMALL SCHOOL DISTRICTS, MASSACHUSETTS ORGANIZATION OF EDUCATIONAL COLLABORATIVES (January 2009), *available at* <http://moecnet.org/wp-content/uploads/2008/05/esasinma-moec-jan2009-1.pdf>.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

Finally, if ESE adopts a truly competitive statewide bidding process for processor procurement (discussed in the previous recommendation), competition between processors would begin at the state level rather than the district level, enabling districts to use collaborative purchasing to drive prices down even further, bringing them closer to achieving maximum cost-efficiency. As a result, more resources would be available for other FSD priorities.

➤ **Challenges and Recommendations**

Despite all of the benefits of purchasing together in a collaborative way, there are also some challenges, particularly with regard to the legal, financial, and recordkeeping burdens on schools entering formal collaboratives. Massachusetts law requires formal collaboratives to report financial information annually.³⁸⁶ Further, collaborative agreements, both informal and formal, should clearly specify the duties and responsibilities of all parties in writing. Members should make sure that they have adequately assigned roles and protected themselves against bearing a disproportionate amount of the costs of such arrangements. For long-term arrangements, members may protect themselves by agreeing to rotate roles periodically so that the duties and costs of each role are shared by all.

For all collaboratives, there should be an agreed-upon method for member school districts to purchase all items necessary for their menus. If a collaborative only provides means for purchasing high volume products, members run the risk of actually increasing their overall food costs, because individual districts are likely to have even less independent buying power than before. As districts place more of their orders through collaboratives, they place fewer on their own, and any low-volume items purchased outside of the collaborative are now part of even smaller orders with higher per-unit prices.³⁸⁷ Accordingly, members should avoid purchasing items that are not included within the collaborative bid, especially if a similar product is available on the collaborative product list.³⁸⁸

The formation of a successful purchasing collaborative can be a difficult and time-consuming process. The bid methods, administrative roles, order placement and other features of purchasing vary across collaborative groups, and it is critical that member schools all agree to and support the options chosen. In Massachusetts, the Massachusetts Organization of Educational Collaboratives (“MOEC”) is a professional organization that represents the state’s educational collaboratives.³⁸⁹ A group of districts hoping to start a new collaborative may enlist MOEC to assist in bringing together the relevant stakeholders and to facilitate forming the relationships necessary to build a successful cooperative purchasing plan.

Lastly, whether brought together by informal or formal means, all public purchasing entities (including unaffiliated independent districts) can and should join BUYSMART. BUYSMART provides a convenient and highly effective method for carrying out collaborative purchasing and, as mentioned above, eliminates many of the administrative and transaction costs associated with other collaborative procurement strategies.

Allow Indirect Discounting (“Net-Off-Invoice” or “NOI”) for Diverted Products

As previously discussed, under Massachusetts’ currently approved value pass-through systems, the fee-for-service (“FFS”) and rebate methods, districts must perform multiple transactions in order to receive

³⁸⁶ Mass. Gen. Laws ch. 40 § 4e (2011), <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section4e>.

³⁸⁷ FIRST CHOICE: A PURCHASING SYSTEMS MANUAL FOR SCHOOL FOOD SERVICE, *supra* note 382 at 177.

³⁸⁸ *Id.*

³⁸⁹ MOEC, Massachusetts Board of Education Policy on Educational Collaboratives, MOECNET.ORG (August 1988), <http://moecnet.org/policy>.

the value of their USDA foods. Under the rebate method, districts may combine their USDA and commercial food orders, but they must pay up front for the full value of the products received, including the price of the diverted commodity food. The districts do not receive the value of their USDA diverted food until the processors issue the rebates. Actually obtaining these rebates can prove to be challenging and time consuming, especially for smaller districts whose food service departments do not have dedicated “accounts receivable departments” to continuously track and pursue them.

Under the FFS method, districts are charged only the service fees associated with converting the USDA commodity, but cannot combine diversion orders with commercial orders. This scenario results in districts having to manage twice the paperwork and planning, as well as staff time, to receive multiple shipments of the same product.

In Massachusetts, FSDs have expressed interest in being able to consolidate their USDA and commercial processed food orders, but seem to strongly disfavor doing so under the rebate method because of its high up-front costs and the uncertainty of when rebates will be issued. The net-off-invoice method (“NOI”) seems to address these issues by providing districts with a way to combine their processing orders (USDA and commercial) and immediately receive the value of their USDA commodity foods subtracted from the bill. As of summer 2012, Massachusetts was one of only 13 states that had not approved NOI.³⁹⁰

➤ **How It Works**

Under NOI, districts may order USDA diversions and commercial products from the same processor. The processor combines their orders and manufactures the products in the same way as any other commercial order, then gives the products to distributors to deliver and invoice the districts. Unlike the rebate method, distributors subtract on an item basis the value of the USDA commodity from the invoice prior to billing the districts, thereby eliminating the reimbursement step. The districts are invoiced for the full commercial bid price of each processed case, less the pass-through value of the USDA foods used.

As mentioned in the previous section, NOI would be particularly useful if Massachusetts also adopted the suggested statewide contract procurement methods. If ESE used the OSD’s internet-based procurement system, Comm-PASS, districts would be able to add their commercial purchases to the statewide processing contracts for USDA diverted food. Combining USDA diversion orders and commercial food orders statewide would greatly increase the buying power of all participants and enable schools to get even better prices for the foods they currently order through both the USDA diversions program and on the commercial market.

➤ **Benefits**

Under NOI, RAs may have the same processor/distributor handle their USDA foods and their commercial products, enabling RAs to (1) increase their purchasing power by increasing their order size, as it includes both USDA foods and their retail order, (2) reduce transaction costs by consolidating multiple orders onto a single bill, (3) eliminate storage costs, as commercial vendors are able to deliver goods to schools on a more frequent, flexible, and reliable schedule, and (4) order as many of the items as they would need to make a sufficient number of meals, with the free USDA Foods commodities being used up first, then the commercial products making up the rest.³⁹¹

³⁹⁰ Telephone Interview with Cliff Meyers, *supra* note 220.

³⁹¹ ACDA PROCESSING COMMITTEE AND PROCUREMENT SUBCOMMITTEE, *supra* note 216 at 13.

➤ **Challenges & Recommendations**

NOI requires cooperation among every partner in the food ordering process (RA, distributor, broker, and processor) in order to be successful. ESE must first approve the NOI value pass-through method, diverted foods processors must agree to participate, the ESE Food Distribution Coordinator must have the required tracking capabilities, and school districts must be willing to commit to verifying sales in accordance with federal and state procedures. According to the American Commodities Distribution Association, “[i]f one of those pieces is missing, the whole thing could be an accounting disaster.”³⁹² Another important consideration is that NOI can be more expensive than FFS or other VPT methods, because all fees will be equal to commercial products’ fees (which include a commercial markup), so it is important to conduct a close comparison of the costs of each method before contracting with vendors using the NOI system.

There are resources available to assist in the transition to NOI. For example, K12 Services, Inc., a data management and consulting firm, provides software and other data management tools to assist in the efficient management of USDA foods in the NSLP. K12 Services offers districts complete start-up assistance by working with state agencies, vendors, and school food service to ensure that all relevant stakeholders have the resources and information they need for NOI to be a success.³⁹³ Implementation costs of K12 Services tracking systems are borne by the vendors, not the districts, so the financial burden of start-up would be minimal.³⁹⁴

Areas for Future Research

Massachusetts should also gather additional information about the following potential reforms to assess whether they are appropriate or feasible.

State-Level Processing Agreements

Currently, ESE only allows RAs to use multi-state processors with NPAs to process USDA Foods commodities in Massachusetts. This reduces human resource costs in Massachusetts because USDA regulates and ensures the safety of multi-state processors with NPAs. However, this denies local, in-state vendors the opportunity to process USDA foods, which is a missed opportunity for in-state economic development. Local processing might also be more responsive to school requests for specific products. Further research on the feasibility and costs of allowing in-state processing and State Processing Agreements is needed to determine whether this reform would be beneficial in Massachusetts.

Expansion of Commodity Letters of Credit/Cash in Lieu of Commodities

USDA Foods currently provides in-kind food benefits in 49 states. Only one state, Kansas, receives cash in lieu of USDA Foods, through a special provision in federal law.³⁹⁵ In addition, as a remnant of an old pilot program, USDA provides cash and Commodity Letters of Credit (CLOC) instead of commodity

³⁹² *Id.*

³⁹³ Telephone Interview with Cliff Meyers, *supra* note 220.

³⁹⁴ *Id.*

³⁹⁵ WHITE PAPER: USDA COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM, *supra* note 37 at 7.

donations at a very small number of sites.³⁹⁶ Under Cash in Lieu, USDA provides RAs with money rather than food. Under CLOC, USDA also provides RAs with cash instead of food; however, this cash must be used to purchase items in specific agricultural markets.³⁹⁷ There is some evidence that cash may be preferable to the current USDA Foods in-kind program. For example, one study found that school districts might derive greater benefits from cash over in-kind food donations.³⁹⁸ Allowing school districts to use cash to purchase items on the commercial market might be more cost effective than USDA's current purchasing scheme for USDA Foods. USDA has never published economic evidence that it is actually procuring food at a lower price than the commercial market.³⁹⁹ In fact, a recent analysis of USDA Foods costs in Minnesota schools found that 25% of the commodity products were more expensive per unit than products available through a local commercial supplier.⁴⁰⁰ One reason for this disparity is that every agency or entity along the supply chain includes an additional fee for the services that they provide, forcing up the cost of commodity foods. Cash in lieu also allows for greater flexibility and ease of execution than the current, complicated USDA Foods structure. If schools could use cash rather than relying on USDA's offerings and timetables, they could more easily tailor the program to their individual school's needs. Future research should further explore the feasibility and potential benefits of providing cash in lieu or CLOC as options to states and RAs.

State Agency in Charge of Distribution of USDA Foods

Each state decides which state agency will serve as the state Distributing Agency for USDA Foods. In Massachusetts and in many other states, USDA Foods falls under the purview of the Department of Education.⁴⁰¹ Other states place the program within the Department of Agriculture or the Office of General Administration.⁴⁰² The Department of Education is typical because of the NSLP's natural fit within education and school services. However, some states, such as Florida, have recently made the switch to the Department of Agriculture.⁴⁰³ This allows the state to work more closely with local growers and maximize the usage of in-state produce in the school lunch program. Similarly, state Departments of Agriculture may have greater bandwidth to disperse or absorb any anomalies in commodity distribution. A potential area for future research would be to investigate how different implementing DAs compare in effectiveness and program outcomes across states.

³⁹⁶ *Id.* In 1981, Congress required that USDA look into alternatives to the USDA Foods program. This resulted in a pilot program using cash and Commodity Letters of Credit at a very small number of sites. In 1994, these sites were made permanent and account for between \$8 and \$15 million of USDA Foods funding annually. *See id.*

³⁹⁷ *Id.*

³⁹⁸ Cora Peterson and Julian LeGrand, *Should the U.S. National School Lunch Program continue its in-kind food benefit? A school district-level analysis of funding efficiency and equity*, 33 APPLIED ECONOMIC PERSPECTIVES AND POLICY 566 (2011). In this study, it was estimated that districts obtained only \$0.60 in commodity food value for every \$1 increase in commodity funding. *See id.*

³⁹⁹ Cora Peterson, *A Comparative Cost Analysis of Commodity Foods from the U.S. Department of Agriculture in the National School Lunch Program*, 28 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 626, 627 (2009).

⁴⁰⁰ Cora Peterson, *A Descriptive Analysis of Supply Factors and Prices for USDA Foods in the National School Lunch Program*, 34 JOURNAL OF CHILD NUTRITION AND MANAGEMENT (2010), available at <http://www.schoolnutrition.org/Content.aspx?id=14031>.

⁴⁰¹ FOOD RESEARCH AND ACTION CENTER, *supra* note 27 at 17; *see, e.g., Food Distribution*, CALIFORNIA DEPARTMENT OF EDUCATION, <http://www.cde.ca.gov/ls/nu/fd/> (last visited Jan. 20, 2012); *Food Distribution Program*, MICHIGAN DEPARTMENT OF EDUCATION, <http://www.michigan.gov/mde/0,4615,7-140-43092-19567--,00.html> (last visited Jan. 20, 2012).

⁴⁰² *See, e.g., Division of Food Distribution*, KENTUCKY DEPARTMENT OF AGRICULTURE, <http://www.kyagr.com/consumer/food/index.htm> (last visited Apr. 16, 2012); *Connecticut Food Distribution Program*, DEPARTMENT OF ADMINISTRATIVE SERVICES, <http://das.ct.gov/cr1.aspx?page=29> (last visited Jan. 20, 2012); *see also Food Distribution Program*, USDA.ORG, <http://www.fns.usda.gov/fdd/statewebs/fdpwebs.htm> (USDA's full list of DAs).

⁴⁰³ *State DA Contacts*, US DEP'T OF AGRIC. FOOD AND NUTRITION SERVICES (APR. 11, 2013), <http://www.fns.usda.gov/fdd/contacts/sdacontacts.htm>.

Conclusion

How do you operate a school lunch program that is nutritious, economical, and appetizing to children?

This is the puzzle Food Service Directors face every day, and it has become increasingly difficult to solve with the introduction of the new school nutrition guidelines, which impose additional requirements on schools. This new burden makes the USDA Foods program more important than ever. Through its donated commodities, the USDA Foods Program provides an important opportunity for Food Service Directors to reduce food costs. On paper, USDA Foods appear to be win-win. Supporting farmers while supplying free food to children? It seems so logical, so simple. In practice, however, USDA Foods is an extremely complex program with many hidden costs and administrative burdens. To truly reduce expenses for Food Service Directors, donated foods must be consistent, predictable, and offer the right foods in sufficient quantities. Unfortunately, the current design of the USDA Foods Program—with its federal-state-local division of responsibilities—can make these requirements difficult to satisfy. For example, how can consistent delivery be ensured when food is traveling long distances at irregular intervals? How can sufficient quantities be guaranteed when USDA purchases are dependent on agricultural surplus and price support needs?

This report has laid out the major issues at the root of these challenges, along with recommendations to help mitigate them at the state level. We applaud the many positive steps that ESE has been taking in Massachusetts to improve the operation of the program within the state. It is of paramount importance that ESE and other Massachusetts stakeholders consider these recommendations and continue to take action to create a more efficient program. Ultimately, every improvement will help make the Massachusetts school lunch program more cost-effective, more efficient, and more nutritious for the hundreds of thousands of students it serves.

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Glossary

ACDA: American Commodities Distribution Association, a non-profit professional trade association committed to improving the USDA Commodity Food Distribution Program.

AMS: Agricultural Marketing Service. Division of the U.S. Department of Agriculture responsible for purchasing commodities for the NSLP to help stabilize prices in agricultural markets.

Bonus Commodity: Commodities that are offered as they become available through agricultural surpluses. Bonus commodities do not count against a school's entitlement and are often purchased on short notice.

BPS: Boston Public Schools

Comm-PASS: Commonwealth Procurement and Solicitation System, implemented by OSD

DA: Distributing Agency. The agency in charge of implementing USDA Foods within each state.

Diversions: USDA Foods items that are sent ("diverted") to a processor to be made into alternative end products before they are delivered to Recipient Agencies.

DoD-Fresh: A program within USDA Foods run by the Department of Defense that allows schools to use entitlement dollars towards fresh fruits and vegetables.

Entitlement: The minimum level of commodity assistance required under the National School Lunch Act. A school's entitlement is calculated by multiplying the estimated number of reimbursable lunches served the previous year by the value of commodities assistance for each lunch (currently, 22.25 cents).

ESE: Department of Elementary & Secondary Education. The Distributing Agency in Massachusetts.

FDC: Food Distribution Coordinator, the position within the Department of Elementary & Secondary Education responsible for overseeing the distribution of food to nutrition programs in Massachusetts.

FNS: Food and Nutrition Service. The division of the U.S. Department of Agriculture primarily responsible for implementing the USDA Foods program.

FSD: Food Service Director. Each school district in Massachusetts has a Food Service Director responsible for implementing the NSLP within the district. This includes food purchasing, menu planning, contracting with outside vendors, and implementing the USDA Foods program locally.

FSA: Farm Service Agency. Division of the U.S. Department of Agriculture responsible for purchasing price support commodities for the NSLP.

FFS: Fee-For-Service. A Value Pass-Through method for diversions wherein vendors bill school districts only for the cost of services provided by the processors.

HHFKA: Healthy, Hunger-Free Kids Act. The 2010 reauthorization of the Child Nutrition Act.

NOI: Net-Off-Invoice. A Value Pass-Through method for diversions wherein distributors subtract the value of the commodity from the final invoice, allowing for the inclusion of non-commodity food products on the same invoice.

NPA: National Processing Agreement. A contract with USDA required for all multi-state processors involved with the USDA Foods program.

NSLA: National School Lunch Act. Federal law passed in 1946 that authorizes and funds the National School Lunch Program.

NSLP: National School Lunch Program. Federal program that provides cash reimbursements and free commodity foods to schools offering free or reduced-price lunches to low-income students.

OSD: Operational Services Division of the Executive Office for Administration and Finance (MA)

SPA: State Processing Agreement. A contract between the state and a processor that can take diverted products and process them into alternative end products.

USDA Foods: The in-kind food support component of the National School Lunch Program. USDA purchases American-grown food and provides it to NSLP-participating schools free of cost.

USDA Foods Advisory Council: A body made up of Food Service Directors and other USDA Foods stakeholders that advises Distributing Agencies on issues relating to USDA Foods.

VPT: Value Pass-Through. The method processors use to bill Recipient Agencies for processed goods while allowing RAs to retain the value of the diverted raw USDA Foods used in the end products.

WBSCM: Web-Based Supply Chain Management. USDA's new online ordering portal for USDA Foods that provides an integrated purchasing, tracking, and ordering system for the program.

Appendices

Appendix A: Healthy, Hunger-Free Kids Act Summary

 **United States Department of Agriculture**
Food and Nutrition Service



Healthy, Hunger-Free Kids Act Quick Facts

Healthy, Hunger-Free Kids Act Overview

The Healthy, Hunger-Free Kids Act (HHFKA) of 2010 marked a great win for our nation's kids. This landmark legislation, for the first time in over 30 years, secured historic reforms to school meals and the entire school food environment.

Improving child nutrition is the focal point of the HHFKA. It authorizes funding and sets policy for the United States Department of Agriculture's core child nutrition programs: the National School Lunch Program (NSLP), the School Breakfast Program, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the Summer Food Service Program, and the Child and Adult Care Food Program.



Improvements for Back to School 2011

As we head into the new school year, USDA is working with schools on the following HHFKA changes:

Promoting the School Breakfast Program.

Eating breakfast can have a positive effect on a child's ability to learn, and this program provides nutritious breakfasts to students when breakfast at home is not an option. HHFKA establishes requirements for promoting the School Breakfast Program to students. USDA is working with schools on innovative delivery strategies such as breakfast on the bus, grab 'n' go breakfast and breakfast in the classroom.

Expanded access to meals served through eligible afterschool programs for at-risk children participating in the Child and Adult Care Food Program (CACFP).

Afterschool programs that serve meals or snacks draw at-risk children and teens into safe, constructive learning activities. The Act makes such meals, offered before in only Washington DC and 13 States, available nationwide.

Improvements in the school environment to teach our children healthy habits that last a lifetime.

Since 2006, all NSLP schools have been required to adopt a local school wellness policy. The Act expands the scope of wellness policies and increases transparency and local participation. USDA is working with the Centers for Disease Control and Prevention and the Department of Education on new technical assistance resources and strategies.

Improvements in the nutrition quality of food sold at school through six major components that work together to make these reforms a reality:

1. Updated nutrition standards for school meals based on expert recommendations from the Institute of Medicine.
2. Science-based standards for all other foods sold in school.
3. Increased funding for schools.
4. Common-sense standards for revenue provided to school food authorities from non-Federal sources.
5. Training and technical assistance to help schools achieve and monitor compliance.
6. Healthy offerings through the USDA Foods program.

For more information visit:

<http://www.fns.usda.gov/cmd>

Appendix B: USDA Foods Available for SY2012-2013

May-12		SY 2013 National School Lunch Foods Available list		
Material Number	Group	Material Description	Code	Material Group
100206		APPLE SLICES CAN-6/10	A345	FRUIT, CANNED
100258		APPLE SLICES UNSWEETENED FRZ CTN-30 LB	A346	FRUIT, FROZEN
100523		APPLES BRAEBURN FRESH B CARTON-40 LB	A343	FRUIT, FRESH
100517		APPLES EMPIRE FRESH CTN-40 LB	A343	FRUIT, FRESH
110140		APPLES FOR FURTHER PROCESSING - BULK		FRUIT, FRESH
100284		APPLES FRESH SLC-100/2 OZ	A337	FRUIT, FRESH
100286		APPLES FRESH SLC-200/2 OZ	A339	FRUIT, FRESH
100285		APPLES FRESH SLC-64/2 OZ	A338	FRUIT, FRESH
100521		APPLES GALA FRESH G CARTON-40 LB	A343	FRUIT, FRESH
100512		APPLES GRANNY SMITH FRESH CTN-37 LB	A343	FRUIT, FRESH
100514		APPLES RED DELICIOUS FRESH CTN-40 LB	A343	FRUIT, FRESH
100206		APPLESAUCE UNSWEETENED CAN-6/10	A345	FRUIT, CANNED
100260		APRICOT FRZ CTN-40 LB	A447	FRUIT, FROZEN
100261		APRICOT FRZ CUP-96/4.5 OZ	A449	FRUIT, FROZEN
100259		APRICOT SLICES FRZ BOX-20 LB	A358	FRUIT, FROZEN
100209		APRICOTS CAN-6/10	A360	FRUIT, CANNED
100216		APRICOTS DICED PEELED CAN-6/10	A382	FRUIT, CANNED
110230		APRICOTS DICED PEELED SUCROSE CAN 6/10	new	FRUIT, CANNED
110231		APRICOTS SUCROSE CAN-6/10	new	FRUIT, CANNED
100244		BLUEBERRY CULTIVATED UNSWEETENED FRZ CTN-30 LB	A367	FRUIT, FROZEN
100243		BLUEBERRY WILD UNSWEETENED FRZ CTN-30 LB	A366	FRUIT, FROZEN
100299		CHERRIES DRIED PKG-4/4 LB	A293	FRUIT, DRIED
100237		CHERRIES FRZ IQF CTN-40 LB	A364	FRUIT, FROZEN
100228		CHERRIES RED TART PITTED CAN-6/10	A363	FRUIT, CANNED
100235		CHERRIES RED TART PITTED FRZ CTN-30 LB	A365	FRUIT, FROZEN
100214		CRANBERRY SAUCE CAN-6/10	A288	FRUIT, CANNED
100296		FRUIT AND NUT MIX DRIED PKG-5/5 LB	A261	FRUIT, DRIED
110161		FRUIT MIX DRIED PKG-5/5 LB	A343	FRUIT, DRIED
100212		MIXED FRUIT CAN-6/10	A470	FRUIT, CANNED
110233		MIXED FRUIT SUCROSE CAN-6/10	new	FRUIT, CANNED
100276		ORANGE JUICE CONC FRZ CAN-12/32 OZ	A301	FRUIT, JUICE
100204		ORANGE JUICE CONC -TANKERS	A303	FRUIT, JUICE
100205		ORANGE JUICE DRUM-55 GAL	A305	FRUIT, JUICE
100277		ORANGE JUICE SINGLE CTN-70/4 OZ	A299	FRUIT, JUICE FROZEN
100220		PEACHES CLING DICED CAN-6/10	A409	FRUIT, CANNED
110234		PEACHES CLING DICED SUCROSE CAN-6/10	new	FRUIT, CANNED
100219		PEACHES CLING SLICES CAN-6/10	A408	FRUIT, CANNED
110236		PEACHES CLING SLICES SUCROSE CAN-6/10	new	FRUIT, CANNED
100239		PEACHES FREESTONE SLICES FRZ CTN-20 LB	A424	FRUIT, FROZEN
100282		PEARS BARTLETT FRESH CTN-45 LB	A435	FRUIT, FRESH
100239		PEACH FREESTONE DICED FRZ CUP-96/4.4 OZ	A424	FRUIT, FROZEN
100280		PEARS BOSG FRESH CTN-45 LB	A442	FRUIT, FRESH
100279		PEARS D'ANJOU FRESH CTN-45 LB	A441	FRUIT, FRESH
100225		PEARS DICED CAN-6/10	A434	FRUIT, CANNED
110237		PEARS DICED SUCROSE CAN-6/10	new	FRUIT, CANNED
100235		PEARS HALVES CAN-6/10	A365	FRUIT, CANNED
100241		PEARS HALVES SUCROSE CAN-6/10	new	FRUIT, CANNED
100224		PEARS SLICES CAN-6/10	A433	FRUIT, CANNED
110239		PEARS SLICES SUCROSE CAN-6/10	new	FRUIT, CANNED
100293		RAISINS BOX-144/1.33 OZ	A504	FRUIT, DRIED
100294		RAISINS CTN-30 LB	A500	FRUIT, DRIED
100295		RAISINS PKG-24/1.5 OZ	A501	FRUIT, DRIED
100253		STRAWBERRY UNSWEETENED FRZ CTN-30 LB	A375	FRUIT, FROZEN
100256		STRAWBERRY FRZ CUP-96/4.5 OZ	A417	FRUIT, FROZEN
100254		STRAWBERRY SLICES FRZ CTN-30 LB	A380	FRUIT, FROZEN
100351		BEANS GREEN FRZ CTN-30 LB	A070	VEGETABLE, CANNED
100307		BEANS GREEN CAN-6/10	A061	VEGETABLE, CANNED
coming 2013	dark green	BROCCOLI FLORETS		VEGETABLE, FROZEN
100309	red/orange	CARROTS CAN-6/10	A100	VEGETABLE, CANNED
100315	red/orange	CARROTS FRESH BABY CUTS BAG-100/2 OZ	A140	VEGETABLE, FRESH
100352	red/orange	CARROTS FRZ CTN-30 LB	A099	VEGETABLE, FROZEN
100340		CORN COB FRZ CSE-96	A129	VEGETABLE, FROZEN
100348		CORN FRZ CTN-30 LB	A130	VEGETABLE, FROZEN
100313		CORN WHOLE KERNEL(LIQ) CAN-6/10	A110	VEGETABLE, CANNED
100315		PEAS CAN-6/10	A140	VEGETABLE, CANNED
100350		PEAS GREEN FRZ CTN-30 LB	A160	VEGETABLE, FROZEN
100506		POTATO BULK FOR PROCESS FRZ	A232	VEGETABLE, FRESH
110227		POTATO FOR PROCESS INTO DEHY PRD-BULK	new	VEGETABLE, FRESH
100357		POTATOES OVENS FRY PKG-6/5 LB	A210	VEGETABLE, FROZEN
100358		POTATOES ROUNDS FRZ PKG-6/5 LB	A204	VEGETABLE, FROZEN
100340		POTATOES RUSSET FRESH CTN-50 LB	A214	VEGETABLE, FRESH
100356		POTATOES WEDGE FAT FREE FRZ PKG-6/5 LB	A173	VEGETABLE, FROZEN
100358		POTATOES WEDGE FRZ PKG-6/5 LB	A204	VEGETABLE, FROZEN
100336	red/orange	SPAGHETTI SAUCE MEATLESS CAN-6/10	A243	VEGETABLE, CANNED
110177	red/orange	SPAGHETTI SAUCE MEATLESS POUCH-6/106 OZ	new	VEGETABLE, CANNED
100980	red/orange	SWEET POTATO BULK FRESH PROC	A212	
100343	red/orange	SWEET POTATO FRESH CTN-40 LB	A230	VEGETABLE, FRESH
100318	red/orange	SWEET POTATOES MASHED CAN-6/10	A222	VEGETABLE, CANNED
100354	red/orange	SWEET POTATOES MASHED FRZ PKG-6/5 LB	A225	VEGETABLE, CANNED
100353	red/orange	SWEET POTATOES RANDOM CUT FRZ PKG-6/5 LB	A224	VEGETABLE, FROZEN
100317	red/orange	SWEET POTATOES W/ SYRUP CAN-6/10	A220	VEGETABLE, CANNED
100329	red/orange	TOMATO DICED CAN-6/10	A241	VEGETABLE, CANNED

(continued on next page)

110185	rediorange	TOMATO DICED POUCH-6/102 OZ	new	VEGETABLE, CANNED
100327	rediorange	TOMATO PASTE CAN-6/10	A252	VEGETABLE, CANNED
100326	rediorange	TOMATO PASTE DRUM-35 GAL	A249	VEGETABLE, CANNED
100332	rediorange	TOMATO PASTE FOR BULK PROCESSING	A048	VEGETABLE, CANNED
110189	rediorange	TOMATO PASTE POUCH-6/111 OZ	new	VEGETABLE, CANNED
100330	rediorange	TOMATO SALSA CAN-6/10	A237	VEGETABLE, CANNED
110186	rediorange	TOMATO SALSA POUCH-6/106 OZ	new	VEGETABLE, CANNED
100330	rediorange	TOMATO SAUCE CAN-6/10	A237	VEGETABLE, CANNED
110186	rediorange	TOMATO SAUCE POUCH-6/106 OZ	new	VEGETABLE, CANNED
100371	legumes	BEANS BABY LIMA CAN-6/10	A082	BEANS VEGETABLE, CANNED
100359	legumes	BEANS BLACK TURTLE CAN-6/10	A908	BEANS VEGETABLE, CANNED
100368	legumes	BEANS BLACKEYE CAN-6/10	A084	BEANS VEGETABLE, CANNED
100360	legumes	BEANS GARBANZO CAN-6/10	A089	BEANS VEGETABLE, CANNED
100373	legumes	BEANS GREAT NORTHERN CAN-6/10	A088	BEANS VEGETABLE, CANNED
100369	legumes	BEANS PINK CAN-6/10	A083	BEANS VEGETABLE, CANNED
100365	legumes	BEANS PINTO CAN-6/10	A079	BEANS VEGETABLE, CANNED
100370	legumes	BEANS RED KIDNEY CAN-6/10	A086	BEANS VEGETABLE, CANNED
100362	legumes	BEANS REFRIED CAN-6/10	A085	BEANS VEGETABLE, CANNED
100366	legumes	BEANS SMALL RED CAN-6/10	A087	BEANS VEGETABLE, CANNED
100364	legumes	BEANS VEGETARIAN CAN-6/10	A091	BEANS VEGETABLE, CANNED
110089	legumes	BEANS GARBANZO DRY BAG-25 LB	A933	BEANS, DRY
100381	legumes	BEANS GREAT NORTHERN DRY BAG-25 LB	A925	BEANS, DRY
100377	legumes	BEANS NAVY PEA DRY BAG-25 LB	A924	BEANS, DRY
100383	legumes	BEANS PINTO DRY BAG-25 LB	A942	BEANS, DRY
101014	legumes	BEANS LENTILS DRY BAG 25 LB	A134	BEANS, DRY
100161		BEEF 100% PATTY FRZ CTN-40 LB	A626	BEEF, GROUND
100150		BEEF BONELESS SPECIAL TRIM FRZ CTN-60 LB	A602	BEEF, SPECIAL TRIM
100127		BEEF CAN-24/24 OZ	A721	BEEF, CANNED
100154		BEEF COARSE GROUND FRZ CTN-60 LB	A504	BEEF, GROUND
110264		BEEF CRUMBLES W/ SPP LFT OPT PKG 4/10	new	BEEF, COOKED
100134		BEEF CRUMBLES W/SPP PKG-4/10 LB	A717	BEEF, COOKED
110196		BEEF DICED FRZ CTN-60 LB	new	BEEF, FROZEN
100158		BEEF FINE GROUND FRZ CTN-40 LB	A608	BEEF, GROUND
110261		BEEF FINE GROUND LFT OPT FRZ CTN - 40 LB	new	BEEF, GROUND
100155		BEEF FRESH BONELESS COMBO-20/2000 LB	A704	BEEF, FRESH
110085		BEEF IRRADIATED FINE GRND FRZ CTN-40 LB	A579	BEEF, GROUND
110082		BEEF IRRADIATED PATTY FRZ CTN-40 LB	A578	BEEF, GROUND
100163		BEEF LEAN PATTY FRZ CTN-40 LB	A580	BEEF, GROUND
100162		BEEF LEAN PATTY FRZ CTN-40 LB	A627	BEEF, GROUND
110270		BEEF LEAN PATTY LFT OPT FRZ CTN - 40 LB	new	BEEF, GROUND
100160		BEEF SPP PATTY FRZ CTN-40 LB	A616	BEEF, GROUND
100130		BEEF SPP PATTY HOMESTYLE CKD CTN-40 LB	A706	BEEF, COOKED
100037		CHEESE BLEND AMER SKM WHT SLC LVS-6/5 LB	B133	CHEESE, PROCESSED
100036		CHEESE BLEND AMER SKM YEL SLC LVS-6/5 LB	B119	CHEESE, PROCESSED
100011		CHEESE CHEDDAR RDU FAT WHT SHRED BAG-6/5 LB	B028	CHEESE, NATURAL AMER
100008		CHEESE CHEDDAR RDU FAT YEL CUTS-4/10 LB	B034	CHEESE, NATURAL AMER
100012		CHEESE CHEDDAR RDU FAT YEL SHRED BAG-6/5 LB	B027	CHEESE, NATURAL AMER
100005		CHEESE CHEDDAR WHT BLOCK-40 LB - CY 2012	B071	CHEESE, NATURAL AMER
110253		CHEESE CHEDDAR WHT BLOCK-40 LB (40800) - CY 2013	new	CHEESE, NATURAL AMER
100004		CHEESE CHEDDAR WHT CUTS-4/10 LB	B087	CHEESE, NATURAL AMER
100002		CHEESE CHEDDAR WHT SHRED BAG-6/5 LB	B032	CHEESE, NATURAL AMER
100007		CHEESE CHEDDAR YEL BLOCK-40 LB - CY 2012	B072	CHEESE, NATURAL AMER
110254		CHEESE CHEDDAR YEL BLOCK-40 LB (40800) - CY 2013	new	CHEESE, NATURAL AMER
100006		CHEESE CHEDDAR YEL CUTS-4/10 LB	B088	CHEESE, NATURAL AMER
100003		CHEESE CHEDDAR YEL SHRED BAG-6/5 LB	B031	CHEESE, NATURAL AMER
100034		CHEESE MOZZARELLA LITE SHRED FRZ BOX-30 LB	B035	CHEESE, MOZZARELLA
110243		CHEESE MOZZARELLA LITE UNFZ PROCESSR PK (41125) - CY 2013	NEW	CHEESE, MOZZARELLA
100022		CHEESE MOZZARELLA LM PART SKIM FRZ LVS-8/5 LB	B042	CHEESE, MOZZARELLA
100042		CHEESE MOZZARELLA LM PART SKIM UNFZ PROCESSR PK - CY 2012	B077	CHEESE, MOZZARELLA
100021		CHEESE MOZZARELLA LM PART SKM SHRD FRZ BOX-30LB	B037	CHEESE, MOZZARELLA
110244		CHEESE MOZZARELLA LM PT SKM UNFZ PRDC PK(41125) - CY 2013	new	CHEESE, MOZZARELLA
110242		CHEESE NAT AMER FBD BARREL-500 LB(40800) - CY 2013	new	CHEESE, NATURAL AMER
100010		CHEESE NATURAL AMER FBD BARREL-500 LB - CY 2012	B049	CHEESE, NATURAL AMER
100017		CHEESE PROCESS LVS-6/5 LB	B064	CHEESE, PROCESSED
100019		CHEESE PROCESS WHT SLC LVS-6/5 LB	B066	CHEESE, PROCESSED
100018		CHEESE PROCESS YEL SLC LVS-6/5 LB	B065	CHEESE, PROCESSED
100877		CHICKEN BONED CAN-12/50 OZ	A507	CHICKEN, CANNED
100098		CHICKEN CUT-UP FRZ CTN-40 LB	A515	CHICKEN, FROZEN
100101		CHICKEN DICED CTN- 40 LB	A517	CHICKEN, COOKED
100115		CHICKEN DRUMSTICKS CHILLED -BULK	A573	CHICKEN, BULK
100117		CHICKEN FAJITA STRIPS CTN-30 LB	A563	CHICKEN, COOKED
100103		CHICKEN LARGE CHILLED- BULK	A522	CHICKEN, BULK
100113		CHICKEN LEGS CHILLED - BULK	A518	CHICKEN, BULK
100105		CHICKEN LEG QTR CTN - 40 LBS	A509	CHICKEN, FROZEN
110080		CHICKEN OVEN ROASTED FRZ 8 PC CTN-30 LB	A494	CHICKEN, COOKED
100100		CHICKEN SMALL CHILLED-BULK	A521	CHICKEN, BULK
100114		CHICKEN THIGHS CHILLED - BULK	A531	CHICKEN, BULK
100045		EGGS WHOLE FRZ CTN-30 LB	A569	EGG PRODUCTS
100046		EGGS WHOLE FRZ CTN-6/5 LB	A568	EGG PRODUCTS
100047		EGGS WHOLE LIQ BULK -TANK	A566	EGG PRODUCTS
100201		FISH CATFISH STRIPS BRD OVN RDY PKG-4/10 LB	A752	FISH, FROZEN

(continued on next page)

100892		FISH ALASKAN POLLOCK FRZ BULK CTN-40 LBS	A747	FISH, FROZEN
100184		PORK HAM WATER ADDED FRZ PKG 4/10 LB	A693	HAM, FROZEN
100187		PORK HAM WATER ADDED SLC FRZ PKG-8/5 LB	A726	HAM, FULLY COOKED
100188		PORK HAM WATER ADDED CUBED FRZ PKG-4/10 OR 8/5 LB	A727	HAM, FULLY COOKED
100139		PORK CAN-24/24 OZ	A722	PORK, CANNED
100144		PORK CRUMBLES W/ SPP PKG-4/10 LB	A720	PORK, COOKED
110138		PORK BONELESS LEG ROASTS - BULK CTN-60 LB	A734	PORK, FROZEN
100193		PORK PICNIC BONELESS FRZ CTN-60 LB	A632	PORK, FROZEN
100173		PORK ROAST LEG FRZ CTN-32-40 LB	A672	PORK, FROZEN
100119		TURKEY TACO FILLING CTN-30 LB	A585	TURKEY, COOKED
100121		TURKEY BREAST DELI FRZ CTN-40 LB	A549	TURKEY, COOKED
100122		TURKEY BREAST SMKD DELI FRZ CTN-40 LB	A550	TURKEY, COOKED
100123		TURKEY CONSUMER PACK WHOLE CTN-30-80 LB	A529	TURKEY, FROZEN
100124		TURKEY CHILLED -BULK	A534	TURKEY, BULK
100125		TURKEY ROASTS FRZ CTN-32-48 LB	A537	TURKEY, FROZEN
100126		TURKEY HAMS SMKD FRZ CTN-40 LB	A548	TURKEY, COOKED
100883		TURKEY THIGHS BONELESS SKINLESS CHILLED-BULK	A582	TURKEY, BULK
100416		CORN MASA FLOUR INSTANT YELLOW BAG-50 LB	B345	CORN PRODUCTS
100444		CORN YELLOW TOTE-2700 LB	B136	CORN PRODUCTS
100471		CORNMEAL DEGERMED YELLOW BAG-8/5 LB	B138	CORN PRODUCTS
100472		CORNMEAL DEGERMED YELLOW BAG-4/10 LB	B142	CORN PRODUCTS
100470		GRITS WHITE BAG-8/5 LB	B382	CORN PRODUCTS
100469		GRITS FINE YELLOW BAG-8/5 LB	B384	CORN PRODUCTS
110215		FLOUR ALL PURPOSE ENRCH UNBLCH BAG-25 LB	new	FLOUR, WHEAT
100399		FLOUR ALL PURPOSE ENRCH BLCH BAG-50 LB	B190	FLOUR, WHEAT
100400		FLOUR ALL PURPOSE ENRCH BLCH BAG-8/5 LB	B182	FLOUR, WHEAT
100402		FLOUR ALL PURPOSE ENRCH UNBLCH BAG-50 LB	B191	FLOUR, WHEAT
110148		FLOUR ALL PURPOSE ENRCH UNBLCH BAG-8/5 LB	new	FLOUR, WHEAT
100413		FLOUR BAKER HARD UNBLCH BAG-50 LB	B276	FLOUR, BAKERY
100412		FLOUR BAKER HARD WHT BLCH BAG-100 LB	B280	FLOUR, BAKERY
100411		FLOUR BAKER HARD WHT BLCH BAG-50 LB	B275	FLOUR, BAKERY
100417		FLOUR BAKER HARD WHT BLCH-BULK	B285	FLOUR, BAKERY
100418		FLOUR BAKER HARD WHT UNBLCH-BULK	B286	FLOUR, BAKERY
100414		FLOUR BAKER HEARTH BLCH BAG-100 LB	B300	FLOUR, BAKERY
100419		FLOUR BAKER HEARTH BLCH-BULK	B301	FLOUR, BAKERY
100420		FLOUR BAKER HEARTH UNBLCH-BULK	B303	FLOUR, BAKERY
100421		FLOUR BAKER SOFT UNBLCH-BULK	B321	FLOUR, BAKERY
100415		FLOUR BAKER SOFT WHT BLCH-BAG 50 LB	B323	FLOUR, BAKERY
100918		FLOUR BAKERY MIX LOWFAT BAG-8/5 LB	B364	FLOUR, BAKERY MIX
100913		FLOUR BREAD-BULK	B198	FLOUR, BAKERY
110147		FLOUR BREAD ENRCH BLCH BAG-8/5 LB	new	FLOUR, WHEAT
110225		FLOUR BREAD ENRCH UNBLCH BAG-25 LB	new	FLOUR, WHEAT
110148		FLOUR BREAD ENRCH UNBLCH BAG-8/5 LB	new	FLOUR, WHEAT
100911		FLOUR HIGH GLUTEN -BULK	B304	FLOUR, BAKERY
100915	WGR	FLOUR TORTILLA WHOLE WT BULK BAG-50 LB	B228	FLOUR, BAKERY
100408	WGR	FLOUR WHOLE WHEAT BAG-25 LB	B355	FLOUR, WHEAT
100409	WGR	FLOUR WHOLE WHEAT BAG-50 LB	B360	FLOUR, WHEAT
100410	WGR	FLOUR WHOLE WHEAT BAG-8/5 LB	B352	FLOUR, WHEAT
100466	WGR	OATS ROLLED PKG-12/3 LB	B445	CEREAL, PROCESSED
100468	WGR	OATS ROLLED BAG-50 LB	B450	CEREAL, PROCESSED
100467	WGR	OATS ROLLED PKG-25 LB	B444	CEREAL, PROCESSED
100429		PASTA MACARONI PLAIN ELBOW CTN-20 LB	B430	PASTA, MACARONI
100432		PASTA ROTINI MACARONI CTN-20 LB	B435	PASTA, MACARONI
100425		PASTA SPAGHETTI CTN-20 LB	B840	PASTA, OTHER
100919	WGR	PASTA WHOLE GRAIN MACARONI CTN-20 LB	B425	PASTA, MACARONI
100434	WGR	PASTA WHOLE GRAIN ROTINI MAC CTN-20 LB	B428	PASTA, MACARONI
100427	WGR	PASTA WHOLE GRAIN SPAGHETTI CTN-20 LB	B836	PASTA, OTHER
100499	WGR	RICE BROWN US#1 BAG-25 LB	B545	RICE, GRAIN
100500	WGR	RICE, BROWN, LONG-GRAIN, PARBOILED 24/2	B537	RICE, GRAIN
101031	WGR	RICE BROWN US#1 LONG PARBOILED BAG-25 LB	B539	RICE, GRAIN
100494		RICE US#1 LONG GRAIN PARBOILED BAG-25 LB	B507	RICE, GRAIN
100495		RICE US#1 LONG GRAIN PARBOILED BAG-50 LB	B508	RICE, GRAIN
100496		RICE US#1 MEDIUM GRAIN BAG-25 LB	B522	RICE, GRAIN
100490		RICE US#2 LONG GRAIN BAG-25 LB	B505	RICE, GRAIN
100493		RICE US#2 LONG GRAIN BAG-50 LB	B506	RICE, GRAIN
100486		RICE US#2 MEDIUM GRAIN BAG-25 LB	B513	RICE, GRAIN
100489		RICE US#2 MEDIUM GRAIN BAG-50 LB	B521	RICE, GRAIN
100937	WGR	WHOLE WHEAT PANCAKES F2N-144 COUNT	B151	CEREAL, PROCESSED
100938	WGR	WHOLE WHEAT TORTILLA 8" CTN-12/24 1.5	B153	CRACKER PROD, PROC
100442		OIL SOYBEAN LOW SAT FAT BTL-6/1 GAL	B664	VEG OIL
100439		OIL VEGETABLE BTL-6/1 GAL	B670	VEG OIL
100440		OIL VEGETABLE BTL-8/48 OZ	B666	VEG OIL
100441		OIL VEGETABLE BTL-8/48 OZ	B665	VEG OIL
100443		OIL VEGETABLE-BULK	B672	VEG OIL
100397		PEANUT BUTTER SMOOTH DRUM-500 LB	B480	PEANUT PRODUCTS
100396		PEANUT BUTTER SMOOTH JAR-8/5 LB	B473	PEANUT PRODUCTS
100392		PEANUTS ROASTED REGULAR-CAN 6#/10	B500	PEANUT PRODUCTS
100389		PEANUTS ROASTED RUNNER UNSL-CAN 6#/10	B408	PEANUT PRODUCTS
100935		SUNFLOWER SEED BUTTER 6-5#S	B477	SEED BUTTER
110120		SUNFLOWER SEED BUTTER BARREL-520 LB	B478	SEED BUTTER

(continued on next page)

Abbreviation	Word
BRD	Breaded
BTL	Bottle
CKD	Cooked
CONC	Concentrate
CTN	Container
ENRCH	Enriched
FBD	Fiberboard
FRZ	Frozen
GAL	Gallon
IQF	Individually Quick Frozen
LB	pound
LFT OPT	Lean Fine Textured Optional
LIQ	Liquid
LM	Low Moisture
LVS	Leaves
NAT	Natural
OVN	Oven
OZ	Ounce
PK	Pack
PKG	Package
PT	Part
SHRED	Shredded
SKM	Skim
SKNLS	Skinless
SLC	Slice
SMKD	Smoked
SPP	Soy Protein
TRM	Trim
UNBLCH	Un-bleached
UNFZ	Un-Frozen
UNSL	Unsalted
WGR	Whole Grain Rich
WHT	White
WT	Wheat
YEL	Yellow

highlighted = Bulk for Processing

Source: U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, SY 2013 National School Lunch Foods Available List, *available at* <http://www.fns.usda.gov/fdd/foods/SY13-schfoods.pdf>.

Appendix C: USDA Foods Requested by ESE for SY2011-2012

USDA FOODS ORDERED FOR SCHOOL YEAR 2011 - 2012				
Following is a listing of foods expected to be available to schools in Massachusetts during school year 2011 - 2012				
Material Code	Commodity Code	Material Desc.	Requested Qty.	Requested Del. Date
100206	A345	APPLE SLICES CAN-6/10	6,384.00	Oct,Dec
100258	A346	APPLE SLICES FRZ CTN-30 LB	3,960.00	Oct
100519	A343	APPLES FRESH VARIOUS TYPE SUBST	2,772.00	Oct
100208	A350	APPLESAUCE CAN-6/10	6,384.00	Oct,Dec
100360	A089	BEANS GARBANZO CAN-6/10	5,184.00	Oct,Dec
100307	A061	BEANS GREEN CAN-6/10	9,120.00	Aug,Nov,Jan,Feb
100351	A070	BEANS GREEN FRZ CTN-30 LB	13,200.00	Aug,Nov,Jan,Feb
100370	A086	BEANS RED KIDNEY CAN-6/10	2,592.00	Oct
100362	A085	BEANS REFRIED CAN-6/10	2,592.00	Oct
100364	A091	BEANS VEGETARIAN CAN-6/10	2,592.00	Nov
100161	A626	BEEF 100% PATTY FRZ CTN-40 LB	9,500.00	Sep,Oct,Dec
100158	A608	BEEF FINE GROUND FRZ CTN-40 LB	10,000.00	Sep,Oct,Dec
100309	A100	CARROTS CAN-6/10	9,120.00	Sep,Dec,Feb,Mar
100352	A099	CARROTS FRZ CTN-30 LB	13,200.00	Sep,Nov,Feb
100037	B133	CHEESE BLEND AMER SKM WHT SLC LVS-6/5 LB	5,280.00	Dec
100036	B119	CHEESE BLEND AMER SKM YEL SLC LVS-6/5 LB	3,960.00	Dec
100004	B087	CHEESE CHED WHT CUTS-4/10 LB	7,520.00	Aug,Oct,Dec
100034	B035	CHEESE MOZ LITE SHRED FRZ BOX-30 LB	4,032.00	Dec
100022	B042	CHEESE MOZ LM PART SKIM FRZ LVS-8/6 LB	7,560.00	Aug,Oct,Nov,Dec
100021	B037	CHEESE MOZ LM PART SKM SHRD FRZ BOX-30LB	16,128.00	Aug,Oct,Dec,Jan,Mar
100019	B066	CHEESE PROCESS WHT SLC LVS-6/5 LB	10,560.00	Aug,Oct,Dec
100018	B065	CHEESE PROCESS YEL SLC LVS-6/5 LB	10,560.00	Aug,Oct,Nov, Dec
100098	A515	CHICKEN CUT-UP FRZ CTN-40 LB	6,000.00	Oct,Dec
100117	A563	CHICKEN FAJITA STRIPS CTN-30 LB	7,800.00	Aug,Dec
110080	A494	CHICKEN OVEN ROASTED FRZ 8 PC CTN-30 LB	7,200.00	Sep,Dec
100349	A129	CORN COB FRZ CSE-96	11,880.00	Aug,Nov,Feb
100348	A130	CORN FRZ CTN-30 LB	13,200.00	Aug,Nov,Feb
100313	A110	CORN WHOLE KERNEL(LIQ) CAN-6/10	9,120.00	Sep,Nov,Jan,Feb
100214	A288	CRANBERRY SAUCE CAN-6/10	5,184.00	Sep,Dec
100046	A568	EGGS WHOLE FRZ CTN-6/5 LB	8,004.00	Aug,Oct,Nov,Dec

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Material Code	Commodity Code	Material Desc.	Requested Qty.	Requested Del. Date
100400	B183	FLOUR ALL PURP ENRCH BLCH BAG-8/5 LB	2,142.00	Jan
100212	A470	MIXED FRUIT CAN-6/10	9,120.00	Sep,Nov,Dec,Mar
100439	B670	OIL VEGETABLE BTL-6/1 GAL	1,600.00	Dec
100283	A357	ORANGES CTN-34-39 LB	3,078.00	Nov
100429	B430	PASTA MACARONI PLAIN ELBOW CTN-20 LB	12,000.00	Aug,Dec
100241	A416	PEACH FREESTONE DICED FRZ CUP-96/4.4 OZ	12,600.00	Sep,Dec,Mar
100219	A408	PEACHES CLING CAN-6/10	10,032.00	Aug,Oct,Jan,Mar
100220	A409	PEACHES CLING DICED CAN-6/10	10,032.00	Aug,Oct,Jan,Mar
100282	A435	PEARS BARTLETT FRESH CTN-45 LB	1,800.00	Nov
100225	A434	PEARS DICED CAN-6/10	9,120.00	Oct,Dec,Mar
100226	A431	PEARS HALVES CAN-6/10	5,472.00	Oct,Jan
100224	A433	PEARS SLICES CAN-6/10	10,032.00	Sep,Nov,Jan,Mar
100315	A140	PEAS CAN-6/10	5,472.00	Nov,Jan
100350	A160	PEAS GREEN FRZ CTN-30 LB	9,240.00	Oct,Jan
100187	A726	PORK HAM WATERAD SLC FRZ PKG-8/5 LB	6,000.00	Sep,Nov
100357	A210	POTATOES OVENS FRY PKG-6/5 LB	13,200.00	Oct,Dec,Feb
100358	A204	POTATOES ROUNDS FRZ PKG-6/5 LB	13,200.00	Oct,Nov,Feb
100356	A173	POTATOES WEDGE FAT FREE FRZ PKG-6/5 LB	11,880.00	Oct,Jan
100355	A174	POTATOES WEDGE FRZ PKG-6/5 LB	10,560.00	Oct,Nov,Jan,Feb
100293	A504	RAISINS BOX-144/1.33 OZ	11,856.00	Nov
100490	B505	RICE US#2 LONG GRAIN BAG-25 LB	3,360.00	Nov,Dec
100336	A243	SPAGHETTI SAUCE MEATLESS CAN-6/10	9,520.00	Sep,Dec,Feb
100253	A375	STRAWBERRY WHOLE FRZ CTN-30 LB	3,960.00	Sep
100256	A417	STRAWBERRY FRZ CUP-96/4.5 OZ	3,960.00	Sep
100254	A380	STRAWBERRY SLICES FRZ CTN-30 LB	13,200.00	Sep,Dec,Mar
100353	A224	SWEET POTATOES RANDOM CUT FRZ PKG-6/5 LB	7,920.00	Oct,Jan
100317	A220	SWEET POTATOES W/ SYRUP CAN-6/10	8,208.00	Oct,Dec,Feb
100329	A241	TOMATO DICED CAN-6/10	8,208.00	Oct,Jan,Feb
100327	A252	TOMATO PASTE CAN-6/10	9,120.00	Sep,Dec,Feb
100330	A237	TOMATO SALSA CAN-6/10	6,384.00	Nov,Jan
100334	A239	TOMATO SAUCE CAN-6/10	8,208.00	Sep,Dec,Feb
100121	A549	TURKEY BREAST DELI FRZ CTN-40 LB	3,020.00	Sep
100125	A537	TURKEY ROASTS FRZ CTN-32-48 LB	3,000.00	Oct
100937	B151	WHOLE WHEAT PANCAKES FZN-144 COUNT	6,300.00	Jan
101011	B151	WHOLE WHEAT PANCAKES FZN-SUBST	4,200.00	Sep
100938	B153	WHOLE WHEAT TORTILLA 8" CTN-12/24 1.5	4,500.00	Dec

Price and market conditions may influence food availability.

Types, quantities, and shipping periods are estimated and subject to change.

Foods are not offered until received at the warehouse.

If foods are received during the month indicated, the item would then appear on the next month's offer.

Appendix D: Sample Commodity File Report

Commodity File Report

Active										
Comm. Short Title	Code	Group	Pack Size	Truck Units Rail Units	Gross Pck. Wt.	Gross Lbs	Net Pck. Wt.	Net Lbs.	Est. Cost/lb	Truck Value Case Value
TOMATO PASTE	A048	36	TOTES	14	3,125	43,750	2,850	39,900	\$0.40500000	\$16,160
BULK 2				28		87,500		79,800		\$1,154.25
BEANS PINTO 300	A049	41	24/#300 CAN	1,530	28	42,840	23.25	35,573	\$0.39677419	\$14,114
				3,060		85,680		71,145		\$9.22
BEANS BLACK 300	A050	41	24/#300 CAN	1,530	28	42,840	23.25	35,573	\$0.43333333	\$15,415
				3,060		85,680		71,145		\$10.07
SWT POTATO	A051	39	6/5 LB PKG	1,320	32	42,240	30	39,600	\$0.70000000	\$27,720
FRNCH CUT				2,640		84,480		79,200		\$21.00
HOMINY CANNED	A052	36	24/300	1,530	27	41,310	23.5	35,955	\$0.47861702	\$17,209
				3,060		82,620		71,910		\$11.25
ASPARAGUS FRZ	A054	39	12/2.5 LB	1,200	32	38,400	30	36,000	\$1.10716667	\$39,858
2.5				2,400		76,800		72,000		\$33.22
VEG MIX 300	A057	36	24/#300 CAN	1,620	27	43,740	22.5	36,450	\$0.42021333	\$15,317
				3,240		87,480		72,900		\$9.45
BEANS GREEN 300	A059	36	24/#300 CAN	1,620	26.75	43,335	21.75	35,235	\$0.39829461	\$14,034
				3,240		86,670		70,470		\$8.66
BEANS GREEN 10	A061	36	6/#10 CAN	912	46	41,952	38	34,656	\$0.37275334	\$12,918
				1,824		83,904		69,312		\$14.16
BEANS BLKEYE 300	A062	41	24/#300	1,530	28	42,840	23.25	35,573	\$0.44209319	\$15,726
				3,060		85,680		71,145		\$10.28
BEANS GREEN FRZ	A070	39	30 LB CTN	1,320	32	42,240	30	39,600	\$0.36092793	\$14,293
				2,640		84,480		79,200		\$10.83
BEANS LT RED KID	A076	41	24/#300 CAN	1,530	28	42,840	23.25	35,573	\$0.43537122	\$15,487
300				3,060		85,680		71,145		\$10.12
BEANS PINTO CND	A079	41	6/#10 CAN	864	48	41,472	40.5	34,992	\$0.29971914	\$10,488
				1,728		82,944		69,984		\$12.14
BEANS B LIMA CND	A082	41	6/#10 CAN	864	48	41,472	40.5	34,992	\$0.46915480	\$16,417
				1,728		82,944		69,984		\$19.00

Appendix E: USDA Foods Advisory Council Membership

Massachusetts Advisory Council – Membership Break Down

Categories of Membership:⁴⁰⁴
ESE Representatives
USDA Representatives
Child Care Program
Elderly program
School - Med-Sub
School - Reg-Voc
School - Med-Sub
School - Lg-Urban
School - Med-urban
School - Med-Urban
School - Lg-Urban
School - Small
School - Small
School - Med-urban
School - Rural
School - Food Service Mgt. Co.
SNA Contact:
President
Industry
Dietician

** In addition, representation is sought from all 4 regions of the state.

⁴⁰⁴ Email correspondence with Marion Browning, *supra* note 83.

Massachusetts Advisory Council Members for School Year 2011-2012

Name	Position/School System
Marion Browning	ESE – Nutrition Health & Safety
Belinda Wilson	ESE – Nutrition Health & Safety
Ahmed Bilimoria	ESE – Nutrition Health & Safety
Katie Millett	ESE – Nutrition Health & Safety
Rita Brennan Olson	ESE – Nutrition Health & Safety
John Magnarelli	USDA – FNS
Mark Johnson	USDA – FNS
Lou Spsychalski	USDA – FNS
Patti Connolly	USDA – FNS
Joanne Morrissey	Quincy Public Schools
Shirley Chao	Department of Elder Affairs
Jackie Morgan	Milton Public Schools
Shamil Mohammed	Boston Public Schools
Michael Peck	Boston Public Schools
Philip Frehill	Boston Public Schools
Will Morgan	Boston Public Schools
Sylvana Bryan	Pittsfield Public Schools
Anne Marie Stronach	Lawrence Public Schools
Bernie Novak	Greenfield Public Schools
Joanne Lennon	Chicopee Public Schools
Julie Dougal	Hampden-Wilbraham
Ken Dube	Revere
Susan Sacks	SNA – Executive Director
Janice King	Quaobag Public Schools
Kim Imbornone	SNA Industry
David Nichols	SNA Industry
Lauren Mancini	SNA Dietician
Marian Hall	SNA Dietician
John Overcash	Littleton Public Schools
Beth Nichols	Shrewsbury Public Schools
Gail Koutroubas	SNA President & Andover Regional Voc.
April Laskey	Billerica Public Schools
Jeanne Johnson	Dedham Public Schools

Appendix F: Summary of Recommendations

Issue Area/ Current Problem	Current Challenge Nutritional and Financial Implications	Recommendation	Example Best Practice State Distributing Agency(ies)
Ordering and Utilization	<ul style="list-style-type: none"> Lack of consultation in ordering process leads to ill-tailored monthly offer sheets, underutilization, and waste. FSDs unknowingly ordering small quantities of different items, meaning ESE cannot fill USDA truckloads and FSDs thus cannot obtain these items. Need for FSD opportunity to give input on food products they most want to obtain from USDA. 	Survey All MA Districts to Better Inform the State-Level Order	New York Office of General Services
	<ul style="list-style-type: none"> Lack of consultation in ordering process leads to ill-tailored monthly offer sheets, underutilization, and waste. Lack of transparency makes it difficult for FSDs to plan menus using USDA Foods. 	Implement Web-Based Supply Chain Management (WBSCM) at the RA level in Massachusetts	Pennsylvania Department of Agriculture; Maryland Department of Education
	<ul style="list-style-type: none"> Difficulty in exchanging unwanted items leads to waste at some schools and commercial market orders at others. 	Enable easier commodity swapping among districts	Connecticut Department of Administrative Services
Direct Diversions	<ul style="list-style-type: none"> FSDs are not able to compare the prices for different processors or adequately consider other purchasing options Costs associated with utilizing diverted foods are sometimes significantly higher than their commercial market equivalents 	Utilize statewide competitive bids for processing contracts	Operational Services Division
	<ul style="list-style-type: none"> Difficulty meeting minimum order requirements to fill truckloads to processors. High prices/few opportunities to benefit from bulk discounts. 	Facilitate cooperative USDA Foods processing bids among districts	Ohio Department of Administrative Services
	<ul style="list-style-type: none"> Need for consolidation of USDA and commercial food orders to take advantage of more purchasing power, improved efficiency for FSDs, and increased flexibility in delivery schedule. 	Allow indirect discounting (“Net-Off-Invoice” or “NOI”) for diverted products	State of Maine Department of Education