

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve nutrition standards for foods and beverages sold in schools.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 2419

To provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 After section 4402, insert the following:

2 **SEC. ____ . NUTRITION STANDARDS FOR FOODS AND BEV-**
3 **ERAGES SOLD IN SCHOOLS.**

4 (a) IN GENERAL.—Section 10 of the Child Nutrition
5 Act of 1966 (42 U.S.C. 1779) is amended to read as fol-
6 lows:

7 **“SEC. 10. NUTRITION STANDARDS FOR FOODS AND BEV-**
8 **ERAGES SOLD IN SCHOOLS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) APPLICABLE.—

1 “(A) IN GENERAL.—The term ‘applicable’
2 means, with respect to a food or beverage, a
3 food or beverage that is offered for sale—

4 “(i) on the school campus; and

5 “(ii) at any time during the extended
6 school day, when events are primarily
7 under the control of the school or a third
8 party on behalf of the school.

9 “(B) EXCLUSIONS.—The term ‘applicable’
10 does not include, with respect to a food or bev-
11 erage, a food or beverage when the food or bev-
12 erage is sold as a part of a meal or meal sup-
13 plement that is eligible for reimbursement
14 under this Act or the Richard B. Russell Na-
15 tional School Lunch Act (42 U.S.C. 1751 et
16 seq.).

17 “(2) EXTENDED SCHOOL DAY.—The term ‘ex-
18 tended school day’ means—

19 “(A) the official school day; and

20 “(B) the time before and after the official
21 school day that includes activities, such as
22 clubs, yearbook, band and choir practice, stu-
23 dent government, drama, and childcare or
24 latchkey programs.

25 “(b) REQUIREMENT.—

1 “(ii) infrequent within the school.

2 “(3) A LA CARTE MAIN DISH ITEMS.—

3 “(A) IN GENERAL.—The Secretary shall
4 promulgate regulations establishing nutrition
5 standards for main dish items covered by para-
6 graph (1) that are offered for sale a la carte.

7 “(B) CONSIDERATIONS.—In establishing
8 the standards, the Secretary shall consider both
9 the positive and negative contribution of nutri-
10 ents, ingredients, and foods in a la carte items
11 (including calories, portion size, saturated fat,
12 trans fat, sodium, added sugars, and under-con-
13 sumed food groups and nutrients) to the diets
14 of children and adolescents.

15 “(C) REGULATIONS.—Regulations promul-
16 gated under this paragraph shall—

17 “(i) in accordance with rulemaking
18 under section 553 of title 5, United States
19 Code; and

20 “(ii) subject to review by the Office of
21 Management and Budget.

22 “(4) STATEWIDE NUTRITION STANDARDS.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), any State that participates
25 in a food-service program under this Act or the

1 Richard B. Russell National School Lunch Act
2 (42 U.S.C. 1751 et seq.) may not establish or
3 continue in effect any statewide nutrition stand-
4 ards relating to applicable foods and beverages
5 that are different than the standards estab-
6 lished under this section.

7 “(B) EXCEPTION.—Subparagraph (A)
8 does not apply to or affect—

9 “(i) any Federal or State law relating
10 to consumer protection, unfair or deceptive
11 practices, unfair competition, or mar-
12 keting;

13 “(ii) any additional nutrition standard
14 relating to applicable foods and beverages
15 that is established by any political subdivi-
16 sion of a State; or

17 “(iii) any additional nutrition stand-
18 ard for an a la carte main dish item that
19 is established by any State or political sub-
20 division.

21 “(c) APPLICABLE BEVERAGES.—

22 “(1) ELEMENTARY SCHOOLS AND MIDDLE
23 SCHOOLS.—

24 “(A) PACKAGE SIZES.—Except as provided
25 in subparagraph (B)(ii), the package of any ap-

1 plicable beverage that is offered for sale in an
2 elementary school or middle school shall be not
3 more than 8 fluid ounces.

4 “(B) WATER.—Water offered for sale in
5 an elementary school or middle school may—

6 “(i) only be water without flavoring,
7 sweeteners, or carbonation; and

8 “(ii) be sold in a package size of more
9 than 8 fluid ounces.

10 “(C) MILK.—

11 “(i) IN GENERAL.—Milk offered for
12 sale in an elementary school or middle
13 school—

14 “(I) shall be low-fat or non-fat;
15 and

16 “(II) shall contain not more than
17 170 calories per 8 fluid ounce serving.

18 “(D) FLUID MILK SUBSTITUTES.—An ele-
19 mentary or middle school may offer for sale a
20 fluid milk substitute that—

21 “(i) is consistent with the nutrition
22 standards for fluid milk substitutes that
23 are established by the Secretary for use
24 under this Act or the Richard B. Russell

1 National School Lunch Act (42 U.S.C.
2 1751 et seq.); and

3 “(ii) contains not more than 170 cal-
4 ories per 8 fluid ounce serving.

5 “(E) JUICE.—Juice offered for sale in an
6 elementary school or middle school may con-
7 tain—

8 “(i) only juice, with or without added
9 micronutrients or natural flavors—

10 “(I) with no added sweeteners;
11 and

12 “(II) with or without water or
13 carbonated water; and

14 “(ii) not more than 170 calories per 8
15 fluid ounce serving.

16 “(2) HIGH SCHOOLS.—

17 “(A) PACKAGE SIZES.—Except as provided
18 in subparagraphs (B)(ii) and (F)(iii), the pack-
19 age of any applicable beverage offered for sale
20 in a high school shall be not more than 12 fluid
21 ounces.

22 “(B) WATER.—Water offered for sale in a
23 high school may—

1 “(i) be water with or without fla-
2 voring, noncaloric sweeteners, or
3 carbonation; and

4 “(ii) be sold in a package size of more
5 than 12 ounces.

6 “(C) MILK.—

7 “(i) IN GENERAL.—Milk offered for
8 sale in a high school shall—

9 “(I) be low-fat or nonfat; and

10 “(II) contain not more than 170
11 calories per 8 fluid ounce serving.

12 “(D) FLUID MILK SUBSTITUTES.—A high
13 school may offer for sale a fluid milk substitute
14 that—

15 “(i) is consistent with the nutrition
16 standards for fluid milk substitutes that
17 are established by the Secretary for use
18 under this Act or the Richard B. Russell
19 National School Lunch Act (42 U.S.C.
20 1751 et seq.); and

21 “(ii) contains not more than 170 cal-
22 ories per 8 fluid ounce serving.

23 “(E) JUICE.—Juice offered for sale in a
24 high school may only contain juice, with or

1 without added micronutrients or natural fla-
2 vors—

3 “(i)(I) with no added sweeteners; or

4 “(II) with or without water or carbon-
5 ated water with no added caloric sweet-
6 eners; and

7 “(ii) that contains not more than 170
8 calories per 8 fluid ounce serving.

9 “(F) OTHER BEVERAGES.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clauses (ii) and (iii), any beverage
12 offered for sale in a high school other than
13 a beverage identified in subparagraph (B),
14 (C), (D), or (E), shall contain—

15 “(I) during the period beginning
16 on the effective date described in sub-
17 section (j) and ending on June 30,
18 2013, not more than 66 calories per 8
19 fluid ounce serving; and

20 “(II) effective beginning on July
21 1, 2013, not more than 25 calories
22 per 8 fluid ounce serving.

23 “(ii) EXCEPTION.—Effective begin-
24 ning on July 1, 2013, beverages that are
25 mixtures of water, carbohydrates, and elec-

1 trolytes (with or without other ingredients)
2 that are useful for providing energy and
3 hydration for sustained and vigorous phys-
4 ical activity with not more than 66 calories
5 per 8 fluid ounces may be offered for sale
6 in packages of not more than 12 fluid
7 ounces in or immediately adjacent to an
8 area of the high school in which students
9 participate in a school-sponsored sport or
10 other vigorous and sustained physical ac-
11 tivity, subject to the requirement that such
12 an adjacent area shall not be within the
13 general movement of students between
14 classes or into or out of the school campus.

15 “(iii) VERY LOW CALORIE EXCEP-
16 TION.—Any beverage that contains be-
17 tween 0 and 10 calories per 8 fluid ounce
18 serving may be offered for sale in a high
19 school in a package of not more than 20
20 fluid ounces.

21 “(d) APPLICABLE FOOD.—

22 “(1) STANDARDS.—

23 “(A) FATS.—An applicable food shall con-
24 tain—

1 “(i) not more than 35 percent of total
2 calories from fat, except for—

3 “(I) seeds, nuts, nut butters, and
4 nut-based products containing 40 per-
5 cent or more nuts by weight; and

6 “(II) reduced-fat and part skim
7 cheese packaged for individual sale;

8 “(ii) not more than 10 percent of
9 total calories from saturated fat, except for
10 reduced-fat and part skim cheese packaged
11 for individual sale; and

12 “(iii) less than 0.5 grams of trans
13 fats.

14 “(B) SUGARS.—An applicable food shall
15 consist of not more than 35 percent sugars by
16 weight, excluding sugar from whole fruit.

17 “(C) SODIUM.—An applicable food shall
18 contain, per package or serving as offered for
19 sale—

20 “(i) in the case of chips, crackers,
21 French fries, vegetables, baked goods, yo-
22 gurt (including drinkable yogurt and yo-
23 gurt smoothies), and other side dishes or
24 snack items, not more than 230 milligrams
25 of sodium per serving; and

1 “(ii) in the case of pastas that are
2 side dishes, cereals, meats, and soups, not
3 more than 480 milligrams of sodium per
4 serving.

5 “(2) REQUIRED CONTENTS.—Each applicable
6 food that is offered for sale in an elementary school,
7 middle school, or high school shall contain 1 or more
8 of the following:

9 “(A) 10 percent of the daily recommended
10 value of 1 or more of the following:

11 “(i) Vitamin A, E, or C.

12 “(ii) Calcium.

13 “(iii) Magnesium.

14 “(iv) Potassium.

15 “(v) Fiber.

16 “(B) $\frac{1}{4}$ cup of a fruit or vegetable, as pro-
17 vided prior to processing.

18 “(C) 51 percent or more by weight whole
19 grain ingredients or have a whole grain as the
20 first ingredient.

21 “(3) CALORIES.—

22 “(A) ELEMENTARY SCHOOLS AND MIDDLE
23 SCHOOLS.—An applicable food that is offered
24 for sale in an elementary school or middle

1 school shall contain not more than 180 calories
2 per package or serving as offered for sale.

3 “(B) HIGH SCHOOLS.—An applicable food
4 that is offered for sale in a high school shall
5 contain not more than 200 calories per package
6 or serving as offered for sale.

7 “(e) SHARED SCHOOL FACILITIES.—Notwith-
8 standing subsection (c)(1) or (d)(3)(A), if elementary
9 school or middle school students have shared access to
10 areas in common buildings with high school students, the
11 local educational authority may elect whether to apply in
12 those areas the applicable beverage provisions in para-
13 graph (1) or (2) of subsection (c) or the applicable food
14 provisions in subparagraph (A) or (B) of subsection
15 (d)(3).

16 “(f) APPROVAL OF NEW PRODUCTS.—The Secretary
17 may approve for sale in schools a new food or beverage
18 that does not satisfy the applicable food and beverage re-
19 quirements of this section if the Secretary (based on a
20 rulemaking conducted under section 553 of title 5, United
21 States Code, prior to approval)—

22 “(1) determines that the sale of the new food
23 or beverage does not undermine the purposes of this
24 section; and

1 “(2) provides scientific justification for the ap-
2 proval.

3 “(g) UPDATING STANDARDS AND REQUIREMENTS.—

4 “(1) IN GENERAL.—As soon as practicable
5 after the date of publication by the Department of
6 Agriculture and the Department of Health and
7 Human Services of a new edition of the Dietary
8 Guidelines for Americans under section 301 of the
9 National Nutrition Monitoring and Related Research
10 Act of 1990 (7 U.S.C. 5341), beginning with the
11 2015 edition, the Secretary shall review and update
12 as necessary the school nutrition standards and re-
13 quirements established under this section.

14 “(2) REQUIREMENTS.—In reviewing or updat-
15 ing the nutrition standards and requirements under
16 this section, the Secretary shall take into consider-
17 ation—

18 “(A) the positive and negative contribu-
19 tions of nutrients, ingredients, and foods (in-
20 cluding calories, vitamins, minerals, portion
21 size, saturated fat, trans fat, sodium, added
22 sugars, and underconsumed food groups and
23 nutrients) to the diets of children and adoles-
24 cents;

1 “(B) evidence concerning the relationship
2 between consumption of certain nutrients, in-
3 gredients, and foods with respect to the preven-
4 tion of overweight, obesity, and other chronic
5 illnesses;

6 “(C) recommendations made by authori-
7 tative scientific sources concerning—

8 “(i) appropriate nutrition standards
9 for foods sold outside the reimbursable
10 meal programs in schools; and

11 “(ii) the most effective manner in
12 which to teach children and adolescents
13 how to improve dietary habits; and

14 “(D) the practicality and feasibility of im-
15 plementation of potential modifications to the
16 nutrition standards and requirements.

17 “(3) LIMITATION ON AUTHORITY.—The Sec-
18 retary may update or otherwise modify nutrition
19 standards and requirements under this section
20 only—

21 “(A) in accordance with rulemaking under
22 section 553 of title 5, United States Code; and

23 “(B) subject to review by the Office of
24 Management and Budget.

1 “(4) EFFECT OF UPDATED STANDARDS.—Up-
2 dated school nutrition standards and requirements
3 under this subsection shall supersede any other
4 school nutrition standards or requirements in effect
5 on the date on which the updated standards and re-
6 quirements are implemented.

7 “(h) SCHOOL FOOD AND BEVERAGE ADVISORY COM-
8 MITTEE.—

9 “(1) IN GENERAL.—The Secretary may estab-
10 lish an advisory committee, to be known as the
11 ‘School Food and Beverage Advisory Committee’ (in
12 this subsection referred to as the ‘Advisory Com-
13 mittee’), to advise the Secretary on updating the
14 school nutrition standards and requirements under
15 this section.

16 “(2) MEMBERSHIP.—The members of the Advi-
17 sory Committee shall be appointed by the Secretary
18 and shall include—

19 “(A) registered dietitians and certified nu-
20 tritionists;

21 “(B) school officials, such as school food
22 service directors, principals, or school board
23 members;

24 “(C) public health professionals;

1 “(D) members of parent or consumer advoca-
2 cacy groups;

3 “(E) representatives of industry stake-
4 holders that produce food and beverages offered
5 for sale in schools; and

6 “(F) other individuals with relevant exper-
7 tise in child health and nutrition.

8 “(3) DUTIES.—

9 “(A) IN GENERAL.—The Advisory Com-
10 mittee shall provide advice, information, and
11 recommendations to the Secretary on implemen-
12 tation of this section and on other child health
13 and nutrition issues related to the provision of
14 foods and beverages in schools, as requested by
15 the Secretary.

16 “(B) SCIENTIFIC JUSTIFICATION.—The
17 Advisory Committee shall provide—

18 “(i) scientific justification for any rec-
19 ommended modification to the provisions
20 regarding applicable foods and beverages
21 under this section; and

22 “(ii) anticipated nutrition and health
23 benefits if the recommended modification
24 is adopted.

25 “(i) GUIDANCE.—

1 “(1) IN GENERAL.—The Secretary shall develop
2 guidance to help local educational authorities and
3 school food authorities identify beverage and food
4 products that meet the nutrition standards estab-
5 lished by this section.

6 “(2) LIST OF BEVERAGES.—In issuing guidance
7 to carry out this section, and at any time by not
8 later than 60 days after receipt of an applicable re-
9 quest, the Secretary shall identify and maintain a
10 list of beverages allowable under subsection
11 (c)(2)(F)(ii).

12 “(j) EFFECTIVE DATE.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), nutrition standards and requirements es-
15 tablished under this section take effect on the first
16 day of the first school year beginning on or after
17 July 1, 2011.

18 “(2) EXCEPTION.—Standards for a la carte
19 main dish items established under subsection (b)(3)
20 take effect on the date that final regulations under
21 that paragraph are promulgated.”.

22 (b) CONSISTENCY BETWEEN REIMBURSABLE MEALS
23 AND APPLICABLE FOODS AND BEVERAGES.—Section
24 9(f)(3)(A) of the Richard B. Russell National School
25 Lunch Act (42 U.S.C. 1758(f)(3)(A)) is amended—

1 (1) in clause (i), by striking “and” at the end;

2 and

3 (2) by adding at the end the following:

4 “(iii) enforce the current national nu-
5 tritional requirements that implement the
6 most recent Dietary Guidelines for Ameri-
7 cans published under section 301 of the
8 National Nutrition Monitoring and Related
9 Research Act of 1990 (7 U.S.C. 5341) and
10 recommended daily allowances for meals
11 provided by schools through the school
12 lunch program under this Act and the
13 school breakfast program under the Child
14 Nutrition Act of 1966 (42 U.S.C. 1771 et
15 seq.), averaged over each week of the
16 school year; and”.

17 (c) IMPLEMENTATION, REGULATIONS, AND EN-
18 FORCEMENT.—

19 (1) IMPLEMENTATION.—The Secretary shall
20 implement section 10 of the Child Nutrition Act of
21 1966 (as amended by subsection (a)) (other than
22 subsections (b)(3)(C) and (g) of that section)
23 through the issuance of guidance, which shall be
24 considered a “significant guidance document” under
25 Executive Order 12866 (5 U.S.C. 601 note; relating

1 to regulatory planning and review), as amended by
2 Executive Order 13422 (72 Fed. Reg. 2763).

3 (2) REGULATIONS.—

4 (A) IN GENERAL.—Not later than 1 year
5 after the date of enactment of this Act, the Sec-
6 retary shall promulgate—

7 (i) regulations to eliminate any con-
8 flicting provisions regarding competitive
9 foods and foods of minimal nutritional
10 value; and

11 (ii) such other regulations as are nec-
12 essary to carry out the amendment made
13 by subsection (a).

14 (B) PROCEDURE.—The promulgation of
15 the regulations under subparagraph (A) shall be
16 made without regard to—

17 (i) the notice and comment provisions
18 of section 553 of title 5, United States
19 Code;

20 (ii) the Statement of Policy of the
21 Secretary of Agriculture effective July 24,
22 1971 (36 Fed. Reg. 13804), relating to no-
23 tices of proposed rulemaking and public
24 participation in rulemaking; and

1 (iii) chapter 35 of title 44, United
2 States Code (commonly known as the “Pa-
3 perwork Reduction Act”).

4 (C) CONGRESSIONAL REVIEW OF AGENCY
5 RULEMAKING.—In carrying out this paragraph,
6 the Secretary shall use the authority provided
7 under section 808 of title 5, United States
8 Code.

9 (3) ENFORCEMENT.—The Secretary shall en-
10 force this section and the amendments made by this
11 section (including regulations) in accordance with re-
12 quirements established by the Secretary.