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


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 BEVERAGES SOLD IN SCHOOLS.

3. (a) In General.—Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended to read as follows:

4. “SEC. 10. NUTRITION STANDARDS FOR FOODS AND BEVERAGES SOLD IN SCHOOLS.

5. “(a) Definitions.—In this section:

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

“(i) on the school campus; and

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

“(B) EXCLUSIONS.—The term ‘applicable’ does not include, with respect to a food or beverage, a food or beverage when the food or beverage is sold as a part of a meal or meal supplement that is eligible for reimbursement under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(2) EXTENDED SCHOOL DAY.—The term ‘extended school day’ means—

“(A) the official school day; and

“(B) the time before and after the official school day that includes activities, such as clubs, yearbook, band and choir practice, student government, drama, and childcare or latchkey programs.

“(b) REQUIREMENT.—
“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), each applicable food and beverage that is offered for sale in an elementary school, middle school, or high school during the extended school day shall meet the requirements established under this section with respect to each serving or package as offered for sale.

“(2) EXCEPTION.—Paragraph (1) shall not apply to or affect—

“(A) a food or beverage that is sold for the purpose of a school-sponsored or school-related bona fide fundraising activity that does not take place—

“(i) on school grounds; or

“(ii) in transit to or from school;

“(B) a food or beverage that is sold at, or immediately before or after, a school-related event at which parents and other adults comprise a significant part of an audience; or

“(C) a fundraiser (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraiser is—

“(i) approved by the school; and
“(ii) infrequent within the school.

“(3) A LA CARTE MAIN DISH ITEMS.—

“(A) IN GENERAL.—The Secretary shall promulgate regulations establishing nutrition standards for main dish items covered by paragraph (1) that are offered for sale a la carte.

“(B) CONSIDERATIONS.—In establishing the standards, the Secretary shall consider both the positive and negative contribution of nutrients, ingredients, and foods in a la carte items (including calories, portion size, saturated fat, trans fat, sodium, added sugars, and under-consumed food groups and nutrients) to the diets of children and adolescents.

“(C) REGULATIONS.—Regulations promulgated under this paragraph shall be—

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

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

“(4) STATEWIDE NUTRITION STANDARDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any State that participates in a food-service program under this Act or the
Richard B. Russell National School Lunch Act
(42 U.S.C. 1751 et seq.) may not establish or continue in effect any statewide nutrition standards relating to applicable foods and beverages that are different than the standards established under this section.

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

“(i) any Federal or State law relating to consumer protection, unfair or deceptive practices, unfair competition, or marketing;

“(ii) any additional nutrition standard relating to applicable foods and beverages that is established by any political subdivision of a State; or

“(iii) any additional nutrition standard for an a la carte main dish item that is established by any State or political subdivision.

“(c) APPLICABLE BEVERAGES.—

“(1) ELEMENTARY SCHOOLS AND MIDDLE SCHOOLS.—

“(A) PACKAGE SIZES.—Except as provided in subparagraph (B)(ii), the package of any ap-
plicable beverage that is offered for sale in an elementary school or middle school shall be not more than 8 fluid ounces.

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

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

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

“(C) MILK.—Milk offered for sale in an elementary school or middle school—

“(i) shall be low-fat or non-fat; and

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

“(D) FLUID MILK SUBSTITUTES.—An elementary or middle school may offer for sale a fluid milk substitute that—

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

“(ii) contains not more than 170 calories per 8 fluid ounce serving.
“(E) JUICE.—Juice offered for sale in an elementary school or middle school may contain—

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

“(I) with no added sweeteners; and

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

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

“(2) HIGH SCHOOLS.—

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

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

“(i) be water with or without flavoring, noncaloric sweeteners, or carbonation; and

“(ii) be sold in a package size of more than 12 ounces.
“(C) MILK.—Milk offered for sale in a high school shall—

“(i) be low-fat or nonfat; and

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

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

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

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

“(E) JUICE.—Juice offered for sale in a high school may only contain juice, with or without added micronutrients or natural flavors—

“(i)(I) with no added sweeteners; or

“(II) with or without water or carbonated water with no added caloric sweeteners; and
“(ii) that contains not more than 170 calories per 8 fluid ounce serving.

“(F) OTHER BEVERAGES.—

“(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), any beverage offered for sale in a high school other than a beverage identified in subparagraph (B), (C), (D), or (E), shall contain—

“(I) during the period beginning on the effective date described in subsection (j) and ending on June 30, 2013, not more than 66 calories per 8 fluid ounce serving; and

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

“(ii) EXCEPTION.—Effective beginning on July 1, 2013, beverages that are mixtures of water, carbohydrates, and electrolytes (with or without other ingredients) that are useful for providing energy and hydration for sustained and vigorous physical activity with not more than 66 calories per 8 fluid ounces may be offered for sale in packages of not more than 12 fluid
ounces in or immediately adjacent to an area of the high school in which students participate in a school-sponsored sport or other vigorous and sustained physical activity, subject to the requirement that such an adjacent area shall not be within the general movement of students between classes or into or out of the school campus.

“(iii) VERY LOW CALORIE EXCEPTION.—Any beverage that contains between 0 and 10 calories per 8 fluid ounce serving may be offered for sale in a high school in a package of not more than 20 fluid ounces.

“(d) APPLICABLE FOOD.—

“(1) STANDARDS.—

“(A) FATS.—An applicable food shall contain—

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

“(I) seeds, nuts, nut butters, and nut-based products containing 40 percent or more nuts by weight; and

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

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

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

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

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

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

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

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

“(i) Vitamin A, E, or C.

“(ii) Calcium.

“(iii) Magnesium.

“(iv) Potassium.

“(v) Fiber.

“(B) 1/4 cup of a fruit or vegetable, as provided prior to processing.

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

“(3) CALORIES.—

“(A) ELEMENTARY SCHOOLS AND MIDDLE SCHOOLS.—An applicable food that is offered for sale in an elementary school or middle school shall contain not more than 180 calories per package or serving as offered for sale.

“(B) HIGH SCHOOLS.—An applicable food that is offered for sale in a high school shall contain not more than 200 calories per package or serving as offered for sale.
“(e) **Shared School Facilities.**—Notwithstanding subsection (e)(1) or (d)(3)(A), if elementary school or middle school students have shared access to areas in common buildings with high school students, the local educational authority may elect whether to apply in those areas the applicable beverage provisions in paragraph (1) or (2) of subsection (e) or the applicable food provisions in subparagraph (A) or (B) of subsection (d)(3).

“(f) **Approval of New Products.**—The Secretary may approve for sale in schools a new food or beverage that does not satisfy the applicable food and beverage requirements of this section if the Secretary (based on a rulemaking conducted under section 553 of title 5, United States Code, prior to approval)—

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

“(2) provides scientific justification for the approval.

“(g) **Updating Standards and Requirements.**—

“(1) **In General.**—As soon as practicable after the date of publication by the Department of Agriculture and the Department of Health and Human Services of a new edition of the Dietary
Guidelines for Americans under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), beginning with the 2015 edition, the Secretary shall review and update as necessary the school nutrition standards and requirements established under this section.

“(2) REQUIREMENTS.—In reviewing or updating the nutrition standards and requirements under this section, the Secretary shall take into consideration—

“(A) the positive and negative contributions of nutrients, ingredients, and foods (including calories, vitamins, minerals, portion size, saturated fat, trans fat, sodium, added sugars, and underconsumed food groups and nutrients) to the diets of children and adolescents;

“(B) evidence concerning the relationship between consumption of certain nutrients, ingredients, and foods with respect to the prevention of overweight, obesity, and other chronic illnesses;

“(C) recommendations made by authoritative scientific sources concerning—
“(i) appropriate nutrition standards for foods sold outside the reimbursable meal programs in schools; and

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

“(D) the practicality and feasibility of implementation of potential modifications to the nutrition standards and requirements.

“(3) LIMITATION ON AUTHORITY.—The Secretary may update or otherwise modify nutrition standards and requirements under this section only—

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

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

“(4) EFFECT OF UPDATED STANDARDS.—Updated school nutrition standards and requirements under this subsection shall supersede any other school nutrition standards or requirements in effect on the date on which the updated standards and requirements are implemented.

“(h) SCHOOL FOOD AND BEVERAGE ADVISORY COMMITTEE.—
“(1) In general.—The Secretary may establish an advisory committee, to be known as the ‘School Food and Beverage Advisory Committee’ (in this subsection referred to as the ‘Advisory Committee’), to advise the Secretary on updating the school nutrition standards and requirements under this section.

“(2) Membership.—The members of the Advisory Committee shall be appointed by the Secretary and shall include—

“(A) registered dietitians and certified nutritionists;

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

“(C) public health professionals, including physicians and dentists;

“(D) members of parent or consumer advocacy groups;

“(E) representatives of industry stakeholders that produce food and beverages offered for sale in schools; and

“(F) other individuals with relevant expertise in child health and nutrition.

“(3) Duties.—
“(A) IN GENERAL.—The Advisory Committee shall provide advice, information, and recommendations to the Secretary on implementation of this section and on other child health and nutrition issues related to the provision of foods and beverages in schools, as requested by the Secretary.

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

“(i) scientific justification for any recommended modification to the provisions regarding applicable foods and beverages under this section; and

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

“(i) GUIDANCE.—

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

“(2) LIST OF BEVERAGES.—In issuing guidance to carry out this section, and at any time not later than 60 days after receipt of an applicable request,
the Secretary shall identify and maintain a list of beverages allowable under subsection (e)(2)(F)(ii).

“(j) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nutrition standards and requirements established under this section take effect on the first day of the first school year beginning on or after July 1, 2011.

“(2) EXCEPTION.—Standards for a la carte main dish items established under subsection (b)(3) take effect on the later of—

“(A) the date on which final regulations under subsection (b)(3) are promulgated; or

“(B) July 1, 2011.”.

(b) IMPLEMENTATION, REGULATIONS, AND ENFORCEMENT.—

(1) IMPLEMENTATION.—The Secretary shall implement section 10 of the Child Nutrition Act of 1966 (as amended by subsection (a)) (other than subsections (b)(3)(C) and (g) of that section) through the issuance of guidance, which shall be considered a “significant guidance document” under Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review), as amended by Executive Order 13422 (72 Fed. Reg. 2763).
(2) Regulations.—

(A) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate—

(i) regulations to eliminate any conflicting provisions regarding competitive foods and foods of minimal nutritional value; and

(ii) such other regulations as are necessary to carry out the amendment made by subsection (a).

(B) Procedure.—The promulgation of the regulations under subparagraph (A) shall be made without regard to—

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

(ii) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(iii) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”).
(C) CONGRESSIONAL REVIEW OF AGENCY

RULEMAKING.—In carrying out this paragraph, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

(3) ENFORCEMENT.—The Secretary shall enforce this section and the amendments made by this section (including regulations) in accordance with requirements established by the Secretary.