

108TH CONGRESS  
1ST SESSION

# S. 506

To amend the Richard B. Russell National School Lunch Act to ensure the safety of meals served under the school lunch program and the school breakfast program.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4, 2003

Mr. DURBIN (for himself, Mrs. CLINTON, Mr. KENNEDY, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Richard B. Russell National School Lunch Act to ensure the safety of meals served under the school lunch program and the school breakfast program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe School Food Act  
5 of 2003”.

### 6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the national school lunch program under the  
9 Richard B. Russell National School Lunch Act (42

1 U.S.C. 1751 et seq.) is a federally-assisted meal pro-  
2 gram that—

3 (A) operates in more than 97,000 public  
4 and nonprofit private schools; and

5 (B) provides nutritionally balanced, low-  
6 cost or free lunches to more than 27,000,000  
7 children each school day;

8 (2) children are among the populations most  
9 vulnerable to foodborne illness, which sickens an es-  
10 timated 76,000,000 individuals in the United States  
11 each year;

12 (3) nearly 100 reported outbreaks of foodborne  
13 illnesses occurred in schools between 1990 and 2000;

14 (4) Department of Agriculture procurement  
15 policies and procedures—

16 (A) help ensure the safety of foods donated  
17 to schools, which comprise about 17 percent of  
18 the school lunch supply; but

19 (B) do not apply to the remaining 83 per-  
20 cent of food served under the national school  
21 lunch program, which is purchased locally by  
22 schools;

23 (5) it is essential to maintain public confidence  
24 in—

1 (A) the safety of the food supply in the  
2 schools of the United States; and

3 (B) the ability of the Federal Government  
4 and State governments to exercise adequate  
5 oversight of foods served in the schools of the  
6 United States; and

7 (6) public confidence can best be maintained  
8 by—

9 (A) improving Department of Agriculture  
10 procurement and testing standards, and extend-  
11 ing the standards, to the maximum extent prac-  
12 ticable, to foods purchased by schools;

13 (B) preparing and implementing plans to  
14 prevent identified food safety risks in the prepa-  
15 ration of school meals; and

16 (C) improving food safety training, infor-  
17 mation sharing, and coordination between the  
18 Federal Government and States.

19 **SEC. 3. IMPROVEMENTS TO THE SAFETY OF SCHOOL**  
20 **LUNCHES.**

21 Section 9 of the Richard B. Russell National School  
22 Lunch Act (42 U.S.C. 1758) is amended—

23 (1) in subsection (h)—

24 (A) in paragraph (1)—

1 (i) by striking “Except as provided in  
2 paragraph (2), a” and inserting “A”;

3 (ii) by striking “shall, at least once”  
4 and inserting the following: “shall—  
5 “(A) at least twice”;

6 (iii) by striking the period at the end  
7 and inserting a semicolon; and

8 (iv) by adding at the end the fol-  
9 lowing:

10 “(B) post the report on the most recent in-  
11 spection in a publicly visible location; and

12 “(C) make the report available to the pub-  
13 lic on request.”;

14 (B) by striking paragraph (2) and insert-  
15 ing the following:

16 “(2) STATE AND LOCAL GOVERNMENT INSPEC-  
17 TIONS.—Nothing in paragraph (1) prevents any  
18 State or local government from adopting or enforce-  
19 ing any requirement for more frequent food safety  
20 inspections of schools.”; and

21 (C) by adding at the end the following:

22 “(3) AUDITS AND REPORTS BY STATES.—Each  
23 State shall annually audit and submit to the Sec-  
24 retary a report on the food safety inspections of  
25 schools conducted under paragraphs (1) and (2).

1           “(4) AUDIT BY THE SECRETARY.—The Sec-  
2       retary shall annually audit State reports of food  
3       safety inspections of schools submitted under para-  
4       graph (3).”; and

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

6       “(k) PROCUREMENT OF SAFE FOODS.—

7           “(1) ACTION BY SCHOOL FOOD AUTHORITIES.—  
8       Subject to paragraph (3), the Secretary shall require  
9       that a school food authority incorporate into the pro-  
10      curement contracts of the school food authority, to  
11      the maximum extent practicable, provisions to help  
12      ensure the safety of foods purchased by schools for  
13      a program under this Act or the school breakfast  
14      program under section 4 of the Child Nutrition Act  
15      of 1966 (42 U.S.C. 1773).

16          “(2) RULEMAKING BY THE SECRETARY.—Not  
17      later than May 1, 2004, the Secretary shall promul-  
18      gate final regulations to implement paragraph (1)  
19      that require—

20           “(A) each vendor that provides food prod-  
21      ucts to be served by a school that participates  
22      in the school lunch program under this Act or  
23      the school breakfast program under section 4 of  
24      the Child Nutrition Act of 1966 (42 U.S.C.  
25      1773) to supply to the Secretary the name and

1 contact information for each school food sup-  
 2 plier of the vendor; and

3 “(B) as appropriate, pathogen testing dur-  
 4 ing production of foods described in that para-  
 5 graph.

6 “(3) GUIDANCE.—The Secretary shall provide  
 7 guidance to school food authorities on ensuring the  
 8 safety of food purchases not subject to the regula-  
 9 tions promulgated under paragraph (2).

10 “(l) FOOD SAFETY PLANNING.—

11 “(1) IN GENERAL.—Each school that partici-  
 12 pates in the school lunch program under this Act or  
 13 the school breakfast program under section 4 of the  
 14 Child Nutrition Act of 1966 (42 U.S.C. 1773) shall  
 15 monthly prepare a plan that assesses—

16 “(A) the food safety risks inherent in the  
 17 preparation and serving of meals; and

18 “(B) the appropriate methods to prevent  
 19 or eliminate the identified food safety risks.

20 “(2) TRAINING AND TECHNICAL ASSISTANCE.—

21 “(A) IN GENERAL.—The Secretary shall  
 22 provide training and technical assistance to  
 23 State educational agencies to assist in prepara-  
 24 tion of the food safety plans required by para-  
 25 graph (1).

1                   “(B) USE OF FOOD SERVICE MANAGEMENT  
 2                   INSTITUTE.—In carrying out subparagraph (A),  
 3                   the Secretary shall use, to the maximum extent  
 4                   practicable, a food service management institute  
 5                   established under section 21(a)(2).

6                   “(m) AUTHORITY TO RECALL FOOD PRODUCTS  
 7                   SERVED IN SCHOOL MEALS.—

8                   “(1) DEFINITIONS.—In this subsection:

9                   “(A) CLASS I RECALL.—The term ‘Class I  
 10                  recall’, with respect to a food product, means a  
 11                  recall that involves a health hazard situation  
 12                  where there is a reasonable probability that the  
 13                  use of, or exposure to, the food product will  
 14                  cause serious, adverse health consequences or  
 15                  death.

16                  “(B) FOOD PRODUCT.—The term ‘food  
 17                  product’ means a commodity donated to, or a  
 18                  food product purchased by, a school for a pro-  
 19                  gram under this Act or the school breakfast  
 20                  program under section 4 of the Child Nutrition  
 21                  Act of 1966 (42 U.S.C. 1773).

22                  “(2) VOLUNTARY ACTIONS.—If the Secretary  
 23                  finds that there is a reasonable probability that  
 24                  human consumption of a food product that was, or  
 25                  may have been, distributed to schools would present

1 a threat to public health, the Secretary shall provide  
2 each appropriate person (as identified by the Sec-  
3 retary) that prepared, processed, distributed, or oth-  
4 erwise handled the food product with an oppor-  
5 tunity—

6 “(A) to recall and collect the food product;

7 “(B) to provide to the Secretary a list of  
8 individuals to whom the food product was sold  
9 or distributed; and

10 “(C) in consultation with the Secretary, to  
11 provide timely notification of the finding of the  
12 Secretary to the State food safety coordinator  
13 designated under section 12(q) of each State in  
14 which the food product was, or may have been,  
15 distributed, which notification shall include suf-  
16 ficient information to identify the affected food  
17 product.

18 “(3) MANDATORY ACTIONS.—

19 “(A) ORDER.—If any appropriate person  
20 identified by the Secretary under paragraph (2)  
21 does not carry out the actions described in that  
22 paragraph within the time period and in the  
23 manner required by the Secretary, the Sec-  
24 retary shall, by order, require, as the Secretary  
25 determines to be necessary, the person—



1 “(i)(I) to cease immediately distribu-  
2 tion of the food product to schools; and

3 “(II) to promptly recall and collect  
4 the food product;

5 “(ii) to provide immediately to the  
6 Secretary a list of individuals to whom the  
7 food product was sold or distributed; and

8 “(iii) to make immediately the notifi-  
9 cation described in paragraph (2)(C).

10 “(B) INFORMAL HEARING.—The order  
11 shall provide the person subject to the order  
12 with an opportunity for an informal hearing, to  
13 be held not later than 10 days after the date of  
14 issuance of the order, on the actions required  
15 by the order.

16 “(C) VACATING OF ORDER.—If, after pro-  
17 viding an opportunity for a hearing under sub-  
18 paragraph (B), the Secretary determines that  
19 inadequate grounds exist to support the actions  
20 required by the order, the Secretary shall va-  
21 cate the order.

22 “(4) COORDINATION WITH SECRETARY OF  
23 HEALTH AND HUMAN SERVICES.—In the case of an  
24 activity under paragraph (2) or (3) carried out with  
25 respect to a food product regulated under the Fed-

1       eral Food, Drug, and Cosmetic Act (21 U.S.C. 301  
 2       et seq.), the Secretary shall coordinate with the Sec-  
 3       retary of Health and Human Services to ensure that  
 4       the activity is carried out.

5               “(5) NOTIFICATION TO SCHOOLS AND VEN-  
 6       DORS.—

7               “(A) PROVISION OF VENDOR CONTACT IN-  
 8       FORMATION TO STATE EDUCATIONAL AGEN-  
 9       CY.—Not later than August 1, 2004, and as ap-  
 10      propriate thereafter, a school that participates  
 11      in the school lunch program under this Act or  
 12      the school breakfast program under section 4 of  
 13      the Child Nutrition Act of 1966 (42 U.S.C.  
 14      1773) shall provide to the appropriate State  
 15      educational agency current contact information  
 16      for each vendor, and each school food supplier  
 17      of the vendor, that will provide food products to  
 18      be served by the school.

19              “(B) NOTIFICATION BY STATE EDU-  
 20      CATIONAL AGENCIES.—

21              “(i) IN GENERAL.—A State edu-  
 22      cational agency that receives notification  
 23      under paragraph (2)(C) or (3)(A)(iii) with  
 24      respect to a food product shall, within 24  
 25      hours after receipt of the notification, no-

1           tify each vendor and each school to which  
2           the food product was, or may have been,  
3           distributed.

4           “(ii) CONTENTS OF NOTIFICATION.—

5           The notification shall include—

6                   “(I) the finding of the Secretary  
7                   under paragraph (2); and

8                   “(II) sufficient information to  
9                   identify the affected food product.

10           “(C) ACTION BY VENDORS ON RECEIPT OF  
11           NOTIFICATION.—Each vendor that receives no-  
12           tification under paragraph (2)(C), paragraph  
13           (3)(A)(iii), or subparagraph (B) shall—

14                   “(i) immediately cease distribution of  
15                   the food product; and

16                   “(ii) isolate the affected product to  
17                   avoid accidental distribution.

18           “(D) ACTION BY SCHOOLS ON RECEIPT OF  
19           NOTIFICATION.—Each school that receives noti-  
20           fication under paragraph (2)(C), paragraph  
21           (3)(A)(iii)), or subparagraph (B) shall—

22                   “(i) immediately cease serving the  
23                   food product; and

24                   “(ii) isolate the affected product to  
25                   avoid accidental use.

1 “(6) NOTIFICATION TO THE PUBLIC.—

2 “(A) IN GENERAL.—If a State educational  
3 agency finds that a food product subject to a  
4 Class I recall has been consumed under a pro-  
5 gram operated by a school under this Act or the  
6 school breakfast program under section 4 of the  
7 Child Nutrition Act of 1966 (42 U.S.C. 1773),  
8 the State educational agency shall provide pub-  
9 lic notification in accordance with subparagraph  
10 (B).

11 “(B) CONTENTS OF NOTIFICATION.—The  
12 notification shall include—

13 “(i) the finding of the Secretary under  
14 paragraph (2); and

15 “(ii) sufficient information to identify  
16 the recalled food product and the date  
17 when and location where the recalled food  
18 product was served.

19 “(7) ENFORCEMENT.—

20 “(A) IN GENERAL.—A violation of this  
21 subsection may be prosecuted, as applicable—

22 “(i) by the Secretary under—

23 “(I) section 12 of the Poultry  
24 Products Inspection Act (21 U.S.C.  
25 461);

1 “(II) section 406 of the Federal  
 2 Meat Inspection Act (21 U.S.C. 676);  
 3 or

4 “(III) section 12 of the Egg  
 5 Products Inspection Act (21 U.S.C.  
 6 1041); or

7 “(ii) by the Secretary of Health and  
 8 Human Services under section 303 of the  
 9 Federal Food, Drug, and Cosmetic Act (21  
 10 U.S.C. 333).

11 “(B) NO EFFECT ON STATE PROSECU-  
 12 TIONS.—Nothing in this paragraph prevents a  
 13 State from prosecuting any violation of State  
 14 law.

15 “(n) INFORMATION SHARING ON FOOD SAFETY LAW  
 16 COMPLIANCE.—

17 “(1) IN GENERAL.—The Secretary, in consulta-  
 18 tion with the Secretary of Health and Human Serv-  
 19 ices, shall establish an advisory committee (referred  
 20 to in this subsection as the ‘Committee’) to assist in  
 21 establishing an information-sharing database, or im-  
 22 plementing another method, to provide each State  
 23 food safety coordinator designated under section  
 24 12(q) and other appropriate persons with up-to-date  
 25 information regarding food safety concerns relating

1 to food manufacturing, processing, and packing fa-  
2 cilities that produce any food purchased or acquired  
3 for a program under this Act or the school breakfast  
4 program under section 4 of the Child Nutrition Act  
5 of 1966 (42 U.S.C. 1773), including recalls by and  
6 enforcement actions against the facilities.

7 “(2) COMPOSITION.—The Committee shall in-  
8 clude representatives of—

9 “(A) school food authorities;

10 “(B) State educational agencies;

11 “(C) State agricultural agencies;

12 “(D) consumer groups;

13 “(E) State public health officials; and

14 “(F) food manufacturing, processing, and  
15 packing facilities.

16 “(3) COMPENSATION.—

17 “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), a member of the Committee shall  
19 not receive any compensation for the service of  
20 the member on the Committee.

21 “(B) TRAVEL EXPENSES.—A member of  
22 the Committee shall be allowed travel expenses,  
23 including per diem in lieu of subsistence, at  
24 rates authorized for employees of agencies  
25 under subchapter I of chapter 57 of title 5,

1 United States Code, while away from the home  
2 or regular place of business of the member in  
3 the performance of services for the Committee.

4 “(4) TECHNICAL ASSISTANCE.—The Secretary  
5 shall provide for the availability to each State food  
6 safety coordinator of training and technical assist-  
7 ance on use of any database or method described in  
8 paragraph (1).

9 “(5) REPORT.—Not later than May 31, 2004,  
10 the Committee shall submit to the Committee on  
11 Education and the Workforce of the House of Rep-  
12 resentatives and the Committee on Agriculture, Nu-  
13 trition, and Forestry of the Senate a report describ-  
14 ing actions taken to carry out this subsection.

15 “(6) FUNDING.—Section 715 of the Agri-  
16 culture, Rural Development, Food and Drug Admin-  
17 istration, and Related Agencies Appropriations Act,  
18 2003 (Public Law 108–7), and any successor sec-  
19 tion, shall not apply to expenses of the Committee.”.

20 **SEC. 4. DESIGNATION OF STATE FOOD SAFETY COORDINA-**  
21 **TORS.**

22 Section 12 of the Richard B. Russell National School  
23 Lunch Act (42 U.S.C. 1760) is amended by adding at the  
24 end the following:

1       “(q) DESIGNATION OF STATE FOOD SAFETY COOR-  
 2 DINATORS.—Each State educational agency shall des-  
 3 ignate an individual to serve as the State food safety coor-  
 4 dinator to ensure within the State the safety of food served  
 5 under a program under this Act or the school breakfast  
 6 program under section 4 of the Child Nutrition Act of  
 7 1966 (42 U.S.C. 1773).”.

8       **SEC. 5. PROCEDURES AND ACTIONS TO ENSURE THE SAFE-**  
 9                               **TY OF DONATED COMMODITIES.**

10       Section 14 of the Richard B. Russell National School  
 11 Lunch Act (42 U.S.C. 1762a) is amended—

12               (1) in the first sentence of subsection (d)—

13                       (A) in paragraph (4), by striking “and” at  
 14 the end;

15                       (B) in paragraph (5), by striking the pe-  
 16 riod at the end and inserting “; and”; and

17                       (C) by adding at the end the following:

18               “(6) require, at a minimum, for any commodity  
 19 that is used under a program under this Act or the  
 20 school breakfast program under section 4 of the  
 21 Child Nutrition Act of 1966 (42 U.S.C. 1773)—

22                       “(A) daily inspection under the Agricul-  
 23 tural Marketing Act of 1946 (7 U.S.C. 1621 et  
 24 seq.) of any donated commodity that is covered  
 25 by—



1 “(i) the Poultry Products Inspection  
2 Act (21 U.S.C. 451 et seq.);

3 “(ii) the Federal Meat Inspection Act  
4 (21 U.S.C. 601 et seq.); or

5 “(iii) the Egg Products Inspection Act  
6 (21 U.S.C. 1031 et seq.);

7 “(B) daily inspection of any seafood com-  
8 modity that is covered by the inspection pro-  
9 gram carried out by the National Marine Fish-  
10 eries Service under the Agricultural Marketing  
11 Act of 1946 (7 U.S.C. 1621 et seq.); and

12 “(C) quarterly, on-site audits under the  
13 Agricultural Marketing Act of 1946 (7 U.S.C.  
14 1621 et seq.) of each establishment that pro-  
15 duces a donated fresh or processed fruit or veg-  
16 etable.”;

17 (2) by redesignating subsection (g) as sub-  
18 section (h); and

19 (3) by inserting after subsection (f) the fol-  
20 lowing:

21 “(g) ACTIONS TO ENSURE THE SAFETY OF DO-  
22 NATED COMMODITIES.—With respect to commodities pur-  
23 chased by the Secretary for a program under this Act or  
24 the school breakfast program under section 4 of the Child

1 Nutrition Act of 1966 (42 U.S.C. 1773), the Secretary  
2 shall—

3 “(1) in the case of ground uncooked meat prod-  
4 ucts—

5 “(A) collect samples at least 4 times per  
6 day during production; and

7 “(B) conduct at least daily composite test-  
8 ing for compliance with the microbiological lim-  
9 its established by the Secretary on—

10 “(i) *Escherichia coli* (*E. coli*)  
11 O157:H7 in effect on October 1, 2002; and

12 “(ii) *Salmonella* in effect on October  
13 1, 2002, unless the Secretary develops a  
14 more appropriate scientific and health-  
15 based standard;

16 “(2)(A) collect and test samples at least 4 times  
17 per day during production from food contact sur-  
18 faces of ready-to-eat meat and poultry product  
19 plants; and

20 “(B) if the result of a test under subparagraph  
21 (A) is positive for *Listeria* spp., conduct product  
22 sampling for compliance with the microbiological  
23 limit on *Listeria monocytogenes* issued by the Sec-  
24 retary on May 23, 1989 (54 Fed. Reg. 22345); and

- 1           “(3) reject any lot of food products that fails to
- 2       meet the requirements of paragraph (1) or para-
- 3       graph (2), as applicable.”.

