



**Legislative Bulletin.....March 2, 2006**

**Contents: H.R. 4167 – The National Uniformity for Food Act of 2005**

**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$102 million over five years

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 1

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 4167 — The National Uniformity for Food Act of 2005 – as introduced (Rogers, R-MI)**

**Order of Business:** The bill is scheduled for consideration on Thursday, March 2, 2006, under a structured rule (H.Res. \_\_), which will allow for one hour of general debate. After general debate, the Committee of the Whole will rise without motion, and no further consideration of the bill will be in order, until the House passes another rule (which could be next week) providing for amendments to H.R. 4167. In short, there will not be no vote on this bill on Thursday, March 2<sup>nd</sup>. When the Rules Committee reports out a rule providing for amendments to H.R. 4167, the House will the vote on that rule, debate all amendments provided for in the rule, and then vote on the bill.

**Summary:** (To understand the background of this legislation, see the Additional Information section below.) H.R. 4167 would amend the Federal Food, Drug, and Cosmetic Act (FFDCA) to prohibit any state or political subdivision from establishing (directly or indirectly) or continuing a current requirement for any food in interstate commerce:

- “any requirement that is not identical to specified FFDCA provisions (which would result in materially different requirements), including those related to adulterated foods, unsafe food additives, and new animal drugs; or
- “any notification requirement that provides for a warning concerning the food's safety that is not identical to FFDCA provisions.”

In short, this legislation adds to current law a provision prohibiting states from placing requirements on food that differ from FDCA safety and warning provisions. H.R. 4167 also provides that state food requirements, which are inconsistent with FFDCA regulations and are in effect on the date of enactment of the bill, would be nullified 180 days (roughly six months) after enactment.

H.R. 4167 would establish a process by which a state may file a petition for an exemption for state requirements that are inconsistent with FFDCA regulations and are in effect on the date of enactment. A state wishing to receive an exemption for a state food labeling requirement differing from FFDCA regulations must submit within 180 days after enactment, a petition to receive an exemption. Any petition submitted would be published in the Federal Register and subject to a 180-day public comment period on the petition. Within 360 days after the end of the period for public comment, the Secretary of Health and Human Services (HHS) must make a determination on the exemption petition.

In addition, H.R. 4167 would establish a process by which a state may file a petition for an exemption in order to implement a new state food labeling requirement that would be inconsistent with FFDCA regulations. The HHS Secretary would be permitted to provide an exemption for a requirement that:

- “protects an important public interest that would otherwise be unprotected in the absence of the exemption;
- “would not cause any food to be in violation of any applicable requirement or prohibition under federal law; and
- “would not unduly burden interstate commerce, balancing the importance of the public interest of the state or political subdivisions against the impact on interstate commerce.”

The legislation would also create a process by which a state could petition HHS to establish by regulation a national standard relating to the regulation of food. For example, if a state decided for health reasons that it was necessary for all pretzels to be dipped in chocolate and the state felt that this standard should be required on the national scale, that state could petition HHS to consider creating a new FFDCA regulation requiring all pretzels nationwide to be dipped in chocolate.

Under certain, specified situations, H.R. 4167 permits states to establish a requirement that would otherwise contradict FFDCFA regulations. For example, if the requirement is needed to address an imminent hazard to health that is likely to result in serious adverse health consequences or death, a state would be permitted to establish the requirement.

The legislation clarifies that nothing in the Act is to be construed to prevent a state or political subdivision of a state from establishing, enforcing, or continuing in effect a requirement relating to the following:

- “freshness dating, open date labeling, grade labeling, a State inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, or a statement of geographic origin; or
- “a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary, and other certain situations.”

**Additional Information:** A 2002 study conducted by Swedish scientists provided evidence to support that a substance with cancer-causing properties, called acrylamide, is formed in some snacks and other foods when fried or baked at high temperatures. Since 2002, several additional studies have confirmed these results, causing some states to consider warning label requirements for foods containing acrylamide. Specifically, in August 2005, the California Attorney General filed a lawsuit against several different manufacturers of potato chips and French fries, and has requested a court order requiring companies to label certain food products containing acrylamide with a warning of the agent and its cancer-causing properties. The Food and Drug Administration does not currently require states to place a warning label on products which contain acrylamide after the baking process. Therefore, enactment of H.R. 4167 would for all practical purposes, prohibit the state of California from requiring food manufacturers to place an acrylamide warning on their products, unless the state filed a petition for exemption with the Secretary of Health and Human Services, or unless the FDA decided to set the California as a requirement for the country as a whole.

**Committee Action:** H.R. 4167 was introduced on October 27, 2005, and referred to the House Committee on Energy and Commerce, which held a mark-up and reported the bill to the House by a 30-18 vote on December 15, 2005.

**Cost to Taxpayers:** CBO estimates that H.R. 4167 will cost \$102 million over five years, subject to appropriations. Specifically, CBO estimates that processing each exemption petition will cost HHS roughly \$400,000.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill expands the scope of the federal government, as it would preempt certain state laws regarding food safety and labeling requirements.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes, according to CBO, H.R. 4167 contains “preemptions of state regulatory authority would be intergovernmental mandates as defined in UMRA.

However, the costs of complying with those mandates would be minimal.” H.R. 4167 contains no new private-sector mandates as defined in UMRA.

**Constitutional Authority:** The Energy and Commerce Committee finds constitutional authority in Article I, Section 8, Clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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