

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 4167,  
NATIONAL FOOD UNIFORMITY ACT OF 2005

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MARCH 7, 2006.—Referred to the House Calendar and ordered to be printed

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Mr. GINGREY, from the Committee on Rules  
submitted the following

R E P O R T

[To accompany H. Res. 710]

The Committee on Rules, having had under consideration House Resolution 710, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the further consideration of H.R. 4167, the National Food Uniformity Act of 2005, under a structured rule. The rule provides that no further general debate shall be in order.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

The rule waives all points of order against the amendments printed in this report. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 146*

Date: March 7, 2006.

Measure: H.R. 4167, the National Food Uniformity Act of 2005.

Motion by: Mr. McGovern.

Summary of motion: To report an open rule.

Results: Defeated 3 to 6.

Vote by Members: Hastings (WA)—Nay; Sessions—Nay; Capito—Nay; Cole—Nay; Gingrey—Nay; McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Dreier—Nay.

*Rules Committee record vote No. 147*

Date: March 7, 2006.

Measure: H.R. 4167, the National Food Uniformity Act of 2005.

Motion by: Mr. Hastings (FL).

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Mr. Stupak, which permits states to maintain or enact food warning laws that require notifications regarding the treatment of food with carbon monoxide.

Results: Defeated 3 to 6.

Vote by Members: Hastings (WA)—Nay; Sessions—Nay; Capito—Nay; Cole—Nay; Gingrey—Nay; McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Dreier—Nay.

## SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

(Summaries of amendments derived from information provided by the sponsors)

1. Barton (TX): Manager's amendment. Revised. Deletes section (f) from 403B. Would insert in 403A a new clause clarifying when states may act to implement food adulteration standards in absence of a federal adulteration standard for a particular food. Under the amendment, if the FDA has established a federal adulteration or food tolerance standard the state must enforce that standard. If the FDA has considered and officially rejected a federal standard then states may not enforce requirements rejected by the Secretary. However, if the Secretary has not acted to establish a standard or rejected a standard then a state could establish its own adulteration or tolerance standard without having to petition or seek approval from the FDA. Also clarifies that uniformity in notification requirements for warnings does not apply to warnings related to dietary supplements. (10 minutes).

2. Cardoza (CA): Provides for expedited consideration of state petitions that seek adoption of national warning requirements or exemptions from uniformity for state warning requirements in three cases: (1) where the requested warning relates to cancer-causing agents; (2) where the requested warning related to reproductive effects or birth defects; and (3) where the requested warning is intended to provide information that will allow parents or guardians to understand, monitor, or limit a child's exposure to cancer-causing agents or reproductive or developmental toxins. (20 minutes).

3. Rogers (MI): States that the changes of law made by this legislation will not take effect until after the Secretary of Health and Human Services certifies to the Congress, after consultation with the Secretary of Homeland Security, that the implementation of the

legislation will pose no additional risk to the public health or safety from terrorist attacks relating to the food supply. (10 minutes).

4. Waxman (CA): Limits the scope of H.R. 4167 in order to preserve state authorities that help defend and respond to bioterrorism attacks. Specifically, when a Governor or state legislature certifies that a state authority is useful in establishing or maintaining a food supply that is adequately protected from bioterrorism attack, the state authority is not affected by the Act. (10 minutes).

5. Capps (CA)/Stupak (MI)/Waxman (CA)/Eshoo (CA): Permits states to maintain or enact food warning laws that require notifications regarding the risks of cancer, birth defects, reproductive health issues, and allergic reactions associated with sulfiting agents in bulk foods. Also permits states to maintain or enact food warning laws notifying parents of the risks of cancer, reproductive or developmental toxins, and food borne pathogens associated with certain foods, as well as laws governing food safety standards and tolerance levels related to limiting children's exposure to these risks. (20 minutes).

6. Wasserman Schultz (FL): Prevents the National Uniformity for Food Act from affecting any State law, regulation, proposition or other action that establishes a notification requirement regarding the presence or potential effects of mercury in fish and shellfish. (10 minutes).

#### TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARTON OF TEXAS, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 2, line 7, strike "403A(a)" and insert "403A".

Page 2, beginning on line 8, strike "343-1(a)" and insert "343-1".

Page 2, line 10, strike "in paragraph (4)" and insert "in subsection (a)(4)".

Page 2, line 12, strike "in paragraph (5)" and insert "in subsection (a)(5)".

Page 2, line 14, insert "in subsection (a)," after "(3)".

Page 3, strike lines 5 through 15 and insert the following:

(4) by adding at the end the following:

"(c)(1) For purposes of subsection (a)(6) and section 403B, the term 'identical' means that the language under the laws of a State or a political subdivision of a State is substantially the same language as the comparable provision under this Act and that any differences in language do not result in the imposition of materially different requirements. For purposes of subsection (a)(6), the term 'any requirement for a food' does not refer to provisions of this Act that relate to procedures for Federal action under this Act.

"(2) For purposes of subsection (a)(6), a State or political subdivision of a State may enforce a State law that contains a requirement that is identical to a requirement in a section of Federal law referred to in subsection (a)(6) if—

"(A) the Secretary has promulgated a regulation or adopted a final guidance relating to the requirement and the State applies the State requirement in a manner that conforms to the regulation or guidance; or

“(B) the Secretary has not promulgated a regulation or adopted a final guidance relating to the requirement, except that if the Secretary has considered a proposal for a regulation or final guidance relating to the requirement and has, after soliciting public comment, made a determination not to promulgate such regulation or adopt such guidance, which determination is published in the Federal Register, the State may not enforce any requirements in State law that are policies rejected by the Secretary through such determination.”.

Page 13, strike lines 13 through 19.

Page 13, line 20, strike “(g)” and insert “(f)”.

Page 14, line 4, strike “or” after “pricing.”.

Page 14, line 5, insert before the semicolon the following: “, or dietary supplements”.

Page 14, line 13, strike “(h)” and insert “(g)”.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARDOZA OF CALIFORNIA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

Page 11, after line 7, insert the following:

“(C) EXPEDITED CONSIDERATION.—The Secretary shall expedite the consideration of any petition under paragraphs (1) or (2) that involves a request for a notification requirement for a food that provides a warning where the health effect to be addressed by the warning relates to cancer or reproductive or birth defects or is intended to provide information that will allow parents or guardians to understand, monitor, or limit a child’s exposure to cancer-causing agents or reproductive or developmental toxins.”.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROGERS OF MICHIGAN, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following section:

**SEC. 3. CONDITIONS.**

The amendments made by this Act take effect only if the Secretary of Health and Human Services certifies to the Congress, after consultation with the Secretary of Homeland Security, that the implementation of such amendments will pose no additional risk to the public health or safety from terrorists attacks relating to the food supply.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WAXMAN OF CALIFORNIA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

**SEC. 3. PROTECTION AGAINST BIOTERRORISM.**

Nothing in this Act or the amendments made by this Act shall have any effect upon a State law, regulation, action, or proposition if a Governor or State legislature certifies that such law, regula-

tion, action, or proposition is useful in establishing or maintaining a food supply that is adequately protected from bioterrorism attack.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPPs OF CALIFORNIA, OR HER DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

Page 4, beginning on line 1, strike “Except as provided in subsections (c) and (d),” and insert “Except as provided in paragraphs (4) through (6) and subsections (c) and (d),”.

Page 5, after line 16, insert the following:

“(4) NOTIFICATIONS REGARDING CANCER.—Paragraph (1) does not apply to a notification described in such paragraph if the notification warns that the food involved may cause cancer.

“(5) NOTIFICATIONS REGARDING BIRTH DEFECTS OR REPRODUCTIVE HEALTH PROBLEMS.—Paragraph (1) does not apply to a notification described in such paragraph if the notification warns that the food involved may cause birth defects, or warns that the food may cause reproductive health problems, or both.

“(6) NOTIFICATION REGARDING ALLERGENIC SULFITING AGENTS.—Paragraph (1) does not apply to a notification described in such paragraph if the notification warns that the food involved contains a sulfiting agent that may cause an allergic reaction.”.

At the end of the bill, add the following:

**SECTION 3. ENSURING ADEQUATE PROTECTION FOR KIDS.**

Nothing in this Act or the amendments made by this Act shall have any effect upon a State law, regulation, proposition or other action that—

(1) establishes a notification requirement that will allow parents or guardians to understand, monitor, or limit a child’s exposure to cancer-causing agents, reproductive or developmental toxins, or food-borne pathogens; or

(2) offers protection to children from foods bearing or containing cancer-causing agents, reproductive or developmental toxins, or food-borne pathogens.

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WASSERMAN SCHULTZ OF FLORIDA, OR HER DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following section:

**SEC. 3. ENSURING ADEQUATE INFORMATION FOR INFANTS, CHILDREN, AND WOMEN OF CHILD-BEARING AGE.**

Nothing in this Act or the amendments made by this Act shall have any effect upon a State law, regulation, proposition or other action that establishes a notification requirement regarding the presence or potential effects of mercury in fish and shellfish.