

FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT ACT
OF 2008

APRIL 8, 2008.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2063]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2063) to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a voluntary policy for managing the risk of food allergy and anaphylaxis in schools, to establish school-based food allergy management grants, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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AMENDMENTS

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Food Allergy and Anaphylaxis Management Act of 2008”.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Food allergy is an increasing food safety and public health concern in the United States, especially among students.

(2) Peanut allergy doubled among children from 1997 to 2002.

(3) In a 2004 survey of 400 elementary school nurses, 37 percent reported having at least 10 students with severe food allergies and 62 percent reported having at least 5.

(4) Forty-four percent of the elementary school nurses surveyed reported that the number of students in their school with food allergy had increased over the past 5 years, while only 2 percent reported a decrease.

(5) In a 2001 study of 32 fatal food-allergy induced anaphylactic reactions (the largest study of its kind to date), more than half (53 percent) of the individuals were aged 18 or younger.

(6) Eight foods account for 90 percent of all food-allergic reactions: milk, eggs, fish, shellfish, tree nuts, peanuts, wheat, and soy.

(7) Currently, there is no cure for food allergies; strict avoidance of the offending food is the only way to prevent a reaction.

(8) Anaphylaxis is a systemic allergic reaction that can kill within minutes.

(9) Food-allergic reactions are the leading cause of anaphylaxis outside the hospital setting, accounting for an estimated 30,000 emergency room visits, 2,000 hospitalizations, and 150 to 200 deaths each year in the United States.

(10) Fatalities from anaphylaxis are associated with a delay in the administration of epinephrine (adrenaline), or when epinephrine was not administered at all. In a study of 13 food allergy-induced anaphylactic reactions in school-age children (6 fatal and 7 near fatal), only 2 of the children who died received epinephrine within 1 hour of ingesting the allergen, and all but 1 of the children who survived received epinephrine within 30 minutes.

(11) The importance of managing life-threatening food allergies in the school setting has been recognized by the American Medical Association, the American Academy of Pediatrics, the American Academy of Allergy, Asthma and Immunology, the American College of Allergy, Asthma and Immunology, and the National Association of School Nurses.

(12) There are no Federal guidelines concerning the management of life-threatening food allergies in the school setting.

(13) Three-quarters of the elementary school nurses surveyed reported developing their own training guidelines.

(14) Relatively few schools actually employ a full-time school nurse. Many are forced to cover more than 1 school, and are often in charge of hundreds if not thousands of students.

(15) Parents of students with severe food allergies often face entirely different food allergy management approaches when their students change schools or school districts.

(16) In a study of food allergy reactions in schools and day-care settings, delays in treatment were attributed to a failure to follow emergency plans, calling parents instead of administering emergency medications, and an inability to administer epinephrine.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ESEA DEFINITIONS.**—The terms “local educational agency”, “secondary school”, and “elementary school” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) **SCHOOL.**—The term “school” includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services, in consultation with the Secretary of Education.

SEC. 4. ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT POLICY.

(a) **ESTABLISHMENT.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall—

(1) develop a policy to be used on a voluntary basis to manage the risk of food allergy and anaphylaxis in schools; and

- (2) make such policy available to local educational agencies and other interested individuals and entities, including licensing child care providers, preschool programs, and Head Start, to be implemented on a voluntary basis only.
- (b) CONTENTS.—The voluntary policy developed by the Secretary under subsection (a) shall contain guidelines that address each of the following:
 - (1) Parental obligation to provide the school, prior to the start of every school year, with—
 - (A) documentation from the student’s physician or nurse—
 - (i) supporting a diagnosis of food allergy and the risk of anaphylaxis;
 - (ii) identifying any food to which the student is allergic;
 - (iii) describing, if appropriate, any prior history of anaphylaxis;
 - (iv) listing any medication prescribed for the student for the treatment of anaphylaxis;
 - (v) detailing emergency treatment procedures in the event of a reaction;
 - (vi) listing the signs and symptoms of a reaction; and
 - (vii) assessing the student’s readiness for self-administration of prescription medication; and
 - (B) a list of substitute meals that may be offered to the student by school food service personnel.
 - (2) The creation and maintenance of an individual health care plan tailored to the needs of each student with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such students in instances where—
 - (A) the students are capable of self-administering medication; and
 - (B) such administration is not prohibited by State law.
 - (3) Communication strategies between individual schools and local providers of emergency medical services, including appropriate instructions for emergency medical response.
 - (4) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school areas such as cafeterias.
 - (5) The dissemination of information on life-threatening food allergies to school staff, parents, and students, if appropriate by law.
 - (6) Food allergy management training of school personnel who regularly come into contact with students with life-threatening food allergies.
 - (7) The authorization and training of school personnel to administer epinephrine when the school nurse is not immediately available.
 - (8) The timely accessibility of epinephrine by school personnel when the nurse is not immediately available.
 - (9) Extracurricular programs such as non-academic outings and field trips, before- and after-school programs, and school-sponsored programs held on weekends that are addressed in the individual health care plan.
 - (10) The collection and publication of data for each administration of epinephrine to a student at risk for anaphylaxis.
- (c) RELATION TO STATE LAW.—Nothing in this Act or the policy developed by the Secretary under subsection (a) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

SEC. 5. VOLUNTARY NATURE OF POLICY AND GUIDELINES.

The policy developed by the Secretary under section 4(a) and the food allergy management guidelines contained in such policy are voluntary. Nothing in this Act or the policy developed by the Secretary under section 4(a) shall be construed to require a local educational agency or school to implement such policy or guidelines.

Amend the title so as to read:

A bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a voluntary policy for managing the risk of food allergy and anaphylaxis in schools.

PURPOSE AND SUMMARY

The purpose of H.R. 2063, the “Food Allergy and Anaphylaxis Management Act of 2008”, is to provide schools with uniform guidance on how to create appropriate management and emergency plans for children with food allergies.

BACKGROUND AND NEED FOR LEGISLATION

Each year, millions of Americans have allergic reactions to food. Although most food allergies cause relatively mild and minor symptoms, some food allergies can cause severe, even life-threatening, reactions. Following ingestion of food allergens, a person with food allergies may experience a severe, life-threatening allergic reaction called anaphylaxis. This can lead to a number of symptoms, including tingling sensation in the mouth; swelling of the tongue and throat; difficulty breathing; hives; vomiting; abdominal cramps; diarrhea; drop in blood pressure; loss of consciousness; and death.

There is no cure for food allergies. Strict avoidance of food allergens—and early recognition and management of allergic reactions to food—are important measures to prevent serious health consequences since food allergies can be life threatening. Each year in the U.S., it is estimated that anaphylaxis to food results in 30,000 emergency room visits, 2,000 hospitalizations, and 150 deaths.

The risk of an allergic student's accidental exposure to foods can be reduced in the school setting if schools work with students, parents, and physicians to minimize risks and provide a safe educational environment for food-allergic students.

HEARINGS

There were no hearings held in connection to the bill reported by the Committee.

COMMITTEE CONSIDERATION

On Tuesday, March 11, 2008, the Subcommittee on Health met in open markup session and favorably forwarded H.R. 2063, amended, to the full Committee for consideration, by a voice vote. On Thursday, March 13, 2008, the full Committee met in open markup session and ordered H.R. 2063 favorably reported to the House, as amended by the Subcommittee on Health, by a voice vote. No amendments were offered during full Committee consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 2063 reported to the House. A motion by Mr. Dingell to order H.R. 2063 favorably reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 2063 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The objective of H.R. 2063 is to direct the Secretary of Health and Human Services (HHS), in consultation with the Secretary of

Education, to develop a voluntary policy for managing the risk of food allergy and anaphylaxis in schools.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2063 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2063 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 2063 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 2063 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 31, 2008.

Hon. JOHN D. DINGELL,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2063, the Food Allergy and Anaphylaxis Management Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Andrea Noda.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 2063—Food Allergy and Anaphylaxis Management Act of 2008

H.R. 2063 would require the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop a policy for managing the risk of food allergies and anaphylaxis in schools. (Anaphylaxis is a severe allergic reaction that involves multiple organs.) The bill would require that the policy be made available to schools within one year of enactment. Implementation of the policy by schools would be voluntary.

The Centers for Disease Control and Prevention received an appropriation of \$491,000 for fiscal year 2008 to develop guidelines for schools regarding food allergies and anaphylaxis. Because the

development of the policy set forth in H.R. 2063 currently is underway, CBO estimates that the bill would not result in any additional federal spending.

H.R. 2063 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Andrea Noda. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2063 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2063.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 2063 is provided in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 2063 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the Act as the “Food Allergy and Anaphylaxis Management Act of 2008”.

Section 2. Findings

Section 2 sets out the findings of the Act.

Section 3. Definitions

Section 3 sets out the definitions of the Act.

Section 4. Establishment of voluntary food allergy and anaphylaxis management policy

Section 4 directs the Secretary of HHS, in consultation with the Secretary of Education, to develop a voluntary risk-management policy for food allergy and anaphylaxis in schools and to make such policy available to local educational agencies and other interested parties. It sets out the contents and guidelines of such policy. It specifies that State law is not preempted, either by the Act or by such policy, including any State law regarding self-administered medication for students at risk of anaphylaxis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Regarding clause 3(e) of rule XIII of the Rules of the House of Representatives, H.R. 2063 does not amend any existing law.

