

**California Communities Against Toxics • California Environmental Rights Alliance  
California League of Conservation Voters  
California League for Environmental Enforcement Now • California Safe Schools  
Californians for Alternatives to Toxics • Center for Environmental Health  
Center for Food Safety • Communities for a Better Environment • Consumer Action  
Ecological Rights Foundation • Environmental Defense • Environmental Law Foundation  
Environmental Working Group/EWG Action Fund  
Mateel Environmental Law Foundation • Natural Resources Defense Council  
Rose Foundation for Communities and the Environment  
SF Bay Area – Physicians for Social Responsibility • Sierra Club-California  
West Oakland Environmental Indicators Project**

December 5, 2005

The Honorable Representative  
Rayburn House Office Building  
Washington, D.C. 20515

Re: Please oppose H.R. 4167, which would invalidate state and local food protection programs.

Dear Representative:

On behalf of our twenty organizations, which collectively represent more than 390,000 members in California, we urge you to oppose H.R. 4167, the National Uniformity for Food Act of 2005, which has been referred to the House Committee on Energy and Commerce. This legislation would nullify dozens of state and local laws regulating food safety, even on issues where the Food and Drug Administration (FDA) has taken no action whatsoever. This would undermine public health protection, offend longstanding principles of federalism, disrupt the Nation's food safety program, divert tens of millions of dollars into administrative rather than food-protection activities and, according to state officials, "dissolve our nation's biodefense capabilities."

H.R. 4167 would amend the Federal Food, Drug and Cosmetic Act to expressly nullify existing state and local regulations relating to the safety of food and food packaging, and bar states from issuing any new such safety regulations, unless they are identical to those required by the FDA. Standards and warnings would be nullified and barred even if the FDA has not regulated the particular hazard, and even if the FDA has not studied or does not intend to study the hazard. In most situations, the only way a state could regulate food safety where FDA has not acted, or take action that differs from FDA regulation, even in emergency situations, would be to petition the FDA for permission to do so.

Since state laws currently address many hazards that FDA regulations do not, the clear goal of H.R. 4167 is not "uniformity," but elimination of as many state food labeling requirements and safety standards as possible. The "uniformity" created by the Act would, in many cases, be the uniform absence of food safety regulations and warnings.

This bill, which was submitted in the last Congress as H.R. 2699 and in every Congress since the 105<sup>th</sup> in 1998, has never been the subject of any hearings. No effort has ever been made to develop a factual record that could establish the putative benefits of the “uniformity” sought by the legislation or, if there are benefits, how to achieve “uniformity” while keeping the American food supply safe. None of the reasonable legislative steps that could result in development of sound public policy have been taken. Not surprisingly, therefore, the bill represents very poor public policy, achieving only the “uniformity” of a dangerous absence of food safety regulations.

Food safety is not an appropriate field for Federal elimination of state and local action. Food safety is not comprehensively regulated at the Federal level; states do the majority of food inspections. See H.R. Report 108-770 at 21-22. By voiding many state and local food safety regulations and warning requirements, H.R. 4167 would disrupt the ongoing state and local programs to protect the food supply that all Americans rely on. Because many state laws that are not identical to Federal law would become void, states will lose key food safety laws unless they laboriously re-enact new laws that are identical to Federal law or seek waivers. The bill’s provisions for petitions for waivers and exemptions are complex and could take years to work out, likely involving litigation. Also, because many food regulations are particular to, or need to be tailored to, individual states or localities, to the extent FDA studies food safety regulations at all (the bill does not provide FDA with any further resources for this purpose), it will very likely ignore localized concerns in favor of national ones, thus leaving local populations vulnerable.

The extent of this disruption of the Nation’s current food safety system can hardly be overstated. Last year, the Association of Food and Drug Officials raised the serious concern that H.R. 2699, if enacted, “will effectively eliminate our nation’s biosecurity shield, and will undermine our whole food safety and biosurveillance capability.” H.R. 2699 was opposed by the National Association of State Departments of Agriculture.

The bill would implicate significant costs in money and in the time of Federal and state authorities. The Congressional Budget Office, studying H.R. 2699, estimated that over 30 states have laws that would be affected by the legislation. While many laws would be affected, the CBO estimated that states would file about 120 petitions for FDA waivers during the first five years of the Act, and that there would be continuing petitions for waivers as the states continue to try to regulate food safety. H.R. Report 108-770 at 10. The waiver petition processes, even in emergency situations, involve procedural burdens, time constraints, paper work, costs and impose high burdens of proof on the states to make extensive factual showings. Each waiver petition would cost the FDA about \$1 million to process, totaling over \$100 million in the first five years. This does not even count the costs to the states of preparing petitions and seeking the waivers, and both the states and FDA would incur expenses if any FDA final decisions were challenged in court. H.R. Report 108-770 at 9, 10. All of this money, time and effort would be better spent actually working to promote greater food safety.

One of the key targets of the food industry and this bill is California's Proposition 65 – which California voters overwhelmingly passed by referendum in 1986. The food industry lobby has tried many times to propose nearly identical language to H.R. 4167 since Prop. 65 went into effect in 1987 – with every effort being rejected. Proposition 65 requires that consumers be warned when any product, including foods, exposes them to significant risks from chemicals that cause cancer or birth defects. While Proposition 65 has resulted in some food warnings, perhaps the most important effect of the law is that it creates an effective commercial incentive for the food industry to reformulate their products and bring safer products to the marketplace.

The California State Attorney General concluded that Proposition 65 has allowed California to accomplish reformulation of food and food-related products to reduce or remove toxic chemicals, “greatly benefiting the public.” September 25, 2003 letter re. H.R. 2699 from Bill Lockyer to Representative Burr. Attorney General Lockyer also concluded that Proposition 65 has resulted in reductions in toxic chemicals and warnings before the FDA has taken action, and may have prompted FDA action that may otherwise not have occurred. Also, Proposition 65 warnings often have more visibility than FDA's infrequently seen “advisories,” thus getting better information to consumers. Lockyer also concluded that Proposition 65 has caused “quiet compliance,” removing toxic chemicals from food years ahead of FDA action.

Just one example of the importance of warnings on food arose recently when California required point-of-sale warnings on certain fish that the FDA has determined are excessively high in mercury, a compound known to be toxic to the brain of a developing infant. As a result of California's action, pregnant women in our state are now informed about which fish are high in mercury, and can make informed choices about what they eat during pregnancy. This information would not be available to California consumers if H.R. 4167 were enacted.

Thus, Proposition 65 works. California voters have made it clear they want to know if their food contains chemicals that cause cancer or birth defects. They have a right to obtain that information. California, and other states and localities, have a right to provide it.

We urge you to oppose this rollback of state and local food safety programs.

Sincerely,

*Joseph H. Guth (MC for JG)*

Joseph H. Guth  
Executive Director  
California League for Environmental Enforcement Now (CLEEN)  
510-654-6148  
jguth@cleenca.org

Natural Resources Defense Council (NRDC)

Sierra Club-California

California League of Conservation Voters (CLCV)

Communities for a Better Environment (CBE)

Center for Environmental Health (CEH)

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