

NATIONAL UNIFORMITY FOR FOOD COALITION  
[www.uniformityforfood.org](http://www.uniformityforfood.org)

*Letter Sent to All 50 State Attorneys General*

June 16, 2006

Re: The National Uniformity for Food Act

The National Uniformity for Food Act was reported by the House Committee on Energy and Commerce on February 28, 2006, and was passed by the House by a vote of 283 to 139 on March 8<sup>th</sup>. S. 3128 was introduced in the Senate on May 25. Both measures have been referred to the Senate Committee on Health, Education, Labor and Pensions.

There has been a substantial amount of misunderstanding and miscommunication about the intent and the content of this legislation. Accordingly, we are sending this letter to clarify what the National Uniformity legislation does and does not do, so that future debate can be better informed. For this purpose we are enclosing the following information.

First, we are enclosing a brief outline of the legislation, to make certain that its provisions are accurately and fully understood. This should, in itself, dispel the widely disseminated misinformation about the legislation.

Second, we are enclosing an analysis of the 196 state laws that have been identified as possibly being preempted by the legislation. As you will see, there are in fact only 11 state laws, out of the 196 laws identified, that could in any way be affected by the legislation. 185 of the 196 laws could not possibly be affected.

Third, we are enclosing an analysis of the ten specific concerns raised about the legislation by the National Association of Attorneys General in a letter dated March 1, 2006. As the analysis demonstrates, none of those concerns is valid. Each represents a misunderstanding of the legislation or the facts involved in the individual matter.

We invite any additional questions or concerns that you may have on this matter. We are prepared to discuss with you the real impact of this important legislation. A member of our Coalition will contact your office to follow up. However, if you need more information in the meantime, please contact us at [info@uniformityforfood.org](mailto:info@uniformityforfood.org).

We believe that this legislation will in fact provide much stronger, cohesive, and coordinated food safety protection throughout the country. This is in the best interest of all of our citizens.

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Sincerely,

Ahold  
Alabama Beverage Association  
Albertson's  
American Bakers Association  
American Beverage Association  
American Feed Industry Association  
American Frozen Food Institute  
American Plastics Council  
American Meat Institute  
American Spice Trade Association  
Animal Health Institute  
Apple Products Research and  
Education Council  
Arizona Beverage Association  
Association for Dressings and  
Sauces  
Biscuit and Cracker Manufacturers  
Association  
Bush Brothers & Company  
Business Roundtable  
Cadbury Schweppes plc  
California Farm Bureau Federation  
California Grocers Association  
California League of Food Processors  
California Manufacturers and  
Technology Association  
California-Nevada Soft Drink  
Association  
California Restaurant Association  
Calorie Control Council  
Campbell Soup Company  
Cargill, Incorporated  
Carolinas Food Industry Council  
Chocolate Manufacturers Association  
The Coca-Cola Company  
Coca-Cola Enterprises Inc.  
Colorado Beverage Association  
ConAgra Foods, Inc.  
Connecticut Pepsi-Cola Bottlers  
Association  
Council for Citizens Against  
Government Waste  
Dairy Institute of California

Dean Foods Company  
Del Monte Foods  
Diamond Foods, Inc.  
Flavor & Extract Manufacturers  
Association  
Flowers Foods, Inc.  
Food Marketing Institute  
Food Products Association  
Frito-Lay  
Frozen Potato Products Institute  
General Mills, Inc.  
Gerber Products Company  
Glass Packaging Institute  
Godiva Chocolatier Inc.  
Grain Foods Foundation  
Grocery Manufacturers Association  
H.J. Heinz Company  
The Hershey Company  
Hoffmann-La Roche Inc.  
Hormel Foods Corporation  
Independent Bakers Association  
Institute of Shortening and Edible Oils  
International Association of Color  
Manufacturers  
International Bottled Water  
Association  
International Dairy Foods Association  
International Food Additives Council  
International Foodservice Distributors  
Association  
International Formula Council  
International Ice Cream Association  
International Jelly and Preserves  
Association  
The J.M. Smucker Company  
Jewel-Osco  
Kansas Beverage Association  
Kellogg Company  
Kentucky Beverage Association  
Kraft Foods Inc.  
Lance, Inc.  
Land O' Lakes, Inc.  
Maine Potato Board

Massachusetts Beverage Association	New York State Bottlers Association
Masterfoods USA	North American Millers' Association
Maryland, Delaware, DC Beverage Association	North Carolina Beverage Association
McCormick & Company, Inc.	North Carolina Coalition of Business and Industry
McKee Foods Corporation	North Carolina Retail Merchants Association
Michigan Beverage Association	Northern Plains Potato Growers Association
Milk Industry Foundation	Ohio Soft Drink Association
Minneapolis Regional Chamber of Commerce	Oregon Soft Drink Association
Minnesota Beverage Association	Osco Drug
The Minute Maid Company	O-I
Montana Beverage Association	Peanut and Tree Nut Processors Association
National Association of Convenience Stores	Pennsylvania Manufacturers Association
National Association of Manufacturers	Pennsylvania Soft Drink Association
National Association of Margarine Manufacturers	Pepperidge Farm Incorporated
National Association of Wheat Growers	PepsiCo, Inc.
National Association of Wholesaler-Distributors	Pickle Packers' International
National Cattlemen's Beef Association	The Procter & Gamble Company
National Cheese Institute	Quaker Oats
National Chicken Council	Rich Products Corporation
National Coffee Association of USA	Rich SeaPak Corporation
National Confectioners Association	Safeway
National Council of Farmer Cooperatives	St. Paul Area Chamber of Commerce
National Fisheries Institute	Sara Lee Corporation
National Frozen Pizza Institute	Sav-on Drugs
National Grape Cooperative Association	The Schwan Food Company
National Grocers Association	Snack Food Association
National Institute of Oilseed Products	Society of Glass and Ceramics Decorators
National Milk Producers Federation	South Carolina Retail Merchants Association
National Pasta Association	SUPERVALU INC.
National Pecan Shellers Association	Target Corporation
National Pork Producers Council	Tortilla Industry Association
National Potato Council	Tropicana
National Restaurant Association	Twin West Chamber of Commerce
National Turkey Federation	Unilever
Nestle USA	United Fresh Fruit and Vegetable Association
New Jersey Beverage Association	United States Tuna Foundation
	U.S. Chamber of Commerce
	Vinegar Institute

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Washington State Beverage  
Association  
Welch Foods, Inc.  
Winn-Dixie

Wisconsin Beverage Association  
Wm. Wrigley Jr. Company  
Yoplait

## **National Uniformity for Food Act of 2006**

### **Outline of the Legislation**

Introduction: In 1990, Congress enacted the Nutrition Labeling and Education Act (NLEA) which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to modernize food labeling. As part of that legislation, Congress included Section 403B of the FD&C Act, 21 U.S.C. 343-1, to require National Uniformity for most aspects of food labeling. Two areas of food regulation were not included under the 1990 National Uniformity provisions: (1) the food safety provisions of the FD&C Act and (2) food warnings. The National Uniformity for Food Act of 2006 is intended to address these two important areas, in order to assure that food is safe throughout the nation and that, whenever some form of warning is appropriate, it will be provided in every part of the country.

The pending legislation has been drafted in order to reconcile the right and duty of States to protect their citizens from harm with the need for a nationwide market in food products. It would be impossible to maintain the national food market that we have come to demand if each State imposed its own separate food safety and food warning requirements. Nonetheless, the States must be given the right to collaborate with FDA in assuring that appropriate food safety and food warning requirements are imposed and that, where uniquely local matters are involved, the States will have the predominate role in public protection. This legislation accomplishes these dual objectives.

Food Safety: The legislation divides food safety into two categories: (1) traditional local matters that have long been the subject of city, county, and State regulation and (2) inherently national matters for which a consistent policy throughout the country is essential to a nationwide market.

The pending legislation does not include traditional local food safety matters within the requirement for National Uniformity. For example, there are three areas of local food sanitation that have long been handled by cooperative federal/state/industry/academia programs: milk production (a program begun in 1923), seafood (begun in 1925), and regulation of restaurants, vending machines, and retail food stores (begun in 1935). All three of these areas largely involve food sanitation and administrative procedures that are excluded from National Uniformity. Similarly, the economic adulteration provisions of the law that have long been handled at the local level are also excluded from National Uniformity: for example, the illegal addition of water or other adulterants to milk, juice, honey, or maple syrup in order to deceive the public. None of these types of laws are included within this legislation. Because each uniquely takes place in a local jurisdiction and regulation has no impact upon a nationwide market, there is no need for National Uniformity in order to preserve the ability of the food industry to serve the entire country.

As a practical matter, moreover, the cooperative programs that have long been used in these areas assure widespread uniformity in food sanitation and economic adulteration requirements that has served the public so well for decades.

In contrast, there are inherently national matters for which National Uniformity is essential to an orderly and free national marketplace. Regulation of the safety of natural and synthetic food ingredients, color additives, and packaging components must be consistent in every jurisdiction in the country in order to permit our free market economy to thrive. If differing standards and requirements were adopted in each State, and specific ingredients were regarded as safe in some States but not in others, there would be economic chaos. Thus, National Uniformity is applied under this legislation to all of these inherently national aspects of food regulation, with three exceptions.

The first exception is where a State identifies a problem that FDA has not addressed and on which FDA has taken no action. Under these circumstances, the State remains free to take appropriate action as long as it proceeds in accordance with a State statutory provision that is comparable to a federal requirement under the FD&C Act. Second, as will be described in greater detail below, a State may petition FDA for an exemption if it can demonstrate a unique local problem that requires local action or a national standard if it is a problem that applies throughout the country. Third, the State may also take immediate action in the event of an imminent hazard to health even if the action would otherwise violate the requirement of National Uniformity.

Food Warnings: The provisions of the National Uniformity legislation that relate to food warnings are narrowly limited to warnings, and do not apply to a large number of other types of statements relating to food. For example, the legislation does not apply to directions for use such as “keep refrigerated,” or to descriptions of the origin of a food such as “free range chicken” or “farm raised fish.” It does not cover specialized laws found in many States that require that the term “honey” can only be used for a food that consists solely of honey, or that the term “maple syrup” can only be used if the product is made solely from the sap of the maple tree, or that “cider vinegar” must be made solely from apple cider. None of these are in the nature of a warning. Finally, the legislation itself excludes non-warning statutes and regulations relating to freshness dating, open date labeling, grade labeling, a state inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, a statement of geographical origin. None of these involve safety warnings and thus are explicitly excluded from the statute. One type of safety warning -- a consumer advisory under the FDA Food Code relating to the risk of eating raw or undercooked food -- has also been explicitly excluded from the legislation because it is already recommended on a national basis by FDA. Finally, the bill also excludes dietary supplement regulation.

Thus, there are dozens of State statutes and regulations that are excluded from the legislation because they are essential local in nature and do not in any way relate to food safety.

The National Uniformity legislation focuses exclusively on food safety warnings. It prohibits a State from imposing any such warning that is in addition to or different from a warning imposed by FDA, in order to assure that the same information on food safety is provided to citizens in every part of the country.

Implementation of the Legislation: For both food safety requirements and safety warning requirements, the National Uniformity legislation divides State laws and regulations into two categories: (1) those already existing as of the date of enactment of the legislation and (2) those that are the subject of State action after the legislation goes into effect.

For those State laws and regulations that have already been enacted and are currently in effect, the legislation provides for a two-year process for FDA consideration as to whether the requirements can be justified on the basis of sound science or whether they cannot withstand close scrutiny. If a State wishes to abandon a requirement, it need do nothing further. If the State desires to continue enforcing the requirement, it can petition FDA either for an exemption from National Uniformity or to adopt the State requirement throughout the country. Following a two year public process, FDA will make a decision based on sound science. That decision may also be appealed to the courts. At every stage of this process, the States will be intimately involved. If FDA fails to take action as required by the legislation, provisions authorize the courts to force the agency to do so. State requirements that are the subject of State petitions to FDA remain in effect until FDA takes action on the petition, however long that may take.

For future State safety requirements and warnings, there are three mechanisms by which a State may adopt provisions that do not conform to National Uniformity. First, a State may petition FDA for an exemption from National Uniformity in order to address a local problem. Second, the State may petition for a national standard that would impose a requirement throughout the country, in order to address a nationwide problem. Third, the State may act immediately in order to address an imminent hazard to health, for example, an issue of bioterrorism. For all three of these areas, the legislation explicitly provides that FDA must expedite consideration of any requirement relating to a cancer risk or to the safety of pregnant women and children. Again the courts are empowered to force FDA to take action if the agency fails to do so.

The National Uniformity legislation explicitly reinforces the unique and important role of State officials in enforcing food safety requirements. The legislation provides, for example, that it does not affect state administrative procedures or enforcement powers. The legislation explicitly confirms that States can enforce, at any time, local laws and regulations that are the same as the requirements of the FD&C Act. And States can at any time issue their own food safety warnings to their citizens, even if the State warnings do not conform to FDA policy. Thus, States retain substantial authority to protect their citizens. In this way, National Uniformity is reconciled with the fundamental right and duty of a State to protect the public from unsafe food.

Food Bioterrorism: The National Uniformity legislation fully recognizes valid concern about the potential for bioterrorism through intentional poisoning of the food supply. First, as already noted, any State can act immediately under the imminent hazard provision of the legislation in the event of food bioterrorism. Second, the entire bill will not go into effect unless and until the Secretary of HHS certifies to Congress, after consultation with the Department of Homeland Security, that implementation will pose no additional risk to the public health or safety from terrorism attacks.

Conclusion: The National Uniformity legislation represents a balanced approach, incorporating both the need for a consistent and coordinated approach to food safety and food warnings throughout the country, while retaining the authority of States to take the lead on local issues, to collaborate with FDA to assure appropriate national regulatory requirements, and to cooperate in a comprehensive enforcement system that will protect the public in every jurisdiction throughout the country.

**ANALYSIS OF**  
**STATE LAWS CITED IN CSPI REPORT**  
**SHREDDING THE FOOD SAFETY NET**

<b>Alabama</b>	<p>Statutory provision prohibiting terra alba, barytes, talc, chrome yellow, or burnt umber in confectioneries. (Code of Alabama, Title 20, Chapter 1, §20-1-23).</p> <p><i>Not preempted. State law is identical to federal requirements.</i></p> <p>Statutory provision setting minimum nutritional requirements for cornmeal or grits. (Code of Alabama, Title 20, Chapter 1, §20-1-73).</p> <p><i>Not preempted. This state law creates a standard of identity for cornmeal and grits. State standards of identity are already preempted under FD&amp;C Act § 403A(a)(1) if not identical to an existing federal standard of identity.</i></p> <p>Statutory provision authorizing tolerances for infested, moldy, or decayed pecans and other nuts. (Code of Alabama, Title 20, Chapter 1, §20-1-90).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws on food sanitation.</i></p> <p>Statutory provision governing the safety of milk. (Code of Alabama, Title 20, Chapter 13, Article 3, §§ 2-13-80 to 2-13-94).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Code of Alabama, Title 22, Chapter 20, § 22-20-5).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (Code of Alabama, Title 9, § 9-12-47 et seq.) (<i>Note: CSPI report included an incorrect citation for this state law.</i>)</p>
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	<p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Alaska</b></p>	<p>Statutory provision requiring the labeling of farm-raised salmon products. (Alaska Food, Drug, and Cosmetic Act, Alaska Statutes, § 17.20.040(a)(12)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision requiring labeling of genetically modified fish or fish products. (Alaska Food, Drug, and Cosmetic Act, Alaska Statutes, § 17.20.040(a)(14); SB 25).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Alaska Food, Drug, and Cosmetic Act, Alaska Statutes, § 17.20.005(4)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Alaska Food, Drug, and Cosmetic Act, Alaska Statutes, § 17.20.005(1)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (Alaska Food, Drug, and Cosmetic Act, Alaska Statutes, § 17.20.005(5)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>

<p><b>Arizona</b></p>	<p>Statutory provision governing the safety of milk and other dairy products. (Arizona Revised Statutes, Title 3, Chapter 4, §§ 3-601 to 3-634).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Arizona Revised Statutes, Title 36, Chapter 1, Article 1, § 36-104(b)(i)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (Arizona Revised Statutes, Title 3, Chapter 16, Article 1, §§ 3-2901 to 3-2904).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
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<p><b>Arkansas</b></p>	<p>Statutory provision authorizing regulations governing the safety of salvaged food. (Arkansas Code, §20-57-102).</p> <p><i>Not preempted. FDA has no regulations or policy statements establishing requirements for safety of salvaged food.</i></p> <p>Statutory provision requiring a label on egg containers that states, “Keep refrigerated at or below 45 degrees Fahrenheit.” (Arkansas Code, §20-58-210).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision requiring any catfish product to be labeled as “farm-raised,” “river or lake,” “imported,” or “ocean.” (Arkansas Code, §20-61-206).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Arkansas Code, Title 20, Subtitle 4, §§ 20-59-101 to 20-59-248).</p>
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	<p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Arkansas Code, Title 20, Subtitle 4, Chapter 57, Subchapter 2, §§ 20-57-201 to 20-57-204).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>California</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (California Health and Safety Code (Sherman Food, Drug, and Cosmetic Law), §§ 110085 and 110090).</p> <p><i>Uniformity provisions would apply without practical effect.*** This California statute authorizes food safety standards that differ from federal requirements. However, California has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provisions requiring that consumers be notified of contaminants that are known to the state to cause cancer or reproductive toxicity. (Proposition 65) (California Health &amp; Safety Code, §§ 25249.5 <i>et seq.</i>).</p> <p><i>Uniformity provisions would apply.** This California statute requires a food safety warning not required by FDA.</i></p> <p>Statutory provisions on shellfish safety. (California Health and Safety Code §§ 112150-112295) and regulatory provision regarding warning on risks of eating raw oysters (17 California Code of Regulations 13675).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. California regulation requiring warning for raw oysters not preempted, because H.R. 4167 expressly permits state laws requiring consumer advisories about food sanitation imposed on food establishments under part 3-6 of the Food Code.</i></p> <p>Statutory provision limiting the amount of lead in candy. (California Health and Safety Code § 110552; AB 121, signed into law October 2005).</p> <p><i>Not preempted. State law is identical to federal requirements, unless and until California sets a limit on lead in candy that differs from the federal</i></p>

*limit established by a final FDA regulation or guidance.*

Statutory provision prohibiting the use of certain dietary supplements by high school athletes. (California Education Code § 49030; SB 37, signed into law October 2005).

*Not preempted. H.R. 4167 does not preempt state laws relating to safety of dietary supplements.*

Statutory provision requiring label to disclose if food contains more than ½ of one percent alcohol. (California Health and Safety Code, § 110695).

*Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.*

Statutory provision requiring label to disclose if food is perishable when not refrigerated. (California Health and Safety Code, § 110700).

*Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.*

Statutory provisions pertaining to the adulteration of wine. (California Health and Safety Code, § 110597).

*Not preempted. This California law provides that wine is adulterated if it contains lead in concentrations exceeding 150 parts per billion. FDA has no regulation or guidance establishing a specific limit on the lead content of wine. Unless FDA previously considered and rejected establishment of a limit on lead in wine, the state is free to set its own limit. (Note: The California law also provides that wine is adulterated if its container uses a metal foil capsule containing lead in excess of 0.3 percent by dry weight. Here, federal law already contains a stricter requirement. FDA regulations already prohibit use of tin-coated lead foil capsules on wine bottles (21 C.F.R. § 189.301).)*

Statutory provision governing the safety of milk. (California Food and Agriculture Code, §§ 32901-32921).

*Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.\**

Statutory provision governing the safety of food in restaurants and other food service establishments. (California Health and Safety Code, Division

	<p>104, Part 7, Chapter 4, §§ 113700-114475).</p> <p><i>Generally not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. However, uniformity provisions would apply to § 114070, which prohibits use of sulfites in “potentially hazardous foods,” because it establishes a food safety standard that is not identical to federal requirements.**</i></p>
<b>Colorado</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Colorado Food and Drug Act, Colorado Revised Statutes, §25-5-413(2)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Colorado statute authorizes food safety standards that differ from federal requirements. However, Colorado has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (Colorado Revised Statutes, Title 25, Article 5.5, Part 1, §§ 25-5.5-101 to 25-5.5-117).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Colorado Revised Statutes, Title 25, Article 4, Part 16, §§ 25-4-1601 to 25-4-1612).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (Colorado Revised Statutes, Title 25, Article 4, Part 18, §§ 25-4-1803 to 25-4-1805).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Connecticut</b>	<p>Statutory provision prohibiting the use of "honey" on the label of a food that does not contain honey. (General Statutes of Connecticut, Chapter</p>

	<p>417, § 21a-23).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision prohibiting the sale of cider vinegar unless made wholly from apple juice. (General Statutes of Connecticut, Chapter 417, § 21a-25).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision requiring a warning about a possible allergic reaction when any sulfiting agent is present in any bulk food. (General Statutes of Connecticut, Chapter 47, § 21a-104a).</p> <p>Uniformity provisions would apply.** <i>This Connecticut statute requires a food safety warning that is not required by FDA.</i></p> <p>Statutory provision governing the safety of milk. (General Statutes of Connecticut, Title 22, Chapter 430, §§ 22-127 to 22-203h).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Regulatory provision governing the safety of food in restaurants and other food service establishments. (Public Health Code, Title 19a, Chapter 368a, §§ 19a-36a to 19a-36b).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (General Statutes of Connecticut, Title 26, Chapter 491, §§ 26-192a to 26-192c).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Delaware</b>	<p>Statutory provision requiring carbonated beverages containing artificial sweeteners to be labeled as "dietetic." (Delaware Code, Title 16, §4312).</p>

	<p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Delaware Code, Title 16, § 122(3)(f)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Delaware Code, Title 16, § 122(3)(u)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Law governing shellfish safety. (Delaware Code, Title 7, Part 2, Chapter 19, §§ 1901-1920).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Florida</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Florida Food Safety Act, Florida Statutes, § 500.13(2)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Florida statute authorizes food safety standards that differ from federal requirements. However, Florida has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provisions on shellfish safety. (Florida Aquaculture Policy Act, Florida Statutes, Title XXXV, Chapter 597).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Numerous statutory provisions concerning labeling of citrus fruit, canned citrus juices, and frozen citrus juices. (Florida Agriculture, Horticulture, and Animal Industry, Citrus Code, Florida Statutes, Title XXXV, §§ 601.99 <i>et seq.</i>).</p>

	<p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Florida Statutes, Title XXXIII, Chapter 502, §§ 502.012-502.232).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Florida Statutes, Title XXXIII, Chapter 509, §§ 509.013-509. 101).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
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<p><b>Georgia</b></p>	<p>Statutory provision permitting ingredients of a carbonated beverage to be disclosed through an affidavit to the Commissioner rather than on the label. (Georgia Statutes, §26-2-28(9)(c)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision regulating when a food can have the label "honey." (Georgia Statutes, §26-2-32(a)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Georgia Statutes, Title 26, §§ 26-2-230 to 26-2-250).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Georgia Statutes, Title 26, §§ 26-2-371 to</p>
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	<p>26-2-373.1).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of fish and seafood. (Georgia Statutes, Title 26, § 26-2-318).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Hawaii</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Hawaii FDCA, §328-13(b)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Hawaii statute authorizes food safety standards that differ from federal requirements. However, Hawaii has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (Hawaii Revised Statutes, § 321-11(14)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Regulatory provision governing the safety of food in restaurants and other food service establishments. (Hawaii Administrative Rules, Title 11, Chapter 12).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Idaho</b>	<p>Statutory provision governing the safety of milk. (Idaho Statutes, Title 37, Chapter 4, §§ 37-402 to 37-413).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p>

	<p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Idaho Statutes, Title 39, Chapter 16, §§ 39-1601 to 39-1608).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Illinois</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Illinois FDCA, § 13(b)) (410 ILCS 620).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Illinois statute authorizes food safety standards that differ from federal requirements. However, Illinois has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision deeming egg products adulterated if processed in a manner that increases the risk of microbial contamination. (Ill. FDCA, §10(f); Ill. Egg and Egg Products Act, § 3.1(1)) (410 ILCS 615).</p> <p><i>Not preempted. This state law is identical to federal requirements.</i></p> <p>Statutory provision governing the safety of milk. (Grade A Pasteurized Milk and Milk Products Act, Chapter 410, §§ 635-1 to 635-19) (410 ILCS 635).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Food Handling Regulation Enforcement Act, Chapter 410, § 1-3.1) (410 ILCS 625).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
	<p>Statutory provisions allowing the state to adopt tolerances for food</p>

<p><b>Indiana</b></p>	<p>additives and color additives that are more protective of human health than the applicable federal tolerances. (Indiana FDCA, Indiana Code, §16-42-2-5(b)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Indiana statute authorizes food safety standards that differ from federal requirements. However, Indiana has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (Indiana Code, Title 15, Article 2.1, Chapter 23, §§ 1-17.</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Indiana Code, Title 16, Article 42, Chapter 5, §§ 16-42-5.05 to 16-42-5.28 and Chapter 5.2, §§ 16-42-5.2-1 to 16-42-5.2-1 to 16-42-5.2-15).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Iowa</b></p>	<p>Statutory provision regulating when a food can have the label "honey." (Iowa Code, Title V, §189.14(2)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision regulating when a food can have the label "sorghum." (Iowa Code, Title V, §189.14(3)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision regarding the safety of milk. (Iowa Code, Title V, Subtitle 4, §§ 192.101 to 192.146).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements</i></p>

	<p><i>identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Iowa Code, Title IV, Subtitle 2, Chapter 137F, §§ 137F.1 – 137F.19).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Kansas</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Kansas FDCA, Kansas Statutes, § 65-667(b)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Kansas statute authorizes food safety standards that differ from federal requirements. However, Kansas has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (Kansas Statutes, Chapter 65, Article 7, §§ 65-771 to 65-791).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Kansas Statutes, Chapter 36, Article 5, §§36-507 to 36-515c).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>

<p><b>Kentucky</b></p>	<p>Statutory provision governing the safety of milk. (Kentucky Revised Statutes, Title XXI, Chapter 260, §§ 260.775-260.845).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Kentucky Revised Statutes, Title XVIII, Chapter 217, § 217.127).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Louisiana</b></p>	<p>Statutory provision on shellfish safety. (Revised Statutes, § 40:5.3).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision requiring any catfish product to be labeled as farm-raised or naturally produced. (Revised Statutes 56:578.11).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision requiring a vendor of food, dietary supplements, or homeopathic remedies to provide certain information to a consumer if the vendor provides information for a fee (Revised Statutes, § 37:1742.1, Act No. 334; signed into law June 30, 2005).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Revised Statutes, Title 40, §§ 921-925).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other</p>

	<p>food service establishments. (Revised Statutes, 40:5.5).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Maine</b></p>	<p>Statutory provision requiring disclosure of whether fresh produce has had a post-harvest treatment. (Maine Revised Statutes, Title 22, Part 5, Chapter 551, § 2157.14).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision requiring sign stating that eating smoked alewives poses a health risk. (Maine Revised Statutes, Title 22, Part 5, Chapter 551, § 2173).</p> <p><i>Uniformity provisions would apply.** This Maine statute requires a food safety warning that is not required by FDA.</i></p> <p>Statutory provision regulating when apples may be represented as having been exposed to "controlled atmosphere." (Maine Revised Statutes, Title 7, Part 2, Chapter 103, § 539).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Maine Revised Statutes, Title 7, Part 7, Chapter 601, §§ 2900 to 2910-A).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Maine Revised Statutes, Title 22, Subtitle 2, Part 5, Chapter 562, §§ 2491-2501).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>

<p><b>Maryland</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Maryland FDCA, §21-239(c)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Maryland statute authorizes food safety standards that differ from federal requirements. However, Maryland has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision requiring label to disclose if "fresh" food was previously frozen and thus should not be refrozen. (Maryland FDCA, §21-210(b)(11)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision prohibiting the sale of frozen food that has been previously thawed from a prior freezing. (Maryland FDCA, §21-207(b)(8)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Maryland Code, Title 21, Subtitle 4, §§ 21-401 to 21-430).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Maryland Code, Title 21, Subtitle 3, §§ 21-301 to 21-323.1).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of shellfish. (Maryland Code, Title 4, Subtitle 7, § 4-742).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not</i></p>
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	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Massachusetts</b>	<p>Statutory provision barring "halibut" on a food label if the food is not either <i>hippoglossus hippoglossus</i> or <i>hippoglossus stenolepsis</i>. (General Laws of Massachusetts, Title XV, Chapter 94, §194B).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (General Laws of Massachusetts, Title XV, Part 1, Chapter 94, §§ 13-48D).</p> <p><i>Generally not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. However, uniformity provisions would apply to §§ 13 and 13E which authorize the state health commissioner and local governments to set "more stringent" bacterial standards than are provided in the FDA's Grade "A" Pasteurized Milk Ordinance (PMO), could be preempted.** The uniformity provisions may apply to this state law without practical effect. The State of Massachusetts did not identify any such bacterial standards in response to our inquiry nor are we aware of any such standards. However, our research did not include a comprehensive review of all state and local requirements in Massachusetts.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (General Laws of Massachusetts, Title XV, Part 1, Chapter 94, §§ 305A-305B).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Michigan</b>	<p>Regulations on smoked fish. (Michigan Admin. Code r. 285.569).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision banning the use of sulfiting agents in restaurants and other food service establishments. (Michigan Compiled Laws, Chapter 289, § 289.6139).</p>

	<p><i>Uniformity provisions would apply.** This Michigan statute authorizes food safety standards that differ from federal requirements.</i></p> <p>Statutory provision requiring a warning about a possible allergic reaction when any sulfiting agent is present in any bulk food. (Michigan Food Law of 2000, Chapter 289, § 289.8103).</p> <p><i>Uniformity provisions would apply.** This Michigan statute requires a food safety warning that is not required by FDA.</i></p> <p>Statutory provision governing the safety of milk. (Michigan Compiled Laws, Chapter 288, §§ 288.471-288.711).</p> <p><i>Generally, not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. However, uniformity provisions would apply to certain provisions that set bacterial limits and somatic cell counts that differ from those in FDA's Grade "A" Pasteurized Milk Ordinance (PMO). In some cases, the federal bacterial limits are lower than the limits under Michigan law. For example, § 288.630 provides that milk for pasteurization may not have more than 500,000 bacteria per mL, whereas the PMO sets a limit of 100,000 per mL.**</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Michigan Compiled Laws, Chapter 289, §§ 289.1105-289.6135).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Minnesota</b>	<p>Statutory provision regulating when a food may be sold as "honey." (Minnesota Statutes, §31.74).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision requiring labeling of various types of wild rice. (Minnesota Statutes, §30.49).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision prohibiting the sale of a confection containing alcohol to a person under the age of 21 and requiring labels on such confections.</p>

	<p>(Minnesota Statutes, §31.76).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws regarding adulteration of confectionery with alcohol. The notification requirement in this statute is not preempted, because it does not require a food safety warning.</i></p> <p>Statutory provision governing the safety of milk. (Minnesota Statutes, Chapter 32, §§ 32.01-32.398).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Minnesota Statutes, Chapter 157, §§ 157.011-157.22).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Mississippi</b></p>	<p>Statutory provision requiring any catfish product to be labeled as farm-raised, river or lake, or ocean. (Mississippi Code, §69-7-607).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Mississippi Code, Title 75, Chapter 31, § 75-31-65).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Mississippi Code, Title 69, Chapter 1, § 69-1-18).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>

<p><b>Missouri</b></p>	<p>Statutory provision governing the safety of milk. (Missouri Revised Statutes, Title XII, Chapter 196, §§ 196.520-196.610).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Missouri Revised Statutes, Title XII, Chapter 196, §§ 196.240-196.265).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Montana</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Montana FDCA, §50-31-108).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Montana statute authorizes food safety standards that differ from federal requirements. However, Montana has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision regulating when a food can have the label "honey." (Montana FDCA, §50-31-204).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Montana Code Annotated, Title 81, Chapter 22, §§ 81-22-101 to 81-22-419).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Montana Code Annotated, Title 50, Chapter 31, §§ 50-31-103 to 50-31-106).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not</i></p>

	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Nebraska</b>	<p>Statutory provision governing the safety of milk. (Nebraska Statutes, Title 2, §§ 2-3913 to 2-3946).</p> <p><i>Generally not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.* However, certain provisions setting bacterial limits higher than those in the PMO could be preempted.**</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Nebraska Statutes, Title 81, §§ 81-2,244.01-81-2,276).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Nevada</b>	<p>Statutory provision prohibiting the use of "honey" on a food label if the food does not consist solely of honey. (Nevada Revised Statutes, §585.355).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (Nevada Revised Statutes, Title 51, Chapter 584, §§ 584.180-584.210).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Nevada Revised Statutes, Title 40, Chapter 446, §§ 446.017-446.945).</p> <p><i>Generally, not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. However, uniformity provisions would apply to § 446.842. This provision requires that food establishments that sell alcoholic beverages post a sign warning pregnant</i></p>

	<p>women about the risk of birth defects. Because this warning statement is not clearly a consumer advisory of the kind required by part 3-6 of the Food Code, it would trigger uniformity review.**</p>
<b>New Hampshire</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (New Hampshire Revised Statutes, Title X, § 146:21-II).</p> <p><i>Uniformity provisions would apply without practical effect.*** This New Hampshire statute authorizes food safety standards that differ from federal requirements. However, New Hampshire has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision prohibiting the sale of cider vinegar unless made solely from apple cider (New Hampshire Revised Statutes, Title X, §146:14).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision requiring that maple syrup be made solely from the sap of the maple tree. (New Hampshire Revised Statutes, Title X, §146:13).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision governing the safety of milk. (New Hampshire Revised Statutes, Title XIV, Chapter 184, §§ 184:30a-184:30h).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (New Hampshire Revised Statutes, Title X, Chapter 143A, §§ 143.A:1-143.A:11).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>New Jersey</b>	<p>Statutory provision prohibiting the sale to a person under the legal age of a</p>

	<p>confection containing more than 1/2 percent alcohol (New Jersey Statutes, § 24:5-9.1).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws regarding confectionery adulterated with alcohol.</i></p> <p>Statutory provision governing the safety of milk. (New Jersey Statutes, Title 4, §§ 4:4-22 to 4:4-23).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (New Jersey Statutes, Title 26, §§ 26:1A-7 to 26:1A-10).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>New Mexico</b>	<p>Statutory provision governing the safety of milk. (New Mexico Statutes, Article 7, §§ 25-7-1 to 25-7-8).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (New Mexico Statutes, Chapter 25, Article 1, §§ 25-1-1 to 25-1-13).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>New York</b>	<p>Statutory provision requiring label to show fats and oils in order of predominance in the food. (New York Agriculture and Markets Law, Article 17, § 204-b).</p> <p><i>Not preempted. This New York law is identical to federal requirements (see 21 C.F.R. § 101.4(b)(14)). H.R. 4167 does not preempt state notification requirements unless they are warnings about food safety.</i></p>

Statutory provision prohibiting the combined amount of lead, cadmium, mercury, and hexavalent chromium in any package from exceeding 100 parts per million. (New York Environmental Conservation Law, Article 37, § 37-0205).

*Not preempted. FDA has no regulation or guidance establishing specific limits for these heavy metals in food packaging. Unless FDA previously considered and rejected such limits, the state is free to set its own limits.*

Statutory provision requiring label to disclose whether frozen food has previously been offered for sale in unfrozen form. (New York Agriculture and Markets Law, Article 17, §214-g).

*Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.*

Regulations regarding processing of smoked fish. (Rules and Regulations of New York, Title I, Part 262, § 262.5).

*Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*

Statutory provision governing the safety of milk. (New York Agriculture and Markets Law, Article 5, § 75).

*Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.\**

Statutory provision governing the safety of food in restaurants and other food service establishments. (New York Agriculture and Markets Law, Article 28, § 500).

*Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*

Statutory provision governing the safety of shellfish. (New York Environmental Conservation Law, Article 13, Title 3, § 13-0307).

*Not preempted. State law addresses food sanitation and other matters not*

	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>North Carolina</b>	<p>Statutory provision on shellfish safety. (North Carolina General Statutes, Chapter 130A, Article 8, Part 3, § 130A-230).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Regulation requiring that in summer camps only grade A pasteurized milk be used and that the milk be served in the individual, original container so that the consumer can see the name of the milk distributor. (North Carolina Admin Code, Title 15A, Subchapter 18A, § 1021(a))</p> <p><i>Not preempted. There are no federal requirements regarding what kind of milk may be served in summer camps.</i></p> <p>Statutory provision governing the safety of milk. (North Carolina General Statutes, Chapter 106, Article 29, §§ 106-267 to 106-268.1).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (North Carolina General Statutes, Chapter 130A, Article 8, Part 6, §§ 130A-247 to 130A-250).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>North Dakota</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (North Dakota FDC Act, § 19-02.1-12(2)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This North Dakota statute authorizes food safety standards that differ from federal requirements. However, North Dakota has not exercised its authority to adopt any standards that differ from federal standards.</i></p>

	<p>Statutory provision governing the safety of milk. (North Dakota Century Code, Title 4, Chapter 4-30, §§ 4-30-01 to 4-30-56).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (North Dakota Century Code, Title 23, Chapter 23-09.2, §§ 23-09.2-01 to 23-09.2-04).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
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<p><b>Ohio</b></p>	<p>Statutory provision prohibiting the use of "honey" on a food label if the food is not honey (Ohio Revised Code, Title XXX VII, §3715.38).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision that a dietary supplement is adulterated if the Director of Agriculture finds that it presents a significant or unreasonable risk of illness or injury. (Ohio Revised Code, Title XXXVII, §§ 3715.80-3715.86).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws regarding the safety of dietary supplements.</i></p> <p>Statutory provision governing the safety of milk. (Ohio Revised Code, Title IX, Chapter 917, §§ 917.01-917.99).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Ohio Revised Code, Title XXXVII, §§ 3717.01-3717.33).</p>
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	<p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Oklahoma</b>	<p>Statutory provision governing the safety of milk. (Oklahoma Statutes, Title 2, Article 7, §§ 2-7-402 to 2-7-421).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Oklahoma Statutes, Title 63, Article 11, § 1-1118).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Oregon</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Oregon Revised Statutes, §49.616.366).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Oregon statute authorizes food safety standards that differ from federal requirements. However, Oregon has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision requiring food that has been "salvaged" to have a label stating that fact. (Oregon Revised Statutes, §49.616.250(16)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they are warnings about food safety.</i></p> <p>Statutory provision requiring a warning label of foods containing diethylstilbestrol (DES). (Oregon Revised Statutes, Title 49, Chapter 616, § 49.616.333).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Oregon statute requires a food safety warning not required by FDA. However, this state law is an historical artifact. DES, which was once permitted in animal feed, has not been allowed in human food or animal feed since 1979.</i></p>

	<p>Statutory provision governing the safety of milk. (Oregon Revised Statutes, Chapter 621, §§ 621.003-621.300).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Oregon Revised Statutes, Title 49, Chapter 624, §§ 624.005-624.992).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Pennsylvania</b>	<p>Statutory provision governing the safety of milk. (Pennsylvania Statutes, Title 31, Chapter 13, §§ 645-660g).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Regulatory provision governing the safety of food in restaurants and other food service establishments. (Pennsylvania Administrative Code, Title 28, Part II, Chapter 17, §§ 17-81-17.85).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Rhode Island</b>	<p>Statutory provision permitting ingredients of carbonated beverages to be disclosed in an affidavit to the Director of Health. (Rhode Island FDCA, §21-31-11(9)(ii)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision requiring packaging or labeling to comply with the regulations of the Poison Prevention Packaging Act. (Rhode Island FDCA, §21-31-11(13)).</p> <p><i>Not preempted. State law addresses matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal</i></p>

	<p><i>requirements.</i></p> <p>Statutory provision requiring disclosure of whether uncooked fish and shellfish have ever been frozen. (Rhode Island General Laws, §21-31-3(13)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provisions regulating packing of various kinds of fish in casks. (Rhode Island General Laws, Title 21, Chapter 21-15, §§ 21-15-3 <i>et seq.</i>).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws prohibiting economic adulteration.</i></p> <p>Statutory provision regulating labeling of closed packages of apples. (Rhode Island General Laws, Title 21, Chapter 21-18, § 21-18-2).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Rhode Island General Laws, Title 21, Chapter 21-2).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Rhode Island General Laws, Title 21, Chapter 21-27, §§ 21-27-1 to 21-27-11.13).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>South Carolina</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (South Carolina Food and Cosmetics Act, §39-25-130(b)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This South Carolina statute authorizes food safety standards that differ from federal requirements. However, South Carolina has not exercised its</i></p>

	<p><i>authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (South Carolina Code of Laws, Title 46, Chapter 49, §§ 46-49-10 to 46-49-90).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (South Carolina Code of Laws, Title 44, Chapter 1, § 44-1-140(2)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of shellfish. (South Carolina Code of Laws, Title 44, §§ 44-1-150 to 44-1-155).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>South Dakota</b></p>	<p>Statutory provision deeming confectionery adulterated if it contacts any vinous, malt, or spirituous liquor or compound or narcotic drug. (South Dakota Codified Laws, Title 39, Chapter 4, § 39-4-3(2)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state laws regarding adulteration of confectionery with alcohol.</i></p> <p>Statutory provision requiring food label to disclose when food contains chloroform and various narcotics. (South Dakota Codified Laws, Title 39, Chapter 4, § 39-4-10).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (South Dakota Codified Laws, Title 39, Chapter 6, §§ 39-6-1 to 39-6-22).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not</i></p>

	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (South Dakota Codified Laws, Title 34, Chapter 18, §§ 34-18-25 to 34-18-33).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Tennessee</b>	<p>Statutory provisions governing the safety of milk. (Dairy Law of the State of Tennessee, Tennessee Code, Title 53, Chapter 3, Part 1, §§ 53-3-101 to 53-3-118).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Tennessee Code, Title 68, Chapter 14, Part 3, §§ 68-14-301 to 68-14-323).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Texas</b>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Texas FDCA, § 431.161(b)).</p> <p><i>Uniformity provisions would apply without practical effect.*** This Texas statute authorizes food safety standards that differ from federal requirements. However, Texas has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Regulatory provision requiring that the internal temperature of potentially hazardous foods shall be no higher than 41 degrees Fahrenheit. (Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter N, § 299.219(2)(C)(i)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not</i></p>

	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of milk. (Texas Health and Safety Code, Title 6, Chapter 435, §§ 435.001-435.021).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Regulations governing the safety of molluscan shellfish. (Texas Administrative Code, Title 25, Chapter 241, Subchapter B, §§ 241.50-241.71).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Regulatory provision governing the safety of food in restaurants and other food service establishments. (Texas Health and Safety Code, Title 25, Chapter 229, Subchapter K, §§ 229.161-229.177).</p> <p><i>Our summary review of this lengthy regulation found only one provision to which uniformity provisions would apply. Section 229.164(f) prohibits use of sulfiting agents on fresh fruits and vegetables (except grapes) and on foods considered to be good sources of vitamin B1.**</i></p>
<p><b>Utah</b></p>	<p>Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances. (Utah Code, Title 4, Chapter 5, §§ 4-5-17(3)-(5)).</p> <p><i>Uniformity provisions would apply without practical effect..*** This Utah statute authorizes food safety standards that differ from federal requirements. However, Utah has not exercised its authority to adopt any standards that differ from federal standards.</i></p> <p>Statutory provision governing the safety of milk. (Utah Code, Title 4, Chapter 3, §§ 4-3-1 to 4-3-14).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements</i></p>

	<p><i>identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Utah Code, Title 26, Chapters 15 and 15a, §§ 26-15-1 to 26-15a-107).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Vermont</b>	<p>Statutory provision governing the safety of milk. (Vermont Statutes, Title 6, §§ 2671-2768).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Vermont Statutes, Title 18, Part 5, Chapter 85, Subchapter 1, §§ 4301-4309).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Virginia</b>	<p>Statutory provision banning the use of sulfiting agents in restaurants. (Virginia Code, Title 35.1, Chapter 2, § 35.1-14.1).</p> <p><i>Uniformity provisions would apply.** This Virginia statute authorizes food safety standards that differ from federal requirements.</i></p> <p>Statutory provision prohibiting the removal of a label containing the date by which a food shall be sold (Virginia Food Act, §3.1-388.1).</p> <p><i>Not preempted. H.R. 4167 expressly exempts from preemption state laws regarding freshness labeling.</i></p> <p>Statutory provision governing the safety of milk. (Virginia Code, Title 3.1, Chapter 21, §§ 3.1-420 to 3.1-425).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not</i></p>

	<p><i>subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Virginia Code, Title 35.1, Chapter 1-5, §§ 35.1-35.1-28).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing shellfish safety. (Virginia Code, Title 28.2, Chapter 8, §§ 28.2-800 to 28.2-826).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>Washington</b>	<p>Statutory provision governing the safety of milk. (Revised Code of Washington, Title 15, §§ 15.36.002 to 15.36.561).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Revised Code of Washington, Title 43, Chapter 43.20, §§ 43.20.050(2)(c), 43.20.145).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<b>West Virginia</b>	<p>Statutory provision governing the safety of milk. (West Virginia Code, Title 19, §§ 19-11A-1 to 19-11A-10).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (West Virginia Code, Title 16, Article 6, §§</p>

	<p>16-6-3 to 16-6-11).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Wisconsin</b></p>	<p>Statutory provision requiring label showing age and type of cheese made in Wisconsin. (Wisconsin Statutes, §97.177(3)).</p> <p><i>Not preempted. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision prohibiting the sale of a food containing whole fish flour unless made from the normally edible portions of fish or from fish protein concentrate. (Wisconsin Statutes, Chapter 97, § 97.13).</p> <p><i>Not preempted. This Wisconsin statute appears to be identical to federal requirements. (See FDA food additive regulation for “fish protein isolate” at 21 C.F.R. § 172.340). The provision in this Wisconsin statute requiring that packages of fish flour or fish protein concentrate bear a label statement declaring that the contents are made only from the edible portions of fish would not be preempted, because it is not a warning statement about food safety.</i></p> <p>Regulations regarding processing of smoked fish and a warning label for smoked fish. (Wisconsin food processing regulation, §§ ATCP 70.21 <i>et seq.</i>).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements. H.R. 4167 does not preempt state notification requirements unless they require warnings about food safety.</i></p> <p>Statutory provision governing the safety of milk. (Wisconsin Statutes, Chapter 97, §§ 97.20-97.25).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.*</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Wisconsin Statutes, Chapter 97, §§ 97.30(1)-97.30(2)).</p>

	<p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>
<p><b>Wyoming</b></p>	<p>Regulatory provision governing the safety of milk. (Regulations of Department of Agriculture, Chapter 3, §§ 8(a)(i)-(iii)).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p> <p>Statutory provision governing the safety of food in restaurants and other food service establishments. (Wyoming Statutes, Title 35, Chapter 7, Article 1, §§ 35-7-120, 35-7-123, and 35-7-125).</p> <p><i>Not preempted. State law addresses food sanitation and other matters not subject to preemption under H.R. 4167 and/or adopts requirements identical to federal requirements.</i></p>

\* State law allows sale of raw (*i.e.*, unpasteurized) milk within the state, subject to certain restrictions. Federal law prohibits the sale of raw milk in interstate commerce.

\*\* A state may postpone and possibly avoid preemption if it wishes to retain a state or local law. “This legislation provides for a petition process for a state to apply for an exemption to a uniformity requirement. The legislation also allows for a state to petition the FDA for a new national standard. If a state has identified a potential risk to food, this national standard petition process will compel the FDA to examine the standard to determine if such a standard should be established to protect consumers in all States.” House Report No. 109-379.

\*\*\* While the uniformity provisions of H.R. 4167 would apply, no state requirement inconsistent with federal requirements is in effect. Therefore, the uniformity provisions of H.R. 4167 are without practical effect with respect to this state law.

**Analysis of Concerns Raised By the National Association of Attorneys General  
Letter of March 1, 2006 regarding the National Uniformity for Food Act of 2006  
(H.R. 4167)**

In a letter dated March 1, 2006, the National Association of Attorneys General (NAAG) raised ten specific concerns about H.R. 4167, the National Uniformity for Food Act, which would amend the current National Uniformity provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act). A close review of these ten concerns, however, reveals a serious misunderstanding of the impact of the National Uniformity legislation on the authority of States to regulate the food supply. The following analysis corrects the record and demonstrates that the National Uniformity for Food Act would have none of the consequences that were erroneously alleged in the NAAG letter.

1. Mercury in fish. The NAAG letter states in two places that the National Uniformity legislation would prevent a State from requiring a consumer warning with respect to the mercury content in tuna fish. The letter fails to point out that FDA has determined -- and sent a letter to California explicitly stating its determination -- that there is no valid scientific or public policy basis for such a warning. On April 7, 2006, the San Francisco Superior Court issued an opinion in California v. Tri-Union Seafoods, LLC concluding that mercury is naturally occurring throughout the environment, that it does not present a significant human risk at the levels involved, that the FDA determination to handle the matter through consumer advisories rather than safety warnings must be given deference in California, and therefore that there is no legal basis for the consumer warnings proposed by the State. Accordingly, the example of mercury in fish simply reinforces the legal and factual basis for the National Uniformity legislation.

2. Arsenic in drinking water. The NAAG letter states that the National Uniformity legislation would remove the authority of a State to require a warning about the level of arsenic in drinking water. This is incorrect because the National Uniformity legislation does not involve the regulation of drinking water in any way. The legislation only covers food regulated by FDA. Regulation of drinking water is handled by EPA, not FDA. Accordingly, consumer warnings about arsenic in drinking water are not affected by the National Uniformity legislation. Research has uncovered no State law requiring a consumer warning about arsenic in drinking water.

3. Lead in cans used to package food. The NAAG letter states that the National Uniformity legislation would prevent a State from requiring consumer warnings about the lead content in cans used to package food. This is incorrect because FDA banned lead soldered food cans more than a decade ago. 21 C.F.R. 189.240. FDA also banned lead foil for wine bottles a year later. 21 C.F.R. 189.301. California is the only State that has an explicit law permitting the continued use of lead foil for wine closures.

4. Arsenic in bottled water. NAAG argues that the National Uniformity legislation takes away from the States the authority to require consumer warnings about arsenic in bottled water. This is incorrect because FDA regulates the amount of arsenic permitted in bottled water under a standard of identity promulgated by the agency. 21 C.F.R. 165.110(4)(i)(A). Under the National Uniformity provisions of the Nutrition Labeling and Education Act of 1990, an FDA standard of identity is already subject to National Uniformity. 21 U.S.C. 343-1(a)(1).

5. Lead in ceramic tableware. The NAAG letter contends that the National Uniformity legislation would prevent a State from requiring consumer warnings about lead in ceramic tableware. Following a landmark court decision holding that FDA has jurisdiction over lead in ceramic tableware, the agency has established and enforced stringent regulations and action levels governing the migration of lead from food utensils and ceramic ware. 21 C.F.R. 109.16.

6. Alcohol in candy. The NAAG letter contends that a State will be precluded from consumer warnings about the alcohol content of candy within its jurisdiction. This is incorrect, for two separate reasons. First, the provisions regarding the regulation of alcohol in candy, under Section 402(d) of the FD&C Act, 21 U.S.C. 342(d), explicitly state that each State is permitted either to ban or permit the use of alcohol in candy. Second, the National Uniformity legislation does not cover this provision of the FD&C Act. Thus, the pending legislation would not change current law with respect to the authority of a State to require a consumer warning about the alcohol content of candy within its own borders. Research has uncovered no State law that requires such a warning.

7. The fat and oil content of a food. The NAAG letter states that the National Uniformity legislation would take away the right of a State to require a consumer warning about the fat and oil content of food. This is also incorrect, for three reasons. First, to the extent that the NAAG letter relates to the labeling of the content of fats and oil in food, the National Uniformity legislation does not cover this subject. The labeling of food ingredients and nutrients is subject to National Uniformity that was enacted by Congress in the Nutrition Labeling and Education Act of 1990, 21 U.S.C. 343-1(a). Second, to the extent that the NAAG letter relates to regulating the safety of the content of fats and oils in food, because FDA has no specific regulation governing these matters States would be free to impose safety limitations under their own State statutes in compliance with new Section 403A(c)(3) unless and until FDA issued its own contrary determination. Third, to the extent that the NAAG letter relates to consumer safety warnings about the safety of fats and oils in food, new Section 403B(a)(3) explicitly preserves the right of any State to issue any consumer warning that it determines appropriate although it cannot require the food industry to disseminate such warnings unless it obtains FDA approval of a local exemption or a new national standard. Research has uncovered no State law governing the safety or consumer warnings for the fats and oils content of food.

8. Post-harvest pesticide application to fruits and vegetables. The NAAG letter argues that the National Uniformity legislation would take away the authority of a State to require consumer warnings about post-harvest pesticide applications to fruits and vegetables. This is incorrect because FDA has no statutory authority to establish pesticide tolerances or require consumer warnings about pesticide residues. EPA has sole jurisdiction over pesticides, under Section 408 of the FD&C Act, 21 U.S.C. 346a, and this provision is not covered by the National Uniformity legislation. National Uniformity has already been established for pesticides under the Food Quality Protection Act of 1996, 21 U.S.C. 346a(n). Accordingly, the National Uniformity legislation has no impact on the authority of a State to require warnings about post-harvest pesticide applications to food.

9. False claims of health benefits. The NAAG letter states that the National Uniformity legislation would eliminate the ability of a State to regulate false claims relating to the health benefits of food. This is incorrect because the National Uniformity legislation only covers safety warnings, and does not in any way relate to claims for the health benefits of food. Congress enacted National Uniformity governing the claims for the health benefits of food as part of the Nutrition Labeling and Education Act of 1990, 21 U.S.C. 343-1(a)(5). Accordingly, the current legislation has no impact on this matter.

10. Inadequate warnings for children. Finally, the NAAG letter argues that the National Uniformity legislation will prevent a State from imposing adequate warnings for children with respect to food products. The letter gives no specific examples of appropriate warnings that are not already required by FDA, and cites no State law or regulation that imposes such warnings. The NAAG letter also fails to recognize that new Section 403B(c)(3)(C) of the legislation would grant expedited consideration by FDA to any State petition for a local exemption or a national standard governing warnings that could affect the health of children. Thus, the pending legislation fully recognizes the importance of any appropriate warnings to protect the health of children.