

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2699**

**OFFERED BY MR. BURR**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Uniformity  
3 for Food Act of 2004”.

**4 SEC. 2. NATIONAL UNIFORMITY FOR FOOD.**

5 (a) NATIONAL UNIFORMITY.—Section 403A(a) of the  
6 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–  
7 1(a)) is amended—

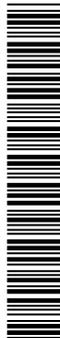
8 (1) in paragraph (4), by striking “or” at the  
9 end;

10 (2) in paragraph (5), by striking the period and  
11 inserting “, or”;

12 (3) by inserting after paragraph (5) the fol-  
13 lowing:

14 “(6) any requirement for a food described in  
15 section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7),  
16 402(c), 404, 406, 409, 512, or 721(a), that is not  
17 identical to the requirement of such section.”; and

18 (4) by adding at the end the following: “For  
19 purposes of paragraph (6) and section 403B, the



1 term ‘identical’ means that the language under the  
2 laws of a State or a political subdivision of a State  
3 is substantially the same language as the comparable  
4 provision under this Act and that any differences in  
5 language do not result in the imposition of materi-  
6 ally different requirements. For purposes of para-  
7 graph (6), the term ‘any requirement for a food’  
8 does not refer to provisions of this Act that relate  
9 to procedures for Federal action under this Act.”.

10 (b) UNIFORMITY IN FOOD SAFETY WARNING NOTI-  
11 FICATION REQUIREMENTS.—Chapter IV of such Act (21  
12 U.S.C. 341 et seq.) is amended—

13 (1) by redesignating sections 403B and 403C  
14 as sections 403C and 403D, respectively; and

15 (2) by inserting after section 403A the fol-  
16 lowing new section:

17 **“SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTI-  
18 FICATION REQUIREMENTS.**

19 **“(a) UNIFORMITY REQUIREMENT.—**

20 **“(1) IN GENERAL.—**Except as provided in sub-  
21 sections (c) and (d), no State or political subdivision  
22 of a State may, directly or indirectly, establish or  
23 continue in effect under any authority any notifica-  
24 tion requirement for a food that provides for a warn-  
25 ing concerning the safety of the food, or any compo-



1       nent or package of the food, unless such a notifica-  
2       tion requirement has been prescribed under the au-  
3       thority of this Act and the State or political subdivi-  
4       sion notification requirement is identical to the noti-  
5       fication requirement prescribed under the authority  
6       of this Act.

7               “(2) DEFINITIONS.—For purposes of paragraph  
8       (1)—

9               “(A) the term ‘notification requirement’ in-  
10       cludes any mandatory disclosure requirement  
11       relating to the dissemination of information  
12       about a food by a manufacturer or distributor  
13       of a food in any manner, such as through a  
14       label, labeling, poster, public notice, advertising,  
15       or any other means of communication, except  
16       as provided in paragraph (3);

17               “(B) the term ‘warning’, used with respect  
18       to a food, means any statement, vignette, or  
19       other representation that indicates, directly or  
20       by implication, that the food presents or may  
21       present a hazard to health or safety; and

22               “(C) a reference to a notification require-  
23       ment that provides for a warning shall not be  
24       construed to refer to any requirement or prohi-



1           bition relating to food safety that does not in-  
2           volve a notification requirement.

3           “(3) CONSTRUCTION.—Nothing in this section  
4           shall be construed to prohibit a State from con-  
5           ducting the State’s notification, disclosure, or other  
6           dissemination of information, or to prohibit any ac-  
7           tion taken relating to a mandatory recall, civil ad-  
8           ministrative order, embargo, detention order, or  
9           court proceeding involving food adulteration under a  
10          State statutory requirement identical to a food adul-  
11          teration requirement under this Act.

12          “(b) REVIEW OF EXISTING STATE REQUIRE-  
13          MENTS.—

14                 “(1) EXISTING STATE REQUIREMENTS; DEFER-  
15                 RAL.—Any requirement that—

16                         “(A)(i) is a State notification requirement  
17                         that expressly applies to a specified food or food  
18                         component and that provides for a warning de-  
19                         scribed in subsection (a) that does not meet the  
20                         uniformity requirement specified in subsection  
21                         (a); or

22                         “(ii) is a State food safety requirement de-  
23                         scribed in section 403A(6) that does not meet  
24                         the uniformity requirement specified in that  
25                         paragraph; and



1           “(B) is in effect on the date of enactment  
2           of the National Uniformity for Food Act of  
3           2004,  
4           shall remain in effect for 180 days after that date  
5           of enactment.

6           “(2) STATE PETITIONS.—With respect to a  
7           State notification or food safety requirement that is  
8           described in paragraph (1), the State may petition  
9           the Secretary for an exemption or a national stand-  
10          ard under subsection (c). If a State submits such a  
11          petition within 180 days after the date of enactment  
12          of the National Uniformity for Food Act of 2004,  
13          the notification or food safety requirement shall re-  
14          main in effect in accordance with subparagraph (C)  
15          of paragraph (3), and the time periods and provi-  
16          sions specified in subparagraphs (A) and (B) of such  
17          paragraph shall apply in lieu of the time periods and  
18          provisions specified in subsection (c)(3) (but not the  
19          time periods and provisions specified in subsection  
20          (d)(2)).

21          “(3) ACTION ON PETITIONS.—

22                 “(A) PUBLICATION.—Not later than 270  
23                 days after the date of enactment of the Na-  
24                 tional Uniformity for Food Act of 2004, the  
25                 Secretary shall publish a notice in the Federal



1 Register concerning any petition submitted  
2 under paragraph (2) and shall provide 180 days  
3 for public comment on the petition.

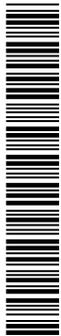
4 “(B) TIME PERIODS.—Not later than 360  
5 days after the end of the period for public com-  
6 ment, the Secretary shall take final agency ac-  
7 tion on the petition.

8 “(C) ACTION.—

9 “(i) IN GENERAL.—With respect to a  
10 State that submits to the Secretary a peti-  
11 tion in accordance with paragraph (2), the  
12 notification or food safety requirement in-  
13 volved shall remain in effect during the pe-  
14 riod beginning on the date of enactment of  
15 the National Uniformity for Food Act of  
16 2004 and ending on the applicable date  
17 under subclause (I) or (II), as follows:

18 “(I) If the petition is denied by  
19 the Secretary, the date of such denial.

20 “(II) If the petition is approved  
21 by the Secretary, the effective date of  
22 the final rule that is promulgated  
23 under subsection (c) to provide an ex-  
24 emption or national standard pursu-  
25 ant to the petition, except that there



1 is no applicable ending date under  
2 this subparagraph for a provision of  
3 State law that is part of such State  
4 requirement in any case in which the  
5 final rule does not establish any con-  
6 dition regarding such provision of law.

7 “(ii) NONCOMPLIANCE OF SECRETARY  
8 REGARDING TIMEFRAMES.—

9 “(I) JUDICIAL REVIEW.—The  
10 failure of the Secretary to comply  
11 with any requirement of subparagraph  
12 (A) or (B) shall constitute final agen-  
13 cy action for purposes of judicial re-  
14 view. If the court conducting the re-  
15 view determines that the Secretary  
16 has failed to comply with the require-  
17 ment, the court shall order the Sec-  
18 retary to comply within a period de-  
19 termined to be appropriate by the  
20 court.

21 “(II) STATUS OF STATE RE-  
22 QUIREMENT.—With respect to a State  
23 that submits to the Secretary a peti-  
24 tion in accordance with paragraph (2),  
25 if the Secretary fails to take final



1 agency action on the petition within  
2 the period that applies under subpara-  
3 graph (B), the notification or food  
4 safety requirement involved remains  
5 in effect until the applicable date  
6 under clause (i).

7 “(c) EXEMPTIONS AND NATIONAL STANDARDS.—

8 “(1) EXEMPTIONS.—Any State may petition  
9 the Secretary to provide by regulation an exemption  
10 from section 403A(a)(6) or subsection (a), for a re-  
11 quirement of the State or a political subdivision of  
12 the State. The Secretary may provide such an ex-  
13 emption, under such conditions as the Secretary may  
14 impose, for such a requirement that—

15 “(A) protects an important public interest  
16 that would otherwise be unprotected, in the ab-  
17 sence of the exemption;

18 “(B) would not cause any food to be in  
19 violation of any applicable requirement or prohi-  
20 bition under Federal law; and

21 “(C) would not unduly burden interstate  
22 commerce, balancing the importance of the pub-  
23 lic interest of the State or political subdivision  
24 against the impact on interstate commerce.



1           “(2) NATIONAL STANDARDS.—Any State may  
2 petition the Secretary to establish by regulation a  
3 national standard respecting any requirement under  
4 this Act or the Fair Packaging and Labeling Act  
5 (15 U.S.C. 1451 et seq.) relating to the regulation  
6 of a food.

7           “(3) ACTION ON PETITIONS.—

8           “(A) PUBLICATION.—Not later than 30  
9 days after receipt of any petition under para-  
10 graph (1) or (2), the Secretary shall publish  
11 such petition in the Federal Register for public  
12 comment during a period specified by the Sec-  
13 retary.

14           “(B) TIME PERIODS FOR ACTION.—Not  
15 later than 60 days after the end of the period  
16 for public comment, the Secretary shall take  
17 final agency action on the petition or shall in-  
18 form the petitioner, in writing, the reasons that  
19 taking the final agency action is not possible,  
20 the date by which the final agency action will  
21 be taken, and the final agency action that will  
22 be taken or is likely to be taken. In every case,  
23 the Secretary shall take final agency action on  
24 the petition not later than 120 days after the  
25 end of the period for public comment.



1           “(4) JUDICIAL REVIEW.—The failure of the  
2 Secretary to comply with any requirement of this  
3 subsection shall constitute final agency action for  
4 purposes of judicial review. If the court conducting  
5 the review determines that the Secretary has failed  
6 to comply with the requirement, the court shall  
7 order the Secretary to comply within a period deter-  
8 mined to be appropriate by the court.

9           “(d) IMMINENT HAZARD AUTHORITY.—

10           “(1) IN GENERAL.—A State may establish a re-  
11 quirement that would otherwise violate section  
12 403A(a)(6) or subsection (a), if—

13           “(A) the requirement is needed to address  
14 an imminent hazard to health that is likely to  
15 result in serious adverse health consequences or  
16 death;

17           “(B) the State has notified the Secretary  
18 about the matter involved and the Secretary  
19 has not initiated enforcement action with re-  
20 spect to the matter;

21           “(C) a petition is submitted by the State  
22 under subsection (c) for an exemption or na-  
23 tional standard relating to the requirement not  
24 later than 30 days after the date that the State



1 establishes the requirement under this sub-  
2 section; and

3 “(D) the State institutes enforcement ac-  
4 tion with respect to the matter in compliance  
5 with State law within 30 days after the date  
6 that the State establishes the requirement  
7 under this subsection.

8 “(2) ACTION ON PETITION.—

9 “(A) IN GENERAL.—The Secretary shall  
10 take final agency action on any petition sub-  
11 mitted under paragraph (1)(C) not later than 7  
12 days after the petition is received, and the pro-  
13 visions of subsection (c) shall not apply to the  
14 petition.

15 “(B) JUDICIAL REVIEW.—The failure of  
16 the Secretary to comply with the requirement  
17 described in subparagraph (A) shall constitute  
18 final agency action for purposes of judicial re-  
19 view. If the court conducting the review deter-  
20 mines that the Secretary has failed to comply  
21 with the requirement, the court shall order the  
22 Secretary to comply within a period determined  
23 to be appropriate by the court.

24 “(3) DURATION.—If a State establishes a re-  
25 quirement in accordance with paragraph (1), the re-



1        requirement may remain in effect until the Secretary  
2        takes final agency action on a petition submitted  
3        under paragraph (1)(C).

4        “(e) NO EFFECT ON PRODUCT LIABILITY LAW.—  
5        Nothing in this section shall be construed to modify or  
6        otherwise affect the product liability law of any State.

7        “(f) NO EFFECT ON IDENTICAL LAW.—Nothing in  
8        this section relating to a food shall be construed to prevent  
9        a State or political subdivision of a State from estab-  
10       lishing, enforcing, or continuing in effect a requirement  
11       that is identical to a requirement of this Act, whether or  
12       not the Secretary has promulgated a regulation or issued  
13       a policy statement relating to the requirement.

14       “(g) NO EFFECT ON CERTAIN STATE LAW.—Noth-  
15       ing in this section or section 403A relating to a food shall  
16       be construed to prevent a State or political subdivision of  
17       a State from establishing, enforcing, or continuing in ef-  
18       fect a requirement relating to—

19                “(1) freshness dating, open date labeling, grade  
20        labeling, a State inspection stamp, religious dietary  
21        labeling, organic or natural designation, returnable  
22        bottle labeling, unit pricing, or a statement of geo-  
23        graphic origin; or

24                “(2) a consumer advisory relating to food sani-  
25        tation that is imposed on a food establishment, or



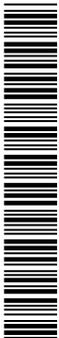
1 that is recommended by the Secretary, under part  
2 3–6 of the Food Code issued by the Food and Drug  
3 Administration and referred to in the notice pub-  
4 lished at 64 Fed. Reg. 8576 (1999) (or any cor-  
5 responding similar provision of such a Code).

6 “(h) DEFINITIONS.—In section 403A and this sec-  
7 tion:

8 “(1) The term ‘requirement’, used with respect  
9 to a Federal action or prohibition, means a manda-  
10 tory action or prohibition established under this Act  
11 or the Fair Packaging and Labeling Act (15 U.S.C.  
12 1451 et seq.), as appropriate, or by a regulation  
13 issued under or by a court order relating to, this Act  
14 or the Fair Packaging and Labeling Act, as appro-  
15 priate.

16 “(2) The term ‘petition’ means a petition sub-  
17 mitted in accordance with the provisions of section  
18 10.30 of title 21, Code of Federal Regulations, con-  
19 taining all data and information relied upon by the  
20 petitioner to support an exemption or a national  
21 standard.”.

22 (c) CONFORMING AMENDMENT.—Section 403A(b) of  
23 such Act (21 U.S.C. 343–1(b)) is amended by adding after  
24 and below paragraph (3) the following:



1 “The requirements of paragraphs (3) and (4) of section  
2 403B(c) shall apply to any such petition, in the same man-  
3 ner and to the same extent as the requirements apply to  
4 a petition described in section 403B(c).”.

