Bill as Introduced

HCR 35 - AS INTRODUCED

2000 SESSION

00-2821
08/09

HOUSE CONCURRENT RESOLUTION *35*

A RESOLUTION urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

SPONSORS: Rep. L. Pratt, Coos 4; Rep. K. Marshall, Merr 4; Rep. Melcher, Hills 11; Rep. P. Davis, Coos 1; Rep. P. Dowling, Rock. 13; Sen. F. King, Dist 1

COMMITTEE: Environment and Agriculture

ANALYSIS

This house concurrent resolution urges the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and instead consider adoption of processing standards which can achieve the same level of public protection at reasonable cost to small cider makers.

HCR 35 – AS INTRODUCED

00-2821
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

Whereas, New Hampshire has over 60 small family run cider mills which will likely be forced to close if the United States Food and Drug Administration (USFDA) proceeds with new rules requiring pasteurization of apple cider offered for sale to the consuming public; and

Whereas, the costs for installing pasteurization equipment are prohibitive and are beyond the means of all but the very largest commercial apple cider makers; and

Whereas, alternative technologies using either ultraviolet rays or a strict process of washing and rinsing of the raw apples can accomplish the USFDA's goal of a 100,000-fold bacteria reduction; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That in order to preserve our tradition of making fine apple cider at local mills based at New Hampshire orchards, we urge the USFDA to defer its proposed rules requiring pasteurization for apple cider and instead consider adoption of processing standards which can achieve the same level of public protection at reasonable cost to our small cider makers;

That copies of this resolution be sent by the house clerk to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Administrator of the United States Food and Drug Administration, and each member of the New Hampshire congressional delegation.

Committee Minutes

Date: May 10, 2000
Time: 3:00 p.m.
Room: 101 LOB

The Senate Committee on Wildlife Recreation held a hearing on the following:

HCR 35 urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

Members of Committee present: Senator Disnard
Senator Klemm
Senator Roberge

The Chair, Senator George F. Disnard, opened the hearing.

Senator George F. Disnard, D. 8: We will now open the hearing on HCR 35,

> *urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.*

I am now very happy to call on the prime sponsor, Rep. Pratt.

Rep. Pratt: Thank you very much. This is an old historical deal. We had Johnny Appleseed, we've had many others but the apples came to this country and seed first planted then. What came with the apples came the traditional apple cider.

About 9 years ago, maybe somebody will correct me, but I've been in the legislature for 10 and I hadn't been here for long when there was a bill in Massachusetts about drinking apple cider made in one place. There were some people down in Massachusetts who got very frustrated about it because there had been some sickness concerning it. And they contacted the health department, the head organization down in Florida where the headquarters and they came up and tested the cider but they couldn't find anything wrong with it probably because of fermentation.

We introduced it. I think down in Massachusetts they started out by saying we'll sell more pasteurized cider. I think they've changed that since. However, we were concerned about it. We didn't think it was so rough until the bill we had we didn't want to pasteurize so we put that in study.

The person that was there, he and I were appointed chairman of the co-committee, House and Senate to study the apple cider. Being an ex county agent I called the county agent from the territory down there. I knew who he was and I discovered there was nothing normal done with the apple cider. I wouldn't want to go into the details but I wouldn't have drank the cider either knowing the certain circumstances.

Basically this got kicked around. The Health Department discussed it. The Department of Agriculture discussed it. the Department of Agriculture now is checking the apples that go in.

One of the problems with the changing of the Health Department taking care of it is that it changes our philosophy on apple cider. I'll give you an example.

Yes I wear an apple up here (Rep. Pratt points to an apple on his lapel) and the reason for it is my degree in entomology and I worked for the apple people for many years. There is a fellow up at Lancaster and his name is Bruce Sloat. Maybe some of you have heard of him. He is one of the very first ones that put in this

hydro-electric system in New Hampshire and so on. He is an engineer.

One day he started growing some apple trees and I was the county agent. When he started growing the apple trees he built the hydro system at the same time. The water came through a pipe down to a spot underground and it created electricity underground and he had a spot that he had to have a building on top of. So I said why don't you build a garage and he said my garage is too big already.

I said what about a workshop and he said I have enough of that space. Since he had young apple trees I said why don't you put a cider mill there? You've got power enough to operate those. He said, where would I get one and I said just put it in the Market Bulletin. There are lots of old apple cider mills around. So he didn't follow that and the next thing I knew he'd called me and said boy it's terrible to make apple cider – the presses cost so much.

So I said did you put it in the Market Bulletin or someplace like that? And he said no and I said "do it." So what he did is he went to a place where a person had two of them for sale. The person who had owned it didn't know how to operate the thing. It was essentially a big cylinder for pumping oil, he thought, to make the piston go back. What it was was an old hydro cider mill for doing all the work and pressing the apples and grinding and what have you. This mill now, has a dear old leather belt, you see, that is exposed and the whole works. It 's made of cast iron and so on.

They uh, he started making cider and people came and enjoyed it and what have you. If we turn this over to the Health what we discovered very quickly was that's not a modern mill. And I would say that our apple growers like him in New Hampshire that make our cider would probably most of them go out of business. Now this one has been talking about going out of business ever since and we've struggled with it to keep the thing in function and process so that myself and various others can go out and get a glass of good old fashioned apple cider.

There might be a couple or two around the state that want to make some hard cider and that doesn't bother me any either. This is the issue. Now with some people maybe I shouldn't say hard cider. But I think that is about all I have to say about it.

Senator George F. Disnard, D. 8: Thank you very much representative.

Senator Sheila Roberge, D. 9: Would the ultraviolet be as safe as the pasteurization of cider to get rid of the bacteria?

Rep. Pratt: Basically the apples that were the problem were not picking up the bacteria in the normal way and it would be a place that none of us would ever purchase the cider. The Health Department in Massachusetts really clobbered the person because they would not touch that, you see. I'll tell you frankly what it was. He ran pigs and apples together and then took the apples out to make the cider. I can't imagine anyone doing that. This is what happened.

Whenever you have some food problem that hits, I mean people get a little more careful without making ...(inaudible)

Senator Sheila Roberge, D. 9: I wondered. I'm not positive. What would happen if you just used the apples on the tree and didn't use the ones that fell to the ground?

Rep. Pratt: Well they, I think that the gentleman that is following me with the Department of Agriculture will tell you how they do it now because the Health Department and the Department of Agriculture have worked out a solution for New Hampshire. OK?

Senator George F. Disnard, D. 8: Thank you. As a courtesy we will call somebody from the Governor's Office if you don't mind, sir.

Rep. Pratt: I didn't know we were going to have such good testimony.

Susan Arnold: I'm Susan Arnold, Director of Policy for Governor Shaheen. I am here on behalf of the Governor to indicate her support for HCR 35. I think what she felt she could do that would be most helpful in terms of supporting the resolution is to do a letter to the Commissioner of the U. S. Food And Drug Administration. What I would like to do is read that letter for my testimony.

This is a letter from the Governor to Jane Henney, who is the Commissioner of the U.S. Food and Drug Administration.

See Attachment "A"

Senator George F. Disnard, D. 8: This has been mailed already?

Susan Arnold: Well, I am going to put it in the mail.

Senator George F. Disnard, D. 8: Some time will you send me some copies?

Susan Arnold: I have some copies here.

Senator George F. Disnard, D. 8: Thank you very much. Any questions?

I would actually say last but not least and I appreciate your being here. Richard?

Richard Uncles: Richard Uncles, from the N. H. Department of Agriculture. The department would ask the Committee to support Rep. Pratt's resolution.

I would like to take a few minutes and give you some background about cider production and cider regulation in New Hampshire. We have considerable experience in the department in this area.

As recently as six or seven years ago there were no regulations for cider, literally. Neither in our department or Public Health pretty much ignored them. It was common practice for orchards to collect apples in the fall, off the ground, drops typically and take them in without washing or brushing, without even minimal sorting, and crush them and squeeze them into juice. We used to think that cider was protected, protective of public health because of its acidity. The pH is very low. Salmonella doesn't live in it. But then in the mid 90's there were several outbreaks of disease that were traced to apple cider, E. Coli 0157, so called deadly E. Coli . There were some serious incidents. Also another organism called Cryptospiridium was found to be able to live in cider and made a number of people sick.

Just prior to those outbreaks, a group of cider producers had come to commissioner Taylor and asked our department to create some regulations but they kind of almost predicted the future and they felt that there should be some minimal standards. Just definitions of what cider is.

Over a two year period, Rep. Pratt, I believe was a sponsor of that bill also, got some legislation passed giving our department the authority to develop rules. Producers thought that we could create rules, which we did, that were specific to cider. Not as public health regulations tend to be, kind of one size fits all food processing regulations. Because this industry really evolved very differently and is done in traditionally a kind of rustic type of set-up.

We formed a task force after we got the law passed, got some rules written and called it the New Hampshire Cider Task Force, and had representatives from the UNH Extension, state epidemiologists, folks from the food protection bureau of public health and our department and also from the fruit growers. We

did several things. The task force created some rules here in New Hampshire to go along with our rules that provided a number of things that we feel are protective of public health.

We prohibited the use of manure in orchards or the grazing of livestock if drops were to be used in cider. It is important that drops, especially in New England, because we grow mostly McIntosh. Eighty percent of the apple crop is McIntosh and McIntosh has a tendency to drop, to fall off the trees. Sometimes just a wind storm or remnants of a hurricane will knock a good portion of the crop off. So it has always been the practice and has been necessary for the survival of the orchards to do something with these drops. Red Delicious on the other hand don't fall off. They will hang on till they freeze solid in December. That's something unique about New England.

We also developed some standards for equipment that is used and for the maintenance and sanitation of that equipment. In addition to the regulations there was some educational work done. We did some workshops and the Cooperative Extension created some documents called "Good Manufacturing Practices" that were guidelines that went beyond the rules. We felt the things that we did were sufficient to protect public health. The other thing that happened of course is that the cider makers were paranoid about liability issues and they really embraced these standards and regulations and changed their practices and were very careful. We also began a fairly regular rigorous inspection program to make sure that the rules were being followed.

Another point that I wanted to make to you that we've heard from many consumers in New Hampshire that they want to be able to buy unpasteurized cider. A number of the mills tell us they are doing a better retail business now than they ever did before because the super markets, when the health scare came out, the super markets dropped the unpasteurized producers product like a hot potato and demanded pasteurized. Those people that wanted unpasteurized went to the local mills and some of them are doing better than they were.

We've got about 65 mills in the state. Most orchards operate a cider mill. Apples are still an important agricultural crop here. Something we still do very well. And it's a small but important part of their business that they be able to use those drops and turn it into a higher value product.

FDA, and what this resolution intends to do, FDA did a couple of things. After this national incident there was an incident with some juice out of California that sickened some children that you may remember reading about in '96-'97? Well when that happened FDA decided that this was a national issue and they proposed a two part regulation.

The first was to require a warning statement on containers of unpasteurized juice, not just apples but any juice that you will see if you happen to see some unpasteurized in some of the retail stores that still stock it.

The second part of the regulation is proposed and has not been implemented yet. It has been delayed a couple of times. That calls for a HACCP Plan. A HACCP Plan is a system of monitoring what they call critical control points in the food processing operation and taking steps to address the points in that system where food can become contaminated. It's much like ISO 9000 for manufacturers but it's an in vogue system for food processors. That HACCP proposal that FDA has called for has an element to it that requires that one 5 log or 100,000 times reduction in what they call "pertinent micro organisms" that might be in cider and that would be E Coli 0157 and Crytospiridium. The step, the HACCP step to get the 5 log reduction, they don't say pasteurization in the regulation, can only be that because that is the only proven way to reduce a low of 100,000 organisms to one, by pasteurizing.

We feel that the things we've done so far, while we can't document it that they've caused a 100,000 log reduction, or 5 log reduction rather, probably somewhere on the order of 2 to 3 times. There

are some other technologies that are in development, like ultraviolet light, that are effective but cannot satisfy that FDA requirement because they have to approve the process and that takes years. Then there are some other things like ozone gas treatment that also are hopeful.

Pasteurization, that heat pasteurization that this HACCP Plan the FDA is proposing is quite expensive. There are two cider mills in New Hampshire that pasteurize. They went ahead and put in the equipment a few years ago and actually benefited marketing-wise tremendously because the supermarkets had few choices so both of those have done very well and they are supplying the supermarkets. But the other 50 or 60 likely won't put in pasteurization equipment and if the proposal comes to be, they will go out of business. Then we will have a couple juice producers.

Senator George F. Disnard, D. 8: Thank you. Questions?

Senator Sheila Roberge, D. 9: Aren't there some worms or insects in them too? In the apples?

Richard Uncles: Oh there could be. There could be.

Senator Sheila Roberge, D. 9: Makes me not want to buy apple cider ever.
(laughter)

Richard Uncles: Of course your orchards do control your insects pretty well. Insects are not particularly harmful to ingest.

Senator Sheila Roberge, D. 9: I just don't like to think that I might be eating cooked, or uncooked worms. It's kind of distasteful. Very unpleasant.

Richard Uncles: It's unpleasant, but it really won't hurt you.

Senator George F. Disnard, D. 8: Sir, when you have spot checks, do they check for the presence of E Coli?

Richard Uncles: No, but one of the things that I didn't mention and one of the things that the Task Force did was they started a testing program, a limited program that Public Health helped with and there was none. They looked at about 80 samples not just for E Coli but salmonella and lead levels and a few other things. There was nothing of any concern that came out.

One of the things about testing for E Coli. This organism takes one or two cells to cause illness unlike most other food borne illnesses. So sampling, testing, really is, it gives you a lot of false negatives. You get the needle in a haystack kind of sampling. There may be just one or two organisms in a thousand gallon batch and to catch it in a sampling procedure is very unlikely.

In fact the incident in California, this juice company that was nationally distributed? The FDA, I mean several children were made sick and one little girl died as a result of kidney failure. It is a very serious illness. But they were never able to find it in another bottle and they sent thousands of bottles from all around the country and they were never able to find another organism.

So it's a nasty creature but it really has no, it's not inherently linked to cider from apples. It comes from cattle manure.

Senator George F. Disnard, D. 8: It was that problem with the school lunch program. These kids that got sick.

Richard Uncles: Oh was it? OK. I'm not sure. I know it was distributed in health food type stores.

Senator George F. Disnard, D. 8: Thank you.

Richard Uncles: You're welcome.

Senator George F. Disnard, D. 8: We will now close the hearing on HCR 35.

The hearing on HCR 35 was closed at 3:19 p.m.

This verbatim transcript respectfully submitted,
Jennifer Ruffing, Wildlife Secretary

Attachment A

STATE OF NEW HAMPSHIRE

OFFICE OF THE GOVERNOR

JEANNE SHAHEEN
GOVERNOR

May 10, 2000

Jane Henney, Commissioner
US Food and Drug Administration
5600 Fishers Lane, Room 1471
Rockville, Maryland 20857

Dear Commissioner Henney:

I am writing to urge you to defer your proposed rules requiring pasteurization for apple cider, and instead to consider adoption of alternative processing standards.

Apple cider making is a New Hampshire tradition, and currently more than sixty small family-run cider mills are in operation around the state. The pasteurization rules proposed by the FDA will have a devastating impact on these small cider makers as the costs of installing the pasteurization equipment are prohibitive for anyone other than the very largest commercial producers. That these traditional businesses may be forced to close by the proposed rules is a loss not only to New Hampshire, but also to the entire nation. Small-scale cider making is part of our national cultural heritage, and we all will be impoverished by its loss.

It is my understanding that there are alternatives to pasteurization that will accomplish your agency's goal of a 100,000-fold reduction of bacteria in unprocessed apple cider. These include technologies employing ultra-violet rays or strict washing and rinsing protocols for the raw apples. I urge you to consider these alternatives as viable options to pasteurization that will protect the public while not imposing unreasonable costs on our small cider producers.

Fresh-pressed apple cider is one of the special pleasures of fall in New Hampshire. It also is an important economic activity that supports many small farm operations around our state that are essential components of New Hampshire's traditional rural character and economy. This special character and history is why tourism is New Hampshire's second largest industry, and the loss of small cider makers would have harmful reverberations in that arena of our economy as well.

In closing, I again urge you to defer your proposed rules requiring pasteurization for apple cider, and instead consider adopting alternative processing standards.

Thank you for your consideration.

Very truly yours,

Jeanne Shaheen

Jeanne Shaheen

STATE HOUSE, CONCORD, NH 03301 (603) 271-2121
TDD Access: Relay NH 1-800-735-2964

Attachment B

Chronology of Food-borne illness incidents attributed to Apple Cider/Juice

- Oct. 1996 CA E. Coli 0157H:7, 57 confirmed cases, 1 death. Unpasteurized juice.
- Oct 1996 CT E. Coli 0157H:7, 14 ill. Apple cider from washed and brushed fruit.
- Sept 1996 NY Cryptospiridiosis. 20 ill. Apple cider
- Oct 1993 ME Cryptospiridiosis, 160 ill. Apple cider produced at school agricultural fair. Oocysts detected in cider, on press and in manure of calf at farm supplying apples. Drops from uncultivated orchard in which cattle had grazed. Fruit washed (rinsed) before pressing. (JAMA Nov23/30 1994, Vol. 272, No. 20)
- Fall 1991 MA E. Coli 0157H:7, 18 ill. Drop apples purchased, not washed or brushed, press operator raised cattle. (JAMA May 5, 1993, Vol. 269, No. 17)
- 1980 CANADA HUS (E. Coli 0157H:7 likely). Fresh pressed apple juice.
- 1974 NJ Salmonella typhimurium. Cider, drop apples, trees manured.

Speakers

Jennifer

SENATE WILDLIFE & RECREATION COMMITTEE

Date May 10, 2000 Time 3:00 p.m. Public Hearing on **HCR 35**

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
☑	RICHARD UNCLES	ND DEPT AGRICULTURE	
☑	Susan Arnold	Governor's office	Gov. Shaheen
☑	Representative Pratt		
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Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

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Testimony

STATE OF NEW HAMPSHIRE

OFFICE OF THE GOVERNOR

JEANNE SHAHEEN
GOVERNOR

May 10, 2000

Jane Henney, Commissioner
US Food and Drug Administration
5600 Fishers Lane, Room 1471
Rockville, Maryland 20857

Dear Commissioner Henney:

I am writing to urge you to defer your proposed rules requiring pasteurization for apple cider, and instead to consider adoption of alternative processing standards.

Apple cider making is a New Hampshire tradition, and currently more than sixty small family-run cider mills are in operation around the state. The pasteurization rules proposed by the FDA will have a devastating impact on these small cider makers as the costs of installing the pasteurization equipment are prohibitive for anyone other than the very largest commercial producers. That these traditional businesses may be forced to close by the proposed rules is a loss not only to New Hampshire, but also to the entire nation. Small-scale cider making is part of our national cultural heritage, and we all will be impoverished by its loss.

It is my understanding that there are alternatives to pasteurization that will accomplish your agency's goal of a 100,000-fold reduction of bacteria in unprocessed apple cider. These include technologies employing ultra-violet rays or strict washing and rinsing protocols for the raw apples. I urge you to consider these alternatives as viable options to pasteurization that will protect the public while not imposing unreasonable costs on our small cider producers.

Fresh-pressed apple cider is one of the special pleasures of fall in New Hampshire. It also is an important economic activity that supports many small farm operations around our state that are essential components of New Hampshire's traditional rural character and economy. This special character and history is why tourism is New Hampshire's second largest industry, and the loss of small cider makers would have harmful reverberations in that arena of our economy as well.

In closing, I again urge you to defer your proposed rules requiring pasteurization for apple cider, and instead consider adopting alternative processing standards.

Thank you for your consideration.

Very truly yours,

Jeanne Shaheen

Jeanne Shaheen

STATE HOUSE, CONCORD, NH 03301 (603) 271-2121
TDD Access: Relay NH 1-800-735-2964

Committee Report

Date: May 10, 2000 Time: 3:00 p.m.

The Senate Committee on Wildlife Recreation held its hearing in Room 101 LOB, . Concord, New Hampshire.

BILL NO.: HCR 35 TITLE: urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

Members of the Committee present: Senator Disnard
Senator Klemm
Senator Roberge

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☒ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Wildlife Recreation

to which was referred House Concurrent Resolution 35

AN ACT urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

VOTE: 3-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Sheila Roberge
For the Committee

HCR35 Docket

Next|Previous|Results List|Bill Status|Main

Bill Title: urging the United States Food and Drug Administration to defer its proposed rules requiring pasteurization for apple cider and consider adoption of alternative processing standards.

Date	Body	Description
3/23/2000	H	Introduced and ref to Env & Agric; HJ26, p852
3/28/2000	H	Copy to Chairman on 3/28/2000
3/30/2000	H	Reps Chandler & Burling Susp Rules for deadline, MA 2/3VV; HJ29, p970
3/30/2000	H	Hearing Apr 6 11:00 RM303,LOB
4/6/2000	H	Maj Report OTP for Apr 20 (vote 16-0;CC)
4/20/2000	H	Adopted (Cons Cal by 2/3VV);
4/27/2000	S	Introduced and referred to Wildlife & Recreation

Next|Previous|Results List|Bill Status|Main