Legislative Summary **LS-497E**

BILL C-28: AN ACT TO AMEND THE FOOD AND DRUGS ACT

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LEGISLATIVE HISTORY OF BILL C-28

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	29 November 2004	First Reading:	19 October 2005
Second Reading:	14 February 2005	Second Reading:	1 November 2005
Committee Report:	11 May 2005	Committee Report:	22 November 2005
Report Stage:	7 October 2005	Report Stage:	
Third Reading:	18 October 2005	Third Reading:	23 November 2005

Royal Assent: 24 November 2005

Statutes of Canada S.C. 2005, c. 42

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

The *Food and Drugs Act* governs foods, drugs, cosmetics and medical devices. With respect to food, the Act prohibits the sale of any food that is contaminated with a harmful substance, is unfit for consumption, consists of or contains animal or vegetable matter unfit for consumption, is adulterated, or has been handled in an unsanitary manner. The Act does not offer a definition of the term "adulterated," but does indicate in clause 30(1)(a) that the Governor in Council may make regulations "declaring that any food or drug or class of food or drugs is adulterated if any prescribed substance or class of substances is present therein or has been added thereto or extracted or omitted therefrom." Therefore, a food may be considered as adulterated only if the substance in question is prescribed in the regulations and is present in amounts other than the specified levels. Bill C-28, which was introduced in the House of Commons by the Minister of Health on 29 November 2004, permits foods with higher than allowable limits of agricultural chemicals, veterinary drugs or pesticides to be sold if they have been issued an interim marketing authorization by the Minister of Health.

DESCRIPTION AND ANALYSIS

Clause 1 of this bill amends section 4 of the *Food and Drugs Act*, which states that contaminated or harmful food cannot be sold. Bill C-28 amends this section with respect to the prohibition on adulteration of food. The original section 4 of the Act is renumbered as

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

subsection 4(1), and a new subsection 4(2) is added that states that food is not considered as adulterated if it has an interim marketing authorization and if the substance in question does not exceed the maximum residue limit set out in the authorization. The substances for which an authorization can be issued include agricultural chemicals, veterinary drugs, pest control products, or their components, derivatives and metabolites.

Clause 2 amends the Regulations section (section 30) of the *Food and Drugs Act* by adding two new regulation-making powers for the Governor in Council. These include: regulations defining "agricultural chemical," "food additive," "mineral nutrient," "veterinary drug" and "vitamin" for the purposes of the Act; and regulations regarding interim marketing authorizations.

Clause 3 adds new subsection 30.2 to section 30 of the *Food and Drugs Act*. The new subsection gives the Minister of Health the authority to issue an interim marketing authorization and outlines the authorization's types and limitations. The Minister has the authority to issue an interim marketing authorization if he or she determines that the food would not be harmful to the health of the purchaser or consumer. An authorization may cover an agricultural chemical, a veterinary drug, a food additive, a vitamin, a mineral nutrient or an amino acid. Additionally, the authorization may provide for a maximum residue limit for agricultural chemicals or veterinary drugs, or a maximum level of use for food additives, only if those substances are already allowed under the regulations and the authorization would permit a level higher than is currently allowed under the regulations, or would permit the substance to be present in, or used on or in, a different food. Section 30.2(4) states that the Minister may apply any terms and conditions to the authorization. Section 30.2(5) requires that authorizations, or notices cancelling authorizations, be published in the *Canada Gazette*, but states that they are exempt from sections 3, 5 and 11 of the *Statutory Instruments Act*. Section 30.2(6) defines the period for which an authorization is effective. The period begins on the date when the authorization is published in the *Canada Gazette*, and it expires on the earliest of: the date on which a notice of cancellation is published; the date on which a new regulation of the same effect as the authorization comes into force; or two years after the authorization is published. The provisions of clause 3 essentially move regulatory powers currently in section B.01.056 of the *Food and Drug Regulations* into the Act itself.

Clause 4 is a deeming provision that allows any Notice of Interim Marketing Authorization issued under section B.01.056 of the *Food and Drug Regulations* prior to the coming into force of clause 4 to be deemed an interim marketing authorization issued under the amended Act.

Clause 5(1) provides that if an agricultural chemical is a pest control product, then the maximum residue limit established under the *Food and Drug Regulations* as read immediately before the coming into force of clause 5(1) is deemed to be the maximum residue limit as set out in the *Pest Control Products Act*. Clause 5(2) states that clause 5(1) comes into effect once both section 89 of the *Pest Control Products Act* and clauses 1 through 4 of this Act have come into force.

Clause 6 states that the Governor in Council shall fix the day on which this Act comes into force.

COMMENTARY

This bill was introduced in the House of Commons on 29 November 2004 with no advance notice or indication as to what it is designed to accomplish. Notably, it will be moving the existing regulatory power for the Governor in Council to issue Notices of Interim Marketing Authorization to a legislative authority for the Minister.

Debate at second reading, however, provided some additional information. On 14 December 2004, the Parliamentary Secretary to the Minister of Health, the Honourable Robert Thibault, explained that this proposed amendment to the *Food and Drugs Act* was drafted in response to concerns expressed by the Standing Joint Committee on the Scrutiny of Regulations. He stated that the Scrutiny of Regulations Committee "expressed concern that the power to exempt some foods from the requirements of the Food and Drug Regulations would give to the director administrative discretion that exceeds the legislative authority granted by Parliament to the governor in council."(1) That is, those regulations exceeded the scope of the *Food and Drugs Act* in authorizing the issuance of notices of interim marketing authorizations – a problem that is corrected by Bill C-28.

(1) House of Commons, *Debates*, 14 December 2004