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H.R.1599, Safe and Accurate Food Labeling Act of 2015

FLOOR SITUATION

On Thursday, July 23, 2015, the House will consider H.R. 1599, *the Safe and Accurate Food Labeling Act of 2015,* under a structured rule. H.R. 1599 was introduced on March 25, 2015, by Rep. Mike Pompeo (R-KS) and was referred to the Committee on Energy and Commerce, and in addition, to the Committee on Agriculture. The Committee on Agriculture ordered the bill reported, as amended, by voice vote on July 14, 2015.

SUMMARY

H.R. 1599 establishes a voluntary non-genetically engineered food certification program within U.S. Department of Agriculture (USDA) to govern the labeling of such food in a nationally uniform manner. The bill authorizes $2 million to be appropriated for the initial establishment of the genetically engineered food program and authorizes the USDA to collect fees in order to cover the estimated costs to the federal government of carrying out the program.

Major provisions of the bill are as follows:

Non-genetic Engineering Certification Program[1]—the bill establishes a voluntary non-genetically engineered food certification program within USDA to govern label claims with respect to the use or non-use of genetic engineering in the production and processing of food in a nationally uniform manner. In order for a product to be labeled as not containing genetically engineered foods, covered products must be:

1) subjected to certain supply chain process controls;

2) kept separate from genetically engineered plants during crop growth, harvesting, storage, processing, and transportation;

[1] See Section-by-Section Summary of the Amendment in the Nature of a Substitute to H.R. 1599, Safe and Accurate Food Labeling Act of 2015 at 3.

3) produced and handled in compliance with a non-genetically engineered food plan, as defined and required by this Act.

Accreditation Program[2]—the bill directs the USDA to establish and implement a program to accredit any state official or private person that meets the requirements of a certifying agent under the requirements under this Act. The bill specifies certain accreditation criteria.

Recordkeeping, Investigations, and Enforcement[3]—the bill requires that in order to supply and label non-genetically engineered food as such, suppliers must maintain certain records and provide such records for review. The bill allows USDA to take investigative actions to verify the accuracy of information reported and determine if violations of the program have been made.

Penalties[4]—the bill provides for a civil penalty fine of not more than $10,000 for each day in which violations occur. The bill provides for a five year ban, or period of ineligibility, for entities found to be in violation of the program. The bill allows the USDA to modify or waive a period of ineligibility if the agency determines that the modification or waiver is in the best interests of the genetically engineered food certification program.

Labeling requirements[5]—the bill maintains the Food and Drug Administration's (FDA) current authority to require that the labeling of a food produced from, containing, or consisting of a genetically engineered plant contain a statement to adequately inform consumers of a difference between the food so produced and its comparable food, if the FDA determines that:

1) there is a material difference in the functional, nutritional, or compositional characteristics, allergenicity, or other attributes between the food so produced and its comparable food; and

2) the disclosure of such material is necessary to protect public health and safety or to prevent the label or labeling of the food so produced from being false or misleading.

The bill specifies that the use of genetic engineered organisms does not, by itself, constitute information that is material for purposes of determining whether there is a difference between a food produced from, containing, or consisting of a genetically engineered plant and a comparable food.

Food Safety Affirmation[6]—the bill requires that before a nonregulated genetically engineered plant can be used in food, the food producer must receive a notification from the FDA that it has no objections to the producer's determination that the food is as safe for use by humans or animals as one or more comparable foods and the entity provides the notification of FDA's finding to the USDA.

Further, bill provides exemptions to this premarket notification requirement for food produced for research and development, for food that is used as a nutrient source for microorganisms, and for other scientific-related purposes.

Nonregulated Genetically Engineered Plant Listing[7]—the bill requires the USDA to publish on its website a registry listing each nonregulated genetically engineered plant intended for a use or

[2] Id. at 4.
[3] Id. at 6.
[4] Id. at 7.
[5] Id. at 2.
[6] Id. at 1.
[7] Id. at 2.

application in food, the petitions and determinations made by USDA related to the plants, and the FDA notifications related to the plants.

Interstate Commerce and State Preemption[8]**—**the bill prohibits any state or local government from directly or indirectly regulating interstate commerce pertaining to the use of genetically engineered plants for a use or application in food that is not consistent with this Act.

Labeling of "Natural" Foods[9]**—**the bill directs the FDA to promulgate rules defining the use for labeling purposes of the terms '"natural", "100% natural", "naturally grown", "all natural", "made with natural ingredients", and certain other terms determined to be applicable by the agency.

Definition of Genetically Engineered Plant[10]—the bill defines "genetically engineered plant" to mean a plant or plant product if it contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques and the modification could not otherwise be obtained using conventional breeding techniques.

BACKGROUND

Genetically engineered foods or plants, commonly referred to as genetically modified organisms (GMO) or bioengineered foods, are foods derived from plant varieties that are developed using rDNA technology which introduce new traits or characteristics to an organism. Federal law does not impose specific labeling requirements on a food just because it may contain genetically engineered ingredients or was derived using biotechnology.[11] Although more than 60 countries have some form of labeling mandate for genetically engineered foods[12], according to the Committee, those laws contain numerous inconsistencies and have in some cases been enacted to impose non-tariff trade barriers to U.S. agricultural exports.

The FDA has stated that specific labeling requirements for genetically engineered foods are unnecessary because the general food labeling requirements required by the Federal Food, Drug, and Cosmetic Act (FFDCA) will guide and protect consumers. Specifically stating that, "[the agency] has no basis for concluding that bioengineered foods differ from other foods in any meaningful or uniform way, or that, as a class, foods developed by the new techniques present any different or greater safety concern than foods developed by traditional plant breeding."[13] FDA has not issued formal regulations and policies on the labeling of genetically engineered foods.

The FFDCA prohibits the misbranding of foods in order to enable consumers to choose foods wisely by ensuring that the labels communicate essential and accurate information. The FDA does not have the specific legal authority to require mandatory labeling of genetically engineered foods, unless there is a material difference; however, the agency does have the authority to take enforcement action against false or misleading labels, such as food falsely labeled "GMO free".[14]

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[8] Id at 3 and 4.
[9] Id. at 9.
[10] Id. at 4.
[11] See CRS Report, *"Legal Issues with Federal Labeling of Genetically Engineered Food: In Brief,"* August 28, 2014.

[13] See FDA, *"Draft Guidance For Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering."*
[14] See CRS Report, *"Legal Issues with Federal Labeling of Genetically Engineered Food: In Brief,"* August 28, 2014.

The use of the word "natural" on labels of food has been subject to the source of deceptive and misleading legal complaints. Neither the FFDCA nor the FDA, through regulation, defines the term “natural”; however, the FDA has issued an informal policy defining "natural" as food that does not contain added color, artificial flavors, or synthetic substances.[15] Food labeled "natural" sold more $40 billion in domestic retail sales in 2013; however, many companies have begun removing such labeling from their products due to a recent increase in lawsuits challenging labeling accuracy.[16] As part of a recent class action lawsuit, PepsiCo settled a lawsuit for $9 million over allegations that the “natural” labeling on its Naked Juice products misled consumers.[17]

Connecticut, Maine, and Vermont have recently enacted laws that, among other things and with certain exceptions, require food suppliers to disclose the presence of genetically engineered ingredients in foods. However, both the Connecticut and Maine statutes contain a provision stating that the state will not enforce the labeling requirements outlined in the respective acts until a requisite number of states pass similar legislation (which has not yet been met). Vermont’s law is set to take effect on July 1, 2016.[18]

These state laws raise various legal issues, such as whether the state labeling requirements violate the First Amendment rights of the manufacturers; whether the state laws are preempted by federal labeling requirements; and whether these laws place an impermissible burden on interstate commerce. Certain trade organizations have filed a lawsuit challenging the constitutionality of Vermont's labeling law on these and other grounds.[19]

According to the Committee on Agriculture Chairman Michael Conaway, “H.R. 1599 is the solution to an urgent and growing problem. The current patchwork system of varied labels interferes with the free flow of goods across the country, posing a real threat to interstate commerce and typically results in inconsistent and confusing information for consumers. Creating a uniform national policy regarding biotechnology labeling is the free market solution that will allow consumers access to meaningful information, create market opportunities for those on the production and processing side, and will facilitate future innovation.”[20]

COST

The Congressional Budget Office (CBO) estimates enacting H.R. 1599 would cost a total of $4 million over the 2016 to 2020 period, subject to appropriation of the specified and necessary amounts. In addition, enacting the bill would increase both revenues and direct spending by about $1 million annually, therefore pay-as-you-go procedures apply. CBO estimates that the net effect on the deficit of those changes in revenues and direct spending over the 2015-2025 period would be insignificant.

AMENDMENTS

1. Rep. Peter DeFazio (D-OR)—The amendment establishes that if a U.S. company or their subsidiary labels their product as containing GMOs in any foreign country they must label the

[15] http://www.fda.gov/aboutfda/transparency/basics/ucm214868.htm
[16] http://www.wsj.com/articles/SB10001424052702304470504579163933732367084
[17] http://www.huffingtonpost.com/2013/08/28/naked-juice-class-action-lawsuit_n_3830437.html
[18] Id.
[19] Id.
[20] See Agriculture Committee press release, *“House Agriculture Committee approves H.R. 1599, the Safe and Accurate Food Labeling Act,”* July 14, 2015.

equivalent product the same way in the U.S.

2. Rep. Jared Huffman (D-CA)—The amendment ensures tribal sovereignty to prohibit or restrict the cultivation of genetically engineered plants on tribal lands.

3. Rep. Rosa DeLauro (D-CT)—The amendment prohibits the use of the term “natural” on food when a food consists of a genetically engineered plant.

4. Rep. Chellie Pingree (D-ME)—Substitute amendment that strikes the entire bill and adds back the section that creates a non-GMO certification program and label at USDA.

STAFF CONTACT

For questions or further information please contact John Huston with the House Republican Policy Committee by email or at 6-5539.