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TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

NEITHER FOR NOR AGAINST LD 1257

An Act Regarding Labeling of Genetically Engineered Food Products

Sen. Talbot Ross, Rep. Pluecker, and members of the Committee, my name is Celeste Poulin. I am the Director of the Division of Quality Assurance and Regulation (QAR) within the Bureau of Agriculture, Food, and Rural Resources. I am testifying on behalf of the Department of Agriculture, Conservation, and Forestry as neither for nor against LD 1257, "An Act Regarding Labeling of Genetically Engineered Food Products," based on our understanding that federal law passed in 2016 may already achieve the aims of this bill.

QAR implements state and federal laws regarding food and food products in commerce. Our Consumer Protection Inspectors enforce retail compliance with the Maine Food Code and the federal Food, Drug, and Cosmetic Act. This includes ensuring that all food and food products offered for sale in Maine are correctly labeled, including a complete list of all ingredients and any necessary disclosures.

The National Bioengineered Food Disclosure Law, passed by Congress in July of 2016, directed USDA to establish this national mandatory standard for disclosing foods that are or may be bioengineered (BE). On July 29, 2016, Public Law 114-216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be BE. USDA published a final rule (2018 BE final rule) promulgating the regulations (7 CFR part 66) to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory compliance date of January 1, 2022.

On July 22, 2022, AMS published a proposed rule in the Federal Register seeking public comment on recommendations to update the List of Bioengineered Foods (87 FR 43751). The updated rule became effective December 29, 2023. Mandatory compliance will begin on June 23, 2025.

The law's definition for "bioengineered foods" (7 USC §1621 et seq.) is equivalent to Maine's statutory definition of foods that are "genetically engineered" (7 MRS §530-A). The National

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Bioengineered Food Disclosure Standard (NBFD Standard) requires that bioengineered (BE) foods be labeled as such.[1] 7 USC §1621.

While the NBFD Standard requires the labeling of any BE food, LD 1257 limits itself to food "derived from aquaculture, livestock or poultry." Currently, just one food would trigger the provisions of LD 1257: a patented BE salmon produced in Indiana known as AquAdvantage. The federal BE label is required on AquAdvantage salmon. There are no commercially available meat and poultry products that qualify as BE foods. Further, the NBFD Standard contains preemption language that prevents states from requiring any "labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering" that is not identical to the federal law. 7 USC §1639b(e).

We also note as a point of information—and as Committee members are likely aware—the existence of so-called "cultured meat" products. These are foods made from animal cells grown in laboratories. These do not meet the definition of BE foods. However, they, too, are subject to oversight by the FDA and USDA's Food Safety and Inspection Service, including product labeling requirements.[2]

I will be happy to answer any of your questions and will be present at the work session for further discussion as needed.

[1] For more information, visit: https://www.fda.gov/food/agricultural-biotechnology/how-gmos-are-regulated-united-states#:~:text=The%20Standard%20establishes%20requirements%20for,breeding%20or%20found%20in%20nature. *See also*: https://www.ams.usda.gov/rules-regulations/be.

[2] See https://www.fda.gov/food/food-ingredients-packaging/human-food-made-cultured-animal-cells.

https://www.govinfo.gov/content/pkg/USCODE-2023-title7/pdf/USCODE-2023-title7-chap38-subchapV-sec1639b.pdf

(e) State food labeling standards Notwithstanding section 1639i of this title, no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food that is the subject of the national bioengineered food disclosure standard under this section that is not identical to the mandatory disclosure requirement under that standard.

Editorial Notes

AMENDMENTS

2005—Pub. L. 109–97 substituted "2008" for "2006".

2004—Pub. L. 108–199 substituted "2006, except for 'farm-raised fish' and 'wild fish' which shall be September 30, 2004" for "2004".

SUBCHAPTER V—NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD

§ 1639. Definitions

In this subchapter:

(1) Bioengineering

The term "bioengineering", and any similar term, as determined by the Secretary, with respect to a food, refers to a food—

(A) that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques; and

(B) for which the modification could not otherwise be obtained through conventional breeding or found in nature.

(2) Food

The term "food" means a food (as defined in section 321 of title 21) that is intended for human consumption.

(3) Secretary

The term "Secretary" means the Secretary of Agriculture.

(Aug. 14, 1946, ch. 966, title II, § 291, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 834.)

§ 1639a. Applicability

(a) In general

This subchapter shall apply to any claim in a disclosure that a food bears that indicates that the food is a bioengineered food.

(b) Application of definition

The definition of the term "bioengineering" under section 1639 of this title shall not affect any other definition, program, rule, or regulation of the Federal Government.

(c) Application to foods

This subchapter shall apply only to a food subject to—

(1) the labeling requirements under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(2) the labeling requirements under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) only if—

(A) the most predominant ingredient of the food would independently be subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(B)(i) the most predominant ingredient of the food is broth, stock, water, or a similar solution; and

(ii) the second-most predominant ingredient of the food would independently be subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(Aug. 14, 1946, ch. 966, title II, § 292, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 834.)

Editorial Notes

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1), (2)(A), (B)(ii), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Meat Inspection Act, referred to in subsec. (c)(2), is titles I to IV of act Mar. 4, 1907, ch. 2907, as added Pub. L. 90–201, Dec. 15, 1967, 81 Stat. 584, which are classified generally to subchapters I to IV (§ 601 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

The Poultry Products Inspection Act, referred to in subsec. (c)(2), is Pub. L. 85–172, Aug. 28, 1957, 71 Stat. 441, which is classified generally to chapter 10 (§ 451 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 451 of Title 21 and Tables.

The Egg Products Inspection Act, referred to in subsec. (c)(2), is Pub. L. 91–597, Dec. 29, 1970, 84 Stat. 1620, which is classified principally to chapter 15 (§ 1031 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 1031 of Title 21 and Tables.

§ 1639b. Establishment of national bioengineered food disclosure standard

(a) Establishment of mandatory standard

Not later than 2 years after July 29, 2016, the Secretary shall—

(1) establish a national mandatory bioengineered food disclosure standard with respect to any bioengineered food and any food that may be bioengineered; and

(2) establish such requirements and procedures as the Secretary determines necessary to carry out the standard.

(b) Regulations

(1) In general

A food may bear a disclosure that the food is bioengineered only in accordance with regulations promulgated by the Secretary in accordance with this subchapter.

(2) Requirements

A regulation promulgated by the Secretary in carrying out this subchapter shall—

(A) prohibit a food derived from an animal to be considered a bioengineered food solely because the animal consumed feed produced from, containing, or consisting of a bioengineered substance;

(B) determine the amounts of a bioengineered substance that may be present in food, as appropriate, in order for the food to be a bioengineered food;

(C) establish a process for requesting and granting a determination by the Secretary regarding other factors and conditions under which a food is considered a bioengineered food;

(D) in accordance with subsection (d), require that the form of a food disclosure under this section be a text, symbol, or electronic or digital link, but excluding Internet

website Uniform Resource Locators not embedded in the link, with the disclosure option to be selected by the food manufacturer;

(E) provide alternative reasonable disclosure options for food contained in small or very small packages;

(F) in the case of small food manufacturers, provide—

(i) an implementation date that is not earlier than 1 year after the implementation date for regulations promulgated in accordance with this section; and

(ii) on-package disclosure options, in addition to those available under subparagraph (D), to be selected by the small food manufacturer, that consist of—

(I) a telephone number accompanied by appropriate language to indicate that the phone number provides access to additional information; and

(II) an Internet website maintained by the small food manufacturer in a manner consistent with subsection (d), as appropriate; and

(G) exclude—

(i) food served in a restaurant or similar retail food establishment; and

(ii) very small food manufacturers.

(3) Safety

For the purpose of regulations promulgated and food disclosures made pursuant to paragraph (2), a bioengineered food that has successfully completed the pre-market Federal regulatory review process shall not be treated as safer than, or not as safe as, a non-bioengineered counterpart of the food solely because the food is bioengineered or produced or developed with the use of bioengineering.

(c) Study of electronic or digital link disclosure

(1) In general

Not later than 1 year after July 29, 2016, the Secretary shall conduct a study to identify potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods.

(2) Public comments

In conducting the study under paragraph (1), the Secretary shall solicit and consider comments from the public.

(3) Factors

The study conducted under paragraph (1) shall consider whether consumer access to the bioengineering disclosure through electronic or digital disclosure methods under this subchapter would be affected by the following factors:

(A) The availability of wireless Internet or cellular networks.

(B) The availability of landline telephones in stores.

(C) Challenges facing small retailers and rural retailers.

(D) The efforts that retailers and other entities have taken to address potential technology and infrastructure challenges.

(E) The costs and benefits of installing in retail stores electronic or digital link scanners or other evolving technology that provide bioengineering disclosure information.

(4) Additional disclosure options

If the Secretary determines in the study conducted under paragraph (1) that consumers, while shopping, would not have sufficient access to the bioengineering disclosure through electronic or digital disclosure methods, the Secretary, after consultation with food retailers and manufacturers, shall provide additional and comparable options to access the bioengineering disclosure.

(d) Disclosure

In promulgating regulations under this section, the Secretary shall ensure that—

(1) on-package language accompanies—

(A) the electronic or digital link disclosure, indicating that the electronic or digital link will provide access to an Internet website or other landing page by stating only "Scan here for more food information", or equivalent language that only reflects technological changes; or

(B) any telephone number disclosure, indicating that the telephone number will provide access to additional information by stating only "Call for more food information.";

(2) the electronic or digital link will provide access to the bioengineering disclosure located, in a consistent and conspicuous manner, on the first product information page that appears for the product on a mobile device, Internet website, or other landing page, which shall exclude marketing and promotional information;

(3)(A) the electronic or digital link disclosure may not collect, analyze, or sell any personally identifiable information about consumers or the devices of consumers; but

(B) if information described in subparagraph (A) must be collected to carry out the purposes of this subchapter, that information shall be deleted immediately and not used for any other purpose;

(4) the electronic or digital link disclosure also includes a telephone number that provides access to the bioengineering disclosure; and

(5) the electronic or digital link disclosure is of sufficient size to be easily and effectively scanned or read by a digital device.

(e) State food labeling standards

Notwithstanding section 1639i of this title, no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food that is the subject of the national bioengineered food disclosure standard under this section that is not identical to the mandatory disclosure requirement under that standard.

(f) Consistency with certain laws

The Secretary shall consider establishing consistency between—

(1) the national bioengineered food disclosure standard established under this section; and

(2) the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and any rules or regulations implementing that Act.

(g) Enforcement

(1) Prohibited act

It shall be a prohibited act for a person to knowingly fail to make a disclosure as required under this section.

(2) Recordkeeping

Each person subject to the mandatory disclosure requirement under this section shall maintain, and make available to the Secretary, on request, such records as the Secretary determines to be customary or reasonable in the food industry, by regulation, to establish compliance with this section.

(3) Examination and audit

(A) In general

The Secretary may conduct an examination, audit, or similar activity with respect to any records required under paragraph (2).

(B) Notice and hearing

A person subject to an examination, audit, or similar activity under subparagraph (A) shall be provided notice and opportunity for a hearing on the results of any examination, audit, or similar activity.

(C) Audit results

After the notice and opportunity for a hearing under subparagraph (B), the Secretary shall make public the summary of any examination, audit, or similar activity under subparagraph (A).

(4) Recall authority

The Secretary shall have no authority to recall any food subject to this subchapter on the basis of whether the food bears a disclosure that the food is bioengineered.

(Aug. 14, 1946, ch. 966, title II, § 293, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 835.)

Editorial Notes

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (f)(2), is title XXI of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§ 6501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of this title and Tables.

§ 1639c. Savings provisions

(a) Trade

This subchapter shall be applied in a manner consistent with United States obligations under international agreements.

(b) Other authorities

Nothing in this subchapter—

(1) affects the authority of the Secretary of Health and Human Services or creates any rights or obligations for any person under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(2) affects the authority of the Secretary of the Treasury or creates any rights or obligations for any person under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.).

(c) Other

A food may not be considered to be "not bioengineered", "non-GMO", or any other similar claim describing the absence of bioengineering in the food solely because the food is not required to bear a disclosure that the food is bioengineered under this subchapter.

(Aug. 14, 1946, ch. 966, title II, § 294, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 838.)

Editorial Notes

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Alcohol Administration Act, referred to in subsec. (b)(2), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, which is classified generally to subchapter I (§ 201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

SUBCHAPTER VI—LABELING OF CERTAIN FOOD

§ 1639i. Federal preemption

(a) Definition of food

In this subchapter, the term "food" has the meaning given the term in section 321 of title 21.

(b) Federal preemption

No State or a political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food or seed in interstate commerce any requirement relating to the labeling of whether a food (including food served in a restaurant or similar establishment) or seed is genetically engineered (which shall include such other similar terms as determined by the Secretary of Agriculture) or was developed or produced using genetic engineering, including any requirement for claims that a food or seed is or contains an ingredient that was developed or produced using genetic engineering.

(Aug. 14, 1946, ch. 966, title II, § 295, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 838.)

§ 1639j. Exclusion from Federal preemption

Nothing in this subchapter, subchapter V, or any regulation, rule, or requirement promulgated in accordance with this subchapter or subchapter V shall be construed to preempt any remedy created by a State or Federal statutory or common law right.

(Aug. 14, 1946, ch. 966, title II, § 296, as added Pub. L. 114–216, § 1, July 29, 2016, 130 Stat. 838.)

SUBCHAPTER VII—HEMP PRODUCTION

§ 1639o. Definitions

In this subchapter: