Compromise Bioengineered Food Labeling Legislation (Public Law 114-216)

Requires the establishment of a national disclosure standard for bioengineered foods.

Updated last July 29, 2016 for Public Law 114-216

WHAT IT DOES

The FDA closely monitors food labeling; however, no uniform standards previously exist for labeling food that is considered bioengineered. Public Law 114–216 (S 764) establishes a definition of bioengineered food and requires the Secretary of Agriculture (“Secretary”) to promulgate regulations for labeling such foods. This legislation would void and preempt state labeling laws in favor of a national, uniform label. Specifically, the bill amends the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) by adding new sections that address:

- **Definitions** - “Bioengineering” refers to a food:
  - “That contains genetic material that has been modified using in vitro recombinant deoxyribonucleic acid (DNA) techniques”;
  - and
  - “for which the modification could not otherwise be obtained through conventional breeding or found in nature”;


- **Mandatory Standard** - Within two years of enactment, the Secretary must establish a mandatory national bioengineered food disclosure standard, including requirements and procedures to carry out the standard. Regulations must include:
  - Prohibiting a food derived from an animal to be deemed bioengineered solely because its feed contains a bioengineered substance;
  - Determining the quantity of a bioengineered substance in food necessary for it to be considered bioengineered; and
  - Requiring that the form of disclosure labeling be a text, symbol, electronic or digital link (i.e. QR code), with the disclosure option selected by the food manufacturer.

- **Study** - Within one year of enactment, the Secretary must identify potential technological challenges consumers may face in trying to access the disclosure information through electronic or digital means. The process shall include an opportunity for public comments and consideration of certain factors, such as the availability of wireless networks and obstacles for rural retailers. If the Secretary concludes that consumers would have insufficient access to disclosure information while shopping, the Secretary shall provide additional options.

- **Disclosure** - Associated on-package language is limited to stating only technological phrases such as “scan here for more food information.” The label must be displayed in a conspicuous and consistent manner, taking a consumer directly to a site page overviewing the disclosure that excludes marketing information and does not capture and maintain any personally identifiable data.

- **Existing Law** - Restricts continuation or establishment of state law that is not identical to the mandatory national bioengineered food disclosure standard. The Secretary is also directed to consider establishing consistency between the standard and the Organic Food Production Act of 1990 (7 U.S.C. 6501et seq.) (only foods certified as such may claim to be “not bioengineered”).

- **Enforcement** - Prohibits knowingly failing to adhere to the mandatory national bioengineered food disclosure standard and also establishes standards for recordkeeping and audit performance.

RELEVANT SCIENCE

Bioengineered foods are a class of genetically modified organisms (GMOs). GMOs are developed using lab-based techniques, often
referred to as “recombinant DNA techniques” that specifically alter genetic material, a substance composed of DNA, in order to introduce non-natural, desirable characteristics or delete less desirable ones.

The genetic material of an organism can be edited to either:

1. Insert a gene from another organism; or
2. Delete a piece of DNA from the original organism’s genome.

The introduction of foreign or non-natural genetic material can provide many advantages, such as increased production, increased resistance to pests and disease (and reduced need for pesticides), enhanced crop nutrient content, and enhanced crop viability in harsh soil and weather conditions. GMOs do not refer to living organisms that have been modified through selective breeding, a technique that has historically been used in agriculture to select for plants with high yields or sweet fruits.

RELEVANT EXPERTS

Misha Angrist, PhD

BACKGROUND

FDA regulation prohibits mandatory labeling about a food’s production method if there is no “material difference” in the product due solely to the production process. The FDA has not found that, as a class, GMO foods differ materially in nutritional value, organoleptic properties (those components that stimulate the sensory organs, such as texture or aroma), or functional characteristics. Therefore, the FDA does not consider a food made by genetic engineering to be materially different, requiring mandatory labeling.

ENDORSEMENTS & OPPOSITION

Both the purpose of GMO labels and the methods of this disclosure continue to be debated.

Endorsements:

- S. 764 has broad support from food producers, industry trade groups, and GMO labeling advocates.
- On mandatory disclosure labels for bioengineered food, the Grocery Manufacturers Association a trade group representing the food industry, states in a letter of support: “We thank Senators Roberts and Stabenow for their hard work and leadership to find the solution that can give consumers more information about genetically engineered ingredients and prevent different state labeling laws...America’s food industry fully supports the disclosure provisions in this legislation. GMA members are committed to making available the product information that consumers want. We are pleased to see that the legislation enables transparency, clarity and consistency in disclosure and reflects the wide variety of ways that consumers will get this information about the foods they buy.”

Opposition:

- The Consumers Union, the advocacy branch for Consumer Reports, writes in a letter of opposition: “First, S. 764 undermines GE labeling occurring in the marketplace. Labels marking products with GE ingredients are already appearing on store shelves across the country, in compliance with duly enacted state labeling requirements...the bill’s definition of “bioengineered” specifies that the bill applies to food “that contains genetic material that has been modified” through in vitro rDNA techniques. This would likely leave out many highly processed foods from GE sources without detectable genetic material, such as refined sugars, high-fructose corn syrup, oils, or proteins from GE plants.”
On the methods of disclosure, the Consumers Union letter continues, “S. 764 allows companies to employ methods of disclosure that are difficult to use, and are not available to all consumers. In particular, scanning a QR code may not be feasible for numerous consumers who are unfamiliar with the technology or who lack a smartphone, as three out of four older Americans and about half of rural residents do.”

STATUS

Bill S. 764 was introduced to the Senate on March 17th, 2015 and referred to the Committee on Commerce, Science, and Transportation on July 23rd, 2015. On July 28th, 2015, the bill passed the Senate and was sent to the House; on September 18th, 2015, the bill passed the House. Next, on July 7th, 2016 the Senate amended the House version of S. 764 with a 63-30 (Yea-Nay) vote. The House then concurred to the Senate version with a 306-117 (Yea-Nay) vote. Finally, on July 29th, 2016, the bill was signed by the President and became public law.

RELATED POLICIES

**S. 2609**, the “National Voluntary Bioengineered Food Labeling Standard” was introduced on March 1rst, 2016 and referred to the Senate committee on Agriculture, Nutrition, and Forestry. This legislation aims to create standards for voluntary food labeling for GM foods.

**H.R. 1599**, titled “The Safe and Accurate Food Labeling Act of 2015” was introduced on March 25th, 2015, passed the House on July 23rd, 2015, and was assigned to the Senate Committee on Agriculture, Nutrition, and Forestry. Requiring significant oversight by the Food & Drug Administration, this bill would create labeling standards for GM foods. Additionally, H.R. 1599 would prohibit state laws on GM food labeling and create a benchmark for what can and cannot be labeled as “GMO” or “non-GMO.”

**S. 2621**, the “Biotechnology Food Uniformity Labeling Act” would create a national labeling requirement denoting food that contained genetically engineered ingredients by requiring the words “genetically engineered” or “GE” to appear on the label. Additionally, each genetically engineered ingredient would be marked by an asterisk.

SPONSORS

Senator **Roger F. Wicker** (R-MS) is the sponsor of S. 764 and Senator **Dan Sullivan** (R-AK) is an original cosponsor.

PRIMARY AUTHOR

Bryan McMahon

EDITOR(S)

Amy Hafez, PhD Candidate & Aubrey Incorvaia, MPP

RECOMMENDED CITATION