

Mandatory GMO Labeling: Perhaps Some Skepticism on the Hill

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As our readers are aware, many states have introduced legislation that would mandate genetically modified organism (GMO) labeling requirements. There is much uncertainty surrounding state GMO-labeling initiatives, with Vermont successfully enacting legislation (that is being challenged in court) and several high-profile failures in California and, more recently, in Oregon. Although the *Organic Foods Production Act* sets a clear non-GMO standard for certified organic food, a lack of a clear federal definition or preemption for conventional foods has contributed to a wave of costly litigation in this area. As a result, industry is left with the threat of state-based initiatives that have the potential to create the same unworkable patchwork of laws that prompted the Nutrition Labeling and Education Act in the 1990s and the recently finalized Menu Labeling Rule, both of which have federal preemptive effect.

Last week, the U.S. House Energy & Commerce Subcommittee on Health held a hearing to discuss GMO labeling and the legislation introduced by in April. Reps. Mike Pompeo (R-KS) and G. K. Butterfield (D-NC) are promoting the Safe and Accurate Food Labeling Act of 2014 (HR 4432), which would create federal standards for food labeling that preempt state laws, like Vermont's, thus eliminating patchwork confusion and burden and would provide greater regulatory certainty for industry.

The committee raised concerns that permitting states to mandate GMO labeling may cause more harm than good. Concerns include higher food costs and overall economic burden on companies and consumers, with no improvement on food safety. Rep. Henry Waxman (D-CA) and House Energy & Commerce Subcommittee on Health Chairman Joseph R. Pitts (R-PA) echoed FDA's longstanding position that the mandatory labeling could be misleading by implying that GMO foods aren't as safe as foods without genetically modified ingredients, and that 50 different state laws could create an unworkable and burdensome patchwork scheme for companies to follow. The questions and concerns raised by the committee would seem to support the need for legislation along the lines of the Pompeo/Butterfield bill. It is clear that a patchwork of state laws would be unworkable, but the question remains as to whether there will be sufficient momentum to move federal legislation forward. In the interim, more state action and related legal challenges will continue to preoccupy the food industry.

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