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**U.S. House of Representatives Energy and Commerce Subcommittee on Health**

**“Examining FDA’s Role in the Regulation of Genetically Modified Food Ingredients”**

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Introduction

First, I would like to thank the Energy and Commerce Subcommittee on Health, Chairman Pitts, and Ranking Member Pallone for holding this hearing to provide a balanced review of one of the most critical issues facing the food industry today, the labeling of genetically modified organisms, better known as GMOs. I appreciate the opportunity to be here.

My name is Tom Dempsey. I have served as the President and Chief Executive Officer of the Snack Food Association (SFA) since 2013. Prior to joining SFA, I was the President of one of the largest privately owned snack brands in the United States (U.S.) where I spent 24 years in total, 5 of which I served as the President overseeing all areas of sales, marketing, finance, human resources, manufacturing, distribution, research and development, and purchasing. Today at SFA, I represent more than 400 companies who produce a wide variety of snacks ranging from potato, tortilla, and pita chips to pork rinds and meat snacks, to crackers, popcorn, granola bars, and trail mix, as well as dried fruit and nut mixtures. SFA members range from billion-dollar multi-category companies to small family owned and operated businesses, some of which are in the second and third generation of management. More than half of SFA members do less than \$100M/year in sales and many are the primary employer in their community.

GMO Labeling Debate

Over the last several years there have been a number of state ballot initiatives calling for mandatory GMO labeling. While voters have rejected ballot initiatives calling for mandatory GMO labeling in four states: California, Washington, Colorado, and Oregon (pending final recount), the Vermont state legislature approved the nation’s first mandatory GMO labeling law, Act 120, in April 2014. Mandatory GMO labeling at the state level would impact nearly every aspect of SFA members’ business, upping costs by requiring increased product inventory, added complexity for packaging and distribution processes, and extensive new regulatory and training requirements.

Absent a federal GMO solution, manufacturers will have essentially three options in order to comply with a state labeling law such as Vermont's Act 120: order new packaging for products, reformulate products so that no labeling is required, or halt sales to that state. Each option is difficult, costly, time-intensive, and at worst, could eliminate jobs and consumer choice in the marketplace which I will further discuss. I will also outline why some food manufacturers, most likely small and midsize family businesses, do not have all of these options available and could be impacted the most.

### Production Processes

One of the biggest barriers that prevents a company from complying with state by state GMO labeling laws is the manufacturing process itself.

First, it would require separate storage for GMO and non-GMO products throughout the entire supply chain. Farmers will need to separate their crops in planting and when transporting to grain elevators or manufacturers. Once a grain elevator or manufacturer receives the raw materials from farmers they too will need to store and produce GMO and non-GMO materials separately. Aside from new administrative and recordkeeping burdens, manufactures will need to add separate storage areas to their facilities in order to segregate these products. Tortilla processing provides an excellent example. The story begins with the corn. There are two ways to begin the process: one, by cooking the corn into a mash and the other by purchasing corn masa (flour), adding water to it, and then sheeting it for cutting into the triangle shapes we all know as tortilla chips. A mandatory labeling scheme would require two different silos to hold GMO and non-GMO bulk corn and masa (flour).

Given the expense of manufacturing machinery, snack makers would be forced to use the same equipment and conduct thorough cleaning of the sheeting, baking, frying, and seasoning lines between GMO and non-GMO production runs to ensure no contamination occurs. Such a process could take nearly two hours and would lead to a loss in valuable production time. It is not likely a manufacturer would have the financial means or the floor space to invest in separate equipment for GMO and non-GMO production.

Another complicating factor is the need for duplicative labeling film for the same stock keeping unit or SKU assigned to each product line. In order to comply with a state labeling law, our members will need to change film in mid-production and then keep two separate inventories of the same finished product: one with GMO identification specifically for sale in a state that enacts mandatory GMO labeling, and the other for the rest of the distribution area. Companies would not be able to use a single state-required label for all of its products if a patchwork of varying state rules were enacted.

Significant lead times and costs also go into a bag design change. One SFA member estimated they would need to change over 800 SKUs to continue to sell in Vermont alone. The cost in plate charges, new film, and administrative oversight in this instance could be more than \$750,000. The actual cost of the run after converting the film would be approximately 25 percent higher due to the shorter production runs of non-GMO product that would be required to fulfill orders in Vermont, for example. The actual process of designing, compliance review, plate making, and lead-time for film would be 20-26 weeks. This would become even more complicated if additional states pass their own onerous regulations with different specific requirements.

After production, the distribution of most snack foods comes off, in most cases, a route truck with direct service to the grocery store. A state law such as Vermont's Act 120 will mandate a dual inventory for each SKU for every step along the distribution channel. The end result will be increased distribution costs and heightened opportunity for mistakes.

To be clear, the hardest hit by this will be the small, family-owned companies with just one plant or just a single line of production. Quite frankly, these costs could put some companies out of business and thereby increase consolidation in the industry by reducing the players to a few multi-category, multi-national players that can better take on the added cost of sourcing and segregating GMO and non-GMO crops. All of these changes will add final product costs to the consumer. The precise amount of added cost depends on each company's cost structure.

### Sourcing Challenges

In order to avoid the need for duplicate labels in a state like Vermont, it is sometimes assumed that companies could simply remove the GMO ingredients from their products altogether. This is unrealistic because the availability of non-GMO crops is very limited. My understanding is that over 80 percent of the corn, cotton, and soybean crops in the U.S. are harvested from genetically engineered plants.<sup>1</sup> Snack food companies purchase a large majority of their ingredients derived from these plants.

For instance, the process for producing potato chips begins with developing a large network of growers for potatoes, contracting quantities in advance of plantings and harvests, and purchasing cooking oils such as cottonseed or soybean in advance to secure quantities and pricing. The same goes for other crops. One tortilla chip manufacturer told me that they would not have the opportunity to increase their contracts for non-GMO corn for a minimum of two years.

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<sup>1</sup> United States Department of Agriculture Economic Research Service. "Recent Trends in GE Adoption". July 14, 2014. Retrieved from: <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us/recent-trends-in-ge-adoption.aspx>

Transitioning to GMO-free production could not happen overnight, or even by 2016, as is specified in Vermont's Act 120, for example.

### Impact on Consumers and the Economy

On the other hand, manufacturers could also choose to end the distribution of their lines specifically in states that require mandatory GMO labeling. However, ceasing distribution isn't simple. Aside from limiting product options to consumers, there would be a ripple effect in the grocery industry. Retailers would need to be notified of the decision to stop selling in a state and manufacturers could run the risk of being fined if retailers do not comply.

Fewer players in the aisle could mean less incentive to keep quality high and prices low. Decreased promotion and distribution means fewer route sales people needed to deliver the product and job losses for some in the distribution chain, such as drivers, warehouse personnel, account executives, and field management. Fewer jobs could also lead to a decrease in tax revenue in a particular state.

Ultimately, a patchwork of state and local GMO labeling laws will hit consumers the hardest resulting in either increased costs at the grocery store or less availability of products on store shelves.

A recent study performed by economists at Cornell University concluded that mandatory GMO labeling laws would increase the cost of food by about \$500 per family per year on average with some families bearing an increased cost of up to \$1,500 per year<sup>2</sup>. These amounts don't include the regulatory costs the government will incur to actually implement the law that would likely be passed onto consumers in the form of taxes.

### GMO-Free Options Already Exist

While we firmly believe the science shows that our GMO products are safe, SFA members support providing consumers with options in the marketplace. It is important to note that consumers can already choose to purchase non-GMO items and these options continue to expand. For over a decade both the United States Department of Agriculture's (USDA) National Organic Program and a non-profit organization, the Non-GMO Project have certified foods which are organic and non-GMO, respectively. A company cannot display a USDA Organic Seal or a Non-GMO Project Verified Seal without going through an intensive certification process. The Non-GMO Project alone has certified over 20,000 non-GMO products and this number continues to grow.

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<sup>2</sup> Dyson School of Applied Economics and Management, Cornell University. "Costs of Labeling Genetically Modified Food Products in N.Y. State". May 2014. Retrieved from:<http://dyson.cornell.edu/people/profiles/docs/LabelingNY.pdf>

Many SFA members have already made the large investment required to gain these voluntary certifications that give our customers the freedom to choose between products that are produced, distributed, and marketed as Organic and non-GMO and labeled as such. Forcing companies to re-label more than 80 percent of their current products does nothing but add cost, confusion, and, ultimately, may limit the choices available to consumers.

### Conclusion

SFA is concerned both about the burden state-level GMO labeling would put on interstate commerce, as well as the increased costs that could drive food companies out of business or increase food prices for consumers while potentially limiting their options in the marketplace.

SFA does not have a single member company that manufactures, distributes, and sells in just one state making a state labeling law incredibly complex to deal with. Multiply the challenges I've presented here for compliance in Vermont's Act 120 times 5, or 10, or even 25 states and you place an insurmountable burden on our food supply chain and add significant increased cost to our consumers.

For this reason, SFA supports the Safe and Accurate Food Labeling Act (H.R. 4432), a bill which eliminates the current proposed patchwork of state and local GMO labeling laws by creating one federal GMO standard which eliminates confusion, advances food safety, and provides much-needed consistency for manufacturers.

Again, thank you for your time and consideration of our views. I look forward to answering your questions.