

Attachment — Questions for the Record

The Honorable Representative Burgess

As you may know, the USDA's National Organic Program (NOP) regulates the production and labeling of organic foods. Organic certification is required if a product is to be labeled as an organic product under the USDA. To comply with the NOP, a company must adhere to the NOP requirements, which in the case of an agricultural product derived from animals prohibits the use of GMO feed, the use of growth of hormones, and the use of antibiotics. According to the draft bill language before you, the type of feed used in creating a covered agricultural product derived from animals is not specifically defined.

- 1. Do you agree that there should be one definition for "non-GMO" under federal law because otherwise consumers will be deceived as to what "non-GMO" on a label actually means?**

ANSWER: There is value in a unified standard for foods marketed as “non-GMO,” so long as that standard meets the general consumer perception that a non-genetically engineered food be produced from non-GE seed, avoid any GE inputs, and be segregated from other GE materials throughout the production and distribution chain. That said, the standard need not be federally mandated, but could be adopted locally, similar to the origins of the organic standard before the National Organic Program was created. Currently, the “non-GMO” label is essentially regulated by the private market, but the Discussion Draft of H.R. 1599 (July 12, 2015 version – hereinafter “Disc. Dft.”) would replace this market-regulation with an ill-defined and not immediately available federal standard.¹

Importantly, the federal regulatory structure H.R. 1599 proposes would not necessarily create a unified national standard because each of the independent “certifying agents,” *see* Disc. Dft. at 12:17- 13:2, sec. 201 (identifying “chief executive officer of a State” along with “any person (including a private entity) who is accredited by the Secretary [of Agriculture]” to act as a certifying agent), has broad discretion whether to accept a “nongenetically engineered food plan” from a producer – a necessary step before labeling a product as “non-GMO.” *See* Disc. Dft. at 17:16-22, sec. 201. With no clear regulatory standard in place and a multiplicity of certifying agents, there is no guaranteed unity in a future “non-GMO” definition.

The Honorable Representative Burgess

A company that has already met the definition of organic has met the federal definition of non-GMO and therefore should automatically be eligible for a new, non-GMO certification should a new non-GMO labeling program be created.

- 2. It would be inherently unfair for a company to have to go through the non-GMO certification process twice. Don't you agree?**

¹ The Discussion Draft that was the subject of the June 18, 2015, hearing would have immediately halted any private use of a “non-GMO” claim; the current draft (July 12, 2015) would halt current private labeling 36 months after the law’s enactment.

ANSWER: It is not clear from the Discussion Draft that there is a fully developed "definition for 'non-GMO' under federal law," but the National Organic Program does provide a meaningful alternative. For this reason, Vermont's labeling law considers "Organic" certification, under the National Organic Program, to be sufficient to verify that a food need not be labeled as being produced with genetic engineering.

The Honorable Representative Burgess

- 3. You discuss in your testimony that this coordinated campaign of labeling advocates is part of a strategy to end the use of biotechnology in food and agricultural production. How so?**

ANSWER: I did not testify regarding any coordinated campaign of labeling advocates, nor is Vermont's law a "strategy to end the use of biotechnology in food and agricultural production." Vermont's law merely requires a simple factual notification for consumers on products produced with genetic engineering.

The Honorable Representative Burgess

- 4. If they were successful in these efforts, how would that impact our ability to provide affordable and nutritious food to American families?**

ANSWER: I have no information on this issue.

The Honorable Representative Burgess

- 5. Would it not raise food costs for working people in our country?**

ANSWER: It is unlikely that the inclusion of a four-word factual disclosure, as required by Vermont's law, would raise food costs for Americans beyond a minimal increase associated with the initial labeling change.

The Honorable Representative Burgess

- 6. Have there been any medically documented cases of people getting sick from eating a food derived from genetically engineered crops?**

ANSWER: I am not aware of any case identifying the genetically engineered component of the food as the direct cause of the illness, though there have been allegations of such a link. *See, e.g., Luca Bucchini & Lynn Goldman, Starlink Corn: A Risk Analysis*, 110:1 *Envtl. Health Perspectives* 5 (2002) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240687/>. Regardless, a causal connection would be difficult to identify because, currently, consumers are not able to determine which food they eat is produced with genetic engineering. Vermont's law would provide them with that simple information. H.R. 1599, if enacted, would continue the food industry's avoidance of this factual disclosure.

The Honorable Representative Griffith

Mr. Daloz, industry is concerned about potential for private actions against manufacturers. Under your law, I believe the law is maybe unclear on that point.

- 1. Does Vermont's law block private rights of action against manufacturers and suppliers?**

ANSWER: No, it does not prevent private rights of action.

The Honorable Representative Griffith

And if the answer is no:

- 2. What do you intend to do to limit liability when a product is put on a shelf in Vermont, despite the fact that the manufacturer did not intend for it to end up there?**

ANSWER: The Attorney General has broad prosecutorial discretion in bringing an enforcement action under Act 120 and may take steps short of bringing an enforcement action to ensure compliance with the labeling requirements. Given enforcement priorities and limited available resources, the office does not intend to direct formal enforcement actions at accidental, isolated violations.

The Honorable Representative Cardenas

I understand that there is already an independent private sector certification body for foods produced without genetic engineering.

- 1. What impact would this new legislative language have on existing private label non-GMO claims?**

ANSWER: In the short-term, the current Discussion Draft – unlike the draft discussed at the June 18th hearing, which would have halted all such labeling upon passage – would permit private non-GE labeling claims to continue for three years. After that time, private labels would have to comply with the as-yet-undefined standards to be created by the USDA. *See* Disc. Dft. at 32:10-18, sec. 204. As noted above, because so many entities potentially qualify as “certifying agents,” *see* Disc. Dft. at 12:17- 13:2, sec. 201, there is the very real possibility that any enacted federal standard could be implemented differently throughout the country.

The Honorable Representative Cardenas

- 2. Since the cost of certifying non-GMO products is currently not being borne on the tax payer, how much would it cost to create the new USDA certification standard for GE and non-GMO foods?**

ANSWER: I do not have access to an independent analysis of the potential costs of establishing such a program because it is not contemplated in Vermont's law. Given the potential similarities, the costs (in terms of time and money) of establishing the National Organic Program could provide a comparable model.

The Honorable Representative Cardenas

A number of major food brands produce organic lines in addition to their conventional brands. The U.S. also exports a large amount of Identity Preserved non-GMO grain to export markets in Europe and Asia.

- 3. So to what extent is there already segregation in the supply chain and would that be close to sufficient if GE foods were required to be labeled at a federal level? Are there enough farmers and farm workers to produce a sufficient amount of non-GMO or organic food?**

ANSWER: It is not the intent of Vermont's law to alter the market and the law in no way restricts the sale of properly-labeled GE foods. Act 120 provides information for consumers on which to base their own purchasing decisions. If a federal labeling requirement were to shift demand away from GE foods – a question I am not equipped to answer – I would note only that markets generally respond to consumer demands.

The Honorable Representative Welch

- 1. In response to Representative Pompeo's question regarding the effect H.R. 1599 would have on voluntary state GE labeling efforts, you suggested the bill would prohibit state labeling of GE ingredients, such as the labeling regimen currently being implemented in Vermont. Could you please further explain your rationale? Given your position in the Vermont Attorney General's office, what impact do you believe this legislation would have on Vermont's GE labeling efforts?**

ANSWER: H.R. 1599 would categorically halt Vermonters' efforts to have accurate, factual disclosures on their food explaining whether the food was produced with genetic engineering. *See* Disc. Dft. at 30:23-32:2, sec. 203. While the law gives passing attention to codifying the existing consultation process for new GE varieties at the FDA, in each of its iterations, its main goal has remained preempting Vermont's labeling law months before a single labeled item arrives on the shelf of a Vermont supermarket. Indeed, the bill contains no fewer than three express preemption sections, all aimed at aspects of Vermont's Act 120 and all preventing any other state from charting a similar course. *See* Disc. Dft. at 10:3-12, sec. 113 (broadly preempting "any requirement with respect to genetically engineered plants for the use or application in food" that is different from the requirements of H.R. 1599); *id.* at 30:23-32:2, sec. 203 (immediately preempting any state "requirement for labeling" unless the labeling is voluntary); *id.* 34:21-35:7, sec. 303 (preempting any state effort to regulate the use of the term "natural" on food products).

Simply put, if passed, H.R. 1599 would not merely displace Act 120 as if it had never been passed, it would prevent all efforts to provide the factual disclosure Vermonters' sought in

enacting a mandatory GE labeling law. Opponents of Act 120 claim that a federal system of labeling will avoid a “patchwork” of regulation, but this contention holds no water for two important reasons. First, there is currently only a “patch” of one – Vermont’s labeling law. Second, a voluntary GE labeling regime, as established in H.R. 1599, is clearly insufficient to adequately inform consumers. To suggest that a producer – the same producers spending millions of dollars fighting Vermont’s labeling law in court and Congress – would voluntarily label its products as produced with GE, is simply irrational.

The Honorable Representative Welch

- 2. The FDA has stated that there is consensus on the safety of GE foods for human consumption. When asked about the FDA's position during the hearing, you seemed to agree with the FDA statement. However, it remains unclear if you were acknowledging the fact that FDA has indeed made that statement, or if you were supporting the validity of its underling position, namely that GE foods are indeed safe to consume. Please elaborate on your position — do you agree GE foods are safe for human consumption?**

ANSWER: In responding to Chairman Pitts’ question, I agreed that the FDA had previously testified to the consensus on the safety of GE foods, not that Vermont necessarily supported or agreed with the FDA’s statement. After hearing hours of testimony, the Vermont Legislature determined that there is no scientific consensus on the safety of GE foods for human consumption. And in the absence of such consensus, consumers should be able to consider whether products contain GE ingredients when making decisions regarding what to purchase and ingest. That is the goal of Vermont’s Act 120—to provide consumers information. Additionally, as new GE food varieties make their way through the largely voluntary regulatory process, the potential for danger to human and environmental safety increases. Without accurate labeling, drawing a causal link between products and health effects is increasingly difficult. The recent studies showing the dangers the herbicide glyphosate poses to human health are a prime example of this ever evolving concern.