Hearing on "Improving Safety and Transparency in America's Food and Drugs"
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2322 Rayburn House Office Building
Health Subcommittee

Testimony by Sarah Sorscher, Deputy Director of Regulatory Affairs, Center for Science in the Public Interest

I am pleased to testify today on behalf of the Center for Science in the Public Interest, America's Food and Health Watchdog. Since 1971, CSPI has represented consumers in advocating for a safer, healthier food system. Our work is funded by individual subscribers to our Nutrition Action Healthletter and by donations from individuals and foundations. We do not accept donations from corporations, giving us the ability to provide an independent voice on behalf of consumers. CSPI has played a major role over the years in pressing for laws to require the Nutrition Facts on packaged foods, ensure clear allergen labeling, and prohibit misleading claims on foods.

I will speak today primarily on two bills that would impact food labeling in the U.S. FASTER Act (H.R. 2117)[1] the CURD Act (H.R. 4487).[2]

CSPI Supports the FASTER Act

CSPI also supports the FASTER Act (H.R. 2117) which among other things would update the U.S. list of major allergens to include sesame, as well as authorize the FDA to periodically review and further update the list of major allergens based on the latest science.

When Congress passed the Food Allergen Labeling and Consumer Protection Act in 2006, it created important new requirements for labeling the so called "major" food allergens, which were the eight most common allergens identified at that time. In addition to designating the so-called "Big Eight," the law also authorized the FDA to label additional non-major allergens through separate regulations.

In 2014, CSPI urged the FDA to make use of this authority by requiring companies to label for sesame. There are than 1.5 million people in the United States with reported sesame allergy, and 1.1 million Americans have had their sesame allergy diagnosis confirmed by a physician or have a history of convincing symptoms.[3] Recent studies have shown that sesame allergy is now similar in prevalence and of greater severity than some of the "Big Eight" major food allergens; and a greater fraction of adults with sesame allergy report

[1] H.R. 2117 – FASTER Act of 2019. https://www.congress.gov/bill/116th-congress/house-bill/2117/
[2] H.R. 4487 – Codifying Useful Regulatory Definitions Act. https://www.congress.gov/bill/116th-congress/house-bill/4487
[3] Warren C, Chadha A, Sicherer S, Jiang J, Gupta R. Prevalence and severity of sesame allergy in the United States. JAMA Network Open. 2019; 2(8): e199144. (Reported prevalence in Table 1 multiplied by current U.S. population of 327.2 million)

having an emergency room visit for food allergy in the past year than adults with any other major food allergy.[4]

A 2018 report by CSPI found that a majority of the 22 large food companies we surveyed are already voluntarily labeling for sesame,[5] and more indicated they could easily do so if given clear direction from regulators. FDA opened a docket to collect data on prevalence and severity for sesame in 2018, but has taken no action since then.

Given the clear and urgent need for sesame labeling and ongoing delay by the agency, we urge Congress to add sesame to the list of major allergens through legislation.

The FASTER Act would also authorize the FDA to periodically review and update the list of "major" allergens based on the latest scientific and clinical evidence, implementing a recommendation of the Committee on Food Allergies of the National Academies' Food and Nutrition Board.[6]

While FDA is currently authorized to require labeling for new allergens, like sesame, that are not on the major food allergens list, this new provision will help streamline and simplify that process by updating the major food allergens list itself, rather than developing a separate regulatory framework for non-major allergens.

CSPI Opposes the CURD Act

CSPI opposes the CURD Act, as this bill would confuse consumers by defining as "natural" any cheese product that does not meet the narrow regulatory definition of "process cheese."

The ostensible purpose of this bill is to draw a clear line for consumers by clearly defining "process cheese" and differentiate it from "natural cheese." Yet "process cheese" is already clearly labeled as such and there is no evidence that manufacturers are currently misrepresenting such products as "natural."

Instead of protecting consumer interests, the bill addresses are those of cheese manufacturers, who wish to be sheltered from litigation by consumers alleging they were mislead by "natural" claims on cheese that contains artificial ingredients. For example, in 2016, Kraft was sued for "natural" cheeses alleged to contain artificial coloring. More

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[4] Center for Science in the Public Interest. The Call for Sesame Allergen Labeling. January 2020. https://cspinet.org/sites/default/files/attachment/Sesame_Allergen_Labeling_Fact_Sheet_Final_updated%201.8.20.pdf

[5] Sorscher, S. Seeds of Change: While Some Companies Lead the Way in Sesame Allergen Labeling, Large Gaps Remain. Center for Science in the Public Interest. April 2018. https://cspinet.org/sites/default/files/attachment/seeds-of-change-report.pdf

[6] Finding a Path to Safety in Food Allergy: Assessment of the Global Burden, Causes, Prevention, Management, and Public Policy. November 30, 2016. http://nationalacademies.org/hmd/reports/2016/finding-a-path-to-safety-in-food-allergy.aspx

recently,[7] Sargento was sued based on feeding and rearing practices the cows that produced milk for its line of "natural" cheeses.[8] CSPI is not involved in either of these cases and has not taken a position on this litigation. We do, however, oppose any legislative effort to distort the meaning of "natural" for the purpose of denying consumers their day in court.

Traditional cheesemaking involves only a few ingredients: high-quality milk, salt, and cultures. The cheese industry today employs a host of novel processes and additives that can cut the time and expense required to produce products that resemble cheeses made by more traditional means. These novel ingredients are not necessarily reviewed for safety by the FDA, which permits companies to self-certify new ingredients as "Generally Recognized as Safe", without necessarily even notifying the agency or making safety data available to the public.[9]

Certain artificial ingredients are legally permitted under the standards of identity for cheese. For example, artificial coloring is expressly allowed as part of the standard of identity for many cheeses.[10] Cheeses with no set standard of identity have even greater flexibility to add artificial ingredients.

While these artificial ingredients are legally permitted in cheeses, many Americans would not consider the resulting product to be "natural." For example, a nationally representative telephone survey conducted in May 2018 by Consumer Reports found that more than 80 percent of consumers say "natural" should mean no artificial ingredients were used.[11]

That is why the U. S. Department of Agriculture (USDA) permits the term "natural" only products "containing no artificial ingredient or added color" and that are only minimally

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[7] Shook, Hardy & Bacon, LLP. Court Denies Stay for FDA "Natural" Guidance in Kraft Artificial Coloring Case. *Food and Beverage Litigation Update.* December 9, 2016. https://foodbeveragelitigationupdate.com/court-denies-stay-for-fda-natural-guidance-in-kraft-artificial-coloring-case/

[8] Watson, E. Sargento defends 'natural cheese' claims. *Food Navigator.* September 4, 2017. www.foodnavigator-usa.com/Article/2017/09/05/Sargento-attacks-implausible-allegations-in-natural-cheese-lawsuit#.

[9] "Safe and suitable" is defined under 21 C.F.R. 130.3 to mean an ingredient that "(1) Performs an appropriate function in the food in which it is used, (2) Is used at a level no higher than necessary to achieve its intended purpose in that food, and (3) Is not a food additive or color additive…" However, manufacturers may determine that novel ingredients are "not a food additive or color additive under a 1997 proposal by the FDA that allows companies to self-certify novel ingredients as "Generally Recognized as Safe." Gaynor P, How U.S. FDA's GRAS Notification Program Works. U.S. Food and Drug Administration. December 2005/January 2006. Current as of 2/9/2018. https://www.fda.gov/food/generally-recognized-safe-gras/how-us-fdas-gras-notification-program-works.

[10] *See* 21 CFR Part 133.

[11] Natural and Antibiotic Labels Survey. *Consumer Reports.* May 1, 2018. https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf

processed.[12] The FDA is also currently working on a definition of "natural" that ideally will be non-misleading and apply uniformly to all FDA-regulated foods.

The CURD Act seeks to short-circuit that process, carving out a special definition for "natural" that would only apply to cheese. This definition would allow "natural cheese" to contain artificial ingredients, running counter to consumer expectations.

It would also make labeling for cheese inconsistent with U. S. Department of Agriculture (USDA) labeling requirements, which permit the term "natural" only on products that contain no artificial ingredients, leading to inconsistency and confusion across the marketplace.

Finally, because the CURD Act also defines "milk" as a lacteal secretions from an animal and requires "natural cheese" to be made from milk, it could be interpreted as prohibiting the use of the term "natural" on non-dairy alternatives eaten by consumers who are vegan, allergic to milk, or who otherwise wish to avoid dairy cheeses. Use of the term "natural" should not be prohibited on these products, provided the products otherwise meet consumer expectations for a natural food.

We urge Congress not to act prematurely to carve out a definition for "natural cheese" that will confuse consumers, and instead allow the FDA and USDA to define "natural" clearly and consistently across all foods.

We would also like to comment on two other bills included in today's proceedings.

The Infant Formula Protection Act of 2019 (HR 2267)[13] addresses an important gap in current FDA regulation of formula by barring the sale of expired infant formula. The nutrients in formula degrade over time, which is why the FDA requires manufacturers to prove that the formula meets minimum nutrient standards through its "use by" date, and why it recommends not consuming infant formula after that date.

However, there are no federal safeguards preventing businesses from selling the formula after the date has passed. This bill would help close that gap by ensuring that infant formula cannot be sold after its expiration date.

The Keep Food Containers Safe from PFAS Act of 2019 (HR 2827) would deem PFAS compounds as unsafe for use as food contact substances.[14] The bill raises important concerns about the use of PFAS chemicals as food contact substances, including in food wrappers or packaging. We share these concerns about the use of PFAS as food chemicals in light of the known risks of long-chain PFAS and the potential for similar concerns in

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[12] U.S. Department of Agriculture. Meat and Poultry Labeling Terms. August 10, 2015. https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/meat-and-poultry-labeling-terms/meat-and-poultry-labeling-terms

[13] H.R. 2267 – Infant Formula Protection Act of 2019. www.congress.gov/bill/116th-congress/house-bill/2267

[14] H.R. 2827 – Keep Food Containers Safe from PFAS Act of 2019. www.congress.gov/bill/116th-congress/house-bill/2827

short-chain PFAS. This family of compounds is very persistent in the environment and in the human body, and several long chain PFAS chemicals have been banned or phased out as hazardous.