

## Congress Continues Churning GMO Labeling Legislation

*Law360, New York (July 31, 2015, 1:38 PM ET) --*

Last week, the House of Representatives passed H.R. 1599, the Safe and Accurate Food Labeling Act of 2015, which would establish a voluntary labeling framework for genetically modified and non-GMO foods. The bipartisan sponsors of the bill are Reps. Mike Pompeo, R-Kan., and George Kenneth Butterfield, D-N.C. They were joined by 104 additional co-sponsors, 38 of whom had signed on since the start of July.

H.R. 1599 had been marked up and passed by the House Agriculture Committee by a voice vote and then was brought directly to the floor of the House after the Energy and Commerce Committee waived its right to consider the measure. The final vote tally was 275-150, including 45 Democrats voting in favor, which is indicative of considerable support from both sides of the political aisle. The near two-thirds margin provides momentum for action in the Senate, where a congressional hearing has yet to be held and a bill has yet to be introduced.



Bradley A. McKinney

If enacted into law, H.R. 1599 would accomplish several objectives. First and foremost, it would preempt any current or future state laws that mandate labeling for GMO foods. This includes laws already passed by Vermont, Maine and Connecticut.

Vermont's GMO labeling law is scheduled to effect July 1, 2016. Maine and Connecticut's GMO labeling laws will not go into effect until additional northeastern states pass similar labeling laws. If enacted, H.R. 1599 would preempt states from enacting GMO labeling laws that are contrary to H.R. 1599. This would ensure that food manufacturers would no longer confront the potential patchwork of 50 states with 50 different GMO labeling requirements.

The preemption provision was arguably the most important objective and was spearheaded by the industry-led movement supporting the bill, which includes major food manufacturers and various food industry groups.

The legislation would also establish a voluntary certification program administered by the U.S. Department of Agriculture for labeling foods as "GMO" or "non-GMO." Under the new program, companies would voluntarily submit their products to be certified. The USDA would affix to certified products a new seal, specific to this program, which would affirm the "GMO" or "non-GMO" labeling

claim. Currently, if a company wants to make a GMO-related claim on a product label, claims can either be verified by an independent third party, such as the Non-GMO Project, or submit to the USDA Process Verified program, which is a separate USDA program that provides certifications to companies that make claims associated with their manufacturing process.

The bill requires the U.S. Food and Drug Administration — and more specifically the secretary of the U.S. Department of Health and Human Services — to issue regulations within 18 months of the legislation being signed into law, which would establish a definition for “natural” for the purposes of food labeling.

The lack of a set standard for “natural” foods has been somewhat controversial, causing confusion for manufacturers and consumers, while also providing fertile ground for class action litigation. The FDA has repeatedly declined to provide a definition for the term “natural,” but says it “has not objected to the use of the term if the food does not contain added color, artificial flavors or synthetic substances.” The intent of H.R. 1599 is to force the FDA to provide clarity by establishing a definition for this terminology.

Four Democratic amendments to the bill were considered and defeated on the House floor. One from Rep. Peter DeFazio, D-Ore., would have required that a U.S. company or its subsidiary that labels a product as containing GMOs in any foreign country must label the equivalent product sold in the United States in the same way. Another from Rep. Jared Huffman, D-Calif., would have ensured tribal sovereignty to prohibit or restrict the cultivation of genetically engineered plants on tribal lands, but the opponents argued this was already covered by the bill language. Rep. Rosa DeLauro, D-Conn., introduced an amendment to prohibit the term “natural” on food when it contains GMOs, something that opponents of the amendment pointed out the bill essentially accomplishes. The final amendment from Rep. Chellie Pingree, D-Maine, would have replaced the bill's text with only provisions to have the USDA create a non-GMO certification program and label.

The bill that passed the House looks quite different from the version initially introduced in 2014. For starters, the initial version of the bill would have given statutory authority for the new voluntary labeling program to the FDA, not the USDA. This change was the most significant throughout the evolution of the legislation, and altered the legislative path the measure would take in Congress as well. It was predominantly a political maneuver, but with a policy element that meant the new voluntary program would be established at the USDA, where the National Organic program currently resides in addition to the Process Verified program and the process by which bioengineered plants are approved and regulated.

With respect to the legislative path, shifting oversight for the new voluntary labeling program from the FDA to the USDA meant that jurisdiction was transferred almost entirely from the House Energy and Commerce Committee, which oversees the FDA, to the House Agriculture Committee, which oversees the USDA.

The jurisdictional switch is likely to be similar in the Senate, if and when companion legislation is introduced, with the difference being that primary jurisdiction would shift from the Senate Health, Labor and Pensions Committee, chaired by Sen. Lamar Alexander, R-Tenn., to the Senate Agriculture Committee, chaired by Sen. Pat Roberts, R-Kan.

Some believe that Sen. Alexander had little interest in the topic, which dimmed prospects for the bill's passage. Transferring primary jurisdiction to the Agriculture Committee, a panel consisting of members likely to be more sympathetic to such a measure, would lend the bill that much more momentum and provide greater assurances of its consideration.

Attention now turns to the Senate, where companion legislation has yet to be introduced. Sen. John Hoeven, R-N.D., a member of the Agriculture Committee, is widely expected to be the lead sponsor when a bill is introduced. Reportedly, no Democrats have agreed to sign on as a co-sponsor, which is a key reason for the delay.

The legislative calculus going forward is such that only a handful of Democratic votes are likely needed to pass the legislation. Democratic senators from the Midwest, Upper Plains and Rocky Mountain West may be inclined to support such a measure. It is also notable that President Obama has not issued a veto threat.

As with many things in Congress, however, the outlook could change any day, and a smooth path is never assured. Indeed, there remains strong opposition to the bill from groups who continue to advocate for mandatory disclosure of GMOs on food labels. Congress is also working to reach a resolution before the presidential election cycle becomes a legislative obstacle. As such, it is conceivable that this issue could be addressed with some finality in the next six months.

—By Bradley A. McKinney, Andrew L. Ehrlich and Rachael D. Spiegel, Faegre Baker Daniels LLP

*Bradley McKinney is an adviser in FaegreBD Consulting's Washington, D.C., office. Prior to joining the firm, McKinney was a legislative and regulatory affairs specialist at the National Association of State Departments of Agriculture. From 2004 to 2010, he served on the staff of former Sen. Richard Lugar, R-Ind.*

*Andrew Ehrlich is counsel in Faegre Baker Daniels' Washington, D.C., office. Ehrlich worked as a chief of staff in the leadership of the House of Representatives and in a variety of legislative, political and communications positions for three members of Congress.*

*Rachael Spiegel is an associate in Faegre Baker Daniels' Minneapolis office. Prior to joining the firm, Spiegel was a senior economist at CoBank, part of the U.S. Farm Credit System. Prior to law school, she worked at the U.S. Department of Agriculture in Washington, D.C.*

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