

# Food Labeling

## Uniform National Labeling, Education Better than State-Only Rules

### Summary

### Background

Over the years, there have been many attempts to pass legislation or initiatives to require state-only labeling on raw agricultural produce, and packaged foods and beverages, or outright bans on genetically modified or engineered food and cloned animals. There was limited state action across the nation because it was well-known that Congress was considering a labeling bill for genetically modified foods that would potentially preempt any state laws and the U.S. Food and Drug Administration (FDA) was poised to issue updated Nutrition Facts for package labeling. In July 2016, President Barack Obama signed Senate Bill 764 (Wicker; R-Mississippi), establishing national standards for labeling genetically modified organisms. The FDA released final regulations on Nutrition Facts for packages in May 2016.

The last big initiative in California to require mandatory labeling was the California Right to Know Genetically Engineered Food Act in 2012, which was defeated at the polls. Only Vermont passed an initiative a couple of years ago with an implementation date of July 2016; however, this initiative was overturned with the passage of the federal standard.

The issue of genetically modified foods is driven largely by local and grassroots groups who ignore the fact that science doesn't support the allegation that genetically modified crops or fish are inherently bad. The friction between conventional farmers who may be growing genetically modified crops and organic farmers escalates from time to time, especially regarding buffer zones between the fields. Organic farmers contend that unless a large buffer zone is maintained, their crops are at risk of losing organic certification from cross contamination.

The rise of obesity rates in the populace is driving the move to place warnings on the labels of sugar-sweetened beverages. Several bills over the last few years have been introduced at the state level to either tax the beverages or require specific warnings on the labels. So far, none have passed. The playing field moved to the local arena in 2014 when the City of Berkeley passed a measure that imposed a 1-cent per ounce tax on sugary beverages. That same year, the City of San Francisco attempted a similar measure that failed, it is thought, because it was crafted as a dedicated tax, which requires a two-thirds supermajority vote rather than a general tax requiring a 50% plus one vote to pass.

In 2016, however, Oakland, San Francisco and Albany placed measures on the ballot to tax sugar-sweetened beverages following Berkeley's format, all of which passed. Given the local, state and national level of attention that sugar-sweetened beverages have received as a significant contributor to obesity, it is likely that more bills and local initiatives will be introduced.

Obesity isn't caused by any one food or drink. According to the Centers for Disease Control and Prevention: "The key to achieving and maintaining a healthy weight isn't about short-term dietary changes. It's about a lifestyle that includes healthy eating, regular physical activity, and balancing the number of calories you consume and the number of calories your body uses." A stronger effort to inform and educate the public about lifestyle choices is crucial.

### Current Regulations

The Federal Food, Drug, and Cosmetic Act contains the authority to ensure the safety and proper labeling of most foods (except meat and poultry), including foods developed through biotechnology. The act currently requires labeling of genetically engineered foods if the food has a significantly different nutritional property; if a new food includes an allergen that consumers would not expect to be present (for example, a peanut protein in a soybean product); or if a food contains a toxicant beyond acceptable limits.

The U.S. Department of Agriculture (USDA) regulates genetically engineered crops that may become pests by setting limits on their importation, interstate movement, and release into the environment. The department also has the authority to remove these restrictions if it is shown that the crop poses no additional risk of becoming a plant pest than a nongenetically engineered variety of that crop.

In November 2015, the FDA approved a genetically engineered salmon as fit for consumption, making it the first genetically altered animal to be cleared for U.S. supermarkets and dinner tables. The fish has been modified to grow twice as fast by using a gene from the faster-grower Chinook salmon and an eel gene that

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keeps the growth gene turned on. Approval of the salmon has been fiercely opposed by some consumer and environmental groups, which have argued that the safety studies were inadequate and those wild salmon populations might be affected if the engineered fish were to escape into the oceans and rivers. The fish will not have to be labeled as being genetically engineered, a policy consistent with FDA's stance on foods made from genetically engineered crops.

A consumer group has filed a lawsuit challenging the approval. Pretrial conference was scheduled for November 8, 2016. The court decision is pending. At the same time, the FDA issued new guidance to food makers about how to describe their products and the bioengineering that may, or may not, have gone into them.

The FDA in 2016 updated the Nutrition Facts label on food packages to reflect new public health and scientific information, including evidence on nutrition, obesity and chronic disease. The final regulations were published in the *Federal Register* on May 27, 2016, and these new regulations include an updated design, updated information about nutrition science, and updated serving sizes and labeling requirements for certain package sizes.

## Recent Activities

### *Federal*

Senate Bill 764 (Wicker; R-Mississippi), signed by the President, establishes national labeling for genetically modified foods. The bill directs USDA to create a national labeling standard within two years that requires food producers to use text, symbols or QR codes consumers can scan with a smart phone to find out if a product contains genetically modified organisms. The regulations prescribing genetically modified food must:

- Determine the amount of genetically modified organisms a product contains in order to be labeled.
- Establish a process for requesting and granting a determination of other factors and conditions for which food is considered genetically modified.
- Prohibits a food derived from an animal from being considered genetically modified solely because the animal consumed feed containing genetically modified organisms.
- Provide alternative reasonable disclosure options for foods in small packages.

Most important is the statement "The bill prohibits states or political subdivisions of states from establishing or continuing requirements for labeling or disclosure of bioengineered or genetically engineered food that are not identical to the mandatory disclosure standard established by this bill."

### *California 2016 Proposals*

- **AB 2725 (Chiu; D-San Francisco)**, requiring state-only mandatory food labeling, was held in the Assembly Health Committee. The bill required ready-to-eat foods to have a uniform expiration date on their labels. Industry uses such terms as "use by," "expires on," "best if used by." The various terms have meaning within the context of use. Canned goods, packaged goods on the shelf or under refrigeration or fresh goods have labels that guide consumers on the best timeframe for product usage to ensure the best quality.

- **AB 2782 (Bloom; D-Santa Monica)** imposed a targeted tax on each fluid ounce of a bottled sweetened beverage and a tax on each fluid ounce produced from a concentrate from which a sweetened beverage is derived. The bill was held in the Assembly Health Committee.

Major beverage manufacturers are voluntarily reducing the amount of sugar in their products in response to customer preferences. Many food manufacturers are reducing other ingredients such as salt or providing gluten-free products in response to consumer demand. The food industry is very sensitive to market trends as the field is very competitive.

## Anticipated Actions in 2017

The Berkeley initiative assessed a 1-cent-per-ounce tax on the sale of sugar-sweetened beverages. According to a study conducted by two economists, only 21.7% of the tax was passed on to buyers and raised \$375,100 between March and May 2015. The initiative was on track to raise \$1.2 million by the end of 2016. The money earned currently is going to the city's general fund. The success of San Francisco, Oakland and Albany with similar ballot measures is a clear indicator that other cities will follow suit.

It is probable that more bills will be introduced at the state level requiring additional state-only warning labels on food and beverages, and there may be another attempt at a soda tax.

**CalChamber  
Position**

The California Chamber of Commerce supports uniform national labeling laws. Our member companies market products nationwide; therefore uniform national labeling laws are more efficient and maintain a level playing field in the marketplace.

The CalChamber also supports efforts by the public and private sectors to find avenues to educate Californians about balanced diets and healthy lifestyle choices. The CalChamber encourages California's leaders to ensure that particular industries are not unfairly burdened by taxes and unworkable regulations, and to avoid policies that charge one industry with responsibility for public health costs that are caused by a variety of factors.

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