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By: Meredith Schuh, Staff Member

The rise of agricultural biotechnology sparked controversial debate regarding the propriety of requiring labeling on food products denoting the presence of genetically modified organisms, or

GMOs. Proponents of mandatory labeling maintain consumers have a "right to know" what they are ingesting, especially if the food is "unnatural," or bioengineered.[1] Conversely, anti-labeling groups argue that it is unnecessary to provide labels primarily because of the immaterial difference, even nutritionally, between traditionally grown and genetically modified food.[2] Furthermore, opponents suggest if labeling were a requirement, the cost exacted on producers and consumers would be significant.[3]

Unlike the trend overseas, not a single jurisdiction in the United States has yet to pass a law requiring labeling on bioengineered food products. This is largely due to the position endorsed by the FDA. In 1992, the agency promulgated a policy statement, which did not require special labeling for genetically modified food.[4] Instead, the FDA determined that the general label requirements that apply to conventionally produced food also apply to foods made using biotechnology.[5] The FDA based its decision not to require mandatory labeling on the lack of evidence that bioengineered foods already abundantly sold on the market presented any adverse health risks to the consuming public.[6] However, labeling proponents are predominantly apprehensive about the "unknown" health effects of biotechnology in the food industry.[7]

Notwithstanding the FDA's opinion on the matter, the "Right to Know" food movement garnered strength, culminating recently in Proposition 37, a Mandatory Labeling of Genetically Engineered Food Initiative. Proposition 37 was voted on in California's November 6, 2012 ballot as an initiated state statute; it was ultimately defeated.[8] If the statute had been approved, it would have required labeling for food made from plants or animals with genetically altered material and prohibited labeling such food as "natural," but there were a number of exceptions.[9] According to the polls from last week, about 4.3 million Californians voted in favor of Proposition 37, and although the initiative failed, labeling proponents pledged to continue the fight for increased governmental regulation of the food industry.[10]

However optimistic labeling enthusiasts appear, I believe this most recent setback will have a major impact on the success of the "Right to Know" movement. Opposition to mandatory labeling is strong and apparently, very convincing. Prior to the vote on Proposition 37, news sources reported the initiative was "riding high," but that prediction underestimated the effect of a \$46 million advertising campaign funded by opponents of the initiative.[11]

Spurring on the labeling crusade is an irrational fear of the negative effects of consuming genetically modified food sources, but scientific facts should subdue this anxiety.[12] Two decades ago, the FDA released its policy statement declaring there was no material difference between genetically engineered and conventionally produced food,[13] and unless this finding changes, it is likely the U.S. will continue to shy away from mandatory labeling of genetically modified products because of the associated considerable cost. The solution to the problem lies in facilitating public access to pertinent information about the substantiated factual findings concerning GMOs and the food industry.

[1] Valery Federici, *Genetically Modified Food and Informed Consumer Consent: Comparing U.S. and E.U. Labeling Laws*, 35 *Brook. J. Int'l L.* 515, 517 (2010).

[2] Jon Entine, *Food Labeling: Should environmentalists be pro-GMO?*, Genetic Literacy Project, Sept. 7, 2012, <http://www.geneticliteracyproject.org/2012/09/07/food-labeling-should-environmentalists-be-pro-gm/>.

[3] *Id.*

[4] Statement of Policy: Foods Derived From New Plant Varieties, 57 *Fed. Reg.* 22984 (May 29, 1992).

[5] FDA: Guidance, Compliance & Regulatory Information, *Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Biotechnology*, (Nov. 8, 2012), <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059098.htm>.

[6] *Id.*

[7] Federici, *supra* note 1, 521-22.

[8] Marc Lifshet, *Prop. 37 backers vow to continue food regulation efforts*, L.A. TIMES, Nov. 7, 2012, <http://www.latimes.com/business/la-fi-prop37-genetic-food-labeling-20121108.0.7519439.story>.

[9] BallotPedia, California 37, Mandatory Labeling of Genetically Engineered Food (2012).

[http://ballotpedia.org/wiki/index.php/California_Proposition_37_Mandatory_Labeling_of_Genetically_Engineered_Food_\(2012\)](http://ballotpedia.org/wiki/index.php/California_Proposition_37_Mandatory_Labeling_of_Genetically_Engineered_Food_(2012)).

[10] Lifshet, *supra* note 8.

[11] Marc Lifshet, *Prop. 37 is in the dead heat amid ad blitz*, L.A. TIMES, Oct. 25, 2012, <http://articles.latimes.com/2012/oct/25/business/la-fi-prop37-food-poll-20121024>.

[12] Federici, *supra* note 1, 521-22.

[13] *Id.* at 517.

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