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Non-GMO Labeling

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For producers looking for a value-added benefit to their operation, “non-GMO” labeling might be a potential option. “GM” or “GMO,” short for “Genetically Modified Organisms,” is a term generally used to refer to the use of scientific methods to create products by altering the genetic makeup of organisms. This is done in order to produce unique traits that are not easily obtained through conventional breeding techniques. “Non-GMO,” on the other hand, refers to seeds or other products that are created through conventional breeding methods. Because some consumers see this as a trait that they are willing to pay a premium for, some producers recognize a premium by producing “non-GMO” foods.

The federal government does not have a program through which “non-GMO” products are identified, but they do offer testing services to determine whether or not a crop has GM traits. The Grain Inspection, Packers and Stockyards Administration (“GIPSA”) certifies tests that can register biotechnology traits found in seeds. There are also some laws about the usage of labeling, but none of those relate directly to GM products. All food and drug products are subject to general labeling laws. One of the primary statutes discusses the misbranding of foods.¹ For example, labeling a product “100% GMO free” would be virtually impossible to prove without checking every single seed that is harvested. And even if you believe that you are 100% free of GM traits, the label can run afoul of federal labeling laws.

Except for a few exceptions, many labels are sent to the Food and Drug Administration for preapproval before they are ever used on a product that will be sold on the market. Even though it might be preapproved, however, recognition and acceptance by consumers is a completely separate issue. To obtain that recognition and acceptance, some producers and manufacturers are working with third party certifiers to brand their products.

Several third-party organizations have established processes through which they will certify that a product is “non-GMO.” For example, an Iowa company called CERT ID has established a process through which certification is attained.² First, the entity interested in gaining the certification submits an application, including documentation on their sources, quality control procedures and production processes. After that application is submitted and reviewed, an

¹ 21 U.S.C. §331

² CERT ID, available at www.cert-id.com

authorized inspector assesses the client's operation and prepares a report identifying any non-compliance with the standard. The report is then evaluated, and if it fulfills the criteria established by CERT ID, the client is licensed and allowed to use the CERT ID seal. For the CERT ID, several criteria must be met before that approval is given. First, third-party inspections must take place throughout the certification period, in addition to a sampling protocol that provides data and allows for product monitoring. Products must be tested throughout the certification period, and CERT ID monitors ultimate compliance with the plan. After plan approval, the licensing is valid for one year from the date of issue.

Another example of a third-party certification organization is based in the state of Washington. Called the "Non GMO Project," it attempts to address the entire food chain from growers to manufacturers instead of engaging individual sections. In doing so, it tries to limit the contamination of seeds, ingredients, and products, rather than a single component. Non GMO Project focuses on testing at the "most efficient and critical points of the production chain", which it defines as testing of the seed and the harvested crop.³ It emphasizes methods such as segregation, traceability, risk assessment, sampling techniques and quality control management. The concept of traceability is important for labels such as "Non-GMO" and organic, but it certainly makes the process more difficult. Buying seed without GM traits is not enough. If you do grow soybeans and you use the same equipment then did you clean out the planter thoroughly before planting edamame? All of the farm equipment, storage facilities, transportation equipment, and processing facilities must be prepared to ensure that there is no contamination. No better example of this can be found than the requirements to prevent contamination found in the National Organic Program.⁴ Not only does the equipment need to be thoroughly cleaned, but the cleaning solutions themselves must be approved for use in organic production.

Non GMO Project's "Standard and Verification Program" recognizes this difficulty and involves a set standard and variances that are in place for the initial implementation of the standard. The variances allow businesses who are just beginning in the program to have a little more flexibility as they advance towards the goal of meeting the actual standard.

If non-GMO labeling is a niche that the producer or others in the supply chain would like to occupy, third party certification is the only established pathway to doing so at the present time. However, when making the decision on what certifying organization to choose, it is important to review the standards and requirements for all of them. This will allow you to make an informed decision as to what organization best fits your needs and goals for non-GMO production.

³ Non GMO Project, available at www.nongmoproject.org

⁴ 7 U.S.C. §§ 6501-6522.