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Mandatory GMO Labeling  
Professor Ross H. Pifer

## Mandatory GMO Labeling Laws: Overview and Status of Current Legal Issues

Agricultural and Food Law Consortium  
Webinar Series  
November 19, 2014

## Agricultural & Food Law Consortium

- USDA Agricultural Research Service, National Agricultural Library
- 4-university partnership, led by the National Agricultural Law Center
- Objective agricultural and food law research and information
- Online survey



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## Mandatory GMO Labeling Overview of Presentation

- Historical Development of Debate
- Review of Enacted Statutes
- Vermont Litigation
- 2014 Ballot Measures
- Federal Legislation

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## Regulatory Framework for GMOs General Principles

- Coordinated Framework for Regulation of Biotechnology (1986)
  - Established by White House Office of Science and Technology Policy
  - Provides foundation for existing regulatory framework

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## Regulatory Framework for GMOs General Principles

- Coordinated Framework for Regulation of Biotechnology (1986)
  - Biotechnology poses no unique risks
  - Products of biotechnology, not the process, should be regulated
  - Regulation based upon verifiable scientific risks
  - Existing statutes are sufficient to regulate GM products

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## Regulatory Framework for GMOs Agencies Involved

- **USDA APHIS**
  - Authority under Plant Protection Act
- **EPA**
  - Authority under FIFRA
- **FDA**
  - Authority under Federal Food, Drug, and Cosmetics Act

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## Regulatory Framework for GMOs Local Control

- Counties in California, Washington, Oregon, and Hawaii have enacted local prohibitions on GM cultivation.
- Several states have enacted, or are considering, statutes that would preempt local regulation.

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## Mandatory GMO Labeling Legal Developments Generally

- Legal developments have been most active at the state level.
- Minimal legal developments have occurred at the federal level.
- Legal developments at the local level?

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## Mandatory GMO Labeling Oregon Measure No. 27

- November 5, 2002 General Election
- Would have required plainly visible label containing the words "Genetically Engineered."
- Defeated by 70-30 margin.

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## Mandatory GMO Labeling California Proposition 37

- November 6, 2012 General Election
- The California Right to Know Genetically Engineered Food Act
  - "Commencing July 1, 2014, any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed."

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## Mandatory GMO Labeling California Proposition 37

- Arguments for:
  - You have right to know what is in food.
  - You will have information you need to make decision about foods that some doctors and scientists say are linked to allergies and other health risks.
  - Over 40 other countries require labels.

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## Mandatory GMO Labeling California Proposition 37

- Arguments against:
  - Creates government bureaucracy
  - Increases costs
  - Provides no health or safety benefits
  - Full of special-interest exemptions
  - Encourages frivolous litigation

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## California Proposition 37 Newspaper Editorials

- "... send it back to its creators for some modification." (*Contra Costa Times*)
- "... Once you get past the pleasing outside surface of this proposition . . . , it reveals a rotten interior . . ." (*Los Angeles Daily News*)
- "This flawed measure would set back the cause of labeling." (*Modesto Bee*)

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## California Proposition 37 Enforcement Provisions

- "[A]ny person" had standing to initiate enforcement proceedings.
- Attorney's fees and reasonable costs could be awarded to person or organization that initiated enforcement proceedings.
- There was no provision for the award of attorney's fees to the defendant in an unsuccessful enforcement proceeding.

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## Mandatory GMO Labeling California Proposition 37

- Results:
  - Yes – 6,088,714 (48.59%)
  - No – 6,442,371 (51.41%)
- Who really won?

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## Mandatory GMO Labeling Washington Initiative 522

- November 5, 2013 General Election
- Results:
  - Yes – 857,511 (48.91%)
  - No – 895,557 (51.09%)
- Similarity to California
  - Substance, process, and result

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## Mandatory GMO Labeling Connecticut Public Act 13-183

- Signed by Governor on June 25, 2013
- Requires labeling of:
  - food intended for human consumption
  - Seed or seed stock that is intended to produce food for human consumption
- “Produced with Genetic Engineering”

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## Mandatory GMO Labeling Connecticut Public Act 13-183

- Exceptions:
  - Alcoholic beverages
  - Restaurants
  - Sold by farmer to consumer
  - Non-GE animal fed GE food

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## Mandatory GMO Labeling Connecticut Public Act 13-183

- Enforcement:
  - Enforced by Commissioner of Consumer Protection
  - Requires knowing violation

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## Mandatory GMO Labeling Connecticut Public Act 13-183

- Effective when:
  - 4 states, including 1 that borders Connecticut, enact mandatory labeling laws
  - Aggregate population of Northeastern US (9 states) that have mandatory labeling laws exceeds 20 million
    - Population of 6 New England states = 14.4 million

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## Mandatory GMO Labeling Maine LD 718 (HP 490)

- An Act to Protect Maine Consumers' Right to Know about Genetically Engineered Food
- Enacted without Governor's signature on Jan. 12, 2014.

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## Mandatory GMO Labeling Maine LD 718 (HP 490)

- “Beginning 18 months after the effective date of this section, any food offered for retail sale that is genetically engineered must be accompanied by a conspicuous disclosure that states “Produced with Genetic Engineering.”
- Effective when 5 contiguous states, including Maine, enact mandatory labeling laws

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## Mandatory GMO Labeling Maine LD 718 (HP 490)

- **Exceptions:**
  - Alcoholic beverages
  - Restaurants
  - Medical foods
  - Non-GE animal fed GE food
  - Produced without knowledge of GE status
  - GE ingredients less than .9% of total weight

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## Mandatory GMO Labeling Vermont Act 120

- Signed into law on May 8, 2014.
- Will become effective on July 1, 2016
- Labeling required if food is “entirely or partially produced with genetic engineering.”
- Label must indicate “produced with genetic engineering”, “partially produced with genetic engineering”, or “may be produced with genetic engineering.”

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## Mandatory GMO Labeling Vermont Act 120

- **Exceptions:**
  - Alcoholic beverages
  - Food prepared for immediate consumption
  - Food containing *de minimus* amount of GMOs
  - Food produced without knowing or intentional use of GMOs
  - Medical foods
  - Non-GE animal fed GE food

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## Mandatory GMO Labeling Vermont Act 120

- **Enforcement:**
  - Enforced by Attorney General
  - Civil penalty of up to \$1000 per day per product

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## Mandatory GMO Labeling Other State Information

- Aggregate voting results within VT, ME, and CT legislative chambers – 486 to 39
- Jan. 22, 2014 – New Hampshire House of Representatives rejected labeling bill by 185 to 162 vote.
- In 2013, 110 bills introduced in 32 states.

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## Mandatory GMO Labeling Vermont Act 120

- Statute created Special Fund to be used in any potential litigation.
- Litigation filed on June 12, 2014 in the United States District Court for the District of Vermont by Grocery Manufacturers Association, Snack Food Association, International Dairy Foods Association, and National Association of Manufacturers.

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## Mandatory GMO Labeling GMA v. Sorrell, Docket No. 5:14-CV-117

- According to allegations in Complaint, Plaintiffs:
  - “must revise hundreds of thousands of product packages”
  - “must establish Vermont-only distribution channels” to comply with Vermont’s speech requirements
  - may be required to revise labels of all products sold in United States.

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## Mandatory GMO Labeling GMA v. Sorrell, Docket No. 5:14-CV-117

- Legal claims:
  - Violates First Amendment - “imposes burden on protected speech”
  - Violates Commerce Clause
    - Cost of regulation will be borne by out-of-state companies
    - Regulation likely necessitate revision of labeling and marketing on a national level

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## Mandatory GMO Labeling GMA v. Sorrell, Docket No. 5:14-CV-117

- Legal claims:
  - Preempted by a variety of federal labeling laws
    - Federal Food, Drug, and Cosmetic Act
    - Nutrition Labeling and Education Act
    - Federal Meat Inspection Act
    - Poultry Products Inspection Act

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## Mandatory GMO Labeling GMA v. Sorrell, Docket No. 5:14-CV-117

- Procedural history:
  - Aug. 8 – Motion to Dismiss filed by Defendants
  - Oct. 7 – Order Denying Motion to Intervene filed by Vermont Public Interest Research Group and Center for Food Safety
    - Permitted to file legal memoranda as *amici curiae*

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## Mandatory GMO Labeling 2014 Ballot Initiatives

- Oregon Measure 92
  - Contains citizen suit provision with opportunity to recover attorney's fees
  - Violations require knowing or intentional use of genetic engineering
- Results as of Nov. 17:
  - Yes – 741,488 (49.85%)
  - No – 746,012 (50.15%)

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## Mandatory GMO Labeling 2014 Ballot Initiatives

- Colorado Proposition 105
  - Did not authorize private rights of action
  - Exemptions generally mirrored those of New England statutes
  - Results:
    - Yes – 686,093 (34%)
    - No – 1,304,217 (66%)
    - Only 3 counties recorded more yes than no votes.

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## Mandatory GMO Labeling Potential Federal Activity

- Legislative
  - Some advocates on both sides support federal labeling requirements.
  - Legislation introduced in both chambers.

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## Mandatory GMO Labeling Potential Federal Activity

- Genetically Engineered Food Right-to-Know Act
  - Would impose mandatory labeling requirements
  - Senate Bill 809, House Bill 1699
- Safe and Accurate Food Labeling Act
  - Would impose standards on voluntary labeling
  - House Bill 4432

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