Considering the Mandatory Labeling of Genetically-Engineered (GE) Foods in the U.S.

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Multidisciplinary Review Team and References available on the FPRC Website.

Summary of Findings:
- Over 25 U.S. states, including Minnesota, are considering legislation to label GE foods.
- The major arguments for mandatory labeling include the consumer’s right to know, genetic engineering is still controversial, some do not trust the government regulatory process, many countries already require labeling, and a majority support it in polls.
- The major arguments against mandatory labeling include viewing it as a false warning that GE foods are risky, consumers already have GE-free options such as organic products, the difference between a right and need to know, consumer choice could be reduced, and the cost of food could increase.
- State labeling laws are likely to face legal challenges. Federal action is unlikely. However, one grocery chain has already taken action to require GE-product labeling and other food companies may also.

Background
Genetic engineering involves the manipulation of genes in the lab to create new varieties of plants, animals, and organisms with desired characteristics. Most processed foods in the U.S. contain genetically engineered (GE) ingredients, since 88 percent of the corn and 93 percent of the soybeans grown in this country in 2012 were genetically engineered. The first attempt to require the mandatory labeling of GE food in the U.S. was Ballot Measure 27 in 2002 in Oregon, which was defeated. The issue of mandatory labeling was revived in 2012 by Proposition 37 in California, which also was defeated in the election.

Over 25 states are now considering legislative proposals or ballot initiatives requiring the labeling of foods with GE ingredients. Connecticut passed a GE labeling law in June 2013, although it will not go into effect until four bordering states enact similar regulations. Senate Bill 821 (SF 821) was introduced in the Minnesota legislature in 2013. If enacted, the wording “Produced with Genetic Engineering” would be required on retail food packages and on the shelves or bins of unpackaged products. Although it did not move forward, a similar bill is expected to be reintroduced in the next legislative session.

The Case for the Mandatory Labeling of GE Foods
- Labeling conforms with the principle of the “consumer’s right to know”. The first argument usually made for labeling is that consumers have a right to know what is in the food that they eat. Free market economics assumes purchase decisions are made by well-informed consumers, yet most U.S. consumers are unaware of the extent of GE ingredients in food.
- GE crops and foods are still controversial. Opponents of GE foods see risks to health, the environment, and/or the concentration of power in the food system. Some do not trust the government regulatory process since special regulations and labeling for GE foods are not required, relying instead on industry testing and generally treating GE products as “substantially equivalent” to their conventional counterparts.
- A number of countries already require mandatory labeling. Over 60 countries require the mandatory labeling of GE food, including Australia, China, India, Japan and the member states of the European Union (EU).
• **Polls show that a majority of Americans favor mandatory labeling.** Nine out of 10 Americans in a poll of 3,000 conducted for NPR by Thomson Reuters in 2010 wanted foods with GE ingredients labeled. Other polls have had similar results.

The Case Against the Mandatory Labeling of GE Foods

• **Labeling could be viewed as a warning that GE foods pose a health risk.** Based on current knowledge, the broad scientific consensus is that the GE crops and foods approved by the Food and Drug Administration (FDA) are safe, although some experts argue for improved testing.

• **Consumers already have the option of GE-free products.** Under the federal certification program, the “organic” label indicates a process has been followed to exclude GE organisms (i.e., GE seeds). However, accidental contamination can occur, for example due to pollen drift from nearby fields with a GE variety. Although not routine, allowance is made for testing “organic” products believed to contain prohibited substances, such as pesticides and GE organisms (13). Companies can also voluntarily label foods as non-GE, but the labels must also indicate that there is no significant difference between the non-GE and GE product. The private Non-GMO Project has set a threshold of no more than 0.9% GE content for its certification, the same as the EU.

• **There’s a distinction between the consumer’s “right to know” and “the need to know”.** Consumers’ “right to know” is virtually unlimited in terms of what it might arguably be applied to, whereas if something poses a real health risk consumers have a “need to know”. This distinction between “right to” and “need to” may ultimately be in the “eyes of the beholder”.

• **Labeling may reduce consumer choice.** In many countries with mandatory labeling, retailers no longer sell GE-foods so consumers’ choices have been reduced.

• **Guaranteeing foods are non-GE could be costly.** The segregation of GE and non-GE products and identity preservation throughout the supply chain, or testing final ingredients and/or products for the presence of GE material, would add to the cost of food. Reliable cost estimates of GE labeling are not available. A major expense would likely involve lawsuits. Most countries with mandated GE labeling produce little, or no, GE crops, which frequently may be imported, though usually just as animal feed, so in those countries segregation is easier and GE food labeling costs minimal.

Further Considerations

States may enact food labeling laws concerning issues not regulated by the federal government. However, any state that enacts mandatory GE food labeling is almost certain to face a battle in the courts. The most likely legal basis of such lawsuits would be the preemption of state law by federal law (i.e., the FDA regulations), under which state laws may not conflict with federal ones. The preemption provision is sufficiently nuanced and complex though, that legal experts disagree on how the courts might rule in such a situation. Any decision by a lower court is likely to be appealed. The U.S. Senate recently voted overwhelmingly against a proposed 2013 Farm Bill amendment that would have allowed states to mandate GE labeling if they chose. A bill was introduced in the U.S. Congress in April 2013 that would require the labeling of GE foods nationally. However, given the politics of the current Congress, its passage is difficult to envision. On the other hand, more food products are appearing in stores certified as GE-free. In March 2013, the Whole Foods grocery chain announced that all products it sells with GE ingredients must be labeled by their suppliers within five years. Other food companies might take similar action, especially retail chains. Companies could, of course, stop supplying Whole Foods or others that required GE labels.