

United States Senate

WASHINGTON, DC 20510

July 24, 2018

The Honorable Sonny Perdue
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Perdue,

We are writing you to express our deep concern over the Department of Agriculture's proposed rule on the National Bioengineered Food Disclosure Standard. When Congress passed the national, mandatory disclosure law for genetically engineered (GE) foods in 2016, we recognized the consumer's right to know about their food and made a commitment to the American people that consumer confusion would be lessened and that all GE foods – including everything from GE salmon to highly refined GE ingredients and products of modern biotechnology – would bear a disclosure.

All Americans have the right to know what is in their food and how their food is produced. Studies show that the majority of Americans want to see GMO foods labeled.¹ In fact, one study found that 93 percent of Americans support labeling GMO foods.²

Unfortunately, the proposed rule does not achieve the objectives intended by the mandatory disclosure law. We believe the mandatory disclosure standard as currently drafted includes a number of concerning issues that, if not corrected in the final rule, could actually exacerbate consumer confusion, cause conflict with our major international trading partners and risk rendering the disclosure standard ineffective.

As your department moves forward with implementing the mandatory GE disclosure law, we ask that the final rule reflect the following guidance:

1. Ensure the mandatory standard applies to all GE foods and all GE technologies.

USDA's mandatory GMO disclosure standard must apply to all GE foods, including foods that contain highly refined GE ingredients like sugars and oils, as well as foods produced with new genetic engineering techniques like CRISPR and RNAi. In a letter dated July 1, 2016, USDA General Counsel Jeffrey Prieto clarified that the law provides USDA with the legal authority to do so, as Congress intended.

¹ http://humeco.rutgers.edu/documents_pdf/news/gmlabelingperceptions.pdf

² <http://www.nytimes.com/2013/07/28/science/strong-support-for-labeling-modified-foods.html>

Failure to include highly refined sugars and oils would betray the clear intent of Congress that 25,000 more products carry a GE disclosure than what was required at the state level. In addition, roughly 10,889 GE food products – representing one in six GE foods – would be excluded from the disclosure requirement if a special loophole is granted for highly refined sugars and oils. Including such products will also ensure that the disclosure standard comports with our trading partners, as we discuss below. Finally, USDA must ensure that GE foods – like the GE salmon – are added to the mandatory disclosure list as soon as they go to market so that consumers are aware as soon as possible.

2. **USDA's mandatory GE disclosure standard should avoid trade conflicts.** It is critical that USDA's disclosure standard be consistent with our major trading partners and the standards set by the UN Codex Alimentarius to avoid unnecessary trade conflicts. The majority of countries that label GE foods, including the member countries in the European Union, Brazil and China, require the disclosure of refined sugars and oils as well as foods derived from newer forms of genetic engineering. In addition, the standard should apply to food in which an ingredient contains a GE substance that is inadvertent or technically unavoidable, and accounts for no more than 0.9 percent by weight of the specific ingredient.

Over half of the 64 countries that require GE labeling have a threshold level of at minimum 0.9 percent. This threshold is also consistent with the Non-GMO Project standard, the leading voluntary GE-free certification standard in the U.S. While a handful of countries have established a threshold exceeding 0.9 percent, using the 0.9 percent standard would set a regulatory floor to ensure that American companies comply with all standards internationally and that imported foods comply with ours, both at 0.9 percent by weight of the specific ingredient and above it.

3. **The disclosure standard should give companies the choice of terms to use, like "GMO," "genetically modified," or "genetically engineered."** The proposed rule states that a disclosure can only be made using the terms "bioengineered food" or "bioengineered food ingredients." Using these terms will further exacerbate consumer confusion because consumers have never applied this term to food produced through genetic engineering. Prior to passage of Pub. L. 114-216, three states – Connecticut, Maine and Vermont – passed mandatory disclosure laws for GE foods, and Alaska established a mandatory disclosure law for GE salmon.³ Each of these laws used the term "genetic engineering" to describe the technology and the terms "genetically engineered" or "genetically modified" for purposes of the disclosure requirement. In addition to state laws, federal agencies have long used the terms "genetic modification" and "genetic engineering,"⁴ as do USDA's own regulations of plants produced using biotechnology.⁵
4. **USDA must have strong rules for digital disclosures, including comparable options for consumers who won't be able to access digital disclosures.** While 64 other countries have already developed mandatory disclosure standards for GE foods, no country has created mandatory disclosure laws that allow for electronic or digital disclosures. Therefore, how

³ http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=SB0025Z&session=24

⁴ See Office of Science and Technology Policy, Executive Office of the President, *Coordinated Framework for Regulation of Biotechnology*, 51 FR 23302 (1986)
https://www.aphis.usda.gov/brs/fedregister/coordinated_framework.pdf

⁵ 7 CFR § 340.1

USDA writes the rules governing digital or electronic disclosures will set a precedent for how other federal agencies choose to regulate electronic disclosures in the future.

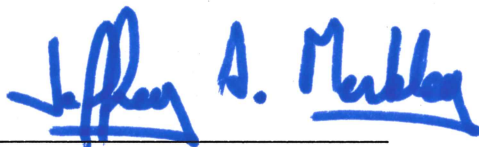
The law clearly directs the Secretary to provide additional and comparable options for consumers if USDA determines that they will not have sufficient access to the GMO disclosure through electronic or digital methods. We believe that any additional or comparable options put forward must be just as convenient as it would be for someone to scan a product with their own personal device. Many Americans live in areas without reliable cell service and a text message option cannot be considered a sufficient comparable option that addresses concerns around access.

While we hope that food companies will make GE disclosures through clear, on-package text, we recognize that some companies may use the digital disclosure option. Therefore, USDA needs to have strong rules to make sure that digital disclosures made using QR codes consistently scan every time, work in all conditions and for all food packages, and that the GMO disclosure is the first thing a consumer sees on the product information page after scanning a digital disclosure. The standard must also be responsive to changes in electronic or digital disclosure technologies.

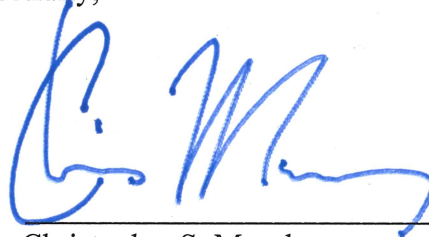
USDA must also ensure that consumer privacy is protected and that food manufacturers are restricted from collecting personal information, such as product choices and physical location, from consumers. This is reflected in the draft rule and we hope that it is retained in the final rule.

Consumers have waited long enough to see GMO disclosures on packages. We trust that USDA will take into consideration these four very important issues in developing its final rule.

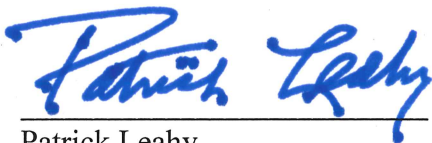
Respectfully,



Jeffrey A. Merkley
United States Senator



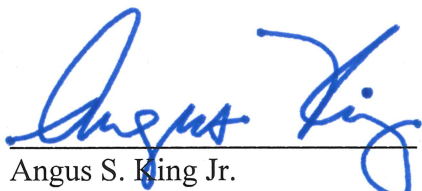
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