

# United States Senate

WASHINGTON, DC 20510

November 7, 2017

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

Dear Secretary Perdue,

All Americans have the right to know what is in their food and how their food is produced. We are writing to urge you and the Agricultural Marketing Service (AMS) to consider carefully the rights and will of the American people as the AMS undertakes a rulemaking process to develop a national standard for clear, accessible labels for food products containing bioengineered (GE) ingredients. We also urge you to consider, and work to address, the obstacles Americans would face while attempting to access GE ingredient information through digital or electronic disclosures.

Studies show that the majority of Americans want to see GE foods labeled.<sup>1,2</sup> In fact, one study found that 93 percent of Americans support labeling GE foods.<sup>3</sup> Responding to the strong public desire for access to this information, Congress debated the issue and passed a bill on July 7, 2016, which requires the U.S. Department of Agriculture (USDA) to establish a standard for labeling bioengineered foods.

While this new law sets the framework for a mandatory bioengineered labeling standard, we are concerned about provisions in the law that would allow the use of digital and electronic disclosure methods to disseminate this GE ingredient information. We are particularly concerned about the potential use of quick response (QR) codes to label bioengineered foods. QR codes present obstacles for Americans who do not possess smartphones; Americans who live and shop in areas without broadband or cellular network access; and Americans who simply do not have the experience, education, or training to access information using these codes.

Fortunately, the new bioengineered food labeling law also required USDA to conduct a study to identify the technological challenges that affect consumer access to GE ingredient information disclosed through electronic or digital methods. Further, the law requires USDA to provide additional labeling options, if the USDA finds that electronic or digital disclosure methods are insufficient to provide consumers with access to this ingredient information.

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<sup>1</sup> Hallman, William K., Cuite, Cara L., and Morin, Xenia K. "Public Perceptions of Labeling Genetically Modified Foods." Rutgers School of Environmental and Biological Sciences, November 1, 2013.

<sup>2</sup> Jalonick, Mary Clare. "Poll finds most Americans want GMO food labels." Associated Press, January 13, 2015.

<sup>3</sup> Kopicki, Allison. "Strong Support for Labeling Modified Foods." New York Times, July 27, 2013.

The resulting Deloitte study supports the concerns described above and is a reminder of the need for clear, accessible, on-package labels for bioengineered foods. According to the study, 23% of American adults did not own a smartphone in 2016. Smartphones are a necessity for Americans wanting to scan QR codes, particularly if stores do not provide QR code scanners. Unfortunately, this means around 74 million Americans would be unable to access this GE ingredient information via QR code disclosure.

In rural areas, smartphone ownership is even smaller. According to a 2017 Pew Research Center study, 33% of Americans living in rural areas did not own a smartphone in 2016.<sup>4</sup> In addition, many Americans without smartphones are seniors; a recent Nielsen study showed 32% of Americans aged 65 and older did not own a smartphone in 2016.<sup>5</sup> **Using QR codes without in-store scanners, and without providing the requisite instructions, would mean leaving millions of seniors and Americans living in rural areas in the dark.**

In addition to smartphones, broadband internet access is key to accessing GE ingredient information through electronic disclosures. Unfortunately, as the Deloitte study points out, 20.5 million Americans do not live in counties with access to broadband internet with the adequate speed required for accessing GMO information disclosed through electronic or digital means. Further, 77% of Americans without adequate broadband internet live in rural areas. **Using digital disclosures for bioengineered ingredients without first establishing broadband internet for all Americans would leave our nation's rural communities in the dark.**

We urge you to address these obstacles as the AMS undertakes the rulemaking process to establish a mandatory food labeling standard. We specifically make the following recommendations:

1. Bioengineered ingredient disclosures should consist of clearly worded, on-package text labels indicating the presence of these GE ingredients. QR codes or other electronic disclosure methods should not be used until broadband internet access and smartphone adoption are near universal, and no longer present obstacles to consumer access to bioengineered ingredient information.
2. QR codes should not be used on packages that are too rounded or glossy, or otherwise hinder scanning equipment in any way. If QR codes or other electronic disclosures are used, the law requires that they be of sufficient size to be scanned and read properly. According to a study conducted by TapWalk, the minimum practical size for QR codes to be readable is between 1.25 and 1.75 square inches.<sup>6</sup>
3. Consumers should be able to understand easily any GE ingredient disclosure, digital or otherwise. It should be plainly obvious through text that QR codes, phone numbers, or other disclosures will lead consumers to GE ingredient information. Further, the law requires that telephone numbers accompany electronic or digital disclosures.

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<sup>4</sup> Perrin, Andrew. "Digital gap between rural and nonrural America persists." Pew Research Center, May 19, 2017.

<sup>5</sup> "Millenials are top smartphone users." Nielsen, November 15, 2016.

<sup>6</sup> "Minimum Practical Size of a QR Code." TapWalk, September 24, 2016.

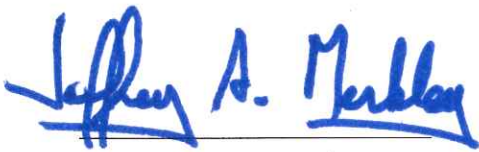


4. Digital or electronic disclosure methods should not be used until all grocery stores provide QR code scanners in every aisle, and provide secure, high-speed wireless internet for shoppers who can and would like to use their smartphones to access these disclosures.
5. GE ingredient information must appear first if it is disclosed through electronic or digital methods, as required by law. Likewise, GE ingredient information cannot be presented alongside marketing information. This information is to be provided as a service to consumers, not an advertising opportunity for food companies.

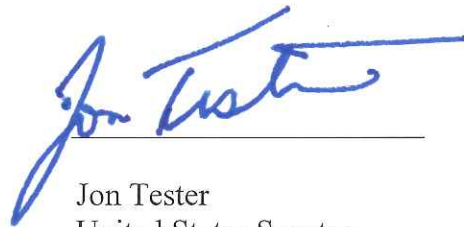
We look forward to working with you to establish a national bioengineered food labeling standard that works for everyone. We encourage the USDA to address the obstacles that would prevent many of our nation's rural communities and seniors from accessing this ingredient information, and we hope you will respect the right of all Americans to know what is in their food and how it is produced.

We will be monitoring the rulemaking process carefully, and hope you will reach out with any updates.

Sincerely,



Jeffrey A. Merkley  
United States Senator



Jon Tester  
United States Senator



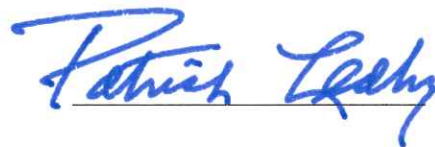
Tom Udall  
United States Senator



Richard Blumenthal  
United States Senator



Kirsten Gillibrand  
United States Senator



Patrick Leahy  
United States Senator

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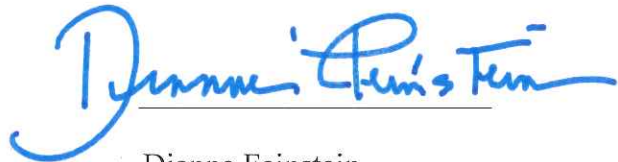
Ron Wyden  
United States Senator

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Sheldon Whitehouse  
United States Senator

A handwritten signature in blue ink, reading "Martin Heinrich", positioned above a horizontal line.

Martin Heinrich  
United States Senator

A handwritten signature in blue ink, reading "Dianne Feinstein", positioned above a horizontal line.

Dianne Feinstein  
United States Senator

A handwritten signature in blue ink, reading "Bernard Sanders", positioned above a horizontal line.

Bernard Sanders  
United States Senator