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“Agriculture Biotechnology: A Look at Federal Regulation and Stakeholder Perspectives”

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Introduction

First, I would like to thank the Senate Committee on Agriculture, Nutrition and Forestry, Chairman Roberts, and Ranking Member Stabenow for holding this hearing to talk about one of the most critical issues facing the food industry today. I greatly appreciate the opportunity to be here.

My name is Daryl Thomas. I am currently the Senior Vice President of Sales and Marketing for Herr Foods Inc. I have been in this position for 9 years. Herr's is a family owned snack food company that was started in 1946 by my father-in-law, James S. Herr.

Our corporate headquarters are located in Nottingham, Pennsylvania. We have two manufacturing facilities – one in Nottingham and one in Chillicothe, Ohio. We also operate 22 company warehouses located throughout the Northeast. Our products are distributed via 500 company-owned routes, 380 independent operator routes, and a network of brokers, wholesalers and distributors located throughout the 48 contiguous states. We also ship product directly to some retailers through their distribution systems. At any given time, Herr's product may be found in any of the United States.

GMO Labeling Debate

Over the last several years there have been a number of state ballot initiatives calling for mandatory GMO labeling. While voters have rejected ballot initiatives calling for mandatory GMO labels in four states (California, Washington, Colorado and Oregon), the Vermont state legislature approved the nation's first mandatory GMO labeling law, Act 120, in April 2014. The law is set to go into effect on July 1, 2016. This looming deadline makes it imperative that Congress work quickly to pass a voluntary GMO labeling bill that will pre-empt such state laws. Mandatory GMO labeling at the state level would create a patchwork of state regulations that would be virtually impossible for companies – particularly mid-sized, family-owned companies such as ours – to navigate.

Absent immediate action by Congress to create a federal GMO solution, manufacturers will have essentially three options in order to comply with a state labeling law such as Vermont's Act 120: 1) order new packaging for products going to each individual state with a labeling law, 2) reformulate products so that no labeling is required, or 3) halt sales to those states with

mandatory labeling laws. Each option is difficult, costly, time-intensive, and could eliminate jobs and consumer choice in the marketplace.

At Herr's it will be difficult for us to continue sales to the state of Vermont, although no final company decision has been made. If other states were to implement their own mandatory labeling laws, we would have to evaluate each state separately. These types of decisions are not easy for a mid-sized company such as ours to make. We are looking for ways to grow our business, not eliminate markets, but the cost and liability associated with the Vermont law are significant.

Our decision will be impacted by a letter we recently received from one of our customers and the largest grocery wholesaler in the United States. The letter informed manufacturers that the company "will not take additional steps to segregate or otherwise specifically direct the shipment of Vermont only products into Vermont." Essentially, this wholesaler will not stock specific SKUs (stock keeping units) in consideration of the new law.

Production Processes

One of the biggest barriers to comply with the Vermont mandatory GMO labeling law, let alone a patchwork of state labeling laws, is the manufacturing process itself.

First, it would require separate storage for GMO and non-GMO products throughout the entire supply chain, beginning on the farm. Farmers will need to separate their crops during planting and when transporting to grain elevators or manufacturers. Once a grain elevator or manufacturer receives the raw materials from farmers they too will need to store and produce GMO and non-GMO materials separately. Aside from new administrative and recordkeeping burdens, manufacturers such as Herr's will need to add separate storage areas to their facilities in order to segregate these products. For example, with our line of tortilla chips, the segregation process will begin in the field. There are two ways to begin the manufacturing process: one, by cooking the corn into a mash and the other by purchasing corn masa (flour), adding water to it, and then sheeting it for cutting into the appropriate shape. At Herr's we currently cook whole corn but will be moving to a masa flower process in 2016. A mandatory labeling scheme would require two different silos to hold GMO and non-GMO bulk corn and masa.

Given the expense of manufacturing machinery and the space required to house extra equipment, we would have to use the same equipment for both GMO and non-GMO lines. A thorough cleaning of the sheeting, baking, frying and seasoning lines between runs would have to occur to ensure no contamination happens. Such a process could take nearly eight hours and would lead to a loss in valuable production time.

Some advocates of mandatory GMO labels assume that companies will simply remove GMO ingredients from their products in a response to labeling requirements. However, this is an unrealistic expectation. At Herr's we have come to realize that the availability of non-GMO crops and ingredients is often very limited. We derive the vast majority of our ingredients from corn, cotton and soybeans, and more than 80 percent of these crops grown in the United States

are genetically modified.¹ At Herr's we use cottonseed and soybean oils in our potato chips and, of course, source corn for our tortilla chips.

Another complicating factor is the need for duplicative labeling film for the same SKU assigned to each product line. In order to comply with a patchwork of mandatory state labeling laws, our company would need to change film in mid-production and then keep multiple inventories of the same finished product: one for each state with a mandatory labeling law.

Significant lead times and costs also go into a bag design change. At Herr's we have approximately 411 SKUs, and we estimate that a bag design change for each SKU is approximately \$5,500. This extra cost includes plate charges, new film and administrative oversight. To keep a different label for an individual state for all of our SKUs would cost millions of dollars per state. Additionally, the actual process of designing, compliance review, plate making, and lead-time for film would be 20-26 weeks each time a new label was required.

After production, our products are distributed through almost 900 routes and a network of brokers, wholesalers and distributors throughout the 48 contiguous states. Tracking individual state's SKUs for each step along this distribution channel will increase costs as well as heighten opportunity for mistakes, thereby leaving the company open to litigation.

To be clear, smaller, family-owned companies such as ours likely will be harder hit by this regulation than large multinational firms. A handful of multi-category, multi-national players may be better positioned to take on the added cost of a segregated system, while such a system could force consolidation among smaller players. In either case, the changes necessary to maintain individual state mandates will ultimately lead to higher costs on grocery shelves for consumers. While some consumers may be willing and able to pay these additional costs, other consumers simply might not be in a financial position to painlessly absorb increased prices on grocery store shelves.

Impact on Consumers and the Economy

Ultimately a patchwork of state mandatory GMO labeling laws will hit consumers the hardest, resulting in increased costs at the grocery store and/or less availability of products on store shelves. As I mentioned, Herr's has not made a final decision about whether or not to continue sales in Vermont. Ceasing distribution to a state is not simple, and it is not a decision we take lightly. We would have to notify our retailers of our decision to stop sales in Vermont, and we would be assuming some risk that retailers will not comply. If a retailer accidentally stocks our product without the appropriate label, we at Herr's are actually liable for that error.

With fewer players in the grocery aisle, there could be less incentive to keep quality high and prices low as competition decreases. If companies choose to eliminate sales in Vermont it could

¹ United States Department of Agriculture Economic Research Service. "Recent Trends in GE Adoption". July 14, 2014. Retrieved from: <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us/recent-trends-in-ge-adoption.aspx>

mean fewer route sales people, warehouse personnel, account executives and field managers. Fewer jobs could lead to a decrease in tax revenue in a given state.

A decrease in competition could also lead to an increase in costs to consumers of products on grocery shelves. While there has been great debate over how much of an increase in costs consumers could actually face, non-GMO or organic products are typically more expensive than their counterparts on store shelves. For some households a moderate increase in cost might be easily absorbed, but for others who already face food insecurity the impact could be devastating and wholly unnecessary.

GMO-Free Options Already Exist

First, we would like to note that Herr's has a strong commitment to safe products and we firmly believe the GMO ingredients we use are safe. We also support consumers having options in the marketplace. In fact, we have recently introduced a Non-GMO Project verified popcorn to our product lineup. The introduction of this product was supported by demand in the marketplace. Ultimately consumers vote with their dollars, and we at Herr's believe there is sufficient consumer demand at the right price point to support our non-GMO popcorn product. For other products in our portfolio, it is unclear if the market demand is there to justify a non-GMO product line, so we have made the business decision not to undergo a similar process for other products at this time. That said, other companies with different business models do provide non-GMO alternatives for potato chips, tortilla chips, pretzels and even cheese curls. Consumers who wish to purchase non-GMO snacks have that choice.

It is worth noting that from our experience, verification through the Non-GMO Project took approximately 6 months to complete. To go through this process for each of our 441 SKUs would be virtually impossible, and it is unclear whether third party verification systems could even handle this type of demand from a multitude of food manufacturers. Litigation is a very real threat, and in this environment Herr's would prefer to pursue third party verification for products labeled as non-GMO.

Herr's, along with many other food manufacturers, have already made the significant investment required to gain these voluntary certifications that give our customers the freedom to choose between products that are produced, distributed and marketed as organic and non-GMO. Forcing companies such as ours to re-label 99 percent of our product line does nothing but add cost, confusion and ultimately, may limit - instead of increase - choice for consumers.

The Politics of Labeling

Generally speaking, mandatory labels on food products are reserved for nutrition information and food safety information. As we heard from the previous panel of witnesses, the debate over the safety of GMOs is settled – the products on the market are safe, and they go through a rigorous approval process at multiple government agencies before they are deemed safe. Most GMOs don't alter the nutrition profile of food products. In fact, the Food and Drug

Administration has noted that genetic modification alone does not make a food product or ingredient materially different than a non-genetically modified product or ingredient.

Michael Landa, Director of the Center for Food Safety and Applied Nutrition at the Food and Drug Administration, aptly noted in his testimony in December 2014 before the House Committee on Energy and Commerce that “Federal courts have held that, absent a material fact or difference in a food derived from a GE source, section 403(a)(1) and 201(n) of the [Federal Food, Drug and Cosmetic Act] do not require labeling indicating that the food has been developed through genetic engineering. Further, courts have held that consumer desire to know such information is not, by itself, sufficient to require such labeling.”

While there is not a food safety or statutory reason to require the labeling of GMO products in the marketplace today, we often hear from activists that food companies should label anyway because “consumers have a right to know.” Some groups that make this claim only use their websites and marketing materials to demonize genetically modified crops. However, options for consumers who do not want to purchase foods with GMO ingredients already exist through certified non-GMO products or organic products.

It is also unclear what information exactly, a state GMO label would provide to consumers given that the proposed definitions of foods to be labeled as GMO vary from state to state. We support giving consumers transparency but transparency shouldn't be defined differently by every state. Vermont's law is confusing enough, but if 2, 3, or 10 more states are allowed to define what is GMO, set labeling protocol, and legislate fines for noncompliance, the U.S. food distribution system could be crippled.

Conclusion

Herr's is extremely concerned about proposals that would require the labeling of products containing GMOs. To be clear, I am not here to testify about the safety of GMO products as that has already been confirmed by the FDA. I'm here to advocate for a federal solution to a critical issue that could force hundreds of family owned companies like ours to make distribution decisions that would negatively impact sales, jobs, and food prices.

We urge the Senate to pass a national, voluntary standard before the law in Vermont can take effect and begin to disrupt markets. If a patchwork of state labeling laws are adopted, it will most certainly disrupt interstate commerce, as just a single state law in Vermont is already forcing companies to make difficult decisions about distribution in that state. However, even a federal mandatory standard would be harmful and counter-productive. Such mandates will only increase costs to food manufacturers and increase food prices for consumers.

Again, thank you for your time and consideration of our views. I look forward to answering your questions.