

# Genetically modified foods, who has to tell?

February 27 2013, by Rosie Mestel

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Consumers who believe they have a "right to know" whether their food contains genetically modified ingredients are pressing lawmakers, regulators and voters to require labels on altered foods. But even if they succeed, experts say there's no guarantee that labels identifying genetically engineered foods would ever appear on packages.

"People are usually surprised to learn that there is no legal right to know," said Michael Rodemeyer, an expert on biotechnology policy at the University of Virginia in Charlottesville.

A variety of rules and regulations control the words that appear on [food packages](#). Such rules must be balanced against companies' constitutionally protected right of commercial speech, experts said.

"It's an unsettled area in the law," said Hank Greely, director of the Stanford Center for Law and the Biosciences in Palo Alto. "If I were a betting man, I think the odds are good that the Supreme Court would ... strike down a GMO labeling requirement."

Consumers do have the right to know some things about foods, and it's the job of the [Food and Drug Administration](#) to enforce the various rules. Labels must carry an accurate name for the food, as well as its weight and manufacturer, a list of ingredients and, since 1990, that panel of calories and breakdown of basic nutrients that some people pore over and others blithely ignore.

And labels cannot be false or misleading. Consumers have a right to

know that a foodstuff contains the nutrients they'd reasonably expect to find in a food with that name: An orange lacking [vitamin C](#) (should anyone desire to create such a thing) would have to be labeled as such.

They also have the right to know if a food contains something new that makes it materially different, such as an [allergen](#) or unexpected nutrient. [Soybean varieties](#) that are genetically engineered to contain high amounts of the monounsaturated fat oleic acid must bear labels that make that property clear, said FDA spokesperson Morgan Liscinsky.

But there is no requirement that food producers use those labels to say how they raised those [oleic acid](#) levels, according to the FDA. They could have done it through conventional breeding or by irradiating plant tissue to create mutations or by fusing cells together in a dish - or with genetic engineering.

When Flavr Savr tomatoes became the first genetically modified plants sold in supermarkets in 1994, they had stickers that informed shoppers that they were "made from genetically engineered seeds." Calgene Inc., the company that produced the tomatoes, even provided brochures and a toll-free number that consumers could call to learn more about the product, said Belinda Martineau, a geneticist at the University of California, Davis, who worked at Calgene in the 1990s.

But those labels were there only because Calgene decided to put them there. The FDA had scrutinized the process by which the company engineered the DNA in the tomatoes and decided that the technology itself didn't amount to a material change. Regulators concluded that Flavr Savr had the appearance, nutrients, taste and texture of a tomato (although not, as it turned out, an especially tasty one).

"It was still a tomato," said Fred Degnan, a food lawyer with the firm King & Spalding in Washington, D.C., who has worked on

biotechnology and labeling issues at the FDA. "They couldn't require it to be labeled in a way that implied it was different from a regular tomato."

Courts have ruled that forcing companies to label GM products violates their First Amendment right of free speech. In a 1996 case, a federal appeals court blocked a Vermont law that required dairy producers to label milk from cows that had been treated with a growth hormone made by genetically engineered bacteria. The hormone helped cows produce more milk, but the milk itself was the same as milk from untreated cows, the FDA determined. Since the law required information to appear on a label that wasn't "material" to the product, it was unconstitutional, the 2nd Circuit Court of Appeals ruled in a 2-1 decision.

Labels can be required only if they alert consumers to a change that affects a food's composition or nutrition, its physical properties (such as shelf life), or the qualities that influence the sensory experience of smelling, tasting and eating it, the FDA says.

It is not a definition that sits well with all.

Andrew Kimbrell, executive director of the Washington, D.C.-based advocacy group Center for Food Safety, said that approach reflects "19th century science." His group has petitioned the FDA to update its rules so that any product created via genetic engineering would be considered changed enough to require a label.

Such a change would also give companies more leeway to label their products as free of genetically modified ingredients: Today they can do so only if the label doesn't imply that there's something wrong with GM foods or that GMO-free foods are superior (although many companies skirt the rules).

"We need to know we have an agency using 21st century regulations to deal with 21st century technology," he said.

The FDA's stance on labeling genetically modified foods differs starkly from that of European regulators, who require foods with [genetically engineered](#) ingredients to bear labels. Most scientists believe that the FDA's approach is rational - but perhaps it's too rational if the goal is to encourage public acceptance of the technology, said Jennifer Kuzma, a science policy expert at the Humphrey School of Public Affairs at the University of Minnesota.

"This is something that people want to see on labels," Kuzma said. "My view is that consumers deserve a choice when it comes to something that is important to them, even though there may not be a scientific basis for doing it."

Rodemeyer, the expert on biotechnology policy, said he thinks food producers made a tactical mistake by deciding not to label their [genetically modified](#) products voluntarily.

"When you don't label, you're always raising suspicion you're trying to hide something," he said.

Since most processed foods contain oil, sugar, syrups, emulsifiers, flour, cornmeal and protein that are derived from GM crops, virtually every product sold in the last 15 years would have carried a label. By now, those labels would have lost all meaning, Rodemeyer said: "If they would have all held their noses and jumped together, this wouldn't be an issue."

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