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# GOVERNMENT ROLE IN LABELS AND LABELING

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Discusses current major issues in labeling and foresees continued emphasis on presenting the consumer with more information to make her or his shopping decisions.

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The advocates of more stringent control of labeling view an economy free of restriction on labeling as a right to deceive and confuse the consumer. The laissez-faire economist and businessman, on the other hand, argues that a free market mechanism allows for maximum communication between the consumer and business. The truth of the matter likely lies somewhere in between. The free market has had a tendency to spawn a maze of confusing labeling variations with a lack of even the most basic information needed for intelligent purchase decisions. On the other hand, in the present industry configuration, certain labeling requirements create the potential for substantial industry structural and cost impacts.

These are the kinds of tradeoffs I want to emphasize in my discussion. This discussion is based upon the following premises:

1. Forces are building for additional labeling requirements. These forces are not likely to subside.

2. The food industry, particularly the food processing segment, has been basically opposed to additional requirements in labeling.

3. Business has not been very good at judging the impact of labeling innovations to date.

4. Voluntary action by business tends to forestall legislative action.

5. If voluntary private action is not taken, legislative action will be taken.

Five years have elapsed since the passage of the Fair Packaging and Labeling Act. The objectives of this Act were twofold:

1. To enable consumers to obtain accurate information as to the quantities of the contents, and

2. To facilitate value comparisons.

The extent to which the Act accomplished its intended purposes is debatable. There is no question that statements of net weight are easier to find and more readable. The concept of net weight can, however, itself be deceptive. Some would argue, for example, for a drained weight concept which applies only to actual weight of fruit or vegetables in a container excluding the liquids in which they are packed. Others suggest that the tolerances for weight variation are either too wide or should not exist at all. Thus, the naive suggestion by one consumer advocate that consumers should act as their own policemen and weigh their packages while in the supermarket.

Much less progress has been made to enable the consumer to make judgments of value in the purchase of food. Judgment of the value of a product is inherently complex. It is a combination of product quality, price, nutrition, and individual tastes and preferences.

The push toward providing the consumer with a better basis for judging product values is apparent in current food industry issues. I want to briefly discuss five such issues -- unit pricing, nutritional labeling, pull dating, ingredient labeling, and grade labeling. These are issues which should be

on your drawing board for analysis with solutions forthcoming in terms of what is best for the industry in the long term.

### Unit Pricing

In many respects the current consumer interest in food purchase decisions began with a bewildering array of offerings and an inability to make price comparisons among brands of products and container sizes. The Fair Packaging and Labeling Act envisioned this as a problem of making net weight comparisons at a time when a proliferation was occurring in container sizes and inflationary pressures sometimes resulted in firms making marginal cuts in container size and weight rather than increasing price -- a phenomena which has been particularly noticeable in potato chips and candy bars. While the ability of the consumer to determine net weights improved prior to the advent of unit pricing, one still needed to either be a mathematical genius, carry a calculator or be willing to substantially increase shopping time to adequately make price comparisons. A partial answer was unit pricing. Initial reaction of grocery retailers was generally negative. The biggest arguments were that it would be too costly and would be too restrictive in terms of price changing. A limited number of chains took action voluntarily. For the chains taking the initiative, a competitive advantage was gained over rivals when accompanied by aggressive advertising. The fears of higher costs were largely ill construed as increased costs associated with the unit pricing procedure itself were largely offset by better price and inventory control. Because of early voluntary action, mandatory unit pricing is not a part of contemporary consumer labeling proposals. But even so, are our actions sufficient? Unit price labels are still generally hard to read and are physically separated from prices on the products themselves. Can the two be integrated? Maybe this should be a part of the new automatic checkout systems.

### Nutritional Labeling

To date we have relied largely on nutritional education to create awareness of a need for a balanced diet and thereby improve the nutritional level of consumers.

Such nutritional education has concentrated on basic food groups. How many of the processed and ready-to-eat foods such as pizza, stew, or the new frozen vegetable casseroles fit into these basic food groups is not readily ascertainable.

The advocates of nutritional improvement are considering two alternatives:

1. Regulation of food enrichment and fortification to ensure an adequate diet regardless of the combination of foods eaten. Such a proposal represents the extreme in regulation but is said not to be impossible to achieve. Such a proposal, in my view, represents far too much regulation to be consistent with a free enterprise economic system. It assumes nutrition is the sole purpose for which people eat. It runs the risk of discouraging innovation in food processing.

2. Establishing requirements for nutritional labeling. In 1969 The White House Conference on Food, Nutrition and Health spurred FDA to explore means of nutritional labeling.

The labeling option involves instructing people interested in nutrition by telling them on the label what is in the food so that they can construct a nutrition diet for themselves. So nutritional labeling is an attempt to establish the minimum amount of consumer information that can be given on a label to characterize a food. Problems we should be working on in this area include the need for and impact of: (1) differentiating protein quality, (2) running continuous assay of nutrients vs. using average nutrient content for the product class, and (3) differentiating between saturated and unsaturated fats.

It is interesting to me that the chains have taken the leadership in nutritional labeling -- not the traditional food processing sector. The extent to which they have capitalized on it in terms of profitability is not well documented. But the success of leaders in nutritional labeling such as Jewel Food Stores, Giant Food, Inc. and The Kroger Company indicates the effects must be positive.

One has to wonder what the food processing sector feels that it has to lose from nutritional labeling. Dairy products provide a case in point. USDA research demonstrates consumers generally overestimate the amount of fat in their products. The fear that nutritional labeling requiring disclosure of fat content will result in adverse consumer reaction just does not appear credible in light of such research results. It seems to me that what is needed is a coordinated effort in terms of how we get the job done for all foods.

### Ingredient Labeling

Ingredient labeling has been, in varying degrees, a part of labeling requirements for a number of years. The USDA meat and poultry inspection programs require a full listing of ingredients for all meat but allows spices, flavoring, coloring, vegetable oils, and animal fats to be designated by class names. FDA requires ingredient labeling on foods where standards of identity have not been established. Some defined products also have individual requirements for ingredient labeling. FDA, like the USDA, allows spices, flavoring, and coloring to be designated by class name.

Contemporary proposals for ingredient labeling are of two basic types. One would require that all food labels disclose their ingredients in order of predominance. A more stringent proposal would require conspicuous labeling of the percentage of net weight each ingredient constitutes.

The arguments for ingredient labeling are both health and nutrition oriented. Dietetic reasons dictate that many consumers avoid foods with specific ingredients. Present labeling requirements frequently do not give consumers with such problems enough information to make intelligent decisions. Increased importance of processed foods such as TV dinners or casseroles also makes ingredient labeling more important to the consumer. Requiring ingredients be listed in order of predominance is a step in this direction, but only a partial step. Percentage ingredient labeling would provide considerable added information on which to base decisions. The third argument for ingredient labeling involves the advent of

textured vegetable proteins as meat substitutes. The consumer can be accurately informed of the extent of such substitutions by ingredient labeling. Where the vegetable or synthetic protein product is nutritionally equal to the all meat product, consumers can be informed by a combination of ingredient and nutritional labeling in a relatively neutral manner rather than by use of terms such as "imitation."

The major concerns I have about ingredient labeling are twofold. First, while not a food technologist, it would be my judgment that ingredient labeling -- particularly percentage ingredient labeling -- could discourage innovation by providing considerable information on the composition of a new product to competitors. Second, ingredient labeling could substantially reduce the ability to substitute least cost sources of ingredients. This would be a particular problem where, as in the case of meat, fruits, and vegetables, prices are highly volatile and the ability to substitute substantially reduces costs to the processor and consumer. In this regard, percentage ingredient labeling would be much more restrictive than labeling in order of predominance.

### Dating

Product dating has undoubtedly been used as a means of quality and inventory control since food preservation came into being. Dating codes on products in stores have not, however, been generally easy for the consumer to decode. We have traditionally relied on the processor and retail store combined with the no repeat purchase or return penalty imposed by the consumer who receives an out of condition product to provide adequate assurance of freshness.

Now the consumer advocates are clamoring for open dating. Open dating is an exceedingly simple concept designed to tell a consumer how fresh a product is. It is, however, exceedingly difficult to implement by law. Most foods "age" gradually and, after a certain stage start to deteriorate in quality. The same products of different manufacturers will have a different shelf life. The same food stored under different conditions will have a different shelf life.

Each of these factors will result in differences among products and among stores in the appropriate open date -- whether the date be a pull date, a freshness date, or an expiration date.

As I see it, the major danger in open dating is that we establish a policy with respect to dating which is too restrictive in terms of the expected product shelf life. A policy which establishes by legislative or administrative fiat a common pull date runs the risk of either substantially increasing product losses or increasing distribution costs to the processor or chain who must meet pull date requirements. It also has the potential for building trade around markets where unduly restrictive pull dates exist and considerable transport time is required from more distant markets.

As a compromise solution, a pull date could be required on all products with the specific pull dates to be specified by the processor. Guidelines for establishing the pull date could be written to allow for a reasonable period for home consumption under specified storage conditions. With such a requirement, the expiration date could also be required to exist. The consumer being aware of the pull date would act as the "policing agent" on manufacturers establishing the appropriate pull date.

I might say as a final point, that the controversy with respect to open dating appears to be another instance where business was unduly concerned and resistant to a consumer concept. The fear that consumers would pick over all the products and pull out the freshest one resulting in high product losses just has not materialized. On the contrary, as in the case of unit pricing, demonstrable benefits accrued in terms of better inventory control and shelf management. The need now, however, is for a uniform system of open dating at the national level to minimize regulatory conflicts among States, counties, and municipalities.

#### Grade Labeling

USDA grade standards are developed to identify degrees of quality in products. Such standards aid in establishing appropriate product use and/or value. Grade

standards currently exist for roughly 325 different food products, and date back to 1917. They were originally developed to establish loan values on products in storage and to assure Government purchases were of acceptable quality. Today these purposes continue to be served, but standards are also used extensively as a part of retailer-packer-producer specifications in contract terms. Standards also frequently serve as a basis for pricing products in accordance with quality differences. In fact, meat carcass standards were specifically developed to reflect to producers the qualities most desired by consumers.

The USDA grade standards program has from time to time been criticized for a relative lack of consumer orientation. With the possible exception of the red meat grading program, this charge may have some validity. The weakness of current grade standards as a consumer program, in my opinion, stems from four major sources:

1. As a voluntary program, and with the exception of red meat and eggs, grade labeling at the retail level is not extensively used. This does not mean that the standards are not used as a basis for specification purchase and pricing at other market levels. The consumer just does not get much general exposure to grade standards except in those commodities where they are used extensively.

2. A major barrier to consumer use of grade standards is a lack of uniform nomenclature. The result is a multiplicity of grade designations on different products. Top quality designations vary from "Prime" for red meat; "Grade A" for poultry; "Grade AA" for eggs, butter, and cheese; "Extra" for instant nonfat milk; "Fancy" for fresh fruits and vegetables; "Grade A" for processed fruits and vegetables; "No. 1" for rice, dry beans and peas; and "Extra No. 1" for lima beans. Such a multiplicity of grades has to be, at best, confusing to the housewife. It likely also discourages use of grade labeling because it does not provide for the firms using grade designations. It should not, therefore, be surprising that consumers do not generally know or understand USDA grades -- particularly outside basic commodities such as red meat.

3. The voluntary and multiple nature of grade standards programs is confused by the fact that under Federal law it is permissible to mark a grade designation on a container of fresh fruits and vegetables without official inspection to certify that the contents meet the designated grade. There is, therefore, no assurance in the case of fresh fruits and vegetables that products designated as being a specific grade would actually meet the specified grade standard.

4. Grading has not, in my opinion, been sufficiently used as a means of up-grading product quality. Too often grades are based on external appearance rather than internal characteristics such as consistency, texture, succulence, and maturity. It is, indeed, disturbing to me as a consumer to pay 20 cents for a grapefruit and find it woody, then go back to the container and find that it was grade labeled "U.S. Fancy" or "No. 1". Technology is certainly far enough along to improve our ability to determine internal product quality. If it isn't, we ought to get with it. I have no doubt benefits will accrue to all parties in the market channel as the demand for products is expanded and quality is rewarded.

What are the policy implications for grade labeling? Bills are currently pending in Congress which would authorize the Secretary of Health, Education, and Welfare to establish a uniform system of grade labeling for all consumer food products. One such bill would establish the use of grades "A" to "E" and "substandard" and mandate the use of these grade designations on all products. It is interesting to note that meat is specifically excluded from the bill because in the words of a sponsoring senator, "Of course, in the area of meats, where our system of prime, choice, and commercial is so well established and understood, the legislature provides for exceptions of those gradations."<sup>1</sup> (Emphasis added.)

Such a mandatory grade labeling system could, in my opinion, have a dramatic affect upon the food industry. The feasibility of implementing a program which accurately reflects consumer perceived quality attributes for the maze of consumer food products is

itself subject to question. The relative market position of different brands -- particularly the private label and packer brands -- would also likely be affected. Producers in different areas would experience a differential impact depending on whether climatic and soil conditions favor production of a given grade product and its consistency with consumer's perceived quality attributes. The relative position of domestic and foreign produced products could be affected. Reverberations would be experienced up and down the market channel until a new equilibrium was reached. The extent of change would depend on how well present grading and pricing systems are reflecting the grades and prices which would be established under a consumer oriented system.

Some intermediate steps could be taken voluntarily by industry to either blunt the threat of mandatory grade labeling or minimize the adjustment required when it becomes a part of our body of laws. Consistent with my previous discussion, I suggest three steps be taken:

1. Require all products carrying grade designations to be officially inspected as meeting the designated grade.
2. Move as rapidly as possible toward a uniform grade nomenclature.
3. Improve existing grade standards to include to the greatest extent possible latest available technology on discovery of perceived consumer quality attributes and identification of those attributes in products.

#### Concluding Remarks

Government agencies are becoming more consumer oriented. This is part of being responsive to economic and social needs. In the process of this change, it is interesting to note that more and more consumer functions are being transferred to other agencies of Government -- principally HEW and FTC. All the legislative proposals discussed in this paper would be administered by HEW under the proposed legislation. Maybe this is a step in the right direction. On the other hand, more than the consumer

interest is involved. Business and the producer also have an interest. The problem is essentially one of balancing these various interests. Who can better do this job? If USDA is to have a role, your support in supplying research, instrumentation, and ideas is essential. In any case, a positive attitude is needed toward labeling and closely related areas such as advertising and promotion. By positive, I mean an attitude which perceives needs and adjusts to them. If such is not the case, one can only perceive greater regulation -- but regulation which is to an important extent thrust by industry on itself because of inaction or negativism.

The professionals can help by pointing to and researching positive directions for change. Maybe we too often align ourselves with short term business interests and philosophy. What are the realistic compromise solutions that get the job done with a minimum of regulation and economic cost? This is the challenge.

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<sup>1</sup>Congressional Record, January 27, 1972, 5595.

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