

Regulators face competing views of 'natural' food

U.S. Food and Drug Administration considering 'natural' definition

By **MATEUSZ PERKOWSKI**
Capital Press

Analysis

The U.S. Food and Drug Administration is facing two competing requests for labeling food as "natural" — banning the term altogether or defining it to include biotech ingredients.

The agency is bound to receive many other proposals regarding "natural" labels now that it's soliciting public comments about their use, potentially to create new regulations.

Concerns over "natural" labels are nothing new in the food industry. The FDA con-

sidered an official definition of the term nearly 25 years ago before ultimately scrapping the idea.

The proposal was recently resurrected due to petitions from the Consumers Union and the Grocery Manufacturers Association, who have very different concepts of how the term should be used.

The FDA is also motivated by several lawsuits over food labels in which federal judges have asked for clarification about what can legally be called "natural."

The agency has so far recused itself from weighing in on specific legal disputes, such as whether high-fructose corn syrup is "natural," replying that any new policy would have to undergo formal rule-making.

As it stands, the FDA doesn't restrict foods under its jurisdiction from being labeled "natural" unless they contain "added color, synthetic sub-

stances and flavors."

The problem, according to the Consumers Union, is that some food companies ignore this guidance without any repercussions from FDA's regulators.

"They say that, but they don't enforce it," said Urvashi Rangan, the group's consumer safety and sustainability director. "It's not truly binding, which it should be."

A survey by the Consumers Union found that two-thirds of consumers believe that "natural" encompasses traits that actually meet the definition of "organic," such as foods produced without pesticides or genetically modified organisms.

Due to this confusion over the difference between "organic" and "natural," the Consumers Union has advocated for FDA prohibiting the "natural" term from food labels.

Rangan acknowledges that some doubts have been raised about the constitutionality

of this proposal, though the group doesn't believe such a ban would violate free speech rights.

"We don't believe people have the freedom to mislead," she said.

In the alternative, though, the Consumers Union would like FDA to only allow the "natural" label for certified organic products that contain no artificial ingredients.

"Our overarching goal is to stop the misleading use of 'natural,'" Rangan said.

The problem affects farmers as well, because some are able to benefit from the "natural" label without much effort while others spend extra time and money to obtain certification as organic, humane, or non-GMO, she said.

Eliminating the "natural" label or restricting it to organic products would level the playing field for farmers, rather than allowing some to reap an unfair advantage, Rangan said.

"We don't think that's part of a fair marketplace. It doesn't serve consumers and it doesn't serve the farmers," she said.

In the view of the Grocery Manufacturers Association, farmers and processors who rely on biotechnology should not be unfairly excluded from labeling their products as "natural."

The FDA has long held that foods made with genetic engineering are just as safe as their conventional counterparts, so calling such ingredients "natural" would be "neither false nor misleading," the group said in a petition to the agency.

There's clearly a need for the FDA to take regulatory action because federal courts and state legislatures are debating the definition of "natural" labels, which could result in a "patchwork of rules" that may at odds with each other, the petition said.

"GMA is concerned that differing state laws and judicial decisions will inevitably confuse consumers, disrupt the free flow of goods in interstate commerce and impose unnecessary costs on the food industry and, potentially, consumers," the petition said.

By including biotech crops in the meaning of "natural," the FDA would provide consumers with a less expensive alternative to organic foods, GMA said.

If biotech crops could not be labeled as "natural," manufacturers would be discouraged from using the label or would have to undertake steps that render "natural" foods more expensive, the group said.

"The cost of creating and maintaining a separate supply of identity-preserved crops from farm to table would add significantly to the cost and availability of these ingredients," according to GMA.

Farm impacts impede landfill expansion

By **MATEUSZ PERKOWSKI**
Capital Press

A controversial proposal to expand a landfill on farmland in Oregon's Yamhill County has been dealt a setback because of an adverse land use ruling.

Oregon's Land Use Board of Appeals found that, in approving the proposal, the county government improperly shifted the burden to farmers to prove they'd be harmed by the 29-acre expansion.

Because of this error, LUBA has now sent the approval decision back to Yamhill County for reconsideration.

Under Oregon law, certain non-farm uses such as landfills can only be approved if they don't "force a significant change" in farm practices on surrounding farmland.

In this case, LUBA found that the county incorrectly discounted evidence of harm from the Riverbend landfill on properties beyond one mile from the facility.

The county also erred by disregarding evidence of bird damage because the farmers didn't quantify the amount of destruction, LUBA said.

It's up to landfill's owner — Waste Management — to prove the harm isn't significant, but the county didn't fault the company for not quantifying the extent of damage from birds attracted to the facility, the ruling said.

Similarly, LUBA said the county insufficiently considered the impacts of wind carrying plastic bags and other trash from the landfill onto nearby fields, complicating hay baling.

The county also should have considered the negative effects of noise on a nearby pheasant farm as well as "odor and visual impacts" on farm stands and other direct marketing operations, LUBA said.



Mateusz Perkowski/Capital Press

Ramsey McPhillips, a landowner in Oregon's Yamhill County, points to the Riverbend landfill, which abuts his property, in this Capital Press file photo. A recent land use ruling has impeded the landfill's expansion, which is opposed by nearby farmers who complain of bird damage, noise, odor and drifting litter.

Ramsey McPhillips, a landowner and longtime opponent of the landfill, said the LUBA decision is a victory because Oregon's environmental regulators can't permit the expansion until Yamhill County revises its findings or the ruling is reversed on appeal.

It will be difficult for the county's commissioners to again ignore evidence of harm to farmers, but if they do, opponents will again challenge the approval, he said.

"We're not going to give up. We're going to just keep going and going and going," McPhillips said.

The best case scenario for opponents would be if Yamhill County turned down the expansion proposal, especially since the legal controversy is prompting landfill customers to examine other dumping options, he said.

"The tide has turned more in that direction," he said.

Waste Management noted that LUBA rejected most of the "assignments of error" alleged by the opponents, which "shows we are on the right track," said Jackie Lang, se-

nior communications manager for the company, in an email.

The finding on farm impacts indicates LUBA want more information, but Waste Management hasn't yet decided whether to appeal that aspect of the ruling, she said.

"We are reviewing the decision now to understand the full intent and determine our next steps," Lang said. "There have been many steps to this process over the last seven years. We are continue to look forward and take it one step at a time."

Tim Sadlo, the county's general counsel, said the commissioners have until Dec. 1 to decide whether to challenge LUBA's ruling before the Oregon Court of Appeals, but such an outcome isn't likely.

The ruling held that Yamhill County did not misconstrue land use law by allowing a landfill in a farm zone, which a major point in favor of the county, Sadlo said.

As for the county's analysis of farm impacts, "that's the kind of thing that can usually be cured on a remand," he said.

Helicopters cleared for Christmas tree harvest

Agreement sets rules for low visibility, though delay worries remain

By **MATEUSZ PERKOWSKI**
Capital Press



Mateusz Perkowski/Capital Press

Helicopter pilots have been cleared to harvest Christmas trees around Salem, Ore., in poor weather, but some still fear the new rules will interfere with timely shipments.

Earlier this year, the Federal Aviation Administration effectively imposed new restrictions on helicopters operating near Salem during times of low visibility.

The agency expanded "Class D" airspace around Salem — in which aircraft are more strictly regulated — from roughly four to eight miles.

Christmas tree farmers feared this would prevent their crop from being harvested during the cloudy, rainy days that are common in autumn, thereby delaying shipments and reducing overall sales.

The FAA has since reconsidered the airspace expansion, and re-proposed increasing it by only about one mile around the Salem airport.

However, that regulatory change will take time and will not be finished in time for this year's harvest.

To avoid hampering Christmas tree operations, the FAA has approved a "letter of agreement" between the air traffic control tower in Salem and helicopter pilots that will generally allow harvest to continue even during low visibility.

Under the agreement, multiple helicopters can fly within the Class D airspace in such conditions as long as they stay below 400 feet and remain in frequent contact with the control tower.

When a plane flying on

A helicopter prepares to drop a load of Christmas trees into a truck in this Capital Press file photo. Helicopters have been cleared by the Federal Aviation Administration to harvest trees in the Salem area during poor visibility conditions in restricted airspace this year, but concerns linger about disruptions in shipments.

instruments approaches or leaves the airport, helicopters that pose a potential for collision must land.

The arrangement basically delegates authority over helicopters to the Salem tower from the FAA's control center in Seattle, which wouldn't have time to deal with such small aircraft in low visibility conditions, said Mitch Swecker, director of the Oregon Department of Aviation.

However, the rules can still be problematic for Christmas tree farmers if multiple airplanes take off or land at the Salem airport during poor weather, he said.

"It is not ideal. There will always be hiccups for the operators, but the FAA and the tower have tried to make it as painless as possible," Swecker said.

The requirement that heli-

copter pilots regularly speak with the Salem control tower is troublesome in hilly areas where radio communications are spotty, said Patrick Hall, a helicopter pilot who is harvesting trees for BTN of Oregon, a grower near Salem.

"A lot of the airspace covers areas where you can't contact the control tower by radio," he said.

Hall said he'd prefer more relaxed requirements in exchange for restricting the allowable flight ceiling to 100 feet, down from the current 400 feet.

"It doesn't need to be that much," he said. "We're essentially working at the level of tree tops."

Ben Stone, whose family owns BTN of Oregon, said he's still concerned about missing shipping windows despite the letter of agreement.

ConAgra and Lamb Weston to separate

Capital Press

OMAHA, Neb. — Officials with ConAgra Foods announced plans Nov. 18 to operate their frozen potato products division, Lamb Weston, as an independent, public company.

According to a corporate press release, ConAgra Foods (NYSE: CAG) will commence operating its consumer brands as Conagra Brands. Frozen Potatoes will sold under the Lamb Weston name.

The deal is expected to be finalized by the fall of 2016, and ConAgra Foods shareholders will hold shares of both companies, according to the press release.

Officials said the change in structure won't add any new tax burdens to shareholders, but it should help each company "sharpen its strategic focus and provide flexibility to capitalize on the unique growth opportunities in its respective market."

The change should also help the new Lamb Weston company place "greater management focus on the distinct business of consumer brands and food service frozen potato products," according to the

press release.

The frozen division that will become Lamb Weston generated \$2.9 billion in fiscal year 2015, according to the press release. Lamb Weston is among the major U.S. potato processors and operates a plant in American Falls, Idaho. Conagra Brands, which gener-

ated \$7.2 billion in fiscal year 2015, includes brands such as Marie Callender's, Hunt's RO*TEL, Reddi-wip, Slim Jim, PAM, Chef Boyardee, Orville Redenbacher's, P.F. Chang's and Healthy Choice. According to the press release, ConAgra products are found in 99 percent of U.S. homes.

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