

# “GMO-Free” Claims and False and Misleading Food Labels—Why Is FDA AWOL?

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# About ITIF

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- Independent, nonpartisan research and education institute focusing on intersection of technological innovation and public policy, including:
  - Innovation and competitiveness
  - IT and data
  - Telecommunications
  - Trade and globalization
  - Life sciences, agricultural biotech, and energy
- Formulates and promotes policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress
- World's top think tank for science and technology policy, according to the University of Pennsylvania's authoritative *Global Go To Think Tank Index*





# What is a “GMO”?

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- According to the Non-GMO Project a “GMO” is

“...a plant, animal, microorganism or other organism whose genetic makeup has been modified in a laboratory using genetic engineering or transgenic technology. This creates combinations of plant, animal, bacterial and virus genes that do not occur in nature or through traditional crossbreeding methods.”



# About this definition...

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- “GMO” is not a scientific term.
- It arbitrarily stigmatizes some techniques vs others that can produce identical phenotypes.
- It insinuates danger where data/experience show there is none.
- Scientists producing “GMOs” use techniques found *in nature*, & enzymes/reagents *from nature* to mimic process and results found *in nature*.
- Every living thing is genetically modified.
- Nature is the all time champion at generating novel “combinations of plant, animal, bacterial and virus genes”

## In other words...

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- “GMO” has no defensible meaning; it is literal “nonsense.”
- The term “GMO” therefore is intrinsically, inescapably misleading.
- The term “Non-GMO” is therefore also intrinsically, inescapably misleading.
- The Non-GMO butterfly wrongly stigmatizes “GMOs” and misleads consumers.



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[NonGMO Project Executive Director Megan Westgate said]

**“...the goal of the Non-GMO Project, which was started in 2005, is to shrink the market for existing GMO ingredients and prevent new commercial biotech crops.”**

<https://www.wsj.com/articles/more-foods-boast-non-gmo-labelseven-those-without-gmo-varieties-1440063000>



# False claims by the Non-GMO Project about “GMO” safety

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- “...a growing body of evidence connects GMOs with health problems... contamination...”
- Exposure itself constitutes negative health consequences.
- “...no scientific consensus on the safety of GMOs.”
- Such false claims are found throughout the Non-GMO Project website & their social media.
- Butterfly is on more than 61,000 food items now in U.S. grocery stores.

# What does FDA say about “GMO” Food Safety?

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- “The agency is not aware of any information showing that foods derived by these new methods differ from other foods... or that [they] present any different or greater safety concern...”
- “FDA does not use the terms “genetically modified” or “genetically modified organism.”
- FDA has reaffirmed these views repeatedly over the past 30 years.

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**AT ITS CORE,  
A NON-GMO LABEL  
IS PURE, OPPORTUNISTIC  
FEAR-BASED MARKETING.**

- Alison Bernstein



**#Moms4GMOs**



# What does U.S. labeling law have to say about misleading consumers?

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- The Food Drug and Cosmetic Act prohibits the “misbranding” of food. This was defined in the 1906 Food and Drug Act:

...the term "misbranded," ...shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular...

--Pure Food and Drug Act of 1906 (P.L. 59-384, 34 Stat. 768).

# What about Congressional intent?

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“...the general prohibition against false and misleading representations was meant to be comprehensive in character and recognized that ‘the labels of food... are not considered... to be the proper media for making any representations... which are not in accord with the facts.’”

--S. Rep. No. 361, 74th Cong., 1st Sess. (1935)

## It gets better...

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“...even truthful information can mislead consumers... if voluntary labeling is to be employed, misleading implications must be avoided and information presented must appear in its proper context. Thus, FDA considers [labels for] genetic modification in a food to be potentially misleading...”

-- 59 Fed. Reg. 6279 (Feb 10, 1994),



# Safety claims must pass a strict test and high hurdle

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- [NonGMO labels] ...may leave the misimpression that the labeled food is somehow safer or better than its genetically manufactured counterpart, or that the use of genetic engineering techniques adversely effects the character, quality, or nature of the food.
- Such voluntary representations must be able to withstand the scrutiny under the standard adopted by the Supreme Court over seventy years ago for evaluating the propriety of information voluntarily placed on the food label.

# Labels that mislead or deceive consumers are prohibited

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- “The statute is plain and direct. Its comprehensive terms condemn every statement, design and device which may mislead or deceive.”
- Deception may result from the use of statements not technically false or which may be literally true.
- The aim of the statute is to prevent that resulting from indirection and ambiguity as well as from statements which are false.
- It is not difficult to choose statements, designs and devices which will not deceive... This test applies to “labeling” as well and, thus, governs promotional and display materials accompanying the sale of food.

# Summary

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Through its butterfly label and marketing materials, the Non-GMO Project makes misleading and inaccurate claims, resulting in misbranding.

It makes food safety claims that are false and misleading.

It's claims interfere with consumers' ability to make wise food purchase decisions.

All these are against the law, yet FDA has taken no action against the NonGMO Project.



# Sources

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- FDA “Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants” March 8, 2019  
<https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-voluntary-labeling-indicating-whether-foods-have-or-have-not-been-derived>
- Petition to the Food and Drug Administration Requesting a Stop to Deceptive and Misleading “Non-GMO” Food Labels, [http://www2.itif.org/2018-non-gmo-citizen-petition.pdf?\\_ga=2.45966887.2084179000.1543496003-1394096080.1536250378](http://www2.itif.org/2018-non-gmo-citizen-petition.pdf?_ga=2.45966887.2084179000.1543496003-1394096080.1536250378)
- Green Paradox: Monarch Butterflies Turn Out To Be GMOs,  
[https://www.science20.com/news\\_articles/green\\_paradox\\_monarch\\_butterflies\\_turn\\_out\\_to\\_be\\_gmos-157192](https://www.science20.com/news_articles/green_paradox_monarch_butterflies_turn_out_to_be_gmos-157192) &  
<https://journals.plos.org/plosgenetics/article?id=10.1371/journal.pgen.1005470>

# Thank You!

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