

GMO Labeling: Coming Soon To California and the Rest of the Country

IN LATE JULY, PRESIDENT BARACK OBAMA SIGNED INTO LAW A BILL THAT WILL REQUIRE LABELING OF GENETICALLY MODIFIED INGREDIENTS, CREATING A NATIONWIDE SOLUTION THAT WILL AVOID A STATE-BY-STATE PATCHWORK OF LAWS.

Following the rejection of Proposition 37 in California in 2012, the hot-button issue of labels for food containing genetically modified (or engineered) organisms (GMOs) took a back seat to other issues for many California food producers and retailers.

However, for GMO-labeling proponents, the focus merely shifted to other states. Maine, Connecticut and Vermont passed laws that would require GMO labeling, and – as of July 1 – the Vermont law became the first such state law to take effect.

Shortly afterwards, Congress took action and created a nationwide GMO-labeling standard that will preempt the Vermont law and all other state regulation in this area – and that will directly apply to food sold in California.

Background

Vermont may be one of the smallest of the 50 states, but the impact of its GMO-labeling law has been felt across the nation. For food producers and retailers with customers in Vermont, this state law created a de facto nationwide obligation, because labeling all goods in compliance with the Vermont law would be less onerous than ensuring non-compliant products don't end up in Vermont.

This might not be so bad in the short run, but what happens when similar – but not identical – laws take effect in other states? Food producers and retailers faced the prospect of several states imposing different labeling requirements for the same product.

Such a byzantine web of regulation – with massive compliance costs – is clearly bad for the food industry, and could only be avoided by Congress passing a law that creates a nationwide GMO-labeling standard that preempts state requirements. Until recently, efforts at the federal level had not been fruitful. However, the fact that the Vermont law was coming into effect catalyzed Capitol Hill.

The Vermont GMO Law

On July 1, 2016, Vermont's GMO-labeling law went into effect. It required specific labeling for products that are entirely or partially genetically engineered and offered for retail sale in Vermont. This obligation attached to both manufacturers and retailers, depending on how the products are packaged.

The law required the use of specific phrases (e.g., “may be produced with genetic engineering”), and precluded use of the word “natural,” and other derivations, to describe GMO-containing foods. Violations of the Vermont law would have resulted in potential penalties of up to \$1,000 per day, per product.

The Federal GMO Law

Previously, Congress had attempted several times to preempt state GMO-labeling laws with federal legislation, but each attempt had stalled. However, with the Vermont law about to take effect, an agreement was reached in the Senate to move forward with S. 764, a bill implementing a national standard.

The Senate passed the bill on July 7 by a vote of 63-30, and the House of Representatives passed it one week later by a vote of 306-117.

On July 29, 2016, the president signed S. 764 into law. Effective immediately, the new law preempts Vermont law and all other state GMO-labeling laws, and the Secretary of Agriculture will have two years to establish a mandatory national disclosure standard for “bioengineered” foods.

Under that standard, manufacturers will need to provide a GMO label consisting of their choice of text, symbols, or electronic or digital links. However, the secretary will be obligated to study the efficacy of using electronic or digital links on labels. If the study determines that the digital and electronic links do not

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sufficiently inform consumers, the secretary must then provide additional labeling options.

The law specifically exempts foods from non-GMO animals that consume GMO feed from being considered “bioengineered” solely for that reason, but otherwise leaves to the secretary the discretion to determine how much of a bioengineered substance must be present in food for the disclosure requirement to be triggered. The law also exempts “very small food manufacturers” and all restaurants and other retail food establishments from the disclosure requirement.

Other provisions of the law require the secretary to:

- establish a procedure for requesting a determination regarding other factors and conditions under which a food is considered a bioengineered food;
- provide alternative reasonable disclosure options for small packages of food; and

- provide additional disclosure options for “small food manufacturers,” including use of a telephone number or a company website, and provide such manufacturers with a delay of at least one year in implementing the disclosure standard, once it is finalized.

Finally, the law explicitly precludes the secretary from recalling food based on a violation of the disclosure requirement, and it does not require that the secretary impose monetary penalties for a violation.

Conclusion

Vermont may have led the way on GMO labeling, but its own law was short-lived: the new national labeling standard entirely supplants the Vermont law and all other state laws addressing GMO labeling.

Authors Donald Sobelman (Partner, San Francisco office) and Joshua Stoops (Associate, Sacramento office) are attorneys at Downey Brand LLP specializing in environmental law, including regulatory compliance and litigation.



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