

Client Alert.

October 22, 2012

Question of the Week:

Under Prop 37, how long do companies have to bring their products into compliance with the new labeling requirements?

By Michael Steel and Alejandro Bras

As we've previously discussed, Prop 37 has two important labeling components: (1) a requirement that foods made with genetic engineering are labeled as genetically engineered, and (2) a restriction on labeling genetically engineered foods and processed foods as "natural." The language of Prop 37 suggests that each of these components has a different date on which it becomes enforceable.

Section 110809, titled "Disclosure With Respect to Genetic Engineering in Food," makes clear that companies would have almost two years before Prop 37's genetically engineered food labeling requirements take effect:

"Commencing on July 1, 2014, any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed."

If Prop 37 passes on November 6, 2012, companies will have about 20 months to ensure that their agricultural commodities and processed foods comply with this requirement.

In contrast, Section 110809.1, titled "Misbranding of Genetically Engineered Foods as 'Natural,'" does not set out any commencement date. This section is conspicuously silent on when it will take effect and, for litigation purposes, when it will be enforceable. There is no apparent link between this section and the 20-month compliance period in Section 110809 requiring labeling of genetically engineered foods.

Companies should not simply assume that the 20-month compliance period applies to the restriction on labeling foods as "natural." Prop 37 in its entirety becomes effective immediately upon enactment pursuant to Article 2, section 10(a) of the California Constitution:

"An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise."

Since it is not otherwise indicated in Section 110809.1, the restriction on labeling foods as "natural" could potentially take effect as early as November 7, 2012.

Companies should be prepared for plaintiffs to embrace this reading of Prop 37 and attempt to bring lawsuits under Section 110809.1 soon after November 6 if the initiative passes. While such a timetable is completely unrealistic with

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respect to the needs of businesses to plan for and implement new marketing and labeling practices, the plain text of Prop 37 seems to offer little solace.

Proposition 37 has the potential to be a game-changer for many of our clients, large and small. If you are interested in learning more, we will be providing continuous coverage of Proposition 37 through our website over the next few months. On our [Proposition 37 homepage](#) you will be able to find our most up-to-date client alerts, recent news, links to important materials and websites, and contact information for our attorneys, who are monitoring the initiative on a daily basis.

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