

Client Alert

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President Signs Federal GMO Food Labeling Bill

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On July 29, 2016, President Obama signed into law the federal genetically engineered (GE) food labeling bill (S. 764). The bill passed the U.S. House of Representatives on July 14, 2016, 306-117, with broad bipartisan support. The Senate had previously passed the final bill, 63-30, on July 7. The bill will create a nationwide labeling standard for foods containing GE ingredients, and puts an end to the patchwork of state legislation that has developed over the past few years, including the nation's first GE food labeling law in Vermont that was supposed to go into effect in July.

PREEMPTION

The federal bill expressly preempts all state laws relating to the GE labeling of food or seed in interstate commerce. Congress' decision therefore dealt a defeat to proponents of stricter GE labeling requirements, namely those who supported Vermont's 2014 law requiring disclosure of GE ingredients on food labels or packaging. Proponents of that bill strongly favored a national standard, arguing that a multitude of different state laws and regulations could drive up the cost of food by requiring companies to change food labels and supply chain systems to comply with different legal and regulatory schemes.

LABELING OPTIONS

The bill allows food companies to label GE food with a text label, symbol, or electronic label accessible by smartphone. With this latter option, consumers would be directed to "scan here for more food information" with a smartphone to find information about the food they want to buy.

APPLICABILITY AND EXCLUSIONS

The new law would define "genetic engineering" in a manner that could exempt the newest biotech methods, such as gene editing. It also calls for the U.S. Department of Agriculture (USDA) to determine the amounts of GE in a food that would trigger a disclosure requirement. Generally, foods that have meat, poultry, and egg products as main ingredients would be exempted.

CRITICS SAY BILL DOESN'T GO FAR ENOUGH

Critics of the bill take issue with the electronic labeling option that would allow companies to forgo an express label on the food item's packaging and instead use a "digital link" that could be scanned with a smartphone to provide information on GE ingredients. GE labeling proponents argue that the "digital link" defeats the purpose of labeling by requiring the consumer to hunt for the information, and is discriminatory toward those Americans with no or limited access to the internet.

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As a nod to this criticism, the bill would require the USDA, within one year of enactment of the legislation, to conduct a study to determine the effectiveness of the proposed labeling methods. If the study finds that the electronic disclosure methods fall short, the USDA may provide additional disclosure options. The bill would give the USDA two years to draft GE labeling rules.

THE RESULT?

For food companies, farmers, and grocery trade associations who supported the bill, the new law offers some amount of certainty and uniformity in what might have been a state-by-state regulatory morass. The question remains as to what regulations will be promulgated by the USDA and what practical effect the law and those rules will have. Several major food companies have already added language to food labels and packaging indicating the presence of GE ingredients.

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