First-Ever Federal Labeling Requirements for Bioengineered Foods Signed Into Law

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On July 29, President Obama signed into law a bill establishing first-ever federal requirements for the labeling of food containing genetically engineered ingredients. The bill, known as S.764, directs the U.S. Department of Agriculture (USDA) to issue rules to establish mandatory labeling requirements for so-called “bioengineered foods.” In preparing its new regulations, USDA must determine the threshold levels of a bioengineered substance that will subject a food to the labeling requirements and develop a process for manufacturers and others to obtain a determination from the Agency concerning the status of a given food item under the new program. USDA must issue these rules within the next two years, and food manufacturers, technology developers, and other interested parties are expected to have opportunities to submit comments throughout the rulemaking process.

Notably, the new law includes a preemption provision that precludes states from enacting their own labeling requirements for bioengineered foods. As a consequence, Vermont’s 2014 labeling law, which went into effect on July 1 of this year and would have required labeling of food sold in Vermont that was produced either entirely or partially with genetic engineering, is now preempted by federal law.

Other important provisions include:

**Defining “Bioengineered” Food**

The law defines “bioengineering” by reference only to recombinant DNA, rather than a wider array of genome-modifying techniques. In order to fall within the scope of the labeling requirement, food must “contain[] genetic material that has been modified through in vitro recombinant [DNA] techniques,” and that modification “could not otherwise be obtained through conventional breeding or found in nature.” Newer technologies, such as gene editing, are not addressed by the law’s definitions.

**Potential Compliance Options**
The law also provides that manufacturers may satisfy their labeling obligations by using electronic symbols or digital links. A QR code—often used in modern advertising to direct users to websites—is one example of such a digital link. Within the next year, USDA must conduct a study to identify potential barriers that consumers may face when trying to use a digital link to access disclosure information. The results of this study will inform the compliance alternatives in the final labeling rules.

**Implications**

Food manufacturers will want to pay close attention to and consider commenting on USDA’s forthcoming regulatory proposals as they relate to these and other aspects of the new law. USDA’s implementation of the definition of “bioengineering” and the process that will be established to determine whether or not a given food item may be regulated should also be watched carefully by developers of biotechnology products, particularly as USDA will be preparing these new regulations at the same time that it is separately reshaping its existing regulations for genetically engineered organisms and working together with the U.S. Environmental Protection Agency and U.S. Food and Drug Administration in a joint effort to modernize the thirty year-old Coordinated Framework for the Regulation of Biotechnology.

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