

Agribusiness Alert: First Genetically-Engineered Food Labeling Legislation Passed

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A critical issue in food production today is the use of genetically modified commodities in food production. Connecticut has recently become the first state to pass GMO labeling legislation, although about half of the states have considered or are considering similar initiatives.

The Connecticut legislation is effective October 1, 2013, but only if certain conditions set forth in the statute are met. It will not become law until:

1. At least four additional states enact a mandatory labeling law for genetically-engineered foods that is consistent with the provisions of the act;
2. One of those states must border Connecticut; and
3. The aggregate population of those states located in the northeast region of the United States must be more than twenty million.

Thus, Connecticut took a tentative first step toward GMO labeling with the enactment of its legislation.

The Connecticut law regulates the labeling of food intended for human consumption and seed or seed stock that is intended to produce food for human consumption that is entirely or partially genetically-engineered. It does not include processed food in which one or more processing aids or enzymes produced or derived from genetic engineering that are in the production process of the processed food. Other exceptions are noted below in this alert.

The labeling of genetically modified food intended for human consumption must have the following label in a form that is clear and conspicuous: "Produced With Genetic Engineering." The labeling requirements are slightly different, depending upon the intended use of the products:

1. The bill of sale for wholesale food not intended for retail sale must be labeled.
2. The retail package must be labeled for food sold at retail and contained in a package.
3. The label must be on the retail store shelf or bin in the case of food that is a raw agricultural commodity or if the product is not separately packaged.



Seed or seed stock must also contain a clear and conspicuous label on the identifying ownership or possession label of the commodity or on the container holding the seed or seed stock. The GMO label must be displayed in the same font and size as the ingredients in the nutritional facts panel on the food label. While the Connecticut legislature considered exemptions for small producers, no such exemption is contained in the final legislation.

There are, however, exceptions to the labeling requirements. The labeling requirements do not apply to (a) alcoholic beverages; (b) food intended for human consumption that is not packaged for retail sale and that either is a processed food prepared and intended for immediate consumption, or is served, sold or provided in any restaurant or other food facility primarily engaged in the sale of prepared food for immediate consumption; (c) farm products sold by a "farmer" or "farmer's agent" to a consumer at a pick your own farm, roadside stand, or farmer's market; or (d) food from an animal that was not genetically engineered, but was fed or injected with genetically engineered food or drugs.

Any person found to knowingly violate the labeling requirements may be subject to a civil penalty not to exceed \$1,000 per day, per product. This means that civil penalties will be assessed against each uniquely named, designated, or marketed product. Retailers will not be liable for failure to label products unless the retailer is also the producer or manufacturer of the genetically-engineered food, seed or seed stock, and sells the genetically-engineered food under its own brand, or unless the failure to label was willful and knowing.

Generally, supporters of GMO labeling argue that the genetic engineering of plants and animals often causes unintended consequences and may lead to detrimental health or environmental problems. Further, supporters assert that it would cost food producers minimally to change their labels to comply with GMO labeling legislation. The benefit to this is increased consumer awareness for making informed decisions.

However, the opponents of GMO labeling argue that the regulation requires extra monitoring of foods and would increase frivolous law suits. Further, food producers who are unable or unwilling to change their packaging to meet labeling requirements would be forced to switch to higher-priced, non-genetically modified products or ingredients, which could potentially increase food prices.

Other states have considered similar GMO labeling legislation. A bill was introduced in Minnesota in the recently concluded legislative session, but was not passed. The Vermont House passed a similar bill which is now being considered by the Vermont Senate. In Washington, a referendum on GMO labeling will be on the November ballot. We can anticipate additional legislation and initiatives in other states in the coming years.



Agricultural producers and processors should be aware of the trend across States to consider GMO labeling legislation and the potential costs associated with the implementation of any GMO labeling on their businesses. Due to the penalties that may be imposed by the state for failure to comply with GMO labeling legislation, processors must be mindful of potential compliance issues and costs. Additional certifications will likely be required of commodity producers. Finally, if food products are distributed to multiple states, each of which has enacted its own GMO labeling law, the patchwork of inconsistent labeling requirements could be a compliance nightmare for food processors.

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