

## Congress Finalizes Mandatory GMO Labeling Law

After several years of debate over voluntary versus mandatory GMO (genetically modified organism) labeling, Congress passed legislation yesterday to create a unified national standard requiring disclosure of information for bioengineered foods. Predictions are that President Obama will sign the legislation soon. Once effective, the new law will preempt state laws that require labeling of foods containing GMOs, such as the Vermont labeling law that recently became effective on July 1. The bill's passage through Congress represented a bi-partisan compromise led by senators Pat Roberts (R-KS) and Debbie Stabenow (D-MI). "This is the most important food and agriculture policy debate of the last 20 years," said Sen. Roberts.

### What's in the bill?

The legislation amends the Agricultural Marketing Act of 1946 to include the following:

- *Definition of "bioengineered" food*, which is food intended for human consumption that contains genetic material that has been modified through in vitro recombinant DNA techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.
  - The Secretary of Agriculture shall determine the amount of bioengineered substance necessary to deem the food as bioengineered.
  - A food that is derived from an animal that consumed feed containing bioengineered substances shall not be considered bioengineered. Thus, meat, poultry, dairy and eggs from animals that have consumed GMO feed will not be subject to the labeling requirements because they cannot be defined as bioengineered.
- *Preemption of state food labeling standards*. No state or political subdivision may establish requirements for labeling whether a food or seed is bioengineered or contains ingredients that are bioengineered. A food may bear disclosure of bioengineering only in accordance with federal regulations arising from this law.
- *Creation of federal mandatory disclosure standard*. Within two years of the bill's enactment, the Secretary of Agriculture must establish a mandatory national bioengineered food disclosure standard and the procedures necessary to implement the national standard.
- *Choice of labeling*. The federal standard must give a manufacturer the option of disclosing information with on-package text, a symbol or an electronic or digital link, such as a QR code. An electronic or digital link must contain access to an internet website or other type of electronic source.
  - The USDA must conduct a study to identify potential technological challenges of disclosure through electronic or digital means, and must provide additional options if

determined that the proposed technological options do not provide sufficient access to bioengineered food disclosure information.

- The USDA must also develop alternative disclosure options for foods contained in small packages.
- *Exclusions.* The following are excluded from the national disclosure standard:
  - Food served in a restaurant or similar retail food establishment.
  - “Very small” food manufacturers, to be defined through rulemaking.
  - As explained above, meat, poultry, dairy and eggs from animals that consume GMO feed.
  - A food containing meat, poultry or eggs if the predominant ingredient would not independently be subject to the standard if the predominant ingredient is broth, stock, water or a similar solution and the second-most predominant ingredient would not independently be subject to the national standard.
- *“Small” food manufacturers.* The USDA must define “small food manufacturers” and provide such manufacturers with a grace period of at least one year for implementation of the new standards and the additional option of providing only a telephone number or internet website on a food label to disclose required information.
- *Food safety implications.* The FDA conducts a [pre-market consultation process](#) for foods from genetically engineered plants; foods that successfully complete the process shall not be treated as more or less safe than non-genetically engineered counterparts because of bioengineering.
- *Organically produced foods.* A food certified as “organic” under the national organic program may be labelled as “not bioengineered,” “non-GMO” or with similar language.
- *Enforcement.* Failing to disclose a food as bioengineered is a prohibited act, but the rulemaking process will determine whether there will be penalties for noncompliance. The USDA Secretary will have authority to request records and conduct audits and hearings in regards to compliance but will not have recall authority for a food that does not comply with disclosure regulations.

What's next?

The preemption established in the new law will be effective immediately and the State of Vermont is prohibited from enforcing its GMO labeling law. The USDA, through its Agricultural Marketing Service, will begin the rulemaking process for the national disclosure standard. A few key issues for agriculture to track though out the rulemaking stage will be the determination of "how much" bioengineered substance is sufficient to deem a food as bioengineered; defining the "very small" food manufacturers that will be exempt from the standard and the "small" manufacturers that will have a grace period and simpler disclosure requirements, whether QR codes and other technology options will remain viable due

to expected objections that they discriminate against lower income consumers; and penalties for noncompliance. The two year window for rulemaking, however, leaves open the opportunity for future changes such as amending the legislation or prohibiting funding to be used for its implementation. Thus, while we have entered a new stage of the GMO labeling debate, the uncertainty of GMO labeling is not yet fully resolved.

To read the legislation, visit [this page](#).