LOEB & LOEB LLP

Health and Wellness Marketing Compliance Task Force

ALERT

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Bipartisan Group Introduces Safe and Accurate Food Labeling Act in House

In an attempt to stop the proliferation of a patchwork of state-by-state food labeling laws, and to "reaffirm" the Food and Drug Administration (FDA) as the sole authority on food safety and labeling, a bipartisan group of sponsors led by Rep. Mike Pompeo (R-Kan.) and Rep. G.K. Butterfield (D-N.C.) recently introduced the Safe and Accurate Food Labeling Act (HR 4432). HR4432 has received backing from the Grocery Manufacturers Association and dozens of other food industry groups. Additional original cosponsors of the bill included Rep. Marsha Blackburn (R-Tenn.), Rep. Jim Matheson (D-Utah), and Rep. Ed Whitfield (R-Ky).

If adopted, HR 4432 would amend the Food, Drug and Cosmetics Act to establish a uniform, national program for premarket review and labeling of food and beverage products made with ingredients containing genetically modified organisms (GMOs), would set a standard for the definition of "natural" foods, and would preempt state labeling laws that do not mirror the federal requirements. It also would require the FDA to approve all new GMO ingredients before they are brought to market.

Food industry groups supporting HR 4432 have hailed it as "an important first step to restoring sanity to America's food labeling laws" that "will bolster consumer confidence in the safety of American food" and provide food producers and manufacturers with some certainty concerning GMO use and labeling requirements.

The legislation has four main goals and aims to create clarity in what is currently a very nebulous area for the food industry.

Goal 1: Eliminating Confusion About Applicable Law

HR 4432 reportedly aims to create a preemptive set of federal rules to quell consumer concerns about GMOs while halting the progress of at least 30 pending state bills and ballot initiatives. These state initiatives are not only costly for the food industry to evaluate and, if necessary, oppose, but if they are successful, they will lead to a patchwork of labeling regulations that would make compliance extremely complicated. The federal legislation would establish a new comprehensive legal framework subject to FDA oversight governing claims on food labels.

Goal 2: Food Safety

HR 4432 would require the FDA to conduct a safety review of all new bioengineered plant varieties before they are introduced into commerce. Under the proposed legislation, the FDA also could (but is not required to) mandate the labeling of foods with GMO ingredients if the agency determines there is a health, safety, or nutrition issue with such ingredients.

Goal 3: Voluntary Labeling Standards for Foods Containing GMOs

HR 4432 empowers the FDA to establish voluntary standards for companies that want to voluntarily label their products for the absence or presence of GMO ingredients. The measure would also require the FDA to promulgate regulations that specify a maximum permissible level of

inadvertent GMO presence that is allowed in foods bearing non-GMO labeling.

Goal 4: Regulating the Use of "Natural" on Food Labels

Even though the FDA has previously refused to define the term "natural" as it relates to GMOs and food labeling (read our client alert on the FDA's decision here), HR 4432 will require the FDA to create a definition of that term so that food companies have a consistent rule to guide their labeling.

Although HR 4432 does subject new GMO ingredients to FDA scrutiny, members of the food industry seem willing to take the chance that the FDA's safety review requirements will not be excessive or onerous, especially in exchange for a comprehensive set of regulations governing food labeling that might also stem the current tide of consumer class litigation.

The legislation has been referred to the Energy and Commerce Committee in the House of Representatives. At present, there is no companion legislation in the Senate.

Loeb & Loeb LLP's Health and Wellness Marketing Compliance Task Force

Our Task Force was formed in response to the increase in regulatory enforcement actions and consumer class action lawsuits targeting producers and sellers of food, health and beauty products. The FTC and States Attorneys General are closely scrutinizing marketing and advertising practices looking for misleading product claims, including product misbranding and mislabeling. The regulatory framework governing the labeling and marketing of food, health and beauty products is ambiguous at both state and federal levels and, as a result, there has been a proliferation of lawsuits over marketing and advertising practices in this space. Our Task Force helps companies avoid liability, manage risk and defend against consumer class actions and regulatory enforcement.

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