

Far-reaching effects for companies in GMO supply chain

By [Justine Krige](#)

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One of the purposes of the Consumer Protection Act, No 68 of 2008 (CPA), is to "promote and advance the social and economic welfare of consumers" by "improving consumer awareness and information, and encouraging responsible and informed consumer choice and behaviour".



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Consistent with these objectives, particularly in relation to the disclosure of information, are the provisions in the CPA and the Regulations thereto which deal with product labelling and trade descriptions, and oblige manufacturers to disclose where packaged foodstuffs contain, or may potentially contain, genetically modified organisms (GMOs), as defined in the Genetically Modified Organisms Act, No 15 of 1997.

South Africa adopted genetically modified crops in 1997, and currently produces genetically modified maize, soybean and cotton.

Regulation 7, which came into force on September 31 2011, requires specific notices to be reflected on foodstuffs where:

- Goods are produced using genetically modified processes;
- Goods contain GMOs; or
- It is likely that goods contain traces of GMOs.

Goods produced using genetically modified processes

Regulations 7(3) and 7(4) stipulate that any goods that comprise at least 5% of GMOs (whether or not such making or manufacturing occurred in South Africa) may not be "produced, supplied, imported or packaged" unless a notice in "plain and understandable language" indicates that the goods in question have been produced using genetically modified

technology.

On a strict literal interpretation, these provisions prevent GMO goods from being imported into South Africa without the required notice, giving rise to potential logistical issues for importers.

Goods containing GMOs

Regulation 7(3) states that all goods comprising at least 5% of GMOs must carry a specific notice informing consumers of the GMO content, and the notice must appear in all marketing material.

Thus, goods with a GMO content of less than 5% require no notice. Companies may, therefore, make use of Regulation 7(3), which allows them to positively assert that a product contains less than 5% GMOs. However, it is currently unclear how the percentage of GMOs in goods is to be calculated and, in this regard, numerous civil society organisations have criticised the Regulations in not going far enough in requiring companies to inform consumers where their goods are made up of less than 5% GMOs.

In terms of Regulation 7(6), goods with 1% GMO content may not be marketed as being "GMfree". This provision has been the subject of much criticism, as it allows companies to positively assert that goods do not contain GMOs in cases where the goods comprise 0.99% GMOs.

Goods that 'may' contain GMOs

Regulation 7(8) applies in situations where it is "scientifically impractical or not feasible" to test goods to determine whether they contain traces of GMOs. In such a case, the Regulations require that the goods must carry a notice (which must be included in all marketing material) indicating that the goods in question "may contain genetically modified ingredients".

It is unclear precisely when it would be "scientifically impractical" or "not feasible" to test goods - the onus for establishing that these thresholds apply is doubtless to be borne by the company that seeks to rely on these provisions.

It is likely, however, given the widespread contamination of nongenetically modified foodstuffs with genetically modified ingredients, that virtually all goods on supermarket shelves will, at the very least, carry the notice "may contain genetically modified ingredients".

Implications

The prevalence of GMOs in goods indicates that Regulation 7 is going to have far-reaching effects for companies involved in the GMO supply chain. In the spirit of the CPA, Regulation 7 empowers consumers with the right to choose between genetically modified products and non-genetically modified products.

A lack of knowledge on the part of the South African public and the Regulations has had the effect of causing increased concern. The Regulations require food producers only to state if foodstuffs comprise GMOs, and do not place an obligation on food producers to educate consumers. Food producers should educate consumers about what GMOs are, so that consumers can make an informed decision without unnecessarily fearing the inclusion of GMOs.

Source: The Times

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