

Bioengineered Food Disclosure Rulemaking Update

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Federal Disclosure Law: Background

- Law passed Senate and House in July 2016
- Authored by Senators Pat Roberts (R-KS) and Debbie Stabenow (D-MI)
- Strong bipartisan votes
 - **House 306-117**
 - **Senate 63-30**
- Signed by President Obama July 29, 2016

Federal Disclosure Law: Key Concepts

- UNIFORMITY
 - **Requires Secretary of Agriculture to establish a national, uniform disclosure standard for food intended for human consumption that is or may be “bioengineered”**
- PREEMPTION
 - **Prevents states and local governments from establishing or enforcing disclosure or labeling requirements except those that are identical to the national standard**

Federal Disclosure Law: Key Concepts

- Implementation by USDA under Agricultural Marketing Act
- Marketing standard not a health and safety standard
- USDA Rulemaking in 2 years (July 2018)
- Three options for disclosure:
 - **Text on packaging**
 - **A symbol**
 - **An electronic or digital link (QR code)**
- Exceptions for small or very small packages

Federal Disclosure Law: Key Concepts

- BIOENGINEERING: “[w]ith respect to a food, refers to a food—”
 - **(A) that contains genetic material that has been modified through in vitro recombinant DNA techniques; AND**
 - **(B) for which the modification could not otherwise be obtained through conventional breeding or found in nature**

Federal Disclosure Law: Key Concepts

- Preemption #1:
 - **Section 293(e): “[No] State ... may directly or indirectly establish under any authority ... as to any food in interstate commerce *any requirement* relating to the labeling or disclosure of whether a food is bioengineered or produced using bioengineered for a food that is the subject of the bioengineered food disclosure standard ... this is not identical to the mandatory disclosure requirement under that standard.”**

Federal Disclosure Law: Key Concepts

- Preemption #2:
 - **Section 295(a): “No State ... may directly or indirectly establish under any authority ... as to any food ... in interstate commerce any requirement relating to the labeling of whether a food ... is genetically engineered....”**

Federal Disclosure Law: Key Concepts

- Certain remedies not preempted
 - **Section 296: “Nothing in this subtitle, subtitle E, or any regulation, rule, or requirement promulgated in accordance with this subtitle or subtitle E shall be construed to preempt any remedy created by a State or Federal statutory or common law right.”**

Federal Disclosure Law: USDA Activity

- Access/retailer study (September 6)
 - **Conducted by Deloitte**
 - **Consumers will face challenges in using devices**
 - Broadband availability
 - Apps – space/usability
 - Lack of awareness about the link

Federal Disclosure Law: USDA Activity

- Timeline to Date:
 - **“Proposed Rule Questions Under Consideration”**
 - **Sticky areas:**
 - Scope
 - Refined ingredients
 - “Threshold”
 - Non-GMO claims
- Proposed Rule sent to OMB on December 26, 2017
- Final rule due July 2018

Federal Disclosure Law: Issues to Watch

- Rulemaking progress: USDA vs. OMB
- Potential for rulemaking litigation
- State efforts to test preemption provisions
- Enforcement under state law

Questions?

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Thank You

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