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 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
BIOENGINEERING: “With 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

- Broad category of foods intended for human consumption
- Foods regulated by FDA under the FFDCA
- Foods containing USDA-regulated ingredients (meat, poultry, eggs) if predominant ingredient of food would be regulated by FDA
- Broader scope than in Vermont
Federal Disclosure Law: Key Concepts

- Food served in restaurants or similar retail food establishments not covered
- Very small food manufacturers not covered
- Food with meat, poultry, or egg products as main ingredient not covered
- Not applicable to food solely because food derived from animals that consumed bioengineered feed
Federal Disclosure Law: Key Concepts

- Implementation by USDA under Agricultural Marketing Act
- USDA Rulemaking in 2 years (July 2018)
- Three options for disclosure:
  - Text on packaging
  - A symbol
  - An electronic or digital link (QR code)
- Alternatives for small packaging
- Access/retailer study in 1 year (July 2017)
Federal Disclosure Law: Rulemaking

Scope Issues:

- Undefined terms ("may be bioengineered," "conventional breeding")
- Amount of a bioengineered substance that may be present to qualify as "bioengineered food"
- "Non-GMO" standard for absence of bioengineered materials
- Process for "other factors and conditions"
- Treatment of highly refined products
Federal Disclosure Law: Rulemaking

Disclosure:

- Optional approach
- Disclosure language
- Symbol
- “Other options” for disclosure per access/retailer study
Federal Disclosure Law: Rulemaking

Preemption:
- “Other similar terms”
- Exclusion for State/Federal statutory or common law remedies

Other issues:
- Recordkeeping
- Enforcement re failure to disclose
- Organic consistency
Federal Disclosure Law: Initial Actions

- USDA’s State Preemption Letters

- Vermont:
  - Preemption of Vermont law (and others not yet in effect)
  - AG statement of non-enforcement
  - Dismissal of Vermont litigation

- FSIS

- NOP Memorandum
Federal Disclosure Law: USDA Activity

Proposed Timeline:

- Access/retailer study (RFI issued; RFP in October, pending funding)
- Advance Notice of Proposed Rulemaking (End of 2016)
  - AMS has identified “areas of discretion”
  - Includes 30+ areas for public comment, e.g.:
    - Definitions, e.g., “found in nature,” “conventional breeding”
    - Amount of bioengineered substance for a food to be considered bioengineered
    - Investigations and enforcement
Federal Disclosure Law: USDA Activity

Proposed Timeline:

– Public stakeholder meetings/listening sessions (Nov – Dec 2016)
– Public comment review (~Spring/Summer 2017)
– Access/retailer study complete (July 2017)
– Notice of Proposed Rulemaking (~Fall 2017)
– Final Rule (Summer 2018)
Questions?