

# National Bioengineered Food Disclosure Law 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 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

- **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?

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