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

- 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

- 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

- 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

- 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."

- 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...."

- 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

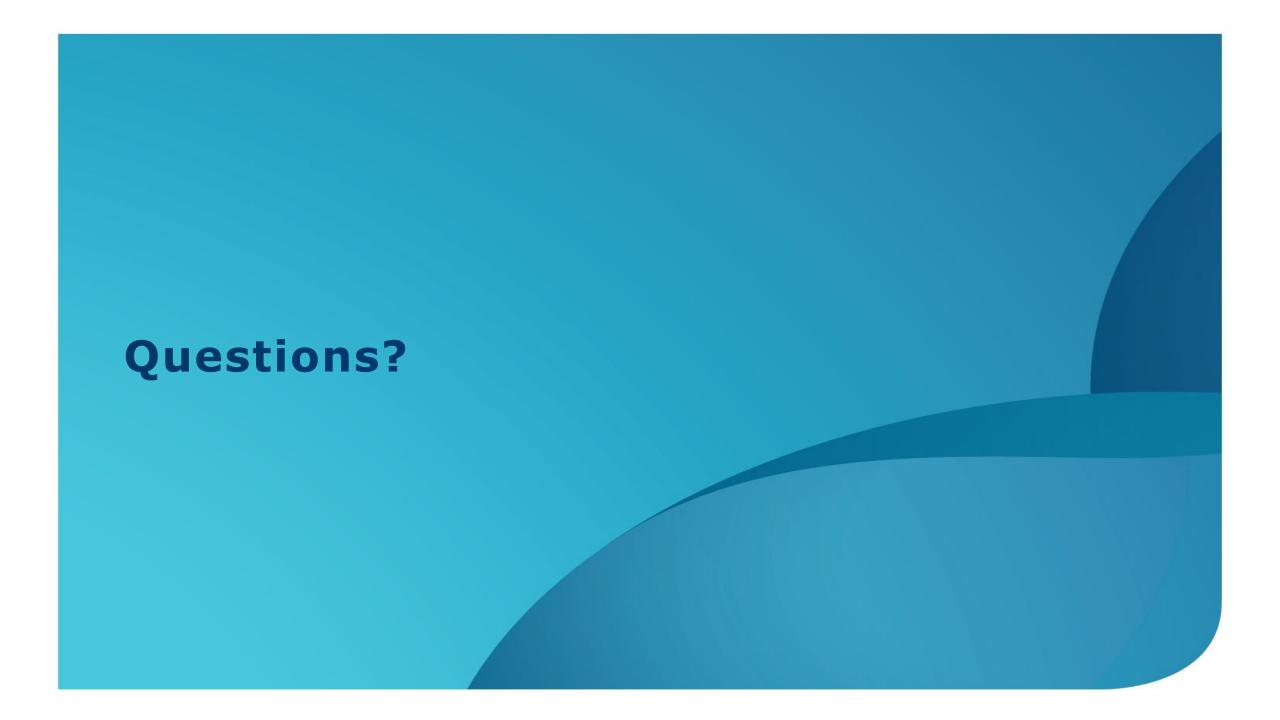
- Access/retailer study (September 6)
 - Conducted by Deloitte
 - Consumers will face challenges in using devices
 - Broadband availability
 - Apps space/usability
 - Lack of awareness about the link

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



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