



FEDERAL LAW ON BIOENGINEERED FOOD DISCLOSURE

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CONNECTICUT'S RELATED FOOD LABELING LAW

The federal law on bioengineered food disclosure preempts Connecticut's law on labeling genetically engineered food. (Bioengineered food is also commonly referred to as "genetically engineered" or "genetically modified" food.)

Connecticut's law required certain foods intended for human consumption that are entirely or partially genetically engineered to be labeled as such after four other states passed similar laws, provided one of those states bordered Connecticut, and the total population of such states in the northeast exceeded 20 million (CGS §§ [21a-92b](#) & [-92c](#)).

When the federal law passed, the threshold requirement for implementing Connecticut's law was not met.

packaged in smaller sizes. Also, food served in restaurants or similar retail establishments or made from very small food manufacturers is exempt from the disclosure.

ISSUE

Summarize the main provisions of the federal law that requires a national disclosure standard for bioengineered foods or foods with bioengineered ingredients ([P.L. 114-216](#), signed by the President on July 29, 2016).

SUMMARY

Public Law 114-216 (codified at [7 U.S.C. §§ 1639 to 1639c and 1639i & 1639j](#)) amended the federal Agricultural Marketing Act of 1946 by adding a national bioengineered food disclosure standard. It requires the United States Department of Agriculture (USDA) secretary to develop regulations, by late July 2018, setting out the requirements for an on-package disclosure that a food is bioengineered.

Among other things, the law requires the regulations to set out the amount of a bioengineered substance that must be in a food for the food to be considered bioengineered. It allows (1) the disclosure to be a text, symbol, or electronic or digital link and (2) food manufacturers to select the disclosure option they use. Alternative disclosure options are available for products from small food manufacturers and those



Under the law, knowingly failing to provide the required disclosure is a violation, but the law does not specify a penalty. Anyone subject to the disclosure requirement must keep records showing compliance with the law and make them available to the USDA secretary if requested.

The law preempts state or local laws with similar requirements regarding the labeling of food or seed in interstate commerce (see sidebox on page one). Further, any labeling or disclosure requirements for food in interstate commerce covered by the federal law must mirror the federal disclosure standard.

FEDERAL DISCLOSURE LAW

General Requirement

Under the new law, the USDA secretary must establish a national mandatory bioengineered food disclosure standard for any actual or potential bioengineered food. The secretary must establish the necessary requirements and procedures to carry out the standard, which will be set out in regulations.

The law defines bioengineered food as food with genetic material that was modified through in vitro recombinant DNA techniques, where the modification could not be found in nature or obtained by conventional breeding.

Scope of Law

The disclosure requirement applies to foods that are subject to labeling requirements under the Federal Food, Drug, and Cosmetic Act (FDCA) ([21 U.S.C. § 301 et seq.](#)). It also applies to any food that is subject to the labeling requirements of the Federal Meat Inspection Act ([21 U.S.C. § 601 et seq.](#)), Poultry Products Inspection Act ([21 U.S.C. § 451 et seq.](#)), or the Egg Products Inspection Act ([21 U.S.C. § 1031 et seq.](#)) and its most prevalent ingredient is:

1. subject to labeling under the FDCA or
2. a broth, stock, water, or other solution and the second-most prevalent ingredient is subject to FDCA labeling.

Regulations

Content. The law provides several requirements for the regulations that the USDA secretary must adopt.

First, it generally allows the form of the disclosure to be a text, symbol, or electronic or digital link, as chosen by the food manufacturer. An electronic or digital link must, among other things, include a telephone number that provides access to the bioengineering disclosure.

Small food manufacturers must also be allowed to meet the disclosure requirement by providing (1) a telephone number with an explanation that calling the number will provide consumers with additional product information and (2) the manufacturer's Internet website.

Additionally, the regulations must:

1. determine the minimum amount of a bioengineered substance in a food that is needed for the food to be considered bioengineered;
2. establish a process for determining other factors and conditions under which a food is considered bioengineered;
3. provide reasonable disclosure alternatives for food in small or very small packages;
4. set an implementation date for small food manufacturers that is at least one year after the regulations' implementation date;
5. exclude very small food manufacturers and food served in restaurants or similar retail food establishments from the requirements; and
6. prohibit foods made from an animal that consumed feed produced from, containing, or consisting of a bioengineered substance, from being considered bioengineered food solely based on that fact.

The law does not specify what constitutes a "small" or "very small" package or food manufacturer. Presumably, the secretary will define these terms in the regulations.

Study. During the first year of developing the regulations, the USDA secretary must study technological challenges that may impact consumer access to the bioengineering disclosure. The study must consider the (1) availability of wireless Internet, cellular networks, and landline telephones; (2) challenges of small or rural retailers; (3) efforts taken to address technology and infrastructure challenges; and (4) costs and benefits of installing technology, such as scanners, to provide the information. As part of the study, the secretary must solicit and consider public comments.

The law provides that if, based on the study's results, the secretary determines that consumers would have insufficient access to the bioengineering disclosure through electronic or digital methods, the secretary must provide other comparable options for access.

Recordkeeping and Document Review

The law requires anyone subject to the mandatory disclosure requirements to maintain compliance records in a manner the USDA secretary determines is customary or reasonable in the food industry.

The compliance records must be available to the secretary, upon request, and the secretary may examine or audit them, or conduct related activities. Anyone subject to one of these actions by the secretary must have notice and an opportunity for a hearing on its results, after which the secretary must make a summary of the action publicly available.

Preemption Provisions

The law prohibits states or their political subdivisions from establishing or continuing a requirement to label food or seed in interstate commerce to indicate whether it is genetically engineered or was developed or produced with genetic engineering. Similarly, any state or local requirements regarding the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering must be identical to the federal standard, if the food is covered by the federal law and is in interstate commerce.

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