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USDA Releases Questions for Input on the National Bioengineered Disclosure Standard Proposed Rule

June 28, 2017

Food, Beverage, and Dietary Supplements

Today, USDA's Agricultural Marketing Service (AMS) released 30 questions to gather input from stakeholders that it will use in drafting a proposed rule as required by The National Bioengineered Food Disclosure Standard enacted last year on July 29, 2016 (click here for Covington's client alert). By statute, AMS has two years--until July 29, 2018--to establish a national disclosure standard and the procedures necessary to implement the standard.

The questions are available at this link https://www.ams.usda.gov/rules-regulations/gmo-questions and request information on a variety of topics, including:

- Terms to be used interchangeably with "bioengineering."
- Breeding techniques that should be considered conventional and modifications that are found in nature.
- Disclosures for highly refined foods with no detectable bioengineered content.
- Regulatory language identifying the exemption for foods from animals fed bioengineered feed.
- The amount of bioengineered content in a food that triggers the disclosure.
- Disclosure categories for products (e.g., that are bioengineered, contain ingredients that are bioengineered, or contain ingredients derived from bioengineering) and disclosure options (text, symbols, electronic/digital link), and whether the disclosure options should include those required by the Vermont disclosure law.
- How to define "small" and "very small" food manufacturers and "similar retail food establishments."
- The records required for compliance.
- Tools that could be used to identify potential non-compliance and enforce compliance with the regulations.
- Import requirements.

AMS requests that input related to the questions be sent to GMOlabeling@ams.usda.gov. AMS does not appear to have provided a timeframe or date after which it will not accept input.

AMS will also provide an opportunity for interested stakeholders to comment on the proposed rule during the rulemaking process.

AMS's announcement comes two weeks after FDA announced its intent to extend the compliance date for the Nutrition Facts Label (NFL) final rules (here). FDA Commissioner Gottlieb, in answer to a question from Kansas Senator Pat Roberts during his confirmation hearing (April 5, 2017), expressed that he was in favor of consolidating the label changes, which would allow food manufacturers to issue labels with both FDA's new NFL and USDA's national disclosure standard at the same time. FDA's federal register notice with the details on the NFL extension was received for review and clearance at the White House Office of Information and Regulatory Affairs (OIRA) last week on June 21, 2017, signaling that the NFL extension may be published soon in the Federal Register.

Covington continues to monitor USDA and FDA activities that impact food, beverage, and dietary supplement manufacturers. We will circulate additional details on USDA's GMO disclosure efforts as they are released and FDA's new NFL compliance date when it is published in the Federal Register.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food, Beverage, and Dietary Supplements practice:

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