

Court Mostly Upholds the National Bioengineered Food Disclosure Standard While Remanding USDA's Text Message Disclosure Decision

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- The National Bioengineered Food Disclosure Standard Law of 2016 (discussed [here](#)) amended the Agricultural Marketing Act of 1946 to require the U.S. Department of Agriculture (USDA) to develop mandatory uniform national bioengineered (BE) food disclosure standards for human food. The law provides three options for a BE disclosure: text, a USDA-created symbol, or electronic or digital link (i.e., a Quick Response (QR) code that directs scanners to online information). For QR codes, however, the law directs USDA to conduct a consumer accessibility study and, if necessary, to provide additional and comparable options to access the BE disclosure. As reported [here](#), the mandated [Study of Electronic or Digital Link Disclosure](#) identified significant challenges that may impact whether consumers can access the BE food disclosure through electronic or digital links. In December 2018, USDA's Agricultural Marketing Service (AMS) published final regulations that include text messaging as a fourth option for providing BE information with improved consumer access.
- On September 14, 2022, a judge in the U.S. District Court for the Northern District of California ruled on a motion for summary judgment that was filed by natural and organic grocers and advocacy organizations challenging the BE disclosure standard and the implementing regulations promulgated by AMS. Most of the challenges to the National Bioengineered Food Disclosure Standard (NBFDS) were dismissed, including a challenge of the rule's use of the word "bioengineered" instead of more familiar terms such as "genetically engineered" or "genetically modified organism," and a challenge to the rule's exclusion of highly refined foods that do not contain detectable amounts of modified genetic material. Summary judgment was granted to the plaintiffs, however, on an Administrative Procedure Act (APA) challenge to the electronic or digital link provisions of the NBFDS. The court found that by leaving the QR code disclosure method as a standalone option (after USDA's study revealed significant access problems) and adding a fourth disclosure option that regulated entities can select *instead* of the electronic disclosure method fails to comply with Congress's express direction to "provide additional and comparable options to access the bioengineering disclosure."

- At USDA's urging, the text message disclosure decision was remanded without vacatur so that the food industry and consumer access to BE disclosures will not be disrupted while USDA revisits this provision of the NBFDS. According to the [Center for Food Safety](#) website, CFS and the other plaintiffs will consider appealing the court's decision to uphold other provisions of the NBFDS.

Nicholas Prust and Frederick Stearns also contributed to this article.

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