PRESENTATION

Enforcement of National Bioengineered Disclosure Standard

Karin F. R. Moore

Director

Hyman, Phelps & McNamara PC



Enforcement of the National Bioengineered Food Disclosure Standard

Karin Moore
Hyman, Phelps & McNamara, P.C.

CRN Regulatory Affairs Committee
November 17, 2021

NBFDS: Jan. 1, 2022

- aka “BE Labeling”
- January 1, 2022 all foods/dietary supplements entering commerce must be labeled in compliance with NBFDS regulations

Enforcement

- What is a Prohibited Act?
  - The failure to make a BE food disclosure as required.
- USDA Enforcement Authority is Limited
  - Marketing Standard, not related to health or safety.
- No authority to recall products, seize products or issue monetary demands
- Limited to investigations and making public the summary of an audit or final results of an investigation at the conclusion of the hearing.

Investigations

- Expect investigations to be (largely) driven by complaints.
  - Regulations allow anyone to file a written statement or complaint with AMS.
- Investigations will include an audit of records.
  - Recordkeeping is key for compliance!

States

- States may adopt their own NBFDS law with identical requirements.
- Remedies for violations of their standards could go beyond the enforcement tools provided by USDA, such as injunctive relief or monetary damages.
- No state laws have been passed, though.

Litigation

- Be very careful about absence claims:
  - Non-GMO
  - Natural
- State consumer protection statutes
- Lanham Act or the Better Business Bureau's National Advertising challenges by competitors.





Karin Moore
Hyman, Phelps & McNamara, P.C.
KMoore@HPM.com
703.861.1185