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Food Law: A Practitioner's Perspective

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Ohio State University Extension –
Food Law Webinar
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Overview

1. What is Food Law?
2. Sources of Food Law
3. Distinction Between Food Law Other Practice Areas
4. Food Law as a Focused General Practice
5. Examples, Anecdotes, Weird Stuff

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What is Food Law?

- Special laws and regulations written just for farmers, food producers.
- Exemptions to broadly applicable law
- Special burdens
- Unique commercial agreements

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Sources: Special Benefits

- Farm Bill
- [Packers and Stockyards Act](#)
- [Perishable Agricultural Commodities Act](#)
 - [Video is better!](#)
- [National Organic Program](#)

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Sources: Exemptions

- [Capper-Volstead Act](#)
- Chapter 12 Bankruptcy
- [Clean Water Act](#)
- [Right to Farm](#), nuisance exemptions
 - [Drunken “Agritourism”](#)
- Labor Law
 - [Overtime](#), confusion about [overtime](#)
 - [Child Labor](#)

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Sources: Special Burdens

- Food Safety Modernization Act
- Marketing and Labeling
 - Food, Drug, Cosmetic Act
 - Federal Trade Commission
 - USDA Meat Labeling (prior restraints on speech)
 - Alcohol and Tobacco Tax and Trade Bureau
 - [“Beer Bottle Dictator”](#)
- Strict Liability
 - Primary consideration in most commercial transactions

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Sources: Unique Commercial Agreements

- Co-packer Agreements
- CSA Agreements
- Livestock Production Contracts
 - Farmers Who Scale
 - Meat Hubs
- Insurance
 - Recall, Residential vs. Commercial
- Lease Agreements: [soil fertility](#), chicken litter

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Distinction Between Food Law and Other Practice Areas

- Multiplicity of Sources
 - Criminal Law
 - Family Law
 - Bankruptcy Law
- Relatively weak “brand”
- Extensiveness of law creates overlapping legal priorities
 - Trademark, Labeling
- New Business Models in Food Industry, blur old distinctions
- Limited professional resources

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Food Law as Focused General Practice

- Effective counsel requires
 - Familiarity with these and other sources of food law
 - Constant communication with clients, who are often unable to spot issues themselves.
 - Standing Guidance to clients: cc us on anything that would trigger the statute of frauds.

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Labeling & Marketing Regulation

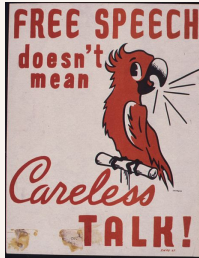


Photo source: Office for Emergency Management, War Production Board - 1942

You are not free to say anything you want about your products.

- “High Fiber”, “low sodium”
- Hearts
 - Trademark Implication

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Label Review

- FDA Labeling Regulations
 - Geometry, information size and placement
 - Claims
 - [Food Allergen Labeling Consumer Protection Act](#)
- [FDA Labeling Guide](#)
- Impacts graphic design of labeling and marketing materials
 - Contracts with designers should specify FDA compliance before aesthetics



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Standard of Identity Challenges

New Foods do not fit old definitions

- [Unilever vs. Hampton Creek](#), eggless mayonnaise violates [21 C.F.R. 169.115](#)
- [Field Roast](#), simulated meat product. Sales contingent on experimentation with live rats




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Protectionism

- Almond Milk vs. Dairy Industry
 - Long history of antagonism
 - [National Milk Producers Federation](#) letter to FDA
 - [New Marketing Campaign](#)
- Dairy Regulators vs. Almond Milk
 - Require pasteurization

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Livestock 

- Meat Hubs
 - Quality control, timing of delivery, price forecasting
- Livestock Contracting
 - [Chicken, Hogs](#)
 - Model can be pushed down to producers of non-commodity livestock, creating efficiencies
- The Recall Problem
 - Small farms and ranches assuming disproportionate risk
 - Requires recall insurance, indemnification

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