



What Does “Natural” Mean To You? FDA Solicits Comments & Information On Use Of The Term On Food Labels As It Considers Rulemaking

By Tom Cunningham, Simon Fleischmann, Ashlee Knuckey and David Standa

Amid growing ambiguity due to the spread of consumer litigation and the beginnings of patchwork state legislation, the FDA is finally taking action and officially soliciting comments and information on whether and how to define the term “natural.” The FDA’s notice was officially published in the [Federal Register](#) on November 12, 2015 and is also available [here](#).

While FDA action has been long anticipated, it comes as a surprise in light of the FDA’s conscious abstention on the term thus far. For example, despite publishing a proposed rule and soliciting comments on defining the term “natural” in 1991, the FDA ultimately decided not to engage in rulemaking. Instead, in 1993, the FDA opted to maintain its policy of interpreting the term “natural” as meaning that “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food” (58 FR 2302 at 2407). This is the interpretation the FDA has stood by to date. However, the FDA now clarifies that its policy was not intended to address food production methods, such as the use of pesticides, nor did it explicitly address food processing or manufacturing methods, such as thermal technologies, pasteurization, or irradiation. The FDA also states that it did not consider whether the term “natural” should describe any nutritional or other health benefit.

In recent years amid growing consumer trends demanding cleaner labels and less ingredients, there has been a spike in litigation over the meaning of the term “natural,” but the only true federal regulation of “natural” in labeling has come from the USDA’s Food Safety Inspection Service (FSIS). The FSIS defines “natural” in its Food Standards and Labeling Policy Book. Still, as recently as last year, the FDA elected to stay on the sideline despite requests from federal district courts to make a determination regarding whether and under what circumstances food products containing ingredients produced using genetic engineering may or may not be labeled “natural.”

Now, it appears the FDA is set to enter the fray. Citing those court requests, three industry-based citizen petitions calling for the FDA to define the term (submitted by Grocery Manufacturers Association, Sara Lee Corp. and The Sugar Association), and one consumer-based citizen petition calling for the prohibition of the term in labeling altogether (submitted by the Consumers Union) as among its bases for taking action, the FDA is gathering comments and information to help determine its next step.

Although not mentioned in the FDA’s notice, the FDA’s decision is certainly a reaction to (a) the growing number of states that are currently considering or have already adopted legislation on mandatory labeling of foods produced from genetically modified organisms (GMOs) and/or genetically engineered (GE) foods (see, e.g., [Vermont’s new law](#) on the labeling of GE foods), and (b) the House’s passing of the [Safe and Accurate Food Labeling Act of 2015 \(SAFLA\)](#), which would require the FDA to regulate the term “natural” on food labeling and would preempt state and other local requirements for the term “natural.” Thus, while the FDA’s notice calls for comments on *whether* to define “natural,” it may not have a choice in the matter, and *how* to define “natural” appears to be the more pressing question.



In its notice, the FDA specifically requests comments concerning the following issues:

- Whether and/or how to define “natural”;
- Whether “natural” should be prohibited from food labeling;
- Whether “natural” should be limited to certain foods, e.g., raw agricultural commodities, single ingredient foods, etc.; and
- Whether “natural” should be prohibited from processed foods or from certain production or manufacturing practices, e.g., genetic engineering, mutagenesis, hybridization, the use of pesticides, animal husbandry practices, drying, salting, marinating, curing, freezing, canning, fermenting, pasteurizing, irradiating, or hydrolysis; and
- How to determine whether foods labeled “natural” comply with the defined criteria.

In addition, the FDA requests information or data regarding:

- Whether and/or how consumers confuse/compare “natural” with “organic”;
- Whether and/or how consumers confuse/compare “natural” with “healthy”;
- Whether and to what extent there is an association between “natural” and any nutritional benefit; and
- Whether there are public health benefits.

The comment period officially opened on November 12, 2015 and is set to close on February 10, 2016. Locke Lord will continue to monitor these issues and would be happy to assist in the preparation and submission of comments on this matter.

Tom Cunningham | 312-443-1731 | tcunningham@lockelord.com

Simon Fleischmann | 312-443-0462 | sfleischmann@lockelord.com

Ashlee Knuckey | 312-443-0694 | aknuckey@lockelord.com

David Standa | 312-443-1748 | dstanda@lockelord.com

Practical Wisdom, Trusted Advice.

**Locke
Lord**^{LLP}

www.lockelord.com

Atlanta | Austin | Boston | Chicago | Dallas | Hartford | Hong Kong | Houston | Istanbul | London | Los Angeles | Miami | Morristown
New Orleans | New York | Orange County | Providence | Sacramento | San Francisco | Stamford | Tokyo | Washington DC | West Palm Beach

Locke Lord LLP disclaims all liability whatsoever in relation to any materials or information provided. This brochure is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. If you wish to secure legal advice specific to your enterprise and circumstances in connection with any of the topics addressed, we encourage you to engage counsel of your choice. If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive brochures. Attorney Advertising.