



100 Hillside Avenue, White Plains, NY 10603

August 25, 2017

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Submitted via email to GMOLabeling@ams.usda.gov

RE: Proposed Rule Questions Under Consideration for GMO Disclosure and Labeling
<https://www.ams.usda.gov/rules-regulations/gmo-questions>

Dear Secretary Perdue,

DanoneWave is pleased to provide comments on the United States Department of Agriculture (USDA) implementation of the National Bioengineered Food Disclosure Standard (Pub. L. 114-216). We are focusing our comments on several of the 30 questions posted by USDA and look forward to providing additional comments during the rulemaking process.

DanoneWave is a business unit of the global food company Danone and operates from headquarter offices in White Plains, New York, Broomfield, Colorado, Boucherville, Quebec, and Mississauga, Ontario. DanoneWave was formed following the acquisition by Danone of WhiteWave Foods, bringing together purpose-driven, health-focused and high-growth companies. DanoneWave's ambition is to produce healthful dairy and plant-based foods, and coffee creamers and beverages, to create economic and social value and to nurture natural ecosystems through sustainable agriculture.

We are proud to be a top 15 food and beverage company in the U.S. holding the number one dairy market position, excluding cheese. We have a strong track record of leading growth in on-trend, higher-growth categories.

As the largest public benefit corporation in the United States, DanoneWave is taking bold steps for social good in North America. We are changing the way many of our foods and beverages are made. We are committed to sustainable agriculture, water conservation, waste reduction, animal welfare and community engagement. As a company we focus on consumer expectations and are committed to being transparent about the food consumers choose.

Our portfolio of brands include: Activia, DanActive, Danimals, Dannon, Danonino, Earthbound Farm, Horizon Organic premium dairy products, International Delight coffee creamers and iced coffee, Light & Fit, Oikos, Silk plant-based foods and beverages, So Delicious Dairy Free, Vega and Wallaby Organic.

While the National Bioengineered Food Disclosure Law addresses the disclosure of the “presence” of bioengineered material in food, it is important to note that consumers are also interested in knowing which food “does not contain” bioengineered material or has “not been produced through the use of” biotechnology. In other words many consumers are seeking foods labeled with “absence” claims (e.g. “Non-GMO”). The USDA’s National Organic Program (NOP) and the Non-GMO Project (NGP) verification are the most consumer-recognized certifications for the absence of the use of bioengineering in the U.S. food supply. DanoneWave strongly supports NOP certified organic and the NGP verification. Today these standards are the most widely accepted by consumers and various stakeholders interested in selecting foods that are produced without the use of biotechnology. Absence claims of “not bioengineered” or “non-GMO” should be supported through rigorous third-party verification such as NOP certified organic and the NGP verification program.

Finally, it is particularly important for USDA to acknowledge the law clearly states that because a food is exempt from disclosing the presence of bioengineered material, it does not automatically qualify for a “Non-GMO” or other similar claim.

Below we offer comments on several of the questions asked by the USDA Agricultural Marketing Service.

1. What terms should AMS consider interchangeable with ‘bioengineering’? (Sec. 291(1))

DanoneWave comment:

For the purpose of disclosure, USDA should allow the use of terms that are widely used by stakeholders and consumers. In that context, specifically the terms “Genetic Engineering” and “GMOs” should be considered interchangeable with “bioengineering.”

2. Which breeding techniques should AMS consider conventional breeding? (Sec. 291(1)(B))

DanoneWave comment:

USDA should define modifications “that could otherwise be obtained through conventional breeding” such that foods and food ingredients from crops that have been subject to novel techniques such as gene editing and synthetic biology would not be exempt from disclosure. USDA proposed rulemaking should be based on its own General Counsel’s office statements in its letter to Senator Stabenow of July 1, 2017 which states:

“Section 291(1) of the Senate bill provides authority to include food in the national disclosure program, including products of certain gene editing techniques. This would include novel gene editing techniques such as CRISPR when they are used to produce plants or seeds with traits that could not be created with conventional breeding techniques. In addition, the definition provides authority to include RNAi techniques that have been used on products such as the nonbrowning apple and potato.”¹

¹ <https://www.congress.gov/crec/2016/07/12/CREC-2016-07-12-pt1-PgS4994.pdf>

4. Will AMS require disclosure for food that contains highly refined products, such as oils or sugars derived from bioengineered crops? (Sec. 291(1)(A))

DanoneWave comment:

- USDA should require disclosure for food that contains highly refined products, such as oils or sugars derived from bioengineered crops. Adopting such a position would reflect the expectations of various stakeholders when Pub. L. 114-21 was passed as reflected by the letter sent from the USDA to Senator Stabenow dated July 1, 2016. Specifically the letter states:

“Section 291(1) of the Senate bill provides authority to include food in the national disclosure program, including products which may or may not contain highly refined oils, sugars, or high fructose corn syrup that have been produced or developed from genetic modification techniques. As a practical matter of implementation, the Department would look not only at the definition in Section 291(1) regarding the genetically modified crops used to produce the refined or extracted materials, but also consider authority provided under Section 293(b)(2)(B) and Section 293(b)(2)(C) with respect to the amount of a bioengineered substance present and other factors and considerations which might deem the product to be considered bioengineered food.”²

5. Although the Law states that the definition of bioengineering shall not affect any other definition, program, rule, or regulation of the Federal government, could there be potential areas of confusion between the definition of bioengineering as used in the Law and others similar terms used by the Federal government? If so, what are the potential remedies that could be added to this regulation to alleviate any confusion between this definition and others by the Federal government? (Sec. 292(b))

DanoneWave comment:

USDA should reaffirm that the regulations implementing the National Bioengineered Food Disclosure Law do not affect any existing or future regulations, guidance, definitions or practices under other federal programs, including in particular any future federal regulations or guidance regarding claims on the absence of the use of bioengineering or the USDA current or future regulations, guidance and practices under the National Organic Program.

8. What is the amount of a bioengineered substance present in a food that should make it be considered bioengineered? (Sec. 293(b)(2)(B))

DanoneWave comment:

In order to limit consumer confusion and disruption in the market, USDA should consider that if the aggregate weight of the genetically engineered material in a food is no more than 0.9 percent of the total dry weight of the finished food, the food should not be considered bioengineered. Such level was included in the Consumer Protection Rule 121 from the State of Vermont on the labeling of food containing bioengineered material and has been used by

² <https://www.congress.gov/crec/2016/07/12/CREC-2016-07-12-pt1-PgS4994.pdf>

several companies, including DanoneWave, in their voluntary efforts to label the presence of bioengineered material in their products.

In addition, the suggested 0.9 percent level mentioned above would be consistent for purposes of harmonization with foreign markets such as the European Union.

9. Should AMS consider more than one disclosure category? (Sec. 293(b)(2)(D))

DanoneWave comment:

USDA should focus on a simple, single way to inform consumers of the presence of bioengineered material in a food. USDA should not develop various categories for disclosure as this would most likely result in consumer confusion.

10. What other factors or conditions should AMS consider under which a food is considered a bioengineered food? (Sec. 293(b)(2)(C))

DanoneWave Comment:

USDA should ensure that the final regulations reaffirm as stated in Sec. 294(c) that a *“food may not be considered to be ‘not bioengineered’, ‘non-GMO’, or any other similar claim describing the absence of bioengineering in the food solely because the food is not required to bear a disclosure that the food is bioengineered.”* In other words, it is particularly important for USDA to clearly acknowledge that because a food is exempt from disclosing the presence bioengineered material, it does not automatically qualify for a “Non-GMO” or other similar claim.

Additionally, USDA should continuously clarify the impact of new and evolving technologies on the disclosure of bioengineered food.

Finally, USDA should also ensure that beyond the issuance of clear and well defined regulations, it makes available to the public all necessary guidance documents to ensure all stakeholders including consumers, non-governmental organizations and industry have access to the most up to date information on the implementation of the National Bioengineered Food Disclosure Law.

12. If a manufacturer chooses to use text to disclose a bioengineered food, what text should AMS require for a text disclosure? (Sec. 293(b)(2)(D))

DanoneWave Comment:

USDA should recognize that numerous manufacturers have voluntarily implemented the provisions of the Consumer Protection Rule 121 from the State of Vermont and have maintained the related disclosures on their labels despite the preemption of the Vermont statute. Therefore, in an effort to limit consumer confusion, build on existing market conditions and avoid additional relabeling costs for industry, USDA should allow manufacturers to continue use the language prescribed by the Consumer Protection Rule 121 from the State of Vermont.

Furthermore it is important for USDA to carefully consider the potential consumer confusion which may result from allowing flexibility for the text used to disclose the presence of bioengineered material.

13. If a manufacturer chooses to use a symbol to disclose a bioengineered food, what symbol should AMS require for disclosure? (Sec. 293(b)(2)(D))

DanoneWave Comment:

DanoneWave strongly believes that the disclosure of a bioengineered food is best done through on-pack text disclosure and not through a symbol or an electronic or digital disclosure. However, should USDA nevertheless establish a symbol, any symbol that USDA selects in the final rule must be easily understood by consumers. It is therefore important that consumer understanding of the symbol be thoroughly evaluated by USDA prior to the final selection of the symbol. In addition, USDA should plan on implementing a strong consumer education campaign to ensure that there is a strong consumer understanding of the meaning of the symbol.

Finally, USDA should issue a detailed style guide on the use of the symbol chosen to disclose a bioengineered food, including size, color, contrast, and placement of the symbol.

14. If a manufacturer chooses to use an electronic or digital link to disclose a bioengineered food, what requirements should AMS implement for an electronic or digital link disclosure? (Sec. 293(b)(2)(D))

15. Should AMS specify in the regulations the type of electronic or digital disclosure manufacturers, e.g. QR code, can use to disclose bioengineered food? What steps should AMS take if an electronic or digital disclosure method becomes obsolete? (Sec. 293(b)(2)(D))

16. What kind of text, symbol, or electronic or digital disclosure should AMS require for bioengineered food that is not purchased from a grocery store shelf, such as food for sale in bulk (such as fresh produce in a bin or fresh seafood at a fish counter), in a vending machine, or online? (Sec. 293(b)(2)(D))

23. Is there other equivalent on-package language that AMS should consider to accompany an electronic or digital disclosure besides “Scan here for more food information”? (Sec. 293(d)(1)(A))

24. How should AMS ensure that bioengineered food information is located in a consistent and conspicuous manner when consumers use an electronic or digital disclosure? (Sec. 293(d)(2))

25. How should AMS ensure that an electronic or digital disclosure can be easily and effectively scanned or read by a device? (Sec. 293(d)(5))

DanoneWave Comment on questions 14, 15, 16, 23, 24 and 25:

DanoneWave strongly believes that the disclosure of a bioengineered food is best done through on-pack text disclosure and not through an electronic or digital disclosure. We believe that at the point of purchase it is unclear whether a consumer will always have the means, the time or the electronic connectivity to reach the appropriate information about the use of bioengineering in the food through an electronic or digital link.

26. What types of records should AMS require to be maintained to establish compliance with the regulations? (Sec. 293(g)(2))

DanoneWave Comment:

USDA should allow records to not be kept on site, as long as the records are retrievable within a reasonable timeframe.

30. What should the requirements for imports into the United States of products covered by the Law/regulation be? (Sec. 294 (a))

DanoneWave Comment:

USDA should impose the same requirements to imported foods as for domestically produced foods.

DanoneWave appreciates the opportunity to provide comments on the implementation of the National Bioengineered Food Disclosure Standard as we strive to fulfill the growing consumer interest for greater transparency and simplicity about food and its origin.

Respectfully submitted,
DanoneWave Public Benefit Corporation

A handwritten signature in cursive script that reads "Philippe Caradec".

Philippe Caradec
Vice President, Public Affairs