

Comments for drafting the National Bioengineered Food Disclosure Standard

Natural Grocers by Vitamin Cottage is a family-operated grocery chain specializing in natural and organic foods. We work diligently to provide our customers with quality products and encourage vendors to be as transparent with their sourcing practices as possible. As a grocer who understands the complexity of the food supply, these comments are being submitted as a consumer advocate with the hope of truly helping to ensure and stabilize consumer trust in the labelling practices used for GMO and/or bioengineered foods.

- 1. What terms should AMS consider interchangeable with ‘bioengineering’? (Sec. 291(1))?**
AMS should consider any product produced with any form of genetic engineering as bioengineering. This would be applicable to any technique that changes the genome without using conventional breeding practices. Applicable terms should include, but not be limited to: genetically modified, produced with genetic engineering, product of bioengineering, modified with genetic engineering.
- 2. Which breeding techniques should AMS consider as conventional breeding? (Sec. 291(1)(B))?** Conventional breeding develops new plant varieties by the process of *selection*, and seeks to achieve expression of genetic material which is already present within a species. Conventional breeding employs processes that occur in nature, such as sexual and asexual reproduction. The product of conventional breeding emphasizes certain characteristics. However these characteristics are not new for the species.
- 3. Which modifications should AMS consider to be found in nature? (Sec. 291(1)(B))?** Modifications that occur in nature should be produced by sexual and asexual reproduction. These characteristics should not be new for the species.
- 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))?** As a major natural and organic grocer, we have experienced customers demand for truly non bioengineered food. From a consumer perspective, this includes oils, sugar, emulsifiers, vitamins, and other additives that may come from genetically modified crops. AMS should require disclosure for these products.
- 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 other 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))?** No comment
- 6. Meat, poultry, and egg products are only subject to a bioengineered disclosure if the most predominant ingredient, or the second most predominant ingredient if the first is broth, stock, water, or similar solution, is subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act. How will AMS determine the predominance of ingredients? (Sec. 292(c))?** This should be done by either weight (dry foods) or volume (for liquids).

7. **How should AMS craft language in the regulations acknowledging that the Law prohibits animal products from being considered bioengineered solely because the animal consumed feed products from, containing, or consisting of a bioengineered substance? (Sec. 293(b)(2)(A))?** This should be crafted based on consumer perceptions so that it is clear to consumers that just because the animal product does not disclose that it contains GM ingredients, the animal's product may still be from animals fed GM feed. Transparency in the wording of this new law will be critical for inspiring consumer confidence and avoiding confusion.
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))?** The non-GMO project verified label requires that each ingredient in a multi-ingredient product intended for human consumption test to be below 0.9% GM in order to gain this label. This is a good standard for the AMS law to adopt as it will coordinate with current industry initiatives.
9. **Should AMS consider more than one disclosure category? (Sec. 293(b)(2)(D))?** The use of multiple labels and disclosure categories will add confusion and reduce transparency. If seasonal changes in availability of raw material needs to be accounted for, the addition of "may" should be allowed on the disclosure for appropriate products that demonstrate an eligibility for this label. For example: This product may be made with ingredients from bioengineered crops.
10. **Should AMS consider more than one disclosure category? (Sec. 293(b)(2)(D))?** Any product containing an ingredient that was created with recombinant DNA technology should be labeled as a bioengineered food. Other issues related to "found in nature" and "could be obtained through conventional breeding" should not be part of the decision.
11. **Could AMS consider whether a type of food is considered a bioengineered food under the determination process? (Sec. 293(b)(2)(C))?** Anything with a Nutrition Facts label should be required to disclose if it was created using bioengineering. Dietary supplements should be exempt and will need to be subject to an entirely different set of rules due to gray areas as to whether supplements are created using bioengineering.
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))?** We still feel strongly that the lack of a requirement for a text statement will undermine consumer confidence in this law. However, giving manufacturers flexibility to choose from more than one acceptable statement will also meet manufacturer's needs for properly describing the composition of their product accurately to the consumer. The disclosure should be standardized to the same place, no matter where that place is chosen to be. We recommend making the disclosure next to the ingredients list as it is the ingredients that are actually bioengineered rather than the entire food itself.
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))?** Next to the ingredients list
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))?** If the goal truly is transparency, then using the digital disclosures are going to be significantly less effective. However if using an

electronic or digital link, extensive information on the product should be required to be available. It should disclose which ingredients are from bioengineered crops or animals.

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))?** If an electronic or digital disclosure method becomes obsolete, clear text statements of disclosure should be required.
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))?** Clear disclosure should still be required this should not exempt the product from the law. Produce stickers that bear the PLUs should also disclose whether bioengineering was used, if digital methods do not fit on these stickers than it should be mandatory to use a text statement. For fresh seafood at a fish counter, disclosure should be made on the signage that identifies the product and also on the print-out sticker that is used to price the personalized portion. For products sold in vending machine's the disclosure should be next to the ingredients list, as was recommended for all products. For online grocery, a text statement or electronic link should be required to be part of the item description that is included on the product page.
17. **The Law offers special provisions for disclosure on very small or small packages. How should AMS define very small or small packages? (Sec. 293(b)(2)(E))?** Small and very small should be defined as is stated in option "a". (In 21 CFR 101.9(j)(13)(i)(B), FDA defines small packages as those with less than 12 square inches in total surface area available to bear labeling.)
18. **What are the reasonable disclosure options AMS should provide for food contained in very small or small packages? (Sec. 293 (b)(2)(E))?** Abbreviated text disclosure.
19. **How should AMS define small food manufacturers? (Sec. 293(b)(2)(F))?** Based off of small companies we work with and our experience in the industry, we recommend: i) retailers with total annual gross sales of \$500,000 or less.
20. **For disclosures by small food manufacturers, what is the appropriate language indicating that a phone number provides access to additional information? (Sec. 293(b)(2)(F)(ii)(I))?** "Bioengineered Food Info: 555-5555"
21. **The Law excludes restaurants and similar retail food establishments from disclosure requirements. How should AMS define similar retail food establishment to exclude these establishments from the requirements of the regulation? (Sec. 293(b)(2)(G)(i))?** Similar food establishments should include: Fresh prepared foods in grocery stores, food trucks, tasting and tap rooms, farmers markets, etc. This is food that is primarily intended to be consumed immediately or on-site.
22. **How should AMS define very small food manufacturers to exclude these manufacturers from the requirements of the regulation? (Sec. 293(b)(2)(G)(ii))?** Any manufacturer who has gross sales of \$500,000 or less.
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))? “Scan here for bioengineering disclosures.” Another option includes “Go here for bioengineering disclosures.” As technology changes, the term scan should be reevaluated.

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))?** Ideally a central hub where all of this information is kept in a standard and uniform fashion should be created and managed by the USDA.
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))?** It should be required that the digital signature be placed on a flat surface near the ingredient list if available to enhance scannability. Requirements should be put into place so if the digital disclosure is difficult to scan or be read by a device there is a penalty in place with the remediation being that the company must then disclose with a text statement.
26. **What types of records should AMS require to be maintained to establish compliance with the regulations? (Sec. 293(g)(2))?** Current FSIS regulations for record keeping should be applied to this new law.
27. **How should AMS obtain information related to potential non-compliance with these regulations? Is there information USDA should request prior to conducting an examination of non-compliance? (Sec. 293(g))?** The best way to determine compliance is through supply chain traceability. If supply-chain documents related to source of raw materials is required for submitting the label, this would allow traceability.
28. **What are the rules of practice for a hearing? (Sec. 293(g)(3)(B))?** N/A
29. **should AMS make public the summary of any examination, audit, or similar activity? (Sec. 293(g)(3)(C))?** This should be published on the AMS website under a specific page that contains all information relevant to this new law. Consumers know to check the USDA website for information on recalls—the same should be used for the summary of audits/examinations of companies.
30. **What should the requirements for imports into the United States of products covered by the Law/regulation be? (Sec. 294(a))?** Disclosure requirements should be the same, regardless of country of origin. Companies wishing to do business in the United States need to adhere to federal regulations as they do to all other pieces of federal labelling requirements.