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

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

Dear Secretary Perdue,

I am writing to offer comments on behalf of Stonyfield regarding USDA's implementation of *the National Bioengineered Food Disclosure Standard (Pub. L. 114-216)*. We appreciate USDA's invitation for public input on the questions under consideration for GMO Disclosure and Labeling.

Founded in 1983 with the goals of helping family farmers survive and protecting the environment, today Stonyfield is the world's leading organic yogurt producer. Our volume of production allows us to support enough family farms to keep over 200,000 acres of farmland in organic production. We are proud to have recently become a certified B Corporation, officially joining a group of companies that meet the highest standards of overall social and environmental performance, transparency and accountability and aspire to use the power of business to solve social and environmental problems. Stonyfield products are sold nationwide, with annual sales approaching \$400 million. Stonyfield also owns and produces the Brown Cow brand of yogurt, which is certified non-GMO by the Non-GMO Project.

Stonyfield has long been a champion of mandatory GMO labeling, in part because we have consistently heard from our consumers that this is something they want. While the organic standard already prohibits the use of GMOs, consumers are confused about whether GMOs are present in the non-organic products that they buy. Polls have repeatedly shown that nine out of ten Americans consistently report they want the right to know if their food is produced with genetic engineering – the same right held by consumers in 64 other countries.



As USDA moves forward with the rulemaking process for Pub. L. 114-216, we believe you must create a meaningful disclosure standard for GMO foods. This standard should uphold Congress' clear intent to cover all GMO foods and GMO technologies, be consistent with international standards, and be inclusive of all Americans – including consumers without smartphones, rural residents and the elderly.

In accordance with the statute and the subsequent Policy Memorandum issued by USDA AMS on Consistency with the National Organic Program, the final rule should consider organic certification sufficient to make a claim regarding the absence of bioengineering in the food, such as “non-GMO” or a similar claim. The final rule should also clearly state that products that are considered exempt from mandatory disclosure do not automatically qualify for an absence claim. Specifically, products made from livestock that consumed genetically engineered feed should not be allowed to make a non-GMO claim.

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

Stonyfield response: As USDA notes in the context for this question, the disclosure standard is a mechanism to inform consumers about their food. If the intent is to inform consumers, it is logical that USDA should allow the use of terms that consumers understand and routinely use to describe bioengineering. At Stonyfield, we observe that consumers consistently use the acronyms “GMO” (genetically modified organism) or “GE” (genetically engineered) to refer to bioengineered foods or ingredients. Similarly, the market standard for third-party verification that a non-organic food was produced without bioengineering is called “the Non-GMO Project.” The terms genetically modified organism, genetically engineered, and their related acronyms should be among the list of terms that AMS considers interchangeable with bioengineering.

The terms “GMO” and “non-GMO” have been used for over a decade in communications, policy memos, and guidance from the USDA National Organic Program and the National Organic Standards Board. Consistent with USDA’s lead, the organic industry uses the phrases “non-GMO” and “made without GMOs.” Organic consumers are familiar with these terms, and understand that the term “non-GMO” when applied to organic is a process claim that infers that the product was made in accordance with organic regulations that prohibit the use of GMOs. If the final rule issued by USDA discourages or disallows the use of the terms GMO and non-GMO, it would create confusion for consumers and cause extensive disruption and economic hardship for the organic industry.

USDA Question: 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))

Stonyfield response: Stonyfield appreciates the policy memo “Consistency with the AMS National Organic Program” issued by USDA that affirms Congress’ intent that the rules for bioengineered food disclosure will not require any modifications be made to the USDA organic regulations. It is critical that any rulemaking for Pub. L.



114-216 protects the definitions and practices that are currently established under the NOP organic regulations and any USDA NOP rulemaking or guidance in process. The policy memo states:

“When proposing standards for national bioengineered food disclosure program, AMS policy will be as follows:

- No certified organic products will require disclosure as bioengineered; and
- No proposed rules for bioengineered food disclosure will require that modifications be made to the USDA organic regulations.”

The definition, terminology, and prohibition on the use of GMOs are all well established in the regulations of the NOP. The organic industry has been operating under these terms and definitions for decades, and disruption of these well-established norms would be confusing for our consumers and extremely problematic for our industry. USDA must use the above language from the AMS policy memo in writing the rules for Pub. L. 114-216 to ensure that no proposed rules or definitions for bioengineered food disclosure will require any modifications to USDA organic regulations.

USDA Question: 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))

Stonyfield response: The section of Pub. L. 114-216 that follows the section referenced in this question is critical to guiding USDA in their interpretation of the law. Section 294 (c) states:

“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 under this subtitle.”

The final rule should follow the law and clearly state that products that do not require mandatory disclosure, such as milk or other dairy products made from animals fed bioengineered feed, do not qualify for a “non-GMO” claim if they are derived from animals that were fed GMO feed. In accordance with Pub. L. 114-216 and the subsequent USDA AMS Policy memo “Consistency between Bioengineered Disclosure and the National Organic Program”, “Non-GMO” labeling claims should be permitted for all certified organic products. Allowing non-organic products to make a Non-GMO claim in instances where the livestock were fed GMO feed would lead to consumer confusion because it would permit and encourage different definitions of non-GMO in the marketplace. For this reason, USDA should specify in the final rule that Non-GMO claims are never permitted for non-organic products if they include ingredients from livestock that were fed GMO feed.

Allowing a non-GMO claim on products made with ingredients from livestock that were fed GMO feed would also be inconsistent with the USDA Food Safety and Inspection Service (FSIS) policy on approving non-GMO



claims on meat, poultry and egg products. As a policy matter and in response to Pub. L. 114-216, FSIS will only approve “negative claims” for meat, poultry and egg products that do not contain bioengineered ingredients or that are derived from livestock that do not consume bioengineered feed and that contain the terms “genetically modified organism” or “GMO”.

As mentioned earlier, Stonyfield also manufactures Brown Cow products. All of our Brown Cow products are not organic, but they are Non-GMO Project verified. Stonyfield worked with a group of dairy farmers in Vermont to develop a new Non-GMO Project verified supply of milk in order to achieve this product verification. We pay those dairy farmers a premium for their extra efforts to grow and/or purchase non-GMO verified feed and take the other steps necessary to allow us to certify their milk under the Non-GMO Project standard. Consumers expect that a non-GMO claim includes not only the ingredients in a product, but the feed given to livestock used for any animal based ingredients. Currently, conventional dairy farmers are able to obtain a premium by meeting this consumer demand. If USDA were to allow manufacturers to make a non-GMO claim on dairy products from cows that were fed GMO feed, it would undercut the market for farmers who are working to meet the consumer demand for milk that is made from cows that were fed non-GMO feed.

USDA Questions: Which breeding techniques should AMS consider as conventional breeding? (Sec. 291(1)(B)); Which modifications should AMS consider to be found in nature? (Sec. 291(1)(B))

Stonyfield response: USDA should consider any ingredient or product produced with the use of bioengineering to be bioengineered. If USDA defines something as being bioengineered too narrowly, and excludes things that were in fact produced with bioengineering just because they could have been produced through conventional breeding or otherwise found in nature, consumers will not view this labeling system as comprehensive and thus not trust it to provide the information they are looking for. This would increase consumer confusion and undermine the law’s intent, which is to provide clear disclosure for consumers.

Bioengineering technology has evolved rapidly over the past several decades, and continues to develop. The rule promulgated by USDA should acknowledge and accommodate this evolution by establishing a clear mechanism for public comment on any future determinations regarding whether bioengineering techniques will require labeling.

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

Stonyfield response: USDA has the authority to broadly interpret the definition of bioengineering in a way that includes highly refined products, such as sugars and oils, and it should do so. Failure to require GMO sugars and oils to carry a disclosure would ignore Congressional intent.



In a colloquy on July 12, 2016, Ranking Member of the Senate Agriculture Committee Senator Debbie Stabenow (D-Mich.) reiterated the broad authority of USDA to include a wide range of ingredients, including highly refined and gene-edited ingredients. Senator Stabenow stated, “This bill gives USDA broad authority to determine . . . which foods will be subject to this bill’s mandatory disclosure standard, including highly refined products derived from GMO crops and products developed using gene editing techniques.” More specifically, she clarified that “this bill does not prohibit the labeling of highly refined products derived from GMO crops including soybean oil made from GMO soybeans, high fructose corn syrup made from GMO corn, and sugar made from GMO sugar beets.”¹

If USDA sets disclosure requirements too narrowly, and excludes ingredients that were in fact produced with bioengineering just because they were then refined in a way that makes that bioengineering undetectable, consumers will not view this labeling system as comprehensive and thus not trust it to provide the information they are looking for. This would increase consumer confusion about this issue and undermine the law’s intent, to provide clear disclosure for consumers. Analysis by the Environmental Working Group shows that as many as 63,000 GMO food products could be excluded from the disclosure requirement if a special loophole is created for highly refined GMO sugars and oils.

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

Stonyfield response: To facilitate trade and potential export of US-made processed foods, USDA should establish a GMO disclosure standard that is consistent with international regulations and standards. To be consistent with as many countries as possible, as well as the standards set by the U.N.’s Codex Alimentarius, the GMO disclosure standard should be an ingredient by ingredient disclosure and have a GMO threshold level of at minimum 0.9%. The threshold level should be based on the amount of GMO ingredients used in a product, regardless of whether testing can still reveal the presence of modified DNA in the final product.

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

Stonyfield response: The technologies used for bioengineering have evolved rapidly since the first genetically modified crops were introduced into commercial production in the mid-1990s. USDA should assume that technology will continue to evolve at a pace that is difficult to fully plan for in the drafting of regulations. USDA has the authority to apply the definition of bioengineering in Pub. L. 114-216 broadly to include genetic engineering technologies other than rDNA. If the definition adopted by USDA is too narrow, and does not include ingredients produced using newer techniques like CRISPR or RNAi, consumers will not trust that the

¹ See 162 Cong. Rec. S4994 (daily ed. July 12, 2016).



labeling system implemented by USDA is meaningful. USDA should establish a broad definition for what constitutes bioengineered food, and establish a mechanism for public comment on advances in bioengineering technology so that the rule can be updated as the technology evolves.

USDA Questions regarding electronic or digital disclosure:

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));

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));

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));

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));

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))

Stonyfield response: The most straightforward way to notify consumers about the presence of GMO ingredients in their food is through text on the package. Many companies demonstrated how simple it is to communicate this information on-pack as they began to use disclosures in anticipation of the state of Vermont’s GMO labeling law going into effect. This information can easily be included in or near the ingredients panel, even on small packages, and does not add substantially to the amount of space needed to communicate a product’s ingredients. In the final rule implementing Pub. L. 114-216, USDA should prioritize text disclosure of GMO ingredients on packaging, and discourage the use of digital disclosure unless other options are truly impractical.

Digital disclosure options will put a barrier between the consumer and the information they seek, and could create technological hurdles that make this information hard to access, either because some consumers lack the technology to access this information, or because their technology does not consistently work. If there is going to be a digital disclosure option, USDA needs to have strong rules to make sure that disclosures made using QR codes consistently scan every time, work in all conditions, and are easily accessible for consumers who don’t have smartphones.

Here in New Hampshire, and in many parts of rural America, it is still common to find yourself in a location that does not have cell service. The law clearly requires USDA to ensure that all consumers have additional, comparable options to access electronic GMO disclosure information if they are in a location that lacks a cell signal, or don’t have a smartphone. At Stonyfield, we know that consumers are often in a hurry when they are shopping at the store, and there are many competing demands for their attention. Most shoppers want to



spend as little time as possible making decisions about which products to purchase. If they want to know whether a product contains GMO ingredients, but cannot easily find that information on the package, it is highly unlikely that they will want to search the store to locate a station where they can look up that information. Comparable options should be truly comparable: it should take no extra time or effort for a consumer to use the digital disclosure option to access information about a product's GMO content, even if they lack a smartphone or cell service. This could most easily be achieved by requiring scanners be placed in every aisle of a store.

USDA Questions: How should AMS define small food manufacturers? (Sec. 293(b)(2)(F)); How should AMS define very small food manufacturers to exclude these manufacturers from the requirements of the regulation? (Sec. 293(b)(2)(G)(ii))

Stonyfield response: Stonyfield has nearly \$400 million in annual sales, national product distribution, and a staff of fewer than 400 people. Yet under the FSIS definition of a small business as one with fewer than 500 employees, Stonyfield would qualify as a small business. Clearly, this definition is not appropriate for the purpose of identifying companies that would be excluded from GMO disclosure requirements, as it could end up excluding many businesses with wide product distribution. The small business exemption should only apply to "cottage foods" and very small companies, in accordance with clear Congressional intent. FDA defines cottage foods and very small companies in regulations for good manufacturing practice, hazard analysis, and risk-based preventive controls for human food, as companies which average less than \$1 million in sales. For purposes of nutrition labeling, FDA has exemptions and special conditions for companies that sell directly to consumers, such as retailers, which average less than \$500,000 in total gross annual sales. USDA should follow precedent set by relevant FDA definitions of small and very small businesses.

In conclusion, Stonyfield appreciates this opportunity to provide input to USDA in advance of issuing the Proposed Rule on the National Bioengineered Food Disclosure Law (Pub. L. 114-216). Consumers have waited many years for a national GMO disclosure requirement, and it is important that USDA implement the law quickly and in a way that meets consumer expectations and needs for full, transparent access to information for all. We are appreciative of USDA's stated commitment to protecting the integrity of the USDA organic seal as part of this process, and we look forward to future opportunities to comment as this rulemaking process continues.

Sincerely,

Britt Lundgren

Director of Organic and Sustainable Agriculture

