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August 23, 2017

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,

Thank you for this opportunity to provide comment on the USDA's implementation of the National Bioengineered Food Disclosure Standard in advance of the July 2018 deadline. We appreciate the Department's solicitation of input from industry stakeholders and the public on the development of this complex regulation.

Founded in 1980 in Austin, Texas, Whole Foods Market is the leading natural and organic foods supermarket, the first national "Certified Organic" grocer, and uniquely positioned as America's Healthiest Grocery Store™. In fiscal year 2016, the Company had approximately \$16 billion in sales and has 470 stores in the United States, Canada, and the United Kingdom.

In March of 2013, we announced our intent to require the disclosure of GMO ingredients on food products in our stores by 2018, and we later announced a deadline of September 1, 2018 for our suppliers to comply with our requirements. In the development and implementation of this policy, we have worked closely with food manufacturers, certification bodies, advocacy organizations and other stakeholders, and we draw on this experience in providing these comments to the USDA.

We will respond to a number of the specific questions posed by USDA on the following pages. Apart from those responses, we would like to provide our general feedback on the implementation of the regulation, based on our experience as a retailer and as a strong advocate for transparency in food labeling:

The products of agricultural biotechnology have been described by a number of terms, including "genetically modified organisms" (or GMO/GM), "genetically engineered" (or GE), and "bioengineered." Based on our experience with our consumers and suppliers, we believe that the terms "genetically modified organism," "GMO" and "Non-GMO" are widely and well understood by consumers to describe the presence and absence of the products of bioengineering. The use of these terms should be allowed under the regulation.

Products exempt under the regulation, such as meat and dairy ingredients from animals fed bioengineered feed, must not automatically qualify for an absence or "Non-GMO" claim on the sole basis of their exemption from the declaration requirement. Consumers do not consider

animal ingredients from animals fed bioengineered feed to be “Non-GMO,” and the regulation must clearly prohibit such representations.

All food ingredients derived from bioengineered crops, including highly refined oils and sugars, are considered to be bioengineered or GMO ingredients by consumers, and must be required to make a disclosure under the regulation.

The USDA National Organic Program standards clearly prohibit bioengineered ingredients in certified organic products, and organic certifiers actively investigate the provenance of ingredients used in organic foods. The regulation must not require any certified organic product to make a disclosure of bioengineered ingredients. AMS should also ensure that this regulation does not conflict with existing Federal organic standards or National Organic Program policies, and will not require modification to organic regulations as described in the law and further clarified through USDA’s Policy Memorandum on “Consistency with the AMS National Organic Program.”

We will also respond to a number of the specific questions posed by USDA regarding the implementation of the regulation:

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

The products of agricultural biotechnology have been described using many terms in various regulatory and popular contexts, including “genetically engineered” or “GE,” “genetically modified” or “GMO,” “bioengineered” and other terms. Based on our work with food manufacturers, consumers, certification bodies and other stakeholders over the past 20 years, we believe that consumers most strongly associate the term “GMO” or “Genetically Modified Organism” with the bioengineered ingredients under discussion. The assertion that the phrase “genetic modification” also describes traditional methods of plant breeding, while technically correct, is not consistent with current consumer understanding of the term. Consumers recognize “GMO” as a description of the products of bioengineering, and our own company policies allow for the use of the term “GMO” with regard to both the absence and presence of bioengineered ingredients.

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))

All ingredients derived from bioengineered crops, including sugars and highly refined oils, should require disclosure. Consumers who choose to avoid GMOs are looking to avoid ingredients derived from bioengineered crops, regardless of whether testable proteins or DNA are present in the finished product.

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))

AMS should ensure that this regulation does not conflict with existing Federal organic standards, specifically the regulations and policies of the National Organic Program, and ensure that the implementation of the regulation will not require modification to organic regulations as described in the law and further clarified through USDA's Policy Memorandum on "Consistency with the AMS National Organic Program."

USDA Question: 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))

We believe that any ingredient derived from a bioengineered crop should require disclosure, regardless of the presence of other exempt animal-derived ingredients in the product. At Whole Foods Market, our GMO labeling policy provides an exemption the animal ingredients themselves, but does not provide an exemption other non-animal ingredients and additives. Consumers seeking to avoid GMO ingredients would expect such ingredients to require declaration, regardless of other exempt ingredients in the product.

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))

We support the exemption of animal ingredients from disclosure requirement for the sole reason that the animals may have consumed bioengineered feed. The regulation should clarify that meat, dairy, egg, honey and insect products are exempt from disclosure.

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))

The regulation should consider the presence of bioengineered materials present at less than 0.9% in the aggregate to be exempt from disclosure. This level is consistent with major Non-GMO certification programs, the European Union labeling regulations, and current contractual arrangements between buyers and sellers of agricultural commodities. The regulation should provide for a total of 0.9% exempt material in the aggregate a given product, rather than allowing an exemption of 0.9% for each ingredient that may be potentially bioengineered.

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

No. A single disclosure category provides a simple and clear mechanism for consumers who are seeking to avoid bioengineered ingredients. In our experience, the distinction between bioengineered products, bioengineered ingredients and ingredients derived from bioengineered crops is not a meaningful or easy to understand set of distinctions. We also do not believe that disclosure that a product may contain bioengineered ingredients during certain times of year is relevant or valuable for retail shoppers. Consumers are seeking a clear and simple on-package mechanism to indicate the presence of any product of bioengineering.

USDA Question: 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 believe that manufacturers should be allowed to use some flexibility in formulating a text-based disclosure of bioengineered ingredients. The label language allowed under the Vermont Law – “Produced with Genetic Engineering,” “Partially Produced with Genetic Engineering,” or “May be Produced with Genetic Engineering” – represents clear disclosures and are already in wide use on consumer food products. We also believe that claims using the acronym “GMO” or “GMOs” are well understood by consumers, and that claims such as “May contain GMOs,” “Produced with GMOs” or “Produced with GMO corn” are clear disclosures and should be allowed under the regulation.

USDA Question: 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))

If a symbol is allowed as a disclosure on label, it should be well established through consumer research that it be recognizable and meaningful. Such a symbol would need to include the acronyms “GMO” or “GE” in order to be meaningful and recognizable.

USDA Question: 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))

In our own GMO labeling policy, we do not consider QR codes or phone numbers to be adequate disclosures of the presence of bioengineered ingredients, and we require on-package declaration. However, we acknowledge that some producers may choose to use QR codes or phone numbers if allowed under the Federal regulation. We urge the USDA to ensure that such codes or numbers lead the consumer directly – with no required additional website or phone menu navigation – to a clear and unmistakable disclosure of the presence of bioengineered ingredients in the specific product.

USDA Question: 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))

AMS should require a clear text disclosure on the customer-facing signage that accompanies fresh produce, meat, seafood or bulk items, or in a conspicuous part of the product description for online items if the product label, with declaration, is not readily visible online.

USDA Question: 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))

Even the smallest packages have room for a simple text claim of “Contains GMOs.” We do not believe that small packages should be exempt from disclosure requirements.

USDA Question: How should AMS define small food manufacturers? (Sec. 293(b)(2)(F))

The exemption of a food manufacturer from the disclosure requirements under this regulation should be consistent with the exemptions based on revenue and product volume under the general food labeling provisions in 21 CFR 101.9(j)(1) and (18).

USDA Question: 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))

We believe that the exemption for restaurants and similar food retail establishments should mirror the definitions and exemptions in 21 CFR 101.11, Nutrition Labeling of Standard Menu Items in Covered Establishments, which excludes restaurant or retail chains of fewer than 20 locations operating under a single name.

We appreciate this opportunity to provide input on the development of the regulation.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Dickson', with a long horizontal flourish extending to the right.

Joseph Dickson
Global Quality Standards Coordinator
Whole Foods Market