



Monday, July 17, 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,

United Natural Foods (UNFI) is America's premier certified organic distributor. We have the largest national distribution of organic products including nutritional supplements, personal care items and organic produce, in the United States. We service 32,000 customers across North America with over 65,000 products and employ over 9500 associates. UNFI's estimate sales will be more than \$9 billion this fiscal year and organic products are instrumental to this growth and success.

One of the hallmarks of being certified by USDA's National Organic Program ("NOP") is that certified products may not be produced using genetically modified organisms ("GMOs") [7 CFR 205.105(e)]. This prohibition on the use of GMOs extends to all NOP certified label categories ("100% Organic," "Organic," and "Made with Organic") and all ingredients contained within each category (organic and non-organic ingredients and processing aids).

It also extends to products derived from livestock that were fed genetically modified feed. Because of this, UNFI has actively and successfully advocated for the right of organic food processors to label their products as made without the use of GMOs, to reinforce the consumer understanding that to be certified organic means – among other things – to be non-GMO. We believe that consumers have the right and desire to know more about their food in general. To that end, we strongly support mandatory labeling of all genetically modified foods.

The National Bioengineered Food Disclosure Law (Pub. L. 114-216) not only requires disclosure of genetically modified ingredients, but also includes important provisions that are critical for organic farmers and food makers—and for the millions of consumers who choose organic every day—because they recognize, unequivocally, that USDA certified organic products qualify for non-GMO claims in the marketplace. Those provisions safeguard USDA certified organic as the gold standard for transparency and non-GMO status as defined in the organic regulations and as expected by consumers that choose to purchase organic products.

Consistent with the statute and the related USDA Policy released since the labeling law was signed, UNFI requests a final rule that will put into action the following key organic provisions:



- USDA shall consider organic certification sufficient to make a claim regarding the absence of bioengineering in the food, such as “not bioengineered,” “non-GMO,” or another similar claim;
- The final rule should clearly state that products exempt from mandatory disclosure as bioengineered foods, such as milk from cows fed genetically modified feed, do not qualify for an absence claim solely because the food is not required to bear a disclosure;
- No proposed rules for bioengineered food disclosure will require that modifications be made to the USDA organic regulations; and
- No certified organic products will require disclosure as bioengineered.

We also strongly urge USDA to:

- Recognize “non-GMO” or other similar phrases as acceptable shorthand term for “not produced using genetic engineering/bioengineering”
- Use its authority and broadly interpret the definition of “bioengineering” and include highly refined products such as oils or sugars derived from bioengineered crops, and
- Establish a clear mechanism for public comment on any future determinations regarding whether genetic modification techniques will require labeling.

We have provided more detailed answers to the following questions USDA is requesting feedback on:

1. What terms should AMS consider interchangeable with ‘bioengineering’?
 - a. Genetically Modified, GM and GMO should be interchangeable with bioengineering. The term “genetically modified” is used by consumers and in commerce, often with no specific technical definition in mind. Under the Standard, the term would have the same meaning as bioengineered under the Law. Consumers are highly familiar with the acronyms “GMO” and “GM.” As stated in the previous question, over the past 15 years, USDA’s NOP has developed an extensive body of federal regulations relating to GMOs. All communications regarding genetic engineering from NOP since 2000 refer to “GMOs.” This includes USDA policy statements, instructions to certifiers and certified operations, and USDA fact sheets/educational materials for the public, all of which are available on the NOP website. In fact, USDA’s web page on this exact issue is entitled “GMO Disclosure & Labeling.”
2. What is the amount of a bioengineered substance present in a food that should make it be considered bioengineered?
 - a. We recommend using a standard that is widely accepted currently as the level of bioengineered content above which a food will be subject to the Law. That should be 0.9 percent.
3. Will AMS require disclosure for food that contains highly refined products, such as oils or sugars derived from bioengineered crops?
 - a. *UNFI urges USDA to use its authority and broadly interpret the definition of “bioengineering” and include highly refined products*



4. What other factors or conditions should AMS consider under which a food is considered a bioengineered food?
 - a. Consumers will expect the mandatory GMO disclosure standard to apply to all foods produced with genetic engineering, including foods which contain ingredients like highly refined sugars and oils as well as foods produced with new forms of genetic engineering like CRISPR and RNAi. In a letter dated July 1, 2016, USDA General Counsel Jeffrey Prieto clarified that the law provides USDA with the legal authority to do that. The GMO disclosure standard should be consistent with international standards set by Codex Alimentarius and harmonized with our trading partners in the European Union. USDA should also establish a clear mechanism under the disclosure standard that requires the inclusion of new genetic engineering techniques, as they are developed, to ensure that companies and consumers understand the full scope of the disclosure standard.

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?
 - a. USDA should ensure that the GMO disclosure standard avoids any conflict with existing organic standards and will not require any modifications to be made to the USDA organic regulations as described in the law and further clarified through USDA's Policy Memorandum on "Consistency with the AMS National Organic Program."

6. 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?
 - a. USDA should establish rules governing the use of electronic or digital disclosure methods, like QR codes, as well as the GMO disclosure itself. Companies that decide to use the electronic or digital disclosure method should be subject to strict rules to ensure that consumer can reliably scan products to access the GMO disclosure and USDA will also need to provide comparable options for consumers who don't have smartphones. We believe this could most easily be achieved by requiring that electronic scanners be placed in every aisle.

 - b. Establishment of a "bridge label" – Many food companies are currently using text on packaging to disclose when a food or food product is produced using genetic engineering and many more may be willing to disclose the use of genetic engineering on their packaging. Many food companies are also in the process of revising labels to comply with FDA's new Nutrition Facts label and the compliance date of July 26, 2018. USDA should provide clear guidance governing a "bridge label" while USDA establishes the mandatory GMO disclosure standard.



7. How should AMS define small food manufacturers to exclude these manufacturers from the requirements of the regulation??
 - a. In exempting very small food manufacturers from having to comply with the labeling requirements of Pub. L. 114-216, Congress intended to only exempt “cottage foods” and very small companies, which FDA defines in food safety regulations as companies that average less than \$1 million in gross annual sales and in regulations for nutrition labeling as companies that sell directly to consumers, such as retailers, which average less than \$500,000 in gross annual sales. USDA should follow precedent set by relevant FDA definitions of small and very small businesses.

8. 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?
 - a. The definition of similar retail food establishment should include retail food stores that sell prepared foods to customers to eat on the premises and for carry out. Both sales are retail sales. These stores are like restaurants and are increasingly important options for consumers interested in affordable and convenient away-from-home food. They should be within the exemption provided by the Law.

9. Implementation date
 - a. The law directs the USDA to establish the mandatory disclosure standard and any requirements and procedures needed to carry out the standard within two years. Many companies are already labeling their products that contain GMOs and given prior experience it is not unreasonable to expect that consumers should be able to see the mandatory GMO disclosure on products within two years of passage of the law. Consumers have waited long enough to see GMO disclosures on packages. USDA must finalize its GMO disclosure standard by July 28, 2018.

Thank you for the opportunity to comment, and for your commitment to transparency in our food supply and protecting the integrity of the USDA organic seal.

Respectfully submitted,

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VP Policy & Industry Relations
United Natural Foods