CCOF
Organic Certification Education & Outreach Political Advocacy Promotion

Bruce Summers
Acting Administrator
United States Dept. of Agriculture
Agricultural Marketing Service
Washington, D.C.

July 17, 2017

Dear Mr. Summers,

Thank you for accepting comment on the forthcoming National Bioengineered Food Disclosure Standard, or GMO labeling regulations. Consumers nationwide have spoken loudly and clearly that they want to know when GMOs are used as an ingredient in food so they can make their purchases accordingly. CCOF strongly supports GMO labeling and advocates for a meaningful GMO label.

CCOF is a nonprofit organization governed by the people who grow and make our food. We advocate on behalf of our members for organic policies, support the growth of organic through education and grants, and provide organic certification that is personal and accessible. We are supported by an organic family of farmers, ranchers, processors, retailers, consumers, and policymakers.

Enclosed are responses to the questions posed by USDA. CCOF strongly advocates for the following principles in the forthcoming rule:

- Labels must have clear statements with the term "GMO." Electronic or digital links are not sufficient to communicate to consumers.
- Protect the USDA National Organic Program's regulations defining bioengineering and related terms.
- Organic certification is sufficient to make a "not bioengineered" or "non-GMO" claim.
- Products which rely on GMOs at any point along the production chain—such as milk from cows fed GMO feeds—cannot be labeled as non-GMO.
- No certified organic products require disclosure statements.

Please do not hesitate to contact me for additional information.

Sincerely,

Jane Sooby

Jane Sooby
Senior Policy Specialist

cc: Cathy Calfo, Executive Director/CEO
Kelly Damewood, Director of Policy and Government Affairs

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1. What terms should AMS consider interchangeable with 'bioengineering'?

The final rule should recognize the terms "GMO" and "non-GMO" as interchangeable with statements referring to bioengineering because they are the most commonly understood terms among consumers. Moreover, the organic sector depends upon the "non-GMO" process claim to communicate the value of their crops and products to consumers. Discouraging the use of the term "non-GMO," a well-established claim in the marketplace, would significantly impact organic producers and food manufacturers.

Additionally, AMS should ensure the regulatory definition for the disclosure is compatible with the definition of "excluded methods" as defined in 7 CFR § 205.2. Federal organic standards prohibit excluded methods, which include transgenic and other genetic modification technologies.

AMS should also consider the recent National Organic Standards Board (NOSB) recommendation to NOP regarding updates to the definition of excluded methods. The recommendation updates regulatory language by including definitions of the following words and abbreviations: "genetic engineering (GE)," "genetically modified organism (GMO)," "modern biotechnology," "synthetic biology." NOSB also developed definitions for the terms "non-GMO" and "classical/traditional plant breeding."

2. Which breeding techniques should AMS consider as conventional breeding?

AMS should use the formal definition of "Classical/Traditional plant breeding" approved by the NOSB in November 2016:[1]

Classical (also known as traditional) plant breeding relies on phenotypic selection, field based testing and statistical methods for developing varieties or identifying superior individuals from a population, rather than on techniques of modern biotechnology. The steps to conduct breeding include: generation of genetic variability in plant populations for traits of interest through controlled crossing (or starting with genetically diverse populations), phenotypic selection among genetically distinct individuals for traits of interest, and stabilization of selected individuals to form a unique and recognizable cultivar. Classical plant breeding does not exclude the use of genetic or genomic information to more accurately assess phenotypes, however the emphasis must be on whole plant selection.

3. Which modifications should AMS consider to be found in nature?

AMS should consider modifications to be found in nature if they are *not* included in the definition of "modern biotechnology" as adopted by NOSB.[2]

Modern Biotechnology – (i) in vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles, or (ii) fusion of cells beyond the taxonomic family, that overcomes natural, physiological reproductive or recombination barriers, and that are not techniques used in traditional breeding and selection.

[1] Formal Recommendation From National Organic Standards Board to National Organic Program. Nov. 18, 2016. National Organic Standards Board. Materials/GMO Subcommittee Proposal. Excluded Methods Terminology. August 30, 2016. Online at https://www.ams.usda.gov/sites/default/files/media/MSExcludedMethods.pdf

[2] Ibid.

4. **Will AMS require disclosure for food that contains highly refined products, such as oils or sugars derived from bioengineered crops?**

Yes, AMS should require GMO labels on highly refined products because without such labeling, the regulation will be inaccurate and misleading.

Based on CCOF's experience as an organic certifier, the following food ingredients are commonly derived from GM crops and should be labeled when that is the case:

- Yeast used in bread and beer
- Tocopherol derived from GMO soy
- Enzymes that are genetically engineered, used for cheesemaking and other processes
- High fructose corn syrup
- Sugar from GMO sugar beets
- Oils from canola, corn, cottonseed, and soy

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?**

The final rule should provide explicit protections for the NOP definitions of excluded methods, which includes bioengineering and related terms.

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?**

The final rule should not allow animals who are fed a GMO-based diet to be labeled as "non-GMO." While the animals themselves are not genetically engineered, the bulk of the feed they receive is likely to be genetically modified unless the animals are certified organic.

8. **What is the amount of a bioengineered substance present in a food that should make it be considered bioengineered?**

To support consistency in trade, AMS should consider the internationally recognized threshold of 0.9% GM content of the primary ingredients.

9. **Should AMS consider more than one disclosure category?**

No. If done correctly, a simple phrase and symbol should adequately communicate the information that consumers want to know: this product contains GM-derived ingredients.

10. **What other factors or conditions should AMS consider under which a food is considered a bioengineered food?**

AMS should take a similar approach to NOP in assessing and listing these technologies. The NOP is also challenged with maintaining a contemporary listing of the transgenic technologies that are not compatible with

organic production. As part of its review of "excluded methods," the NOSB established a set of criteria to determine whether a material has been made with "excluded methods" and constructed a terminology chart listing various types of modifications and whether or not each is excluded from organic production.[3] It is important that AMS establish a mechanism to update the definitions on a regular basis because new transgenic technologies are being released continually.

11. Could AMS consider whether a type of food is considered a bioengineered food under the determination process?

There should be no exemptions. Any food meeting the threshold criteria should be labeled.

12. If a manufacturer chooses to use text to disclose a bioengineered food, what text should AMS require for a text disclosure?

AMS should use the most clear, succinct language possible so that the label is readily understood by most consumers such as "Contains GM ingredients" or "Derived from GMOs."

13. If a manufacturer chooses to use a symbol to disclose a bioengineered food, what symbol should AMS require for disclosure?

AMS should require the symbol to include the term "GMO." The most effective symbols are those that are simple and easy to understand. Consumers look for the term "GMO," so any other symbol could be misleading. Therefore, a circle with the letters "GMO" inside of it should be adequate to convey the necessary information.

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?

AMS should require a clear statement or symbol with the term "GMO" to accompany any use of electronic or digital links. CCOF does not support allowing manufacturers to reveal presence of GM ingredients through an electronic or digital link disclosure. If such an allowance is made, then AMS must ensure that the codes are easily accessible for all consumers, including those without smartphones.

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?

AMS should avoid the ongoing dilemma of rapidly changing technology by requiring clear text disclosing the presence of GMOs. While supplemental information could be provided by electronic or digital disclosure, consumers should always have access to information about the presence of GMOs. Words will never become obsolete; therefore, a clear statement on the label should be the required form of disclosure.

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?

[3] Ibid.

Bulk foods purchased from bins are typically labeled with, at a minimum, the product name and price. Additional information could be included on that label, including the words “Contains GM ingredients” or “Derived from GMOs.” Similarly, transgenic fish should be labeled at the fish counter and labels affixed to vending machines distributing product made with GM ingredients.

26. What types of records should AMS require to be maintained to establish compliance with the regulations?

A valid organic certificate should be accepted as proof that a company’s product has not been made with GMOs and can legally bear a non-GMO label. Maintaining records for 2 years will assist in tracking back any cases of fraud that may arise.

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?

Ingredient lists, including where each ingredient was sourced, will be key to determining the GM status of any given product.

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

All imported foods, particularly processed products, seafood, and fresh fruits and vegetables, should be subject to the same National Bioengineered Food Disclosure Standard to which U.S. foods are held.