July 3, 2018

U.S. Department of Agriculture
Agricultural Marketing Service

Docket No.: AMS-TM-17-0050

**RE: Comments on proposed regulations to implement the National Bioengineered Food Disclosure Standard**

[INSERT TEXT EXPLAINING WHAT YOUR COMPANY IS AND WHY YOU HAVE UNIQUE AND VALUABLE INSIGHT ON THIS ISSUE]

The National Bioengineered Food Disclosure Standard (NBFDS) is the culmination of two decades of Americans overwhelmingly demanding mandatory labeling of genetically engineered (GE) foods, also known as genetically modified organisms (GMOs). The NBFDS’s entire purpose is to provide the American public with comprehensive and clear information in order to support informed choice about consuming GMO products. In order to ensure that the NBFDS does not mislead or confuse consumers, there are critical improvements needed, as outlined below.

1. **Include all GMO foods**

The Standard should include ALL GMOs, regardless of whether or not they have detectable transgenic DNA in the finished product. This means including:

* 1. Refined, processed food, even if it cannot be tested for GMO content due to the limits of current testing methodology
	2. New GMOs like those produced through various gene editing techniques (e.g., CRISPR, RNAi), even though they are not yet commercially testable

In order to support inclusion of all GMO foods, the NBFDS should adopt the definition of Biotechnology (aka Bioengineering) used by Codex Alimentarius. The Codex definition is the most authoritative international definition, as it is what the World Trade Organization looks to in resolving trade disputes. It is also the definition used by the Non-GMO Project, which holds the United States’ most well-established industry protocol for GMO avoidance.

The Codex definition is as follows:

*Modern Biotechnology – the application of:*

* 1. *in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and the direct injection of nucleic acid into cells or organelles; or*
	2. *fusion of cells beyond the taxonomic family that overcome natural physiological, reproductive, or recombination barriers and that are not techniques used in traditional breeding and selection.*
1. **Require meaningful thresholds and enforcement thereof**

In the draft standard, USDA proposes three options for threshold. We support option #2, with the following corrections:

*Food in which any ingredient contains a bioengineered substance that is inadvertent or technically unavoidable, and accounts for no more than nine-tenths percent (0.9 %) ~~by weight~~ of the specific ingredient*

In addition, to ensure that the 0.9% threshold is applied meaningfully, the following requirements should be explicit:

1. Testing to determine GMO content should be conducted using Real-Time or Digital PCR method; testing should be conducted by an ISO 17025 accredited laboratory
2. The testing to establish GMO content must be conducted on a sample where appropriate laboratory controls indicate that the DNA of the input is sufficiently intact to allow for valid quantitative analysis using PCR; a non-detect result based on a test of a highly refined ingredient is not an adequate basis for exemption
3. Records must show that a valid and meaningful sampling plan was employed in accordance with industry standards (e.g., GIPSA)
4. **Maintain accurate lists of food subject to disclosure**

While we support the concept of including two lists, we suggest the following changes:

* 1. A 50% adoption rate be applied for the “Highly Adopted” list; 85% is too high to be meaningful
	2. A 10% threshold should by applied for the “Commercially Available” list; without this, food companies would be subject to expensive and burdensome label changes even before a clear risk is established to the supply chain; as an example, the Arctic Apple is currently commercially available, but only as a pre-sliced, packaged product—requiring all food products containing apples to bear a “May contain” disclosure would be unreasonable
	3. To avoid the risk of the lists becoming horribly out of date, the final rule should include a mechanism for no less than QUARTERLY updates to the lists
1. **Use clear terms that the public recognizes and understands**

Ultimately, the law is only meaningful if consumers understand what the label says. Accordingly, the rule MUST allow for disclosure using plain English terms that people understand; the most well-established term is “genetically engineered;” for example, this is the term used in the Whole Foods Market GMO Labeling Transparency Policy established in 2013, and which thousands of brands have already changed packaging to comply with; it is also the language used in various state labeling efforts and voluntarily adopted by large consumer package goods companies like Campbell’s.

Restricting text claims to an unrecognized single term (“Bioengineered”) would be burdensome and expensive for food companies and misleading to consumers. The rule should also allow for use of the terms “Genetically Engineered” and “Genetically Modified.”

If the rule is going to include a logo, the logo on that acronym should be “GE” or “GMO,” rather than the newly invented acronym “BE.” “BE” is an invented term that has no meaning to the public and is therefore highly misleading. Further, any logo used as part of this law should be aesthetically neutral, in keeping with AMS’s other program logos, such as those used for Process Verified and Certified Organic.

1. **Ensure that the disclosure is accessible to all**

Two of the disclosure methods proposed in the draft are time-consuming and unrealistic and should not be included in the final rule. Namely:

1. QR codes are an unacceptable disclosure method, as they discriminate against more than 100 million Americans—especially those in rural, low-income, minority and elderly populations; the USDA’s own 2017 study confirms this
2. Likewise, the text message disclosure option proposed in the draft rule is unacceptable; for many people it would impose additional costs for each message sent and received

The only acceptable disclosure is plain English terms that are well-established and well understood by the general public; (e.g., GMO, GE, genetically engineered, genetically modified.)

1. **Provide a reasonable opportunity to comment further**

The draft NBFDS published on May 3 is not a complete draft; it leaves many significant questions unanswered. Because of the technical complexity of the issue, there are critical dependencies within the rule that are impossible to adequately comment on without seeing a fully developed draft that indicates clear direction. As such, the public must have another opportunity to comment once a fully developed standard has been drafted.

Sincerely,

[INSERT YOUR NAME AND COMPANY NAME HERE]