

July 3, 2018

United States Department of Agriculture
Agricultural Marketing Service
Docket Clerk
1400 Independence Avenue, SW
Room 4543 - South
Washington, DC 20250

Submitted via www.regulations.gov

RE: Proposed Rule – National Bioengineered Food Disclosure Standard – Doc. No. AMS-TM-17-0050 (83 Fed. Reg. 19860 (May 4, 2018)).

Dear Sir/Madam:

The American Farm Bureau Federation, American Soybean Association, American Sugarbeet Growers Association, National Corn Growers Association, National Cotton Council and US Canola Association appreciate the opportunity to comment on the USDA Agricultural Marketing Service's (AMS) proposed rule to implement the National Bioengineered Food Disclosure Standard, Pub. L. 114-216, (the NBFDS or Act). Our groups represent the majority of agriculture interests in the United States. Our associations represent around 193 million acres of row crops (canola, corn, cotton, soy, and sugarbeets) and nearly 6 million farm and rural families through the American Farm Bureau Federation.

We applaud AMS for attempting to address stakeholders' competing views on the scope of the NBFDS by setting forth a number of options for the final rule. Our overriding concern, however, is that some of the options being considered, if adopted, have the potential to harm U.S. agriculture and stifle American farming innovation by presuming or implying that refined ingredients like sugars and oils, derived from a bioengineered (BE) crop, contain genetic material when sound science shows they do not. Above all else, AMS must ensure that the NBFDS is a marketing standard, not a health, safety, or nutritional standard. Congress expressly recognized that "the comprehensive federal review process has determined that foods produced using bioengineering are safe and not materially different in any way from those made using other methods."¹

As members of the Coalition for Safe Affordable Food we support many of the Coalition's comments and recommendations on the NBFDS. However, as referenced in the Coalition's comments, the members of the Coalition have diverging views on mandatory disclosure of refined ingredients, the BE food list, voluntary disclosure, and thresholds. We explain herein our unified and strongly held position on each of those issues.

¹ S. Rep. No 114-403 (2016) at 2.

I. Definition of “Bioengineering” and “Bioengineered Food.”

We are unified in our support of AMS’s statement in the proposed rule that the “amended Act defines ‘bioengineering’ with respect to a food, as referring to a food ‘(A) that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques; and (B) for which the modification could not otherwise be obtained through conventional breeding or found in nature.’ 7 U.S.C. 1639(1). In accordance with its statutory mandate and for purposes of consistency, AMS proposes to directly incorporate this statutory definition into the definition of ‘bioengineered food’ without further interpretation of what ‘bioengineering’ means.”

II. Refined products should not be included in the definition of a BE food (Position 1).²

It is our unified view that AMS should exclude refined products from the definition of a BE food under Position 1 instead of adopting Position 2 with the undetectable DNA factor and condition. Creating any presumption, even unintentionally, that refined ingredients produced from BE crops are different or less desirable than their conventional counterparts is not supported by science, is contrary to the intent of the NBFDS, imposes a costly and discriminatory burden on the industry, and has harmful economic impacts throughout the supply chain. It also creates consumer confusion and increases consumer prices for identical products.

Excluding refined products from the definition of a BE food is supported by numerous scientific studies demonstrating the absence of modified genetic material from refined ingredients. As several of the studies explain, because refined products are processed under continuous high heat, pH, and other conditions, DNA is readily broken down.³

Excluding refined products from the definition of a BE food is also supported by AMS’s own economic analysis showing that the number of foods subject to disclosure would not be affected by excluding refined sugars and oils. The RIA further shows that Position 1 would be less costly than requiring product testing to prove the absence of modified genetic material.

III. AMS should develop a list of BE ingredients rather than a crop list to facilitate compliance with the NBFDS.

We understand and support AMS’s objective to create an easily referenced list to facilitate compliance with the NBFDS. However, creating lists of highly adopted and not highly adopted

² AMS continues to refer to processed sugars and oils as “highly refined ingredients.” However, the more appropriate term is simply “refined ingredients.” Highly processed or refined ingredients typically refer to multi-ingredient mixtures processed to the extent that they are no longer recognizable as their original plant/animal source, e.g., candy, tomato sauce, ice cream, etc. In contrast, when a single isolated food component, such as sugar, is obtained by extraction or purification using physical or chemical processes, it is typically referred to as “refined.” See e.g., Poti, J.M., et al., Is the degree of food processing and convenience linked with the quality of food purchased by US households?, 101 *Am. J. Clin. Nutr.* 1251-1262 (June 2015). For these reasons, we urge USDA to use the term “refined ingredients” when referring to single food components such as sugar.

³ See e.g., Klein, J., Altenbuchner, J., and Mattes, R., Nucleic acid and protein elimination during the sugar manufacturing process of conventional and transgenic sugarbeets. *J. of Biotechnology*, 60: 145-153 (1998).

BE foods by reference to bioengineered crops which is intended to serve as the “linchpin” for determining whether a regulated entity needs to disclose a BE food is not only contrary to Congress’s intent that a BE food contain modified genetic material, it renders Position 1 and the undetectable rDNA factor and condition superfluous. Rather, AMS should adopt a BE ingredient list. Exhibit 2 of the RIA, modified to reflect ingredients “that are outside of the definition of bioengineered under NBFDS”, i.e., refined products, enzymes, is an easy to understand list that would facilitate compliance with the NBFDS without creating false presumptions or contravening the intent of the NBFDS that a BE food is one that contains modified genetic material. AMS could also use Table 5 from the RIA which lists the top 50 ingredients that would likely trigger disclosure, provided it eliminates from the list those products that do not meet the definition of a BE food, e.g., sugars, oils, or excluded ingredients like enzymes. This is a far better way for regulated entities to make disclosure decisions because most food manufacturers, and especially small food manufacturers, do not know what crops many ingredients are derived from. The RIA itself supports this approach.

Alternatively, if AMS is inclined to retain a crop list, we support the Coalition’s recommendation to also include an Excluded Ingredient List that identifies those ingredients that are excluded from the scope on the NBFDS either under Position 1 or the undetectable DNA factor and condition. We further support the Coalition’s proposal that the initial Excluded Ingredient List be published with the Final Rule to avoid any confusion in the market. If AMS adopts this recommendation, we urge AMS to include refined sugars and oils on the initial Excluded Ingredient List with publication of the Final Rule.

IV. If AMS is inclined to address voluntary claims for foods that are not within the definition of a BE food, then AMS should not endorse specific on-package claims or symbols that ingredients are derived from or sourced from BE crops.

We support food manufacturers’ desire to be transparent and disclose additional information concerning ingredients that are not BE foods under the NBFDS. However, the creation of a voluntary labeling program for foods that are not within the definition of a BE food is not envisioned in the proposed rule and exceeds AMS’s statutory authority. If AMS is nevertheless inclined to create any safe harbors, or provide guidance for such claims, endorsing on-package claims that ingredients are “derived from” or “sourced from” BE crops or creating a symbol signifying such, would create confusion as consumers would presume that sourced or derived from means the food is bioengineered. Not only would this be misleading to consumers, it would defeat Congress’s objective to achieve national uniformity in the labeling of BE foods. Rather, if “sourced from” or “derived from” claims are made, they should be provided through other means, such as an electronic or digital link, that allows complete and truthful information to be provided without creating a secondary claim or disclosure that could mislead consumers into believing the food is BE when it is not.

V. AMS should adopt a 5% threshold (Alternative 1-C) that allows for the intentional use of small quantities of BE ingredients.

Finally, we strongly urge AMS to adopt Alternative 1-C, allowing the intentional use of BE ingredients up to 5% of the weight of the finished product because it supports biotechnology,

appropriately balances disclosure, market dynamics, and international trade, and is consistent with other U.S. regulatory programs, including the USDA Organic Program which allows up to 5% intentional use of non-organically produced agricultural ingredients. A lower threshold, such as 0.9 %, would be more aligned with the Non-GMO Project and European standards which denigrate biotechnology, stifle innovation and reduce choice for both farmers and consumers alike.

VI. Conclusion

With the use of bioengineered seeds, our members produce safe foods, and raise healthier and more productive crops, while providing a broad array of environmental benefits to help meet long-term sustainability objectives. We understand and support the consumer's desire to know what is in their food. However, our concerns have always been that any mandated disclosures must not disparage biotechnology, impose undue regulatory burdens, or create market discrimination when there are no material differences between conventional foods and foods derived from biotechnology. We reiterate Congress' intention that AMS implement a disclosure standard solely for marketing purposes, and that the NBFDS is not based on health, safety, or nutrition concerns. Furthermore, Congress intended that AMS "take every effort to minimize the impacts [of the NBFDS] on growers, handlers, processors, manufacturers, distributors, retailers and consumers."

We appreciate your thoughtful consideration of our submission and stand ready to answer further questions or supplement additional details should you request them.

Respectfully submitted,

Alabama Farmers Federation
American Farm Bureau Federation
American Soybean Association
American Sugarbeet Growers Association
Arizona Farm Bureau
Arkansas Farm Bureau Federation
Arkansas Soybean Association
Big Horn Basin Beet Growers Association
Big Horn County Sugar Beet Growers Association
California Beet Growers Association
California Farm Bureau Federation
Colorado Farm Bureau
Colorado Sugar Beet Growers Association
Connecticut Farm Bureau Association

Delaware Farm Bureau
Elwyhee Beet Growers Association
Florida Farm Bureau Federation
Great Plains Canola Association
Idaho Farm Bureau Federation
Idaho Sugar Beet Growers Association
Illinois Corn Growers Association
Illinois Farm Bureau
Illinois Soybean Growers
Indiana Corn Growers Association
Indiana Farm Bureau
Indiana Soybean Alliance
Iowa Farm Bureau Federation
Iowa Soybean Association
Kansas Corn Growers Association
Kansas Farm Bureau
Kentucky Corn Growers Association
Kentucky Farm Bureau
Kentucky Soybean Association
Louisiana Farm Bureau Federation
Michigan Corn Growers Association
Michigan Farm Bureau
Michigan Soybean Association
Michigan Sugar Company
Mid-Atlantic Soybean Association
Minn-Dak Farmers Cooperative
Minnesota Canola Council
Minnesota Corn Growers Association
Minnesota Farm Bureau Federation
Minnesota Soybean Growers Association
Mississippi Farm Bureau Federation
Mississippi Soybean Association

Missouri Corn Growers Association
Missouri Farm Bureau
Missouri Soybean Association
Montana Farm Bureau
Montana-Dakota Beet Growers Association
National Corn Growers Association
National Cotton Council
Nebco Beet Growers Association
Nebraska Corn Board
Nebraska Corn Growers Association
Nebraska Farm Bureau
Nebraska Soybean Association
Nebraska Sugar Beet Growers Association
New York Corn and Soybean Growers Association
New York Farm Bureau
North Carolina Farm Bureau
North Carolina Soybean Producers Association
North Dakota Corn Growers Association
North Dakota Farm Bureau
North Dakota Soybean Growers Association
Northern Canola Growers Association
NYSSA-NAMPA Sugarbeet Growers Association
Ohio Corn and Wheat Growers Association
Ohio Farm Bureau Federation
Ohio Soybean Association
Oklahoma Farm Bureau
Oklahoma Soybean Association
Oregon Farm Bureau
Pacific Northwest Canola Association
Pennsylvania Farm Bureau
Red River Valley Sugarbeet Growers Association
Rhode Island Farm Bureau

South Dakota Farm Bureau
South Dakota Soybean Association
Southern Minnesota Beet Sugar Cooperative
Southern Montana Sugarbeet Growers Association
Tennessee Farm Bureau
Tennessee Soybean Association
Texas Corn Producers
Texas Farm Bureau
US Canola Association
Utah Farm Bureau Federation
Virginia Farm Bureau Federation
Virginia Grain Producers Association
Wheatland Beet Growers Association
Wisconsin Corn Growers Association
Wisconsin Farm Bureau Federation
Wisconsin Soybean Association
Wyoming Farm Bureau Federation
Wyoming Sugar Company, LLC