

USDA National Bioengineered Food Disclosure Standard: What is it Good For?

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Agenda

Background of the rule

Foods requiring disclosure

Who must make the disclosure

Exemptions

Options for disclosure

Record requirements

Enforcement

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Background and compliance deadline

- Vermont GMO Law in 2014 (Act 120)
- S.764 signed by President Obama in 2016
 - Amended Agricultural Marketing Act of 1946
 - Preempts all state laws requiring GMO labeling
- USDA Agricultural Marketing Service (AMS)
- National Bioengineered Disclosure Rule
 - Published: December 21, 2018
 - Compliance date: January 1, 2022

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Foods Requiring Disclosure - List of BE Foods

- Alfafa
- Apple (Arctic™ varieties)
- Canola
- Corn
- Cotton
- Eggplant (BARI Bt Begun varieties)
- Papaya (ringspot virus-resistant varieties)
- Pineapple (pink flesh varieties)
- Potato
- Salmon (AquAdvantage®)
- Soybean
- Squash (summer)
- Sugarbeet



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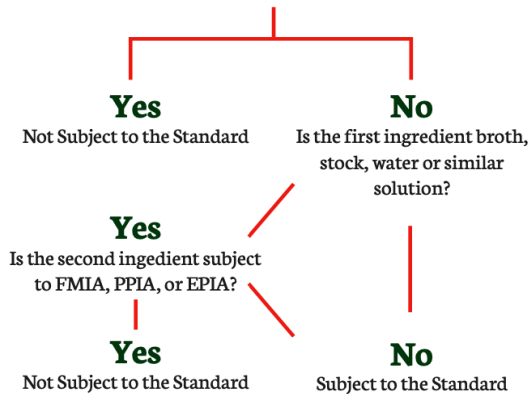
Foods Requiring Disclosure

- **Any** food (including dietary supplements) that contains detectable genetic material that has been modified through *in vitro* rDNA techniques when the modification could not be obtained through conventional breeding, or found in nature.
 - Subject to the labeling requirements of FDCA
 - Subject to the labeling requirements of the FMIA, PPIA, or EPIA only if:
 - The most predominant ingredient would be subject to FDCA, or
 - The most predominant ingredient is broth, stock, water, etc., and second-most predominant ingredient would be subject to FDCA

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Is the first ingredient subject to the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), or Eggs Product Inspection Act (EPIA)?

Ex. Pork, Beef, Sheep, Goat, Catfish, Chicken, Turkey, Domesticated Birds, Egg Product.



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Who must make the disclosure?



Manufacturer or Importer

When product is packaged prior to receipt by retailer



Retailer

When they package or sell a food in bulk

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Exemptions

Food served in a restaurant or similar retail food establishment

Very small food manufacturers

- Annual receipts less than \$2,500,000

Food certified under the National Organic Program

Inadvertent or technically unavoidable presence

- Up to 5% per ingredient

Food derived from an animal that consumed a bioengineered substance

Incidental additives

- Not a bioengineered food if:
 - present in insignificant levels and does not have any technical or functional effect in the food

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Options for Disclosure

- Text
 - “Bioengineered food”
 - “Contains a bioengineered food ingredient”
- Symbol
- Electronic or digital link
 - “Scan here for more food information”
 - Must be accompanied by a phone number
- Text message
 - “Text [command word] to [number] for bioengineered food information”



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Voluntary Disclosure

- Very small food manufacturer
 - Optional compliance
- Retail establishment
 - Optional compliance
- Disclosure of foods derived from bioengineering
 - Same standards, but with:
 - “derived from bioengineering” or
 - “ingredient(s) derived from a bioengineered source”



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Record Requirements

- Customary and reasonable
- Electronic or paper
 - Must contain sufficient as to be readily understood and audited
 - Two years beyond date a food is sold or distributed for retail sale
- Examples


<ul style="list-style-type: none"> • Supply chain records • Bills of lading • Invoices • Supplier attestations • Labels • Contracts 	<ul style="list-style-type: none"> • Brokers' statements • Third party certifications • Laboratory testing results • Validated process verifications • Other records
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Enforcement

- Mandatory Compliance Date
 - January 1, 2022
- Prohibited Act to knowingly fail to make disclosure
 - Any interested person can file a complaint
 - May result in inspection/audit by AMS
 - Opportunity to contest findings
 - Results will be public
- No authority to issue a recall or impose civil penalties
- RISK?
 - State BE food laws and consumer protection laws

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One last
thing to
consider

Center for Food Safety

- Natural Grocers et al v. Perdue et al (Northern District of California)

Key arguments

- Requiring term “bioengineered” is arbitrary and capricious since the EPA and USDA routinely use “genetically engineered” and consumers are more familiar with GMO
- Detectability standard does not fulfill purpose of law
- Electronic or digital disclosures discriminates against at least 20% of adult population
- Voluntary labeling requirements restrict manufacturer and retailer 1st amendment rights to disclose