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July 3, 2018

U.S. Department of Agriculture
Agricultural Marketing Service
1400 Independence Avenue SW
Washington, DC 20250

Docket No.: AMS-TM-17-0050

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

To Whom It May Concern:

Oregon Tilth appreciates the opportunity to comment on the U.S. Department of Agriculture's (USDA's) proposed regulations for the National Bioengineered Food Disclosure Standard (NBFDS, Pub. L. 114-216).

Oregon Tilth is a leading certifier, educator and advocate for organic agriculture and products since 1974. Oregon Tilth is accredited by the USDA to offer organic certification services per the USDA National Organic Program. Our certification program currently certifies nearly 2000 farm and food handling operations throughout the United States and internationally, representing over one million acres of certified organic land and thousands of packaged products sold to consumers.

Nationally, the organic industry has grown from $3.6 billion in 1997 to $49 billion in 2017. While organic agriculture represents a bright spot in agriculture, incoherent and ineffective regulations around genetically engineered food and crops, along with the failure of federal oversight in this arena threatens its success. As part of the 2014 Oregon Governor's "Task Force on Genetically Engineered Seeds and Agricultural Products," I emphasized that *this issue affects more than just organic agriculture.* Other agricultural segments are also at risk. Some have already experienced economic loss due to genetically engineered (GE) contamination, such as producers selling crops to export markets demanding GE-free product, the specialty seed industry, and identity-preserved crop producers.

In addition to comments about proposed label disclosure regulations, Oregon Tilth maintains the importance of the USDA's focus on the larger policy issues surrounding GE crops and potential contamination of non-GE crops, organic or not. Genetic contamination presents formidable challenges for prevention due to the way GE crops perpetuate and spread. We urge the agency to learn and define existing challenges to propose effective, practical and equitable solution-oriented strategies. The *proposed labeling regulation is disingenuous, insufficient, and will not address the core issues surrounding GE crops.*

Oregon Tilth offers the following specific comments on the proposed rule:

1. *The regulations should use language and terms consumers already know and can recognize.*
    a. The proposed rule allows for disclosure with the use of the term "bioengineered" or the acronym "BE," language unfamiliar to most consumers. Common marketplace terms found on food packaging and most familiar to consumers are "genetically modified organism (GMO)" or "genetically engineered (GE)." The stated goal of the proposed labeling rule is to notify consumers of genetically engineered products and provide an informed choice. The USDA should use language that consumers already recognize and understand.

2. *Symbols used for disclosure should be neutral and clearly notify consumers that the product is genetically engineered or contains ingredients derived from genetic engineering.*
    a. Simply put, the proposed symbols are misleading and emotion-driven. The use of proposed symbols that resemble smiley faces, sunshine, and plant leaves suggest positive and natural product attributes, while evoking positive sentiments. The images are suggestive that GE products are safer or have enhanced environmental benefits, compared to non-GE foods. Any symbol used should be neutral and provide consumers with clear, objective information.
    b. All symbol options presented in the proposed rules use terms and/or acronyms the vast majority of consumers would not readily recognize and understand. The proposed symbols used on packaging should use well-established language used and known in the marketplace.
    c. The proposed rule should also ensure that any symbols used are placed near other required on-package disclosures and be large enough to be easily identified.

3. *Digital and electronic disclosures are insufficient, inequitable and ineffective. Clear on-package disclosures that use written text and/or easily understood symbols should be required.*
    a. QR codes, websites and/or text messaging to mobile phones cannot be considered an acceptable means for consumer notification about the GE status of products. Providing information about GE ingredients through electronic means places an unreasonable burden on consumers. Relying on consumers' use of smartphones and access to reliable service would discriminate against millions of Americans – particularly in rural communities as well as low-income, minority, and elderly populations – known to disproportionately lack access to these technologies.
    b. USDA's own research report, *Study of Electronic or Digital Link Disclosure: A Third-Party Evaluation of Challenges Impacting Access to Bioengineered Food Disclosure* (Deloitte, 2017), revealed that nearly one-in-four Americans don't own a smartphone and three-in-four Americans don't know that you can scan QR codes to get product information. Most Americans have never scanned a code to get food information, and 85 percent of Americans who have tried say they have struggled with mobile scanning apps. In addition, disclosure via on-package website URLs or text messaging is unavailable to people without smartphones and impractical for many others because they are charged for each text sent and received. These disclosure methods are time-consuming and work against full disclosure and transparency.

4. *Highly processed or refined products that contain ingredients derived from GE crops and/or organisms should be labeled as GE.*
    a. Some highly refined products derived from GE crops and/or organisms may not make GE ingredients detectable in the final product using current testing methods. However, the proposed labeling disclosure rules are not based upon test results for the detectable presence or absence of GE ingredients.
    b. USDA's organic regulations prohibit the use of highly processed or refined products that contain ingredients derived from GE crops, regardless of whether or not they are detectable via testing methods. Organic regulations prohibit the use of *all* GE ingredients because organic standards exclude the use of genetically engineered crops and ingredients. Consistency across USDA regulations when determining which ingredients are considered genetically engineered is important to maintain clarity for consumers.
    c. Organic food processors and manufacturers regularly secure written verification from ingredient suppliers that highly refined sugars and oils are not derived from genetically engineered crops or organisms. Stakeholders across the food supply chain have already developed the necessary recordkeeping systems to provide this type of verification regarding ingredients. Including these types of ingredients under the labeling disclosure requirements would not introduce new burdens or complications into the marketplace and supply chain.
    d. Consumers expect *all* foods produced using genetic engineering and/or genetically engineered ingredients to be labeled. Each GE ingredient must be identified, including highly refined GE sugars and oils and processed corn and soy ingredients. If these products are left out from the disclosure requirement, it's possible that thousands of GE foods will remain unlabeled, which is dishonest, confusing, and fails to inform consumers.

5. *The proposed rule should be consistent with existing regulations regarding the production and labeling of organic crops and food as codified in the USDA National Organic Program regulations (7 CFR Part 205).*
    a. The final labeling disclosure rule should maintain consistency with and not affect the definition of "excluded methods" or any other definition under USDA's National Organic Program. The statute clearly states that the definition of the term "bioengineering" under section 291 shall not affect any other definition, program, rule, or regulation of the federal government. However, this is not made clear in USDA's proposed rule.
    b. USDA should consider organic certification sufficient to claim the absence of bioengineering in the food, such as "non-GMO," "not genetically engineered," or another similar claim. While the proposed rule specifically exempts food certified as organic under the National Organic Program, it does not affirmatively clarify that organic certification is sufficient to make a non-GMO claim.
    c. The final rule should clearly state that products exempt from mandatory disclosure as "bioengineered" foods, such as milk from cows fed GE feed, cannot by default automatically qualify for an absence claim solely because the food is not required to bear a disclosure. The statute clearly states that a "food may not be considered to be 'not bioengineered', 'non-GMO', or any other similar claim describing the absence of bioengineering in the food solely because the food is not required to bear a disclosure that the food is bioengineered." However, such language is not made clear in USDA's proposed rule.

The USDA's lack of initiative to proactively address GE issues has led to a regulatory and marketplace reality that has placed different sectors of U.S. agriculture and food industries in opposition with one another. Now is

the time for the USDA to show leadership and take federal action to protect all sectors of our nation's vibrant, valued and diverse agriculture.

Providing clear and consistent labeling disclosure rules for GE crops and products would be an important first step. However, labeling rules alone are not enough. Additional policy leadership is required to address broader coexistence issues amongst farmers and the broader food supply chain and industry.

Thanks in advance for your consideration.

Chris Schreiner
Executive Director
Oregon Tilth