



## USDA issues final GMO labeling standard

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On December 20, 2018, the U.S. Department of Agriculture issued its long-awaited final rule establishing a national bioengineered (BE) food disclosure standard, as directed by Congress in 2016. According to Sonny Perdue, Secretary of Agriculture, the standard “ensures clear information and labeling consistency for consumers about the ingredients in their food” and “avoids a patchwork state-by-state system that could be confusing to consumers.”

The final rule uses the term “bioengineered” instead of the more commonly used “genetically modified.” “Bioengineered” refers “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.”

### Applicability

The USDA final rule applies to all human foods subject to the labeling requirements under the Federal Food, Drug and Cosmetic Act, including “raw produce, seafood, dietary supplements, and most prepared foods, such as breads, cereals, non-meat canned and frozen foods, snacks, desserts, and drinks.” It applies to products packaged for retail sale, as well as food sold in bulk bins at retailers.

The disclosure requirement also applies to some of the meat, poultry and egg products regulated by the USDA under the Federal Meat Inspection Act, Poultry Products Inspection Act or Egg Products Inspection Act, provided that an ingredient regulated by the FDA predominates. Thus, a BE disclosure is not required on a processed product in which meat or poultry is the primary ingredient, even if it contains BE ingredients. Notably, the “may be bioengineered disclosure cannot be used.”

### Lists of bioengineered foods

To aid regulated entities considering whether they may need to make a BE disclosure, the USDA developed the List of Bioengineered Foods to “identify crops or foods that are available in a bioengineered form ... that may be produced anywhere in the world.” The following foods comprise the List of Bioengineered Foods: alfalfa, certain varieties of apple, canola, corn, cotton,

certain varieties of eggplant, certain varieties of papaya, pineapple (pink flesh), potato, salmon (AquAdvantage®), soybean, summer squash and sugarbeet.

## **Exemptions**

- Meat and milk from animals fed BE food;
- USDA-certified organic foods;
- Food served in restaurants or similar retail food establishments, including food-to-go sold in supermarkets;
- Incidental additives;
- Very small food manufacturers (those with annual sales below \$2.5 million);
- Foods that contain a bioengineered substance that is “inadvertent or technically unavoidable ... of up to 5% of each ingredient.”

## **Disclosure methods**

The final rule allows disclosure of BE ingredients in several formats, including a symbol or a digital link printed on the packaging. Companies can use a QR code with a statement such as “Scan here for more food information.” After scanning the code, consumers will be brought to a website where bioengineered ingredients will be disclosed. If a company provides a digital link disclosure, it must also provide a telephone number consumers can call for information.

## **Compliance**

The implementation date for most manufacturers is January 1, 2020, with a mandatory compliance date of January 1, 2022.

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