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healthy farms, healthy food, healthy land

July 3, 2018

RE: ID AMS-TM-17-0050-0004, National Bioengineered Food Disclosure Standard, Federal Register Number 2018-09389

Dear AMS:

I appreciate the opportunity to comment on the Proposed Rule regarding the NBFDS. While some of my comments are general in nature and pertain to issues that appear to be no longer open for discussion, a portion of the following text corresponds to items where AMS is explicitly seeking input. Although I serve as the Executive Director of the Northeast Organic Farming Association, and I own and operate a certified organic farm, my comments are from my personal perspective as an environmental advocate.

The purported intent of the regulation is to provide consumers the opportunity to make informed choices when purchasing food products. Implicit in the proposal is that consumers' sole concern is the safety and nutritional value of what they consume as food. The proposal does not help consumers who wish to incorporate environmental considerations into their purchase decisions. This is strikingly evident in the potential exclusion of highly refined foods, and it is also evident in the exclusion of meat, poultry and egg products. Many consumers care about how their food is produced, not just what is produced. The inability to detect modified genetic material in the end products says little about the agricultural practices used to make them.

Nearly every aspect of the GMO versus non-GMO debate is hotly contested, supporting the need for maximum transparency. The overwhelming majority of GMO acreage is dedicated to herbicide and pesticide tolerant crops which are typically grown in large conventional monocultures. In turn, the majority of these crops go into feeding CAFO livestock and producing highly processed foods. The long-term implications of these farming systems are of great concern to many people. By excluding animal products and refined products from the requirements, the proposal deprives consumers informed choice about the type of food and farming systems they wish to support. The proposal takes an inappropriately narrow view of why consumers wish to know more about their food. I intentionally am using the term "GMO", because that is what consumers know. The shift to "BE" is an intentionally confusing subterfuge that distracts from a long-term debate that has produced important new information in recent years. This includes work on the potentially damaging impact of BT products and pesticide residues on our gut microbiota, to give just one example.



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To support real consumer choice, required changes to the proposal include, but are not limited to:

1. The inclusion of animal products where the animals have been fed GMOs (“You are what you eat ate.”)
2. The inclusion of highly refined foods, contrary to Position 1. Position 2 does not go far enough, because it implies that if it were known for certain that a refined product had no traces of modified DNA, it should be exempt. As stated earlier, such a position deprives consumers of making choices in the types of agricultural systems they wish to support. Of the two positions, #2 is clearly better, but it is too narrow in its rationale. Products should not be excluded simply because modified genetic material cannot be detected.
3. As presented in the current draft, the definition of “Bioengineered food” is too restrictive. Striking “through in vitro recombinant deoxyribonucleic acid techniques” would better accommodate new and emerging technologies. The relevant portion would then read, “food that contains genetic material that has been modified and for which the modification could not otherwise be obtained through conventional breeding or found in nature.”
4. In the Alternatives for §66.5(C), 1-B is preferable, primarily for the reasons stated by the AMS.
5. With respect to symbolic disclosure, it is important to bear in mind the AMS’s own statement that “nothing in the disclosure requirements set out in this proposed rule conveys information about the health, safety, or environmental attributes of BE food compared to non-BE counterparts.” The inclusion of “inverted white arch” smiley faces is contradictory to this statement. Any symbolic disclosure should be neutral in its emotive effect.
6. Whatever disclosure is used, it must be complete on the package or at the point of sale and not require the use of technology to obtain further information.
7. The enforcement provisions are almost entirely impotent, in large part due to the lack of authorization for civil penalties and the AMS’s belief that other measures such as unannounced audits or fines are “impractical”. Given that the proposal has no teeth, records of complaints, appeals and findings must be publicly available in a convenient format online.
8. §66.118 opens the door for abuse. It invites misleading or incomplete information to increase product sales.

When making purchases, consumers clearly care about more than the end products. They also care about how products are made, labor standards and other considerations. The NBFDS needs



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to be reoriented from smiley-faced industry propaganda to a standard that actually serves consumers.