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MEMORANDUM

From: Martin J. Hahn
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Date: July 29, 2020

Re: AMS Requests Comments on Updates to List of Bioengineered Foods for National Bioengineered Food Disclosure Standard

The U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) is seeking comments on recommendations to update the List of Bioengineered Foods (List) under the National Bioengineered Food Disclosure Standard (NBFDS). ^{1/} AMS seeks comment on four issues: (1) whether it should add insect-resistant sugarcane to the List; (2) whether it should add the modifier "virus-resistant" to summer squash, which already is on the List; (3) whether additional information is available to support adding cowpea or golden rice to the List; and (4) whether AMS should consider adding any other foods to the List. Comments are due to AMS by August 24, 2020.

Background

On July 29, 2016, Congress established the National Bioengineered Food Disclosure Act, creating a national standard for disclosing that a food is or may be bioengineered. In its regulations implementing the new law, AMS established at 7 C.F.R. § 66.6 the List of Bioengineered Foods, and said the agency plans to update the List annually. Presently, the List includes: alfalfa, 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), and sugarbeet.

If a regulated entity uses a food or ingredient produced from an item on the List, it must make a bioengineered food disclosure unless it has records demonstrating the food or ingredient it is using is not bioengineered. In addition to the foods on the List, a disclosure is required when a regulated entity has actual knowledge that a food or an ingredient is bioengineered.

When AMS considers adding foods to the List, it will assess two criteria: (1) whether the food been authorized for commercial production somewhere in the world, and (2) whether the food currently is

^{1/} National Bioengineered Food Disclosure Standard; Updates to the List of Bioengineered Foods, 85 Fed. Reg. 44,791 (July 24, 2020), available at <https://www.federalregister.gov/documents/2020/07/24/2020-14933/national-bioengineered-food-disclosure-standard-updates-to-the-list-of-bioengineered-foods>.

in legal commercial production for human food somewhere in the world. Once a food is added to the List, regulated entities would have 18 months following the effective date of the updated List to revise food labels to reflect changes to the List.

Request for Comments

AMS is seeking request for comment on four issues:

1. **Sugarcane (insect-resistant):** AMS proposes to add insect-resistant sugarcane to the List. AMS believes that sugarcane meets both criteria for inclusion on the List because Brazil approved an insect-resistant bioengineered sugarcane for commercial release and it currently is in legal commercial production. If added to the List, AMS would include the term “(insect-resistant)” because there currently is only one bioengineered trait used in sugarcane production.
2. **Squash (summer):** AMS proposes to add an additional modifier to summer squash, which already is included on the List, to clarify that the only available trait for BE summer squash is virus-resistance. AMS proposes to add the qualifier “virus-resistant” to the existing listing for summer squash. In other words, the List would include “Squash (summer, virus-resistant).”
3. **Other foods AMS considered for addition to the List:** AMS identifies two foods which it does not consider to meet the criteria for addition to the List, but for which it seeks public feedback to determine whether additional information is publicly available.
 - **Cowpea:** Nigeria recently authorized the commercial release of pod-borer resistant cowpea, bioengineered for lepidopteran insect pest resistance, and it seeks comment on whether the food meets the two criteria for inclusion on the List and, if added, whether it should include any modifiers that would more accurately describe the type of cowpea that is bioengineered (e.g., pod-borer resistant cowpea or insect resistant cowpea).
 - **Rice:** The Philippines Department of Agriculture has approved the safety of bioengineered rice, referred to as golden rice, for use as human food, though it has not yet been authorized for commercial release and is not in legal commercial production.
4. **Other foods for AMS consideration:** AMS also seeks comment on any other foods other than those identified above that it should consider for addition to the List.

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Regulated entities are encouraged to submit comments, particularly on the extent to which the insect-resistant sugarcane is currently identified as such in supply chain records, and on the compliance date for any changes to the List. For example, to the extent changes to the List are finalized in January 2021 with a concurrent effective date, the compliance date for such changes would be July 2022, just six months after the initial January 1, 2022 compliance date.

We will continue to monitor AMS’s implementation of the NBFDS. Should you have any questions, please do not hesitate to contact us.