



July 3, 2018

*Via Electronic Transmission*

USDA-AMS  
Docket Clerk  
1400 Independence Ave. SW.  
Room 4543- South  
Washington, DC 20250-0268

**Re: Agricultural Marketing Service National Bioengineered Food Disclosure Standard Proposed Rule, Doc. No. AMS–TM–17–0050, 83 Fed. Reg. 19860 (May 4, 2018).**

To Whom it May Concern:

On behalf of the American Spice Trade Association (ASTA), we appreciate the opportunity to submit comments in response to the United States Department of Agriculture Agricultural Market Service's (AMS) Proposed Rule on the National Bioengineered Food Disclosure Standard.

### **Introduction**

ASTA was established in 1907 and is the voice of the U.S. spice industry in the global market. Its members include companies involved in all aspects of the spice trade – importing, growing, processing, and marketing at the wholesale and retail levels. ASTA works to ensure the supply of clean, safe spices, shape public policy on behalf of the global industry and advance the business interests of its members. ASTA represents its members' U.S. interests by supporting regulatory compliance and maintaining relationships with U.S. agencies. ASTA has a long history of working with food regulatory authorities, and ASTA is pleased to provide the following comments in response to the AMS proposed rule on the National Bioengineered Food Disclosure Standard which are directly relevant to the spice industry:

- 1. Incidental Additives: ASTA supports the AMS position to align the disclosure requirements of the proposed rule with the applicable FDA regulations on ingredient declaration.**
- 2. Inadvertent or Technically Unavoidable BE: ASTA supports AMS Alternative 1-B to establish that food products that contain inadvertent or technically unavoidable amounts of BE substance of no more than 0.9% would not be subject to BE labeling disclosure.**
- 3. Labeling and disclosure: ASTA believes that AMS rules implementing the National Bioengineered Food Disclosure Standard should be consistent with established regulatory labeling schemes in other jurisdictions when feasible so as not to erect difficult barriers to trade for U.S. food and food ingredient industries.**

4. **Definitions:** ASTA believes that AMS should be aware of advancing technology and allow for definitions that support technology in the proposed rule when appropriate.
5. **Record keeping:** ASTA supports necessary record-keeping and information disclosure to ensure compliance with AMS rules implementing the National Bioengineered Disclosure Standard so long as those requirements are not arbitrary.

**AMS should align the disclosure requirements of the proposed rule with the applicable FDA regulations on ingredient declaration.**

ASTA supports AMS's position that ingredients exempt from labeling pursuant to 21 CFR 101.100(a)(3) would not be required to be disclosed under this regulation so long as the incidental additive does not require disclosure under another labeling requirement. As stated in the proposed rule, incidental additives are present in food in such insignificant levels that they do not have a technical or functional effect in the food, and as such they are exempt from certain labeling requirements. ASTA supports AMS's position that ingredients that are exempt from labeling under 21 CFR 101.100(a)(3) would not be required to be disclosed under this regulation as stated in the proposed rule. This position would align with existing, common-sense regulations for food ingredients that are present in incidental amounts that do not have any technical or functional effect in the food. Aligning the incidental additives labeling requirements under 101.100(a)(3) with the BE labeling disclosure standard also provides clarity for consumers, who may otherwise be confused if a product that is not listed on the label causes a product to bear a BE label.

**ASTA supports AMS Alternative 1-B to establish that food products that contain inadvertent or technically unavoidable amounts of BE substance of no more than 0.9% would not be subject to BE labeling disclosure.**

ASTA supports a reasonable approach to an inadvertent or technically unavoidable amount of a bioengineered substance that may be present in a food that is not labeled bioengineered. ASTA supports Alternative 1-B as proposed by AMS, which states that if an ingredient contains no more than 0.9% of a bioengineered substance that is inadvertent or technically unavoidable the final product would not be subject to disclosure as a result of that one ingredient. AMS considers inadvertent or technically unavoidable presence to mean insignificant amounts of a BE substance in food that resulted from the coexistence of BE and non-BE foods in the supply chain, such as non-BE corn flour that contains trace amounts of BE corn from a neighboring field.

ASTA support Alternative 1-B, which also aligns with some existing industry and international standards. The 0.9% inadvertent threshold suggested in the proposed rule recognizes a reasonable level below which a BE labeling disclosure would not be required in the final product.

**AMS rules implementing the National Bioengineered Food Disclosure Standard should be consistent with established regulatory labeling schemes in other jurisdictions when feasible so as not to erect difficult barriers to trade for U.S. food and food ingredient industries.**

Whenever feasible, a finalized rule implementing the National Bioengineered Food Disclosure Standard should be consistent with established regulatory labeling schemes in other jurisdictions so as not to erect difficult barriers to trade for U.S. food and food ingredient industries. Spices are part of an important global supply chain, and the Proposed Rule should not create barriers to participation in that global supply chain. ASTA appreciates that AMS is considering compatibility with the standards of U.S. trading partners when making decisions on how to craft the proposed rule. Requirements and related definitions that have been established and enforced in other jurisdiction such as the European Union should be taken into account when crafting the proposed rule. Although harmonization is not always possible, AMS should take into account international disclosure schemes and whenever possible create regulations that do not contradict what currently exists internationally.

ASTA supports AMS's consideration of compatibility with standards of foreign countries that are U.S. trading partners when promulgating the U.S. rules on bioengineered foods. The ingredient supply chain is a global industry, and harmonization between countries on food regulations supports U.S. companies. ASTA supports AMS's interest in harmonizing U.S. bioengineering disclosure rules with current existing international laws.

**AMS should be aware of advancing technology and allow for definitions that support technology in the proposed rule when appropriate.**

Although there are currently BE crops in the food supply chain, ASTA is unaware of any bioengineered spices. In the proposed rule, AMS asks whether the definition of conventional breeding "should be limited to methods currently used to propagate or modify existing genetics". ASTA believes AMS should create a definition for conventional breeding that would allow for new, existing or cutting-edge technologies to continue to develop without shoehorning certain technologies into "conventional breeding" or "bioengineered" at a fixed point. Any definition of conventional breeding should allow for some flexibility for technological development without automatically classifying new breeding technology as bioengineered.

**ASTA supports necessary record-keeping and information disclosure to ensure compliance with AMS rules implementing the National Bioengineered Disclosure Standard so long as those requirements are not arbitrary.**

The proposed rule subjects companies to mandatory bioengineered food disclosure standards and requires a facility to maintain records in order to demonstrate compliance with these bioengineered food disclosure requirements. AMS states that the companies must maintain records that are customary and reasonable, and ASTA agrees that recordkeeping requirements for BE should remain consistent with other AMS marketing programs and also suffice for BE recordkeeping. With that in mind, ASTA supports AMS's position to exempt certified organic foods from BE disclosure so that food manufacturers of certified organic foods would not be required to maintain additional records to demonstrate that organic certified food is not bioengineered.

ASTA also supports the AMS position that documentation normally maintained in the ordinary course of business be used to demonstrate whether or not a product is BE. This documentation could include purchase orders, IP certificates, or supply chain documents currently used in the ordinary course of business. However, any information necessary for verification of compliance must be limited and protective of confidential business information and must not be arbitrary.

**Conclusion**

ASTA appreciates the opportunity to comment on the AMS proposed rule on the National Bioengineering Food Disclosure Standard.

Sincerely,



Cheryl Deem  
Executive Director