

July 3, 2018

Secretary of Agriculture Sonny Perdue
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250

RE: National Bioengineered Food Disclosure Standard

Docket Number: AMS-TM-17-0050

Transmitted electronically

We are writing on behalf of the Transatlantic Consumers Dialogue (TACD). The TACD, founded in 1998 with 60 member organizations, is a forum of US and EU consumer organizations. We develop and agree on joint consumer policy recommendations to the US government and European Commission to promote the consumer interest in EU and US policy making. We have worked on the issues related to the labeling of GMOs for many years.¹ Our most recent policy recommendations on foods derived from new genetic engineering techniques was sent to the European Commission and the United States in September 2016.² We urge you to consider this resolution, which provides a broader context for the following comment.

We have closely followed the US-EU trade policy debates and here comment concerning the labeling of foods as it is reflected in the proposed Disclosure Standard. We are concerned that the proposed Disclosure Standard contains provisions that may aggravate transatlantic trade conflicts to the detriment of consumers. As you know, in the Disclosure statute, Congress required that your agency apply the statute in a manner consistent with the United States obligations under all international agreements.³ Unfortunately, we do not think the proposal complies with that

¹ In our 2002 letter on GMO labeling to the European Commission we concluded:

“TACD requires labelling of all GM food sold in Europe and the US, including ingredients of processed food, and food where GM ingredients have been used in production even if they are no longer detectable in the final product. Labelling of animal feed that contains GM ingredients should also be required.” <http://test.tacd.org/wp-content/uploads/2013/09/TACD-FOOD-2002-Letter-to-Commissioner-Byrne-on-GMOs.pdf>

² “Consumer concerns about new genetic engineering techniques,” Transatlantic Consumer Dialogue, September 7, 2016. http://tacd.org/wp-content/uploads/2016/09/TACD-Resolution-new-genetic-engineering-techniques_with-appendix_7-September.pdf

³ 7 U.S.C. § 1639c(a).

Congressional mandate. We urge you to modify the USDA proposal on GE foods in the following ways.

1) Reject "QR codes" and other discriminatory alternatives to on-package labels.

USDA proposes to allow companies to affix "QR codes," which are encoded images on a package that must be scanned by a smartphone to see whether a product was derived from genetic engineering. Because they require a smartphone and a reliable broadband connection, QR codes would discriminate against more than 100 million Americans – especially against consumers in many rural communities and low-income, minority, and elderly populations – known to disproportionately lack access to these technologies. USDA's own 2017 commissioned study of labeling options showed that this type of disclosure would inordinately discriminate against these populations and not alone be adequate to provide Americans the disclosure information Congress intended. On-package labeling must be required, as it is in the rest of the world, including Europe.⁴ U.S. companies selling in Europe who use the QR code option in the United State could not use this option, thus creating a barrier for U.S. exports.

We also oppose the Standard's proposed access to information option via on-package website URLs or text messaging, as unavailable to some and impractical. Many people are charged per texts sent and received, which would increase the burden on consumers to discover what they are eating. These proposed methods to implement the National Bioengineered Disclosure Act-which directs the Secretary to establish the National Bioengineered Food Disclosure Standard (NBFDS), -- are time-consuming and act as a disincentive for true transparency. The proposed indirect forms of food labeling would be unprecedented. In all other countries that require GE food labeling (64, around the world), clear, on-package labeling is the norm. The proposed alternatives to labeling would likely lead to trade disputes with countries that refused to recognize the technologically indirect information as equivalent to their own food labeling rules, and be contrary to Congress's mandate that the rules be consistent with U.S. international trade obligations. We urge USDA to insist on clear, plain language on-package labels to maximize the benefits of required disclosures to all consumers in the US and to harmonize with disclosure rules of other countries.

2) Allow for use of common, well-established labeling terms, not "bioengineered" or "BE."

USDA rejects the terms "genetic engineering" and "GMO," despite their use for 30-plus years by consumers, companies, and regulators and by English- speaking EU countries. Instead, USDA would allow only the little-known term "bioengineered," or still worse the entirely unfamiliar acronym "BE," to denote GMO content. This would only mislead and confuse consumers. Companies are already out in the US marketplace labeling with the use of the well-established terminology "GMO" or "GE" and USDA should permit that to continue. We urge that USDA allow for the use of "genetic engineering," "GMO," or "GE" and not require "bioengineered" or "BE" instead of the terms

⁴ The Deloitte study commissioned by the USDA is available at:
<https://www.ams.usda.gov/sites/default/files/media/USDA%20Deloitte%20Study%20of%20Electronic%20or%20Digital%20Disclosure%20170801.pdf>

commonly used in the U.S. and around the world. Again, the use of such a term would be contrary to the standard usage of GE and GMO in labeling in 64 countries.

3) Require neutral symbols.

The disclosure law permits the use of symbols instead of text. However, two of three symbols proposed by USDA are blatantly pro-biotech propaganda, with biased “smiley faces.”

Symbols should be content neutral and easy for consumers to understand, like a circle with “GE” or “GMO” inside it. The USDA should eliminate the biased symbol options. The USDA should eliminate the proposed examples #2 and #3 as possibilities for symbolic labeling and if using example #1, ensure that it says “GE” or “GMO” not “BE.” Again, to mandate labeling that is more than just simple factual information would be misleading to consumers and contrary to the manner in which the rest of the world provides this information to consumers.

4) Include all processed foods produced with genetic engineering.

The vast majority of current GE foods are not whole foods but processed foods, made with GE commodity crops such as corn, soy, canola, and sugar beets. Many of these products, such as sugar from GE beets, are so highly refined that current DNA tests may or may not detect the GE content in the final product, despite the source of the ingredient(s) indisputably being GE. USDA's proposal has two options, one in which these products are required to be disclosed as GE, and one in which they are not required to be disclosed. The proposed options would apply or not to cooking oils, sodas, and candies. If they are not applied, it's possible that hundreds of GE foods will not be disclosed. Non-disclosure would be grossly misleading, confusing, and fail to inform consumers. It would also be contrary to international norms for disclosure, which require disclosure of these foods. A meaningful standard should not be based on the current status of DNA testing technology. Any meaningful standard must include these GE products regardless of how highly refined they are.

5) Ensure that GE disclosure requirements apply to future food products made with newer forms of genetic engineering

Companies are currently experimenting with newer forms of genetic engineering, such as gene/genome editing. Foods such as oranges, cacao, potatoes, soy, and canola “bioengineered” via the gene-editing tool CRISPR are in development. USDA must ensure that any foods derived from these newer forms of GE are required to be labeled. The US Food and Drug Administration has already stated that it wants to review all of these new kinds of genetic engineering.⁵ The Codex Alimentarius Commission principles of risk analysis, and its definition of foods derived from

⁵ See FDA guidance for genetically engineered animals amended to cover genome editing, see: <https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM113903.pdf> for FDA consultation on genome editing in plants see: <https://www.regulations.gov/document?D=FDA-2016-N-4389-0001>

“modern biotechnology,” cover genome and gene editing.⁶ Since Codex Alimentarius standards are presumed to be authoritative for World Trade Organization members, for the United States to ignore Codex standards of “modern biotechnology” to which it agreed, by not labeling foods derived from the new GE techniques, would be to invite a trade dispute under WTO rules. It would also be contrary to Congress’s mandate in the statute that these regulations be consistent with U.S. trade obligations under international agreements.

6) Harmonize with the European Union standard.

USDA proposes two options for GE content arising from inadvertent contamination at some point in the supply chain. Disclosure would only be required if unintentional GE contamination exceeded 0.9% or 5% of the specific ingredient (by weight). The 0.9% threshold is the appropriate one because it is high enough to cover contamination; has long been established in the European Union and it aligns with existing standards of many U.S. food companies. A third option – to permit even intentional use of a GMO ingredient up to 5% of the entire food item's weight – would exempt the great majority of GE foods from mandatory labeling and would violate the EU’s GMO regulation.

7) Require disclosure now, not postponed until 2022.

The labeling law requires regulations be finalized by July 29, 2018. However USDA would allow companies nonetheless to postpone GMO labeling until as late as 2022 and instead permit them to use up labels without GMO content information. This is an entirely unreasonable delay that undermines for consumers the disclosure impact of the rule. Many companies are already labeling to disclose GE foods and ingredients to consumers. Promptly implement the regulations so that companies be required to use GMO content labels, with the amendments we have proposed. Neither U.S. law nor international comity under trade related equivalence agreements justifies the proposed delay to 2022.

Thank you for considering the Disclosure Standard deficiencies we have identified and the remedies to them we propose here. A deficient and discriminatory Disclosure Standard will deny consumers their right to know what they are eating and likely will affect their acceptance of GE food products in markets on both sides of the Atlantic.

Yours sincerely,

**Food Policy Committee
Trans Atlantic Consumer Dialogue**

⁶ Codex Alimentarius, Principles for the risk analysis of foods derived from modern biotechnology, available at:-
FAO www.fao.org/input/download/standards/10007/CXG_044e.pdf