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Industry Insights: GMO Labeling Update

The USDA and the Agricultural Marketing Service (AMS) have set forth the National Bioengineered Food Disclosure Standard ("the Rule") for labeling food products that have been genetically modified. The Rule requires food companies to disclose information about bioengineered food and food ingredient content by labeling such food as "BE" (bioengineered). According to its summary, the purposes of the Rule are to share information with consumers and to minimize implementation and compliance costs that would otherwise be passed on to consumers. The USDA is proposing two lists:

- highly adopted bioengineered crops (*e.g.* canola, field corn, cotton, soybeans and sugar beets); and
- bioengineered crops that are not highly adopted (*e.g.* non-browning apples, sweet corn, papayas, potatoes and summer squash varieties).

Foods containing highly adopted crops would be required to be labeled as bioengineered. Otherwise, foods containing crops that are not highly adopted would be required to be labeled that they "may be bioengineered" or "may contain bioengineered ingredients." The rule provides food companies with three options to label their foods BE:

- a one-sentence declaration, such as "this product contains a bioengineered food ingredient";
- a standardized icon that can be in black-and-white or color that displays the letters "BE" in a circle; or
- a QR code that can be read by smartphones and directs the user to further information online.

In addition, the Rule also changes the standard nomenclature with respect to food products that have been genetically modified from "GMO" to "BE," the term used by Congress. Critics claim consumers are less familiar with the term "bioengineered." There are also important proposed exemptions to the rule. For example, one proposed exemption would allow foods containing refined or modified sugars and oils not to be labeled as BE on the grounds that the refinement process may screen out modified DNA. Another proposed exemption excludes products containing ingredients from mixed sources that are less than 5% genetically modified by weight as a threshold to the labeling requirements. The Rule is open for public comment until July 3, 2018 and the AMS and USDA hope to finalize the Rule by the end of summer 2018. Meanwhile, food companies must also comply with the FDA's nutrition labeling requirements. In an effort to harmonize the timeline for the implementation of these requirements with the labeling requirements under the Rule, the FDA has extended the deadline by which manufacturers must update their Nutrition Facts and Supplement Facts labels from July 2018 to January 1, 2020 for food manufacturers grossing over \$10 million per year, and January 1, 2021 for others. This buys food companies time to understand and begin compliance with both the FDA's requirements and the Rule.

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