

USDA Issues Rules on Bioengineered Food Disclosures

The USDA issued rules on December 20, 2018 requiring the disclosure of the presence of bioengineered foods and ingredients in food products, called [the National Bioengineered Food Disclosure Standard](#) (the Standard). The Standard implements the National Bioengineered Food Disclosure Law passed in 2016 to create a uniform, federal disclosure standard for bioengineered (BE) foods.

The Standard defines BE food as food that contains detectable genetic material that has been modified through certain lab techniques and cannot be created through conventional breeding or found in nature. The definition excludes incidental additives that are present at an insignificant level and do not have a technical or functional effect on the food.

The Standard establishes a [List of Bioengineered Foods](#) (the List), which will be updated every year. The List includes foods that are known to be bioengineered, although not in every case. If a food importer or manufacturer sells or uses a food that is on the List, it must either maintain records sufficient to show that the actual food or ingredient is not BE or, if a food or ingredient is BE, make a label disclosure regarding the presence of BE food. The disclosure obligation applies only to food that is required to bear a label under FDA and USDA laws and rules, although it does not apply to pure meat, poultry and egg products. Retailers who package food or sell food in bulk bins are also required to make the disclosure.

The List of Bioengineered Foods is as follows:

- 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)
- Sugar beet

All food importers, manufacturers and retailers should review the List carefully. If a manufacturer or retailer uses a food on the List that is not BE, then it must maintain records of the specific ingredient that:

- (1) verify that a food is sourced from a non-bioengineered crop,
- (2) verify that a food has been subjected to a refinement process that has been validated to render modified genetic material undetectable, or
- (3) confirm the absence of detectable modified genetic material.

Examples of such records include supply chain documents, bills of lading, invoices, supplier attestations, labels, contracts, brokers' statements, third-party certifications, laboratory testing results, validated process verifications, and other records generated and maintained in the normal course of business.

If an importer, manufacturer or retailer does sell BE foods or use any BE ingredients on the List, it must disclose that using a symbol on the label of the food product or in another permitted manner as specified in the Standard. Additionally, if a company sells a food or uses an ingredient that is not on the List, but has actual knowledge that the ingredient is bioengineered, it must make disclosures for that food or ingredient. The implementation date of the new rule is January 1, 2020, although small manufacturers have an additional year to comply.

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