NATIONAL SUSTAINABLE AGRICULTURE COALITION

July 2, 2018

U.S. Department of Agriculture
Agricultural Marketing Service
1400 Independence Avenue SW
Washington, DC 20250

RE: Docket No. AMS-TM-17-0050; National Bioengineered Food Disclosure Standard Proposed Rule

The National Sustainable Agriculture Coalition (NSAC) submits the following comments and recommendations on the Agriculture and Marketing Service (AMS) proposed rule to establish the national mandatory bioengineered disclosure standard as directed by Congress.

NSAC is an alliance of grassroots organizations that works to advance the sustainability of agriculture, food systems, natural resources, and rural communities. NSAC member organizations are leaders in the sustainable agriculture and food systems sector, and have worked with farmers and communities to pioneer practices, systems, and supply chains that support the multiple goals of sustainability. These include certified organic, sustainable, non-genetically engineered, and farm identity-preserved products, systems, and supply chains that are impacted by the regulation of genetically engineered (GE) organisms, or lack thereof.

Our members care deeply about ensuring the integrity of agricultural product labeling claims on behalf of consumers and producers. Many of the farmers that NSAC works with and represents choose to grow only non-GE crop varieties because the markets they serve demand GE-free products; because they have concerns about potential adverse economic, environmental, and agronomic impacts of GE crop technologies; or because they are USDA certified organic and not allowed to grow GE crops. We therefore support marketplace transparency regarding whether products have been produced with GE crops and technologies. However, we have grave concerns about this proposed rule, which fails to ensure a robust, meaningful labeling standard that will provide confidence to producers and consumers alike. We therefore provide the following recommendations as detailed below.

Thank you for your attention to our views.

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I. INTRODUCTION

We provide this comment to highlight the sustainable agriculture perspective in this debate, and dispel the notion that this label is only about consumers concerned with the safety of their food. Rather, this label provides purchasers with information about the *systems and processes* that went into the production of their food, and the very real opportunity to vote with their food dollars for the type of agricultural system they wish to support. The desire for that opportunity is no small part of the intention behind the national mandatory disclosure requirement. However, to be a meaningful and effective labeling claim, it must be value-neutral, readily accessible, and easily understood.

NSAC believes labeling claims with integrity are rooted in the following principles:

- **Clarity/Simplicity of Meaning:** The claim must be clear enough to distinguish certain producers' products from others in the marketplace and convey information about practices that is meaningful for consumers to know, and not create confusion in the marketplace beyond what would be expected from legitimate competition.
- **Transparency of Process:** A transparent process for developing, using, and verifying a particular labeling claim is essential in order to establish the integrity and meaning of the claim in the eyes of the public.
- **Accountability:** In order for the labeling claim to retain its meaning and integrity, misuse of the label must incur consequences.
- **Stakeholder Engagement:** The involvement of a variety of stakeholders, including producers and consumers, helps ensure the labeling claim is meaningful, reasonable, and rigorous, which in turn helps to establish legitimacy in the marketplace
- **Independence:** The degree of independence of the parties involved in verification increases in importance along with the distance in the relationship and/or the supply chain between producer and consumer.
- **Fairness/Equity:** Information about the labeling claim should be readily accessible knowledge to all affected producers, and equitably accessible to consumers. The cost or bureaucratic requirements to use a labeling claim should not be prohibitive to small, disadvantaged, or limited capacity producers; nor should the method for accessing information behind the labeling claim be cost-prohibitive or otherwise difficult to access for consumers.
- **Value/Effectiveness:** Use of the labeling claim has a positive impact on (or at least does no harm to) the future of family farming, sustainable farm and food systems, community development, and/or the environment.

Our responses to the proposed rule are therefore grounded in an analysis that considers these principles, as well as the history of public and farmer demand for transparency in product labels, particularly those that identify the presence or absence of genetically engineered (GE) organisms or ingredients.

Many of the farmers that NSAC works with and represent choose to grow only non-GE crop varieties for a variety of reasons: because the markets they serve demand GE-free products; because they have concerns about potential adverse economic, environmental, or agronomic impacts of GE crop technologies; or because they are USDA certified organic and not allowed to grow GE crops.

From an economic perspective, non-GE, identity-preserved, or certified organic crops and products can offer a price premium and new or additional market access – domestic and international – to

producers. Indeed, the well-documented growth of the organic sector presents an important opportunity for American farmers to diversify and become more resilient and profitable.

From an environmental perspective, there is ample evidence that specific practices and inputs that are part of the biotechnology package can negatively contribute to weediness[1] and damaging genetic[2] and particulate[3] drift. These adverse impacts have the potential to negatively impact the bottom line of all producers, whether they choose to utilize the package of GE seeds and inputs or not. Those who do not face the risk of crop damage from pesticide particulate drift and/or lost markets due to genetic contamination of identity-preserved, non-GMO crops. Those who do face the longer-term impacts of degraded soil from increased fertilizer and herbicide use and impacts on pollinator habitat,[4] which stand to make farming a costlier, riskier enterprise. Moreover, natural resource depletion does not occur in a vacuum; such impacts can extend to neighboring farms and regions, and cumulatively result in significant environmental degredation.

From an agronomic perspective, the steady deregulation of herbicide tolerant crops is leading us down a path that commits our food system to low-diversity, highly homogenized cropping systems. In fact, USDA has itself recently supplied good evidence that herbicide resistant crops are a significant obstacle to the development of more diversified and sustainable agriculture systems. An ERS report from 2013 shows that, by reducing the time and labor costs of weed management for well-capitalized farms, glyphosate-resistant crops were a key factor in the latest surge of farm consolidation and increasing farm size that has occurred over recent decades.[5] This process deprives rural areas of a skilled workforce, and very large farms without skilled labor resources can only consider very simple and time efficient approaches to weed management. Thus, when an outbreak of herbicide-resistant weeds occurs, large-scale farmers simply do not have the time, labor, or management ability to integrate cover crops, inter-row cultivation, or perennial forages for weed control. Instead, they look anxiously to the commercialization of a new herbicide-resistance trait/herbicide package as a short-term solution.

USDA has even acknowledged that not deregulating a new herbicide tolerant variety would result in more sustainable practices as farmers combat herbicide tolerant weeds:

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[1] *See* Evans, JA et al, "Managing the Evolution of Herbicide Resistance" *Pest Management Science* (May 11, 2015) *http://onlinelibrary.wiley.com/doi/10.1002/ps.4009/pdf*. *See also* Mortensen, DA et al, "Navigating a Critical Juncture for Sustainable Weed Management," *BioScience* 62:1, p75-84 (Jan 2012); Owen, Micheal DK, and Ian A. Zelaya. "Herbicide resistant crops and weed resistance to herbicides." *Pest Management Science* 61.3 (2005): 301-311.

[2] *See e.g.* Thomison, P. and A. Geyer, "Managing 'Pollen Drift" to Minimize Contamination of Non-GMO Corn," Ohio State University Extension (Mar. 15 2016), available at *https://ohioline.osu.edu/factsheet/agf-153*

[3] *See e.g.* Lipton, Eric. "Crops in 25 States Damaged by Unintended Drift of Weed Killer" New York Times (Nov. 1 2017), *https://www.nytimes.com/2017/11/01/business/soybeans-pesticide.html*; Steil, Mark. "Minn. farmers' harvest hit hard by drifting weed killer," MPR News (Nov. 13 2017), *https://www.mprnews.org/story/2017/11/13/minn-farmers-harvest-hit-hard-by-drifting-weed-killer*.

[4] *See e.g.* Pleasants, JM and KS Oberhauser. "Milkweed loss in agricultural fields because of herbicide use: effect on the monarch butterfly population." Insect Conservation and Diversity (2012), available at http://www.mlmp.org/results/findings/pleasants_and_oberhauser_2012_milkweed_loss_in_ag_fields.pdf; http://www.nrcs.usda.gov/wps/portal/nrcs/detail/plantmaterials/home/?cid=STELPRDB1256245; http://www.epa.gov/oppfead1/cb/csb_page/updates/2015/protecting-monarch-butterfly.html; UN Intergovernmental Science Policy Platform, available at: http://www.ipbes.net/article/press-release-pollinators-vital-our-food-supply-under-threat.

[5] Macdonald, J.M., Korb, P., Hoppe, R.A., 2013. Farm Size and the Organization of U.S. Crop Farming. USDA Economic Research Service, Washington D.C.

> Cover cropping and crop rotation, both of which have shown promise in reducing weed pressure, may increase. . . Crop rotation also may become more diverse to leverage differences in crop ecology to shift the dominant weed species and thereby lessen the size of the resistant weed seed bank.[6]

These economic, agronomic, and environmental implications of GE cropping systems provide many reasons as to why a farmer might choose not to grow GE crop varieties, and why consumers might desire to know the system of agriculture that led to the development of the products they purchase beyond notions of safety or health. However, this information must be provided in a way that is value-neutral, readily accessible, and easy to understand. We provide the following recommendations as to how this proposal can do so.

II. COMMENTS ON WHO MUST DISCLOSE

A. Bioengineered vs Genetically Engineered vs GMO

As a foundational matter, we disagree with AMS' decision to forgo including any terms other than "bioengineered" (BE) as part of the disclosure standard. Congress gave AMS the authority to include additional terms, and we urge AMS to utilize terms that are more recognizable and commonly used in the discourse around genetic engineering. Genetic engineering ("GE") or genetically modified ("GMO") have been part of the debate around labeling since its inception, and are used in other state and federal policy, as well as in international standards and guidelines. Relying on a new term will lead to more confusion and therefore less transparency. We continue to use "GE" and "GMO" throughout our comments for this reason.

Given that some companies already started labeling their products in accordance with Vermont's labeling law prior to the passage of the national disclosure standard and have no problem identifying their products as "GMO,"[7] and that Monsanto – the world's largest manufacturer of GE seed – also refers to their products as "GMO,"[8] why move away from the most widely-recognized term? Moreover, the Non-GMO project reports that Non-GMO Project verified products have reached $22.3 billion in annual sales and more than 50,000 verified products for over 3,000 brands,[9] further demonstrating that both consumers and manufacturers readily understand and utilize the word "GMO" to indicate whether food was produced through the use of gene-altering biotechnology.

Recommendation: Given the ubiquity of the term GMO, and the markets that have been built utilizing the term, we strongly recommend that AMS use the authority Congress granted it to include "GMO" and Genetically Engineered" into the disclosure standard as terms that are interchangeable with "bioengineered" and are more readily understood by consumers and the industry.

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[6] United States Department of Agriculture-Animal and Plant Health Inspection Service. 2014. Dow AgroSciences petitions (09-233-01p, 09-349-01p, and 11-234-01p) for determinations of Nonregulated status for 2,4-D-resistant corn and soybean varieties, Final Environmental Impact Statement.

[7] *See e.g.* Campbell's: http://www.whatsinmyfood.com/stand-issues-matter/gmo/

[8] *See* https://monsanto.com/innovations/biotech-gmos/

[9] https://www.nongmoproject.org/product-verification/verification-faqs/

B. Scope/Definition of "Bioengineering"

AMS is seeking comments on aspects related to the definition of "bioengineering" that would impact the scope of who must disclose under the new standard. We strongly urge the agency to ensure the definition encompasses the broadest range of technologies and products possible. We reiterate that the intent behind this disclosure standard was to provide end purchasers with information about the *systems and processes* that went into the final product, not simply the contents of the final product. Splitting hairs about definitions misses this important point.

Primarily, we urge that the definition of bioengineering be broadly interpreted to include both transgenic technologies as well as gene editing technologies. During the congressional debate that led to the national disclosure standard, USDA stated that the new law authorized it to extend the disclosure requirement to products produced as a result of both transgenic and other gene editing and silencing techniques (e.g. CRISPR, RNAi).[10] The lists as proposed by AMS reflect several technologies that would be considered bioengineered for disclosure purposes, and we urge AMS to maintain a broad scope interpreting the definition of bioengineered.

Similarly, if USDA chooses to define "conventional breeding" and "found in nature," then it should do so in a way that explicitly excludes foods produced with or derived from genetic engineering, including new techniques of modern biotechnology such as gene editing. These definitions should not serve to unduly narrow the types of technologies or production systems that trigger disclosure. Furthermore, given that disclosure is triggered based on these foundational definitional elements, and that USDA did not provide proposed definitions or options in the proposed rule, if USDA does decide to define these terms, it should be done through a supplemental proposed rule with opportunity to comment before finalizing a definition.

The same principles apply to the agency's request for comment regarding highly refined products. Most GE products on the shelves are not raw agricultural commodities or single-ingredient items; they are multi-ingredient processed foods. And the real issue here is not about whether there are trace amounts of transgenes in a final product, it is about relaying to consumers the *systems and processes* that led to their inclusion in the first place. If sugar from GE sugar beets was used in making a product, that product should bear the GE label. An approach that looks to the absolute quantity of transgenes that remain in a highly refined product is unnecessarily reductionist, and only serves to strip away consumers' choice to use their dollars to support a particular system of agriculture. Senator Debbie Stabenow (D-MI), who brokered the final compromise that resulted in the passage of this mandatory disclosure law, made it clear that the law extends to these highly refined products like sugars and oils,[11] and USDA has also acknowledged that Congress authorized the agency to include such highly refined products in the disclosure system.[12]

[10] http://sustainableagriculture.net/wp-content/uploads/2016/07/USDA-general-counsel-letter-GMO.pdf
[11] 162 Cong. Rec. S4994 (daily ed. July 12, 2016). (Ranking Member of the Senate Agriculture Committee Senator Debbie Stabenow (D-Mich.) stated that public law 114-216 allows for "the labeling of highly refined products derived from GMO crops including soybean oil from GMO soybeans, high fructose corn syrup made from GMO corn, and sugar made from GMO sugar beets.").
[12] http://sustainableagriculture.net/wp-content/uploads/2016/07/USDA-general-counsel-letter-GMO.pdf

Recommendations:

- Both transgenic and gene editing techniques should trigger the disclosure requirement, and disclosure should be required of products containing highly refined ingredients produced with GE crops and technologies, as presented in Position 2 in the Proposed Rule.

- Because USDA did not provide proposed definitions or options in the proposed rule of "conventional breeding" or "found in nature," if USDA does decide to define these terms, it should (1) be done through a supplemental proposed rule with opportunity to comment before finalizing a definition, and (2) explicitly exclude from the definitions foods produced with or derived from genetic engineering, including new techniques of modern biotechnology such as gene editing.

C. Thresholds

In the authorizing statute, Congress gave USDA the authority to determine whether there could be GE material in a food product up to a certain threshold without triggering the requirement to disclose, which could limit the scope of products subject to the labeling requirement.

In the proposed rule, AMS requests comment on three options for a threshold, stating that the agency "seeks to minimize costs and impacts on the domestic and international value chain while providing practicality and consistency for regulated entities and consumers regarding implementation." We appreciate the desire to minimize impacts on trade; the proposed option that best satisfies this objective is Alternative 1-B, which would exempt from disclosure products that contain ingredients with GE material that is "inadvertent or technically unavoidable," and does not exceed 0.9 percent of the weight of the specific ingredient.

As noted by AMS, this threshold "aligns with some existing industry standards for the separation of GE and non-GE products as well as the thresholds established by some U.S. trading partners."[13] Notably, both the Non-GMO Project and the European Union set their labeling threshold at 0.9 percent.[14] Moreover, given that many in the industry "currently have processes in place to meet this proposal," as AMS observes,[15] it is reasonable to establish the threshold of 0.9 percent by ingredient weight as the regulatory floor. Alternative 1-B is therefore in keeping with AMS' goal to reduce implementation costs while adhering to a standard that consumers know and expect.

We believe that Alternative 1-C subverts the intent of the law by allowing products that knowingly contain GMOs to avoid disclosure and is not a viable option.

Similarly, the lists that AMS proposes would allow a manufacturer to knowingly use GE ingredients in a product and use the label "may" contain GE materials if the ingredient is derived from a GE food that is considered "not highly adopted." We find this outcome not only incongruous with the intent of the law, but bordering on permissive of fraudulent and deceptive practices. The disclosure standard must ensure that any knowing addition of GE materials to a food product triggers the

[13] 83 Fed. Reg. 19860, 19869 (May 4, 2018).
[14] https://www.nongmoproject.org/wp-content/uploads/2017/04/Non-GMO-Project-Standard-Version-14_4-3-17.pdf at 13; https://ec.europa.eu/food/plant/gmo/traceability_labelling_en
[15] 83 Fed. Reg. 19869.

disclosure requirement that unequivocally states that the product contains GE material. Regardless of how highly adopted a particular GE food is, if a manufacturer knows it is adding GE material to a product, the disclosure standard cannot allow the manufacturer to be ambiguous.

Recommendation: Any intentional use of GE material in food manufacturing should trigger the requirement to disclose, and the inadvertent or technically unavoidable presence of GE material should not exceed 0.9 percent before triggering the requirement to disclose, therefore aligning with existing industry and international trading partner practice.

D. Exemptions for Very Small Manufacturers

AMS is proposing to define a "very small" manufacturer as having less than $2.5 million in sales, estimating that this cutoff will exempt 74 percent of food manufacturers, 4 percent of products, and 1 percent of sales. We believe this option is sufficiently flexible to accommodate the vast majority of food manufactuers while still covering enough of the market ot be meaningful to consumers.

We will note that, in promulating regulations under the Food Safety Modernization Act (FSMA), the Food and Drug Administration defined a very small business under the Preventive Controls Rule as having less than $1 million in human food sales. While these are two separate regulatory standards, food processors may be subject to both rules. Having consistent definitions across regulatory requirements will ease the burden of compliance on small businesses.

Recommendation: Retain the proposed definition of "very small manufacturer" as having less than $2.5 million in sales, or consider adopting the same defintion of a very small manufacturer as in the codified FSMA Preventive Controls Rule for human food processors of less than $1 million in human food sales.

III. COMMENTS ON WHAT DISCLOSURE LOOKS LIKE

A. Text Disclosure

As discussed above, we strongly urge AMS to include the terms GE or GMO as part of the disclosure options. These terms are much more commonly used and understood by producers and consumers alike. It is also notable that many companies are already using the text disclosure both domestically and internationally, without experiencing any major market disruption. Creating a new standard based around "bioengineered" or "BE" only adds to consumer confusion, and essentially seeks to solve a problem that does not exist.

We also strongly urge AMS to clarify that any intentional addition of an ingredient containing GE material to a food product would require the "contains [GE] material" disclosure, regardless of whether the GE food is on the "highly adopted" or "not highly adopted" list. A product that knowingly contains GE material from the "not highly adopted" list and uses the "may contain" rather than the "contains" disclosure should be found out of compliance with the law and prosecuted as fraudulent and prohibited under the Food, Drug, and Cosmetic Act.[16]

[16] It should be noted that failure to make a disclosure is a "prohibited act" under the FD&C Act and therefore subject to FDA enforcement. 7 USC 1639c(g)(1).

Recommendation: Text disclosure should not sow added consumer confusion by allowing "may contain" claims as part of the disclosure option.

B. Symbol

In order to convey meaningful and unbiased information to consumers, the labeling claim must be value-neutral. In fact, Congress went so far as to require neutrality in the disclosure program, such that no food containing the disclosure is to be "treated as safer than, or not as safe as, a non-bioengineered counterpart of the food solely because the food is bioengineered or produced or developed with the use of bioengineering."[17] Moreover, if companies elect the electronic or digital link option, the link cannot include marketing and promotional information.[18] The symbol options presented by AMS in this proposed rule do not comport with this explicit directive from Congress to be value-neutral.

Two of the three options look like they are smiling, and the third imparts a peaceful nature scene. Given the lengths to which the organic community had to go to ensure a neutral label for the USDA Organic standard, it is completely unacceptable that any of these three options, which are so clearly promotional in nature, could become the final symbol.

Recommendation: We strongly recommend that AMS adopt a symbol that is clear and value-neutral. The USDA Organic seal or the Process Verified shield provide examples of a straightforward, unambiguous, and non-promotional symbol. An appropriate symbol would not be easily confused with any existing symbols (such as the USDA Organic seal), and could be as simple as the following:

C. Electronic/Digital and Text Message

We are quite concerned by the equity implications of this option and the text message option. It seems quite likely that, should AMS finalize these four options, the most commonly selected option by companies that produce GE foods would be this electronic or digital option, despite the fact that many companies have adopted text disclosure prior to the passage of this law without experiencing adverse market impacts.

Not only does this option keep helpful identifying information off the actual package label, it also requires consumers to take an additional step to determine whether an item is the product of genetic engineering or contains GE ingredients. Notably, the Deloitte study that Congress required AMS to undertake on QR codes found that although the majority of Americans (77 percent) own smartphones, that still means nearly one in four do not.[19] Moreover, the Deloitte study found that

[17] 7 USC 1639b(b)(3).
[18] *Id.* at 1639c(d)(2).
[19] https://www.ams.usda.gov/reports/study-electronic-or-digital-disclosure ("Deloitte Study").

nearly three out of every four participants in the survey *did not know what a QR code was*.[20] Of those that did, 85 percent experienced technical challenges using apps for scanning digital links.[21] These are troubling findings given the likely industry reliance on this option.

Congress directed USDA to provide "additional and comparable options" to accessing the disclosure in the event that the report mentioned above found that consumers would not have sufficient access to the disclosure through electronic or digital methods. The text message option appears to be an attempt at providing a backup in the event that the purchaser has trouble scanning the digital code, is in a place with poor internet service, or does not have a smart phone. However, this option still requires access to a cell phone, raising similar equity and accessibility concerns.

Moreover, while the law requires that consumers not be charged to access this information, some cell phone plans do charge by the individual text message and nothing in this standard would change that. It is also notable that the added step for consumers to look beyond the package for product information translates to additional consumer time spent at the grocery store; that additional time has cost to the consumer that is not considered here. Therefore, we remain concerned that the reliance on phone-based disclosure – as opposed to straightforward on-package texts or symbols – will only prevent consumers from readily accessing this information, undermining the effectiveness and meaningfulness of this disclosure requirement, and raising significant equity concerns about who is able to access information about their food.

Recommendation: AMS must establish strong rules that govern the use of QR codes, and provide meaningful comparable options to accessing the disclosure if electronic or digital disclosure is selected. This would include requiring free in-store WIFI and scanning devices in each aisle to assist consumers in accessing disclosure information unless that retailer provides on-package disclosure via symbol or text.

IV. COMMENTS ON IMPACTS ON OTHER LABELING CLAIMS

A. Absence Claims

The law makes it clear that a product may not make a claim that is it "not bioengineered," or "non-GMO" or any similar claim regarding the absence of GMOs in the food just because it is not subject to the disclosure requirement.[22] The proposed rule is silent on this point, and we urge USDA to reinforce this requirement in the final rule because of the potential for abuse in the marketplace.

This is particularly concerning given the exemption from disclosure for meat or dairy products from animals fed GMO-fed. The fact that these products are exempt from disclosure does not qualify them as GMO-free. The final rule must take steps to prevent consumer confusion and make this clear for producers and consumers alike via the final rule.

Recommendation: The final rule should contain a provision that restates that exemption from the disclosure requirement does not alone qualify the product to bear a labeling claim as "GMO-free" or other similar absence claims.

[20] Deloitte Study at 43.
[21] *Id.* at 4.
[22] 7 USC 1639c(c).

B. National Organic Standard

The law is clear that foods certified under the National Organic Program (NOP) can make a non-GMO absence claim,[23] and USDA properly interprets this to mean that certified organic products are therefore exempt from the disclosure requirement.[24]

However, USDA does not acknowledge in the proposed rule a point that is clear in the authorizing statute: that certifying a food under the NOP is considered sufficient to allow that food to carry "a claim regarding the absence of bioengineering in the food, such as 'not bioengineered', '*non-GMO', or another similar claim*."[25] (emphasis added). In addition to authorizing the Secretary to include other terms such as "genetic engineered" or "GMO" as part of the disclosure standard, the law grants the Secretary clear authority to "consider establishing consistency between (1) the national bioengineered food disclosure standard established under this section; and (2) the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and any rules or regulations implementing that Act."[26] It is therefore of utmost importance that the new standard not disrupt existing markets for organic products.

Yet, USDA has proposed a standard that does not allow for "GE" or "GMO" labeling claims to be interchangeable with "bioengineered" or "BE," which causes concern that this new standard will impact the absence claims allowed to be used on certified organic products. As stated above, USDA should utilize its authority explicitly provided by Congress to include "GE" and "GMO" in the disclosure standard as terms interchangeable with "bioengineered," and in any event must make it clear in the final rule that the use of "bioengineering" as the disclosure standard does not require absence claims to only use the term "bioengineered" or "BE," and allows for the use of "non-GE" or "non-GMO."

Recommendations:

- Clarify in the final rule that certified organic products can carry absence claims, and that those absence claims are not bound to use "bioengineered" or "BE" on their claim, and may use "non-GMO" or "other similar claims" as specified by Congress.

- Include a provision that explicitly states that the final rule does not affect the definition of "excluded methods" or any other definition under the National Organic Program.

C. COMMENTS ON ENFORCEMENT

As we lay out above, accountability is a key aspect of a meaningful labeling claim. In order for the labeling claim to retain its integrity, misuse of the label must incur consequences.

The law authorizes USDA to enforce the disclosure requirement through examination of records and audits, including making public the summary of any examination or audit. Given that this mechanism is weak – and FDA enforcement for false and misleading labeling claims is only a

[23] 7 USC 6524
[24] 83 Fed. Reg. at 19869.
[25] 7 USC 6524.
[26] 7 USC 1639c(f).

backstop – we urge the agency to develop, publicize, and implement a schedule for conducting audits and making the results of those audits public on a regular basis.

Recommendation: As part of finalizing the rule, USDA should develop, publicize, and then implement a regular schedule for conducting audits and making the results of those audits available to the public in a timely and accessible manner.