Bioengineered Food Disclosure

On December 21, 2018, the USDA’s Agricultural Marketing Service (AMS) published its final rule implementing the National Bioengineered Food Disclosure Standard (NBFDS). The NBFDS preempts State and local genetic engineering labeling requirements and charges AMS with developing a national mandatory standard for disclosing the presence of bioengineered (BE) food. AMS maintains a List of bioengineered foods on its website.

What Bakers Should Know

BE Presence Threshold
Threshold for inadvertent or technically unavoidable presence of bioengineered substances of up to 5% for each ingredient with no allowance for any BE presence that is intentional.

Record Keeping
If food is, or contains, an ingredient on the List of BE foods (that is or is not accompanied by a disclosure), companies must maintain records for at least two years beyond the date food is sold or distributed for retail sale. Companies must respond within five days of an AMS record request.

Yeast and More
For BE yeasts, enzymes and other organisms that don’t qualify as incidental additives, they may require disclosure unless they meet the requirements of another provision to exempt them from disclosure i.e., don’t have detectable modified genetic material.

How to Disclose
Disclosure should be seen on an information panel on or near to the manufacturer/distributor details.
Four options for making disclosure:

Text
On-package text, e.g. “Contains a Bioengineered Food Ingredient”

Symbol
USDA approved symbol

Electronic or Digital
Must include “Scan here for more food information” or similar language, and include a phone number

Text Message
“Text [command word] to [number] for bioengineered food information.”

Timeline & Deadline

Implementation Phase-in Dates:
For most regulated entities: January 1, 2020.
For small food manufacturers: January 1, 2021.

Mandatory Compliance Date: January 1, 2022.
Last day for the voluntary compliance period: December 31, 2021.

Exemptions

Refined Ingredients
Unlikely to require BE food disclosure, but the final rule didn’t prohibit voluntary declaration.

New Technologies
Does not explicitly address whether new technologies, such as gene editing techniques, would require disclosure.

Specific Food Categories
Restaurants and similar retail food establishments, and very small food manufacturers (<$2,500,000 annual receipts).

National Organic Program
Food certified under AMS' National Organic Program (NOP) are exempt.