

Proposed Rule Could Make Sugarcane Subject to the Same National Bioengineered Food Disclosure Standard Burdens as Sugarbeet

Article By:

Richard F. Mann

Evangelia C. Pelonis

- As covered on this [blog](#), on July 24, 2020, the Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) recommended the addition of a new crop, “Sugarcane (insect-resistant),” to the [List of Bioengineered Foods](#) (the List). AMS also recommended amending the existing listing for “squash (summer)” to “squash (summer, virus-resistant),” and sought information about bioengineered (BE) versions of cowpea and rice. As of January 1, 2022, the date when all regulated entities were required to comply with the National Bioengineered Food Disclosure Standard (NBFDS; discussed [here](#)), the use of a listed food or ingredient produced from an item on the List would require a BE food disclosure unless a regulated entity has records demonstrating that the food or ingredient they are using is not BE. When a crop is not on the List (as is currently the case for sugarcane), a BE disclosure is required only if the entity has actual knowledge that a food or food ingredient that it uses is BE.
- On July 21, 2022, AMS [announced](#) a proposed rule that would update the List to add “sugarcane (Bt insect-resistant varieties)” and amend “squash (summer)” to “squash (summer, mosaic virus-resistant varieties).” Both proposed listings would contain more precise language than previously recommended. AMS noted in the July 22, 2022 *Federal Register* [notice](#) of the proposed rule that it did not receive any comments on cowpea or rice and is not proposing any action related to those two crops at this time, and addressed comments opposed to the previously recommended updates on sugarcane or wanting additional changes to the amendment for squash (summer) as follows:
 - On a comment acknowledging that BE sugarcane is authorized in Brazil, but arguing that sugarcane (Bt insect-resistant varieties) should not be added to the List because the BE sugarcane is in production in Brazil primarily for seedling bulk up, and not for human consumption, AMS found that sugarcane (Bt insect-resistant varieties) could be used for human food and requested data or evidence that would support or refute the conclusion that seedling bulk up is the only current use for sugarcane (Bt insect-resistant varieties).

- In answer to a comment that BE sugarcane produced in Brazil is unlikely to end up in the United States, AMS noted that the List reflects production of BE foods on a global level and does not consider whether such foods are likely to end up in the U.S.
- As for comments that sugar produced from BE sugarcane is not a BE food because it is highly refined and does not contain detectable modified genetic material, AMS noted that the BE presumption established by listing applies here because the BE sugarcane meets the only two applicable criteria for inclusion (i.e., it is authorized for commercial production and currently in legal commercial production somewhere in the world), and that the presumption could potentially be rebutted, and the associated BE disclosure requirement could be avoided, by demonstrating that modified genetic material is not detectable in sugar.
- AMS declined to add a trade name to the more specific listing for “squash (summer, mosaic virus-resistant varieties),” in response to comments suggesting this would help distinguish BE versions from their non-BE counterparts, because there is more than one variety of squash (summer) that meets the listing criteria and it is an AMS policy to list crops generically where there is more than one BE variety being marketed.
- As we noted previously when AMS recommended adding “Sugarcane (insect-resistant)” to the List, the addition of “Sugarcane (Bt insect-resistant varieties)” may complicate the strategy of regulated entities wishing to alleviate NBFDS burdens by avoiding “Sugarbeet,” which is currently listed generically based on availability of more than one BE version. Comments on the proposed rule are due by September 20, 2022.

Nicholas Prust, Natalie Rainer, and Frederick Stearns also contributed to this article.

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