

USDA Updates List of Bioengineered Foods

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The U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) published a final rule on November 29, 2023, updating the National Bioengineered Food Disclosure Standard’s (the Standard) List of Bioengineered (BE) Foods (the List) by adding “sugarcane (Bt insect-resistant varieties)” and amending “squash (summer)” to “squash (summer, coat protein-mediated virus-resistant varieties).” **88 Fed. Reg. 83305**. AMS states that in updating the List, “this final rule provides consumers with information regarding foods that may be BE and aids regulated entities in determining whether they need to make a BE disclosure.” The rule will be effective **December 29, 2023**. The compliance date is **June 23, 2025**.

Under the regulations at 7 C.F.R. Section 66.1, a BE food is “a food that, subject to certain factors, conditions, and limitations, contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.” The List, contained in the regulations at 7 C.F.R. Section 66.6, establishes a presumption about what foods require disclosure under the Standard. AMS notes that a food or food ingredient’s absence from the List does not absolve regulated entities from the requirement to disclose the BE status of food and food

ingredients produced with foods not on the List when the regulated entities have actual knowledge that such foods or food ingredients are BE, however. AMS states that if a regulated entity is using a food or ingredient produced from an item on the List, it must make a BE food disclosure unless it has records demonstrating that the food or ingredient it is using is not BE.

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