

Update: Court Orders January 2028 Deadline for Bioengineered Food Disclosure Rule Changes

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As discussed in further detail in our summary, [*USDA's Bioengineered Disclosure Rule Faces Changes After Ninth Circuit's Natural Grocers v. Rollins Ruling*](#), on HB At the Counter, the Ninth Circuit issued an opinion on October 31, 2025, that would lead to changes in the U.S. Department of Agriculture (USDA)'s National Bioengineered Food Disclosure Standard (BE Rule), particularly the detectability-based exclusion and the electronic/digital link (QR code) and standalone text message disclosure options.

What has happened since October?

On remand, the U.S. District Court for the Northern District of California took the following actions:

- On March 5, 2026, the court granted summary judgment to the plaintiffs on the detectability-based exclusion issue, holding (consistent with the Ninth Circuit's opinion) that it was arbitrary and capricious for USDA's Agricultural Marketing Service (AMS) to exempt foods where the modified genetic material is not detectable from the "bioengineered food" definition. At this time, the court also instructed the parties to submit briefs addressing whether the court should vacate (*i.e.*, void) 7 CFR §§ 66.1(1)(ii) (the detectability exclusion), 66.106 (QR code digital disclosure), and 66.108 (text message disclosure).
- On August 3, 2026, after reviewing the briefs, the court issued an order prospectively vacating all three parts of the BE Rule listed above, effective January 1, 2028.

What does the January 2028 date mean?

Starting on January 1, 2028, the vacated portions of the BE Rule — 7 CFR §§ 66.1(1)(ii) (the detectability exclusion), 66.106 (QR code digital disclosure), and 66.108 (text message disclosure) — will have no effect.

In its brief, USDA requested the court push the effective date to 2029, arguing that AMS needed additional time to amend the rule to address the deficiencies identified in this litigation. The District Court rejected that request, quoting the Ninth Circuit's observation that "[a]llowing an inadequate disclosure option to continue throughout the entirety of the administrative process for amending the regulations would itself perpetuate a disruption in consumer access to bioengineering disclosures." The District Court concluded in its short order that granting the USDA's request for delay would "effectively resemble remand without vacatur" and denied the request.

As a result, absent further judicial action, the vacated provisions will cease to have legal effect, regardless of whether AMS has completed rulemaking to replace them. If the BE Rule is not amended before vacatur takes effect, the result will be:

- QR codes and standalone text message disclosures will not satisfy the bioengineered food disclosure labeling requirement.
- The statutory definition of bioengineered food — food that contains genetic material that has been modified in a way that could not be achieved through conventional breeding — will control with no detectability threshold. However, the portion of the regulatory definition that excludes incidental additives remains intact.

According to USDA's [2026 Unified Agenda](#), AMS plans to issue a proposed rule to amend the BE Rule in August 2026. However, AMS has not yet submitted a proposed BE Rule amendment to the Office of Management and Budget.

What should companies do now?

- **Monitor the upcoming rulemaking.** AMS is expected to issue proposed amendments to the BE Rule, and companies should be prepared to submit comments during the notice and comment period.
- **Think of January 1, 2028, as a sell-through date.** Any labels that disclose the presence of bioengineered food with an electronic/digital link (QR code) or a text message disclosure should be sold by January 1, 2028. Move towards text or symbol disclosures under 7 CFR §§ 66.102 and 66.104, which are not affected by this litigation.
- **Assess processed food and highly refined ingredients.** Currently, foods that have been subject to a refinement process that makes any modified genetic material undetectable are excluded from the definition of bioengineered food and do not need to have a disclosure. If any of your products meet this description, they may need to be labeled with a bioengineered food disclosure by January 1, 2028.