

USDA's Bioengineered Disclosure Rule Faces Changes after Ninth Circuit's Natural Grocers v. Rollins Ruling

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On Oct. 31, 2025, the Ninth Circuit issued an [opinion](#) that will likely drive substantial changes to federal regulations governing label disclosures of bioengineered (BE) food. The court rejected the U.S. Department of Agriculture (USDA)'s detectability-based exclusion that has allowed many highly refined foods to avoid disclosure and instructed the district court to prospectively vacate the regulations that permit electronic/digital link (QR code) and standalone text-message disclosures. However, the existing rule remains in effect until the district court enters remedial orders on remand and the USDA conducts follow-on rulemaking.

What are the current regulations?

Congress amended the Agricultural Marketing Act in 2016 by adding the National Bioengineered Food Disclosure Standard (NBFDS), which directed the USDA to adopt regulations establishing standards for labeling bioengineered food. The USDA's Agricultural Marketing Service (AMS) issued the final NBFDS rule in 2018, with mandatory compliance beginning Jan. 1, 2022 (7 C.F.R. Part 66).

The NBFDS rule defines "bioengineered food" as food that contains genetic material, other than as an incidental additive, that has been modified through in vitro recombinant DNA techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature. The rule further states if a food is refined such that the modified genetic material is not detectable under specified methods, it is excluded from the definition—an approach the Ninth Circuit has now ruled is contrary to the statute's focus on whether a food "contains" modified genetic material.

A regulated entity may currently disclose using one of the following options: (1) on-package text stating "Bioengineered food" or "Contains a bioengineered food ingredient"; (2) the USDA-approved BE symbol; (3) an electronic or digital link (e.g., QR code) accompanied by prescribed on-package statements and a telephone number; or (4) a standalone text-message instruction. The Ninth Circuit has directed prospective vacatur of options (3) and (4), subject to district court implementation.

What happened in this lawsuit?

Natural Grocers and several advocacy organizations challenged AMS's 2018 rule under the Administrative Procedure Act. The district court (N.D. Cal.) granted summary judgment to plaintiffs only on the disclosure format claim and remanded the QR code and text message provisions to AMS without vacatur, while rejecting challenges to the detectability exclusion for highly refined foods and to AMS's choice of "bioengineered" as the required term.

On appeal, the Ninth Circuit reversed in part, affirmed in part, and remanded with detailed instructions:

- **Detectability exclusion for highly refined foods.** The court held AMS committed legal error by equating “not detectable” with “does not contain” and by allowing exemption based on validation of a refinement process without testing finished products. The panel directed the district court to enter summary judgment for plaintiffs on this claim and to remand the relevant regulations to AMS. The district court must decide which portions, if any, to vacate while AMS reconsiders the issue.

- **Terminology (“bioengineered” vs. GMO/GE).** The court affirmed AMS’s decision to require the uniform term “bioengineered” in disclosures, concluding the choice was reasonable, tracked the statute and avoided confusion with broader concepts that may fall outside the statutory definition. Regulated entities may add supplemental terms consistent with other laws, but those do not substitute for the required term.

- **Electronic/digital link and standalone text message formats.** The court held the district court abused its discretion by remanding these provisions without vacatur after finding them unlawful. It instructed the district court to prospectively vacate 7 C.F.R. §§ 66.106 and 66.108, after receiving party input on timing and sell through, because the statute requires AMS to cure access deficiencies in electronic disclosures by providing additional and comparable options—not by leaving an inadequate electronic option in place or adding a freestanding fourth option.

What will happen next?

The Ninth Circuit’s mandate will return the case to the district court to implement the appellate instructions. Two tracks will follow:

- **Prospective vacatur of electronic/text message formats.** The district court must prospectively vacate §§ 66.106 (electronic/digital link) and 66.108 (standalone text message), setting an effective date and any sell through allowances to mitigate disruption. After vacatur takes effect, those formats will not be available in their current form unless and until AMS revises the rule to remedy access deficiencies consistent with the statute.

- **Remand of detectability provisions.** The district court will grant summary judgment for plaintiffs on the detectability claim and remand the relevant provisions (including 7 C.F.R. §§ 66.1 and 66.9) to AMS for reconsideration. The district court will decide whether to vacate some or all of those provisions during the remand. If vacated, the default statutory test—whether the food contains modified genetic material—will govern without the current detectability-based shortcut.

On remand, **AMS will likely initiate notice and comment rulemaking** to (1) fix electronic disclosure access, consistent with statutory requirements, and (2) reconsider treatment of refined ingredients, potentially by setting a quantitative or detection limit threshold under the statute’s “amounts” authority. Rulemaking of this scope typically takes months and will depend on technical data and stakeholder input. Until the district court enters vacatur orders, the current rule remains enforceable.

What should food manufacturers and retailers do now?

Corporate compliance and labeling teams should maintain current disclosures while preparing for a near-term pivot:

- **For new packaging, plan to rely on on-package text or the BE symbol.** With prospective vacatur of QR code and standalone text message options on the horizon, shift artwork toward

compliant on package text or symbol. Begin scheduling print runs and inventory sequencing to minimize stranded stock once dates are set.

- **Evaluate refined ingredients.** Assume the detectability exclusion will narrow or disappear during remand. For products with refined sugars, oils, starches, or syrups derived from bioengineered crops, evaluate whether finished products actually lack modified genetic material using fit for purpose, sufficiently sensitive methods. If absence cannot be substantiated, plan for disclosure.
- **Strengthen recordkeeping and testing protocols.** Ensure records can substantiate compliance, including method sensitivity, detection limits, sampling plans, and laboratory credentials. If detectability-based exclusions are vacated, documentation of finished product testing will carry greater weight than raw material testing alone.
- **Maintain the required term “bioengineered.”** Supplemental descriptors like “GMO” or “genetically engineered” may be added where permitted, but they do not satisfy the federal standard unless “bioengineered” appears as required.
- **Model timelines and sell through.** Relabeling often requires multi-month lead times. Prepare data on inventory and changeover cycles to support reasonable implementation schedules in district court proceedings.
- **Monitor AMS and engage where appropriate.** Track the district court’s vacatur orders and AMS’s rulemaking notices. Participation through trade associations can help shape practical thresholds and implementation timelines.

Key legal context remains unchanged: The NBFDS preempts non-identical state disclosure mandates; enforcement is records based under the Agricultural Marketing Act and the USDA lacks recall authority for disclosure violations. These fundamentals, coupled with the Ninth Circuit’s ruling, favor proactive documentation and conservative labeling during the transition.