



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

B-330640

January 11, 2019

The Honorable Pat Roberts  
Chairman  
The Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Collin C. Peterson  
Chairman  
The Honorable K. Michael Conaway  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: National Bioengineered Food Disclosure Standard*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Agricultural Marketing Service (AMS) entitled “National Bioengineered Food Disclosure Standard” (RIN: 0581-AD54). We received the rule on December 21, 2018. The *Congressional Record* does not reflect receipt by either House of Congress. It was published in the *Federal Register* as a final rule on December 21, 2018. 83 Fed. Reg. 65,814. The effective date of the final rule is February 19, 2019.

The final rule establishes the new national mandatory bioengineered (BE) food disclosure standard (NBFDS or Standard). The new Standard requires food manufacturers, importers, and other entities that label foods for retail sale to disclose information about BE food and BE food ingredients. AMS stated that establishment and implementation of the new Standard is required by an amendment to the Agricultural Marketing Act of 1946.

Enclosed is our assessment of AMS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any

questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Julia C. Matta  
Managing Associate General Counsel

Enclosure

cc: Bruce Summers  
Administrator  
Agricultural Marketing Service  
Department of Agriculture

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL MARKETING SERVICE  
ENTITLED  
“NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD”  
(RIN: 0581-AD54)

(i) Cost-benefit analysis

The Department of Agriculture, Agricultural Marketing Service (AMS) estimated that the costs of the national mandatory bioengineered (BE) food disclosure standard (NBFDS or Standard) would range from \$569 million to \$3.9 billion for the first year, with ongoing annual costs of between \$51 million and \$117 million. AMS stated that the annualized costs in perpetuity would be \$68 million to \$234 million at a 3 percent discount rate and \$91 million to \$391 million at a 7 percent discount rate.

AMS also stated that NBFDS is not expected to have any benefits to human health or the environment. AMS determined that any benefits to consumers from the provision of reliable information about BE food products are difficult to measure. However, AMS did estimate the size of the benefits by focusing on Vermont's BE labeling law because the law had been signed into law before NBFDS was passed. AMS found that the annualized net benefit from replacing the Vermont BE labeling law would be between \$40 million and \$49 million at a 3 percent discount rate and between \$70 million and \$84 million at a 7 percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

AMS determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

AMS did not discuss the Act in the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

On May 4, 2018, AMS published a proposed rule. 83 Fed. Reg. 19,860. AMS received 14,000 comments by the end of the comment period. AMS responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

AMS stated that in accordance with the Act it published a 60-day notice on reporting and recordkeeping requirements in the proposed rule. 83 Fed. Reg. 19,860. AMS stated that it also

submitted a request to the Office of Management and Budget (OMB) for approval. AMS determined that the collection will total 7,973,566 hours. OMB assigned reference number 0581-0315 to the reporting and recordkeeping requirements.

Statutory authorization for the rule

AMS stated that it promulgated this rule pursuant to 7 U.S.C. § 1621 *et seq.*

Executive Order No. 12,866 (Regulatory Planning and Review)

AMS determined that this rule was an economically significant rule under Executive Order 12,866. AMS assessed the cost and benefits of the final rule.

Executive Order No. 13,132 (Federalism)

AMS stated that the amendment to the Agricultural Marketing Act of 1946 includes an express preemption of state law. Sections 293(e) and 295(b) provide that no state may directly or indirectly establish or continue with any food or seed requirement relating to the labeling or disclosure of whether the food or seed is bioengineered or was developed or produced using bioengineering, including any requirement for claims that a food or seed is or contains an ingredient that was developed by or produced using bioengineering. AMS stated that it notified the governors of each state of the amended Act's purpose and preemption provisions by letter in August 2016.