

EXHIBIT A

**STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001**

FOR IMMEDIATE RELEASE
October 15, 2014

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**ATTORNEY GENERAL RELEASES DRAFT GE FOOD LABELING RULE FOR
PUBLIC INPUT**

Today, the Attorney General's Office released a preliminary draft of the rule to implement Act 120, the law requiring the labeling of food produced with genetic engineering. The draft [rule](#) is posted on the Attorney General's website. Members of the public are invited to review the rule and provide input either by attending the public meetings around the state next week, or by sending an email to ago.gefoodlabelingrule@state.vt.us.

In passing Act 120, the Legislature tasked the Attorney General with developing the regulations that will implement the labeling law. These regulations will provide clarity on the scope and reach of the law, including the specific requirements for labeling food. While the Attorney General will later solicit official public comments on the proposed rule, the upcoming public meetings and emailed comments will serve as an important opportunity for the Office to obtain input from producers, retailers, and consumers.

Details on the date, time, and location of each public meeting are as follows:

Tuesday, October 21
12:00–2:00 PM
Contois Auditorium, City Hall
149 Church Street
Burlington, VT 05401

Wednesday, October 22
5:00–7:00 PM
Room 11, Vermont State House
115 State Street
Montpelier, VT 05633

Friday, October 24

3:30–5:30 PM

Room 2E, Marlboro College Graduate Campus

28 Vernon Street

Brattleboro, VT 05301

For directions to the Graduate Campus and parking information, visit

<http://www.marlboro.edu/about/directions/brattleboro>

More information about the implementation of Act 120 is available on the Attorney General's website at <http://www.ago.vermont.gov>, under the GE Food Labeling Rule link. Individuals can also contact the Attorney General's GE Food Rulemaking Team via email at ago.gefoodlabelingrule@state.vt.us. People interested in keeping up to date on the development of the rules can also sign up for periodic email updates by visiting <http://list.state.vt.us/guest/RemoteListSummary/GEFoodLabelingRule> and following the directions there.

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DRAFT RULE

Proposed Consumer Protection Rule 121

LABELING FOODS PRODUCED WITH GENETIC ENGINEERING – ACT 120

1. Definitions - Words used in this rule shall have the definitions given below.

- 1.1** “*Clear and conspicuous*” means presented in such a manner, given its font, size, color, contrast and proximity to other disclosures on the shelf, bin or package as to be readily noticed and understood by consumers. A disclosure is not clear and conspicuous if, among other things, it is obscured by the background against which it appears.
- 1.2** “*Commingled*” means physical contact between unpackaged food produced without genetic engineering and unpackaged food produced with genetic engineering during production, processing, transportation, storage or handling, other than during the manufacture of a multi-ingredient product containing both types of food. Unpackaged food in a closed container identifying it as produced without genetic engineering is not commingled while the container is intact.
- 1.3** “*Consumer*,” as defined in 9 V.S.A. § 3042, shall have the same meaning as in subsection 2451a(a) of this title.
- 1.4** “*Enzyme*,” as defined in 9 V.S.A. § 3042, means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.
- 1.5** “*Food*” means (1) articles used for food or drink for humans, (2) chewing gum, and (3) articles used for components of any such article. Food does not include dietary supplements, as defined in 21 U.S.C. § 321(ff), or drugs, as defined in 21 U.S.C. § 321(g).
- 1.6** “*Genetic engineering*,” as defined in 9 V.S.A. § 3042, is a process by which a food is produced from an organism or organisms in which the genetic material has been changed through the application of:
- (a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or
 - (b) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

The term “genetic engineering” does not encompass a change of genetic material through the application of traditional breeding techniques, conjugation, fermentation, traditional hybridization, in vitro fertilization, or tissue culture.

- 1.7** “*In vitro nucleic acid techniques*,” as defined in 9 V.S.A. § 3042, means techniques, including recombinant DNA or ribonucleic acid techniques, that use vector systems and

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techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

- 1.8** “*Know*” or “*knowingly*” means (1) to have actual knowledge of the information; or (2) to act in deliberate ignorance or reckless disregard of the truth or falsity of the information.
- 1.9** “*Label*” (noun) means a display of written, printed, or graphic material on a packaged processed food or packaged raw agricultural commodity or any such material affixed to any shelf or bin in which an unpackaged raw agricultural commodity or unpackaged processed food is displayed for retail sale.
- 1.10** “*Label*” (verb) means to affix a label.
- 1.11** “*Manufacturer,*” as defined in 9 V.S.A. § 3042, means a person who:
- (a) produces a processed food or raw agricultural commodity under its own brand or label for sale in or into the State;
 - (b) sells in or into the State under its own brand or label a processed food or raw agricultural commodity produced by another supplier;
 - (c) owns a brand that it licenses or licensed to another person for use on a processed food or raw commodity sold in or into the State;
 - (d) sells in, sells into, or distributes in the State a processed food or raw agricultural commodity that it packaged under a brand or label owned by another person;
 - (e) imports into the United States for sale in or into the State a processed food or raw agricultural commodity produced by a person without a presence in the United States; or
 - (f) produces a processed food or raw agricultural commodity for sale in or into the State without affixing a brand name.
- 1.12** “*Natural or any words of similar import*” means the word nature, natural, or naturally.
- 1.13** “*Organism,*” as defined in 9 V.S.A. § 3042, means any biological entity capable of replication, reproduction, or transferring of genetic material.
- 1.14** “*Packaged*” means food offered for retail sale, fully or partially contained or wrapped in any material, and upon which a manufacturer is identified. For the purposes of this rule, “partially contained or wrapped” means more than one-third of the food is covered by packaging material.
- 1.15** “*Processed food,*” as defined in 9 V.S.A. § 3042, means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

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1.16 “*Processing aid*,” as defined in 9 V.S.A. § 3042, means:

- (a) a substance that is added to a food during the processing of the food but that is removed in some manner from the food before the food is packaged in its finished form;
- (b) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or
- (c) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at levels that do not have any technical or functional effect in that finished food.

1.17 “*Produces*” or “*produced*” means to develop, grow or process food.

1.18 “*Raw agricultural commodity*,” as defined in 9 V.S.A. § 3042, means any food in its raw or natural state, including any fruit or vegetable that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing

1.19 “*Retail sale*” means offering food for sale to a consumer for any purpose other than for resale.

1.20 “*Retailer*” means a person located in Vermont offering any raw agricultural commodity or processed food for retail sale.

1.21 “*Retail Premises*” means the physical location where a retailer offers food for retail sale.

1.22 “*Segregated*” means to physically separate food produced without genetic engineering from food that is produced with genetic engineering during production, processing, transportation, storage or handling, other than during the manufacture of a multi-ingredient product containing both types of food. Unpackaged food in a closed container identifying it as produced without genetic engineering is considered segregated while the container is intact.

1.23 “*Unpackaged*” means offered for retail sale, but otherwise not “packaged” as defined in this rule, provided that, for the purposes of section 2.1.2 of this rule, processed foods are considered unpackaged if a retailer removes the packaging that contains the Nutrition Facts Label or Ingredient List required by the United States Food and Drug Administration in 21 C.F.R. § 101.9, or any disclosure required by section 2 of this rule, prior to offering the food for retail sale, even if the food would otherwise meet the definition of “packaged” under this rule when offered for sale.

2. Labeling

2.1 Unpackaged Food Labeling by Retailers

Any unpackaged food produced with genetic engineering and offered for retail sale in Vermont, unless a label is not required by section 3 of this rule, shall be labeled by the retailer as follows:

- 2.1.1** For any unpackaged raw agricultural commodity, retailers shall post a label on or immediately adjacent to each sign that identifies the product or

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the product price with a clear and conspicuous disclosure reading “Produced with Genetic Engineering.” If there is no sign identifying the product or product price, the retailer shall post such label containing a clear and conspicuous disclosure reading “Produced with Genetic Engineering” on the bin, shelf or container in which the food is displayed.

- 2.1.2** For any unpackaged processed food, retailers shall post a label containing a clear and conspicuous disclosure reading “Produced with Genetic Engineering,” “Partially Produced with Genetic Engineering,” or “May be Produced with Genetic Engineering,” as appropriate under subsection 2.2.2, on the bin, shelf, or container in which the food is displayed.

2.2 Packaged Food Labeling by Manufacturers

Any packaged food produced with genetic engineering and offered for retail sale in Vermont, unless a label is not required by section 3 of this rule, shall be labeled by the manufacturer as follows:

- 2.2.1** Disclosures on packaged, raw agricultural commodities shall be clear and conspicuous and shall read “Produced with Genetic Engineering.”
- 2.2.2** Disclosures on packaged, processed foods shall read “Produced with Genetic Engineering,” “Partially Produced with Genetic Engineering,” or “May be Produced with Genetic Engineering,” as appropriate.
- 2.2.2.1** The disclosure “Produced with Genetic Engineering” shall be used when food was produced with genetic engineering, provided that:
- 2.2.2.2** “Partially” may be used to modify “Produced with Genetic Engineering” only when a processed food contains less than 75% food produced with genetic engineering, by weight; and
- 2.2.2.3** “May be” may be used to modify “Produced with Genetic Engineering” only when the food’s manufacturer does not know whether the food is, or contains food that is, produced with genetic engineering.
- 2.2.3** Disclosures on packaged, processed foods required by subsection 2.2 shall be located on the package so as to be easily found by consumers when viewing the outside of the package. Such disclosures shall be in a font size no smaller than the size of the words “Serving Size” on the Nutrition Facts label required by the United States Food and Drug Administration in 21 C.F.R. § 101.9 and in any color that contrasts with the background of the package so as to be easily readable by consumers. For foods for which a Nutrition Facts Label is not required, such disclosures shall be in a font size at least 25% larger than the font used for the food’s listed ingredients and in any color that contrasts with the background of the package so as to be easily readable by consumers. A disclosure that satisfies the font and color requirements of this rule and is located on the same panel as the Nutrition Facts Label or Ingredient List shall be presumed to satisfy the “easily found” requirement.

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2.3 Labeling Practices

2.3.1 The manufacturer of a food that is produced entirely or partially with genetic engineering and offered for retail sale in Vermont shall not make any statement about the food that contains the word natural or any words of similar import: (1) in advertising at or in the retail premises, (2) on signs identifying the product at the point of display in the retail premises, or (3) on the label of the food. This prohibition does not apply to a food's trade, brand, or product name, or any information contained in the Nutrition Facts Label or Ingredient List required by the United States Food and Drug Administration in 21 C.F.R § 101.9.

2.3.2 Subject to other applicable legal requirements, including subsection 2.3.1 of this rule, a person may, in connection with offering food produced with genetic engineering for retail sale in Vermont, make other disclosures about the food on its packaging, including that the United States Food and Drug Administration does not consider food produced with genetic engineering to be materially different from other foods.

2.4 Nothing in this section shall be construed to require the listing or identification of any ingredient or ingredients that were genetically engineered; or require the placement of the term "genetically engineered" or a similar phrase immediately preceding any common name or primary product descriptor of a food; or to otherwise require adding to or amending the information required on the Nutrition Facts Label or Ingredient List.

3. Exemptions and Exceptions

Section 2 of this rule does not apply to the following:

3.1 Animal Products and USDA Approved Labels

3.1.1 Foods consisting entirely of or derived entirely from an animal that is itself not produced with genetic engineering, regardless of whether the animal has been fed or injected with any food, drug, or other substance produced with genetic engineering.

3.1.2 Packaged, processed food containing meat or poultry, the label of which requires approval by the United States Department of Agriculture, under 21 U.S.C. §§ 451-472, 601-695, or the state equivalent, under 6 V.S.A. §§ 3301-3318.

3.2 Certification by Sworn Statement

3.2.1 Food for which the person otherwise responsible for complying with section 2 of this rule obtains a sworn statement from whomever sold the food to that person. The sworn statement must affirm that the food (1) was made or grown from food or seed that has not been knowingly or intentionally produced with genetic engineering and (2) has been

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segregated from and has not been knowingly or intentionally commingled with food or seed that may have been produced with genetic engineering.

- 3.2.2** When providing a sworn statement under this rule, a person may rely solely on a sworn statement that contains the above affirmation by whoever sold the food to that person.

3.3 Processing Aids

Processed foods that would be required to be labeled under section 2 of this rule solely because the food includes one or more processing aids or enzymes produced with genetic engineering.

3.4 Alcoholic Beverages

Beverages regulated under the provisions of Title 7 of the Vermont Statutes.

3.5 Minimal Genetically Engineered Content

Processed foods that would otherwise be required to be labeled under section 2 of this rule, if the aggregate weight of the genetically engineered materials in the food is no more than 0.9 percent of the total weight of the food.

3.6 Verification by Qualifying Organization

- 3.6.1** Food that has been certified as organic by an organization accredited to make such certifications under the United States Dept. of Agriculture National Organic Program.
- 3.6.2** Food that has been verified as not having been produced with genetic engineering by an organization that has applied to and has been accepted by the Attorney General as authorized to make such verification.

3.7 Food for Immediate Consumption

- 3.7.1** An unpackaged processed food that is prepared and intended for immediate consumption.
- 3.7.2** An unpackaged food that is served, sold, or otherwise provided in a restaurant or other establishment primarily engaged in the sale of food prepared and intended for immediate consumption.
- 3.7.3** For the purposes of this rule, “prepared and intended for immediate consumption” means food that is or may be purchased as a “taxable meal” as provided in 32 V.S.A. § 9202(10)(A), (B), (C), or (D)(i).
- 3.7.4** For the purposes of this rule, an establishment is “primarily engaged in the sale of food prepared and intended for immediate consumption” if more than 50% of the establishment’s total sales of food in the previous taxable year is, or if the first taxable year is reasonably projected to be, food taxable under 32 V.S.A. § 9202(1)(B) and food taxable under 32 V.S.A.

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§ 9202(1)(C) and food not exempt from taxation under 32 V.S.A.
§ 9202(1)(D).

3.8 Medical Food

Medical food, as that term is defined in 21 U.S.C. § 360ee(b)(3).

4. Enforcement and Penalties

4.1 Sworn Statements

A sworn statement used to comply with subsection 3.2 must be signed by the person otherwise responsible for complying with the requirements of section 2, and must contain the affirmations set forth in subsection 3.2.1. A standard-form sworn statement containing these affirmations is provided in Appendix A. Electronic or facsimile copies of original sworn statements are acceptable under this rule.

4.2 Manufacturer and Retailer Records Retention

Manufacturers and retailers shall retain records sufficient to demonstrate compliance with this rule for three (3) years from the date they sell the food, and shall make such records available to the Attorney General upon a request pursuant to 9 V.S.A. § 2460.

4.3 Notice of Retailer Violation and Safe Harbor

- 4.3.1** If the Attorney General has reason to believe that a retailer has failed to label a food as required by this rule, prior to issuing a civil investigative demand, filing a complaint, or otherwise commencing an enforcement action for such failure, the Attorney General shall issue a corrective action notice.
- 4.3.2** If, after 30 days from issuance of the notice, the Attorney General continues to have reason to believe that a retailer has failed to label in accordance with section 2.1, the Attorney General may commence an enforcement action.
- 4.3.3** If, during the 30-day period, the retailer obtains and presents a sworn statement in accordance with subsection 3.2 of this rule certifying that the food that is the subject of the notice of violation, is exempt from section 2 of this rule, the Attorney General shall not issue a civil investigative demand, file a complaint, or otherwise commence an enforcement action against the retailer for failure to label the food.
- 4.3.4** Provisions of this subsection are not applicable when a retailer produces a processed food or raw agricultural commodity.

4.4 Presumption of Manufacturer Compliance

- 4.4.1** Any packaged, processed food subject to the provisions this rule and offered for retail sale in Vermont before January 1, 2017, that does not comply with this rule is presumed to have been packaged and distributed prior to July 1, 2016, and the manufacturer shall not be liable for failure to

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comply with this rule unless there is evidence that the food was distributed on or after July 1, 2016.

- 4.4.2** Upon written request of the Attorney General, any manufacturer of any packaged, processed food offered for retail sale before January 1, 2017, shall provide the Attorney General with documentation regarding the labeling and distribution of such food within 10 business days of date of the request.

4.5 Penalties

Any person who violates the requirements of this rule, including providing a false statement under subsection 3.2 of this rule, shall be liable for a civil penalty of not more than \$1,000 per day, per product. Calculation of this civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated, or marketed product.

5. Scope

Nothing in this rule shall limit the rights or remedies available to the State of Vermont or to consumers under any other provision of Vermont law, including 9 V.S.A. § 2453.

6. Effective Date

This rule shall become effective on July 1, 2016.

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APPENDIX A

**Sworn Statement Form
Certifying Food NOT Produced with Genetic Engineering**

Name of Manufacturer or Producer: _____

Address: _____

City: _____ State: _____

Zip Code: _____

Agent Signing on Behalf of Manufacturer: _____

Agent Contact Phone Number: _____

Agent Email: _____

Name of Product(S): _____

Lot Number or Identification Number: _____

I, _____, as the authorized agent of the Manufacturer/
Producer listed above, hereby depose and state as follows:

The above named product(s) was made or grown from food or seed that has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering.

I declare or affirm, under penalty of perjury, that the above statement is true and correct to the best of my knowledge.

Agent Signature: _____ Date: _____

Agent Printed Name: _____