

# Vermont Act 120 Rulemaking

October 2014



Office of the Attorney General  
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- 
- Presentation of the labeling law
- 
- Explanation of Attorney General's Draft Rules
- 
- Opportunity to provide input and ask questions
- 
- Not a detailed walkthrough for compliance purposes

## **Purpose of Meeting**

**Mostly  
components**

- Field corn
- Soybeans
- Sugar beets
- Canola
- Cotton (cottonseed oil)
- Alfalfa

**Few available  
direct to U.S.  
consumers**

- Rainbow papaya
- Sweet corn
- Summer squash
- Tomato\*

**Background:**

**What foods are GE?**

Act 120 establishes requirements for labeling and permits the Attorney General to make rules.

Rules fill in and define the gray areas of the statute.

Examples of rules: health and tax code; EPA and FCC regulations.

The statute combined with rules are what make up “the Law.”

**Background:**

**What are rules?**

# **Basics of the Law**

Overview of Act 120

# Purpose of Act 120

- Public health concerns
- Environmental impacts
- Religious concerns
- Consumer deception (“natural” prohibition)
- Lack of federal regulation on GE foods

## **Overview of Act 120**

Food offered for retail sale in Vermont must be labeled if it is produced with genetic engineering (GE).

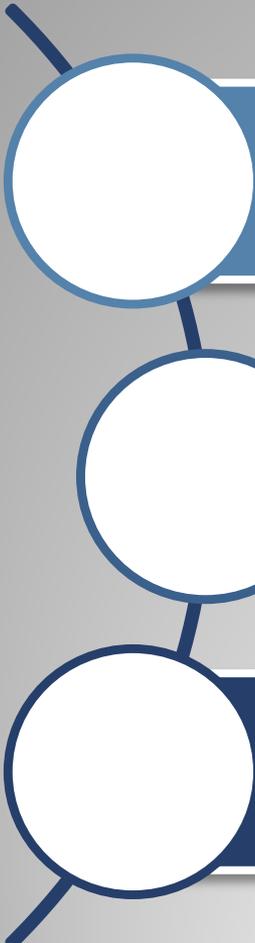
Certain categories of foods are exempt under the law.

Act 120 also prohibits use of the term “natural” to describe foods made from GE ingredients—both on product packaging and in advertising.

## **Overview of Act 120**

# **Basics of the Law**

Key Terms



“Food” means articles used for food or drink for humans.

“Food” includes chewing gum, condiments, seasonings, et cetera.

Food does not include dietary supplements or drugs as defined by U.S. law.

## **Overview of Act 120:**

### **Defining Food**

# Under Act 120, all food is divided into two types.

- Raw agricultural commodities (produce)
- Processed foods
  - Peeled or shucked
  - Cut
  - Cooked

## **Overview of Act 120:**

### **Defining Food**

## What is genetic engineering?

- 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 in vitro nucleic acid techniques or cell fusion

Genetic engineering refers to specific techniques that involve combining genetic material from *different taxonomic groups* in order to *overcome natural barriers*.

## Overview of Act 120:

## Defining GE

**“Genetic engineering” does not encompass a change of genetic material through the application of the following**

- Traditional breeding techniques
- Conjugation
- Fermentation
- Traditional hybridization
- In vitro fertilization
- Tissue culture

**Overview of Act 120:**

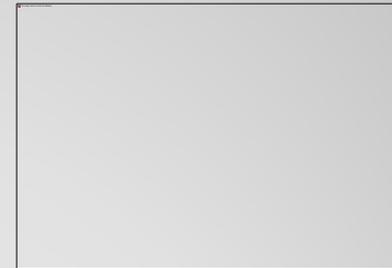
**Defining GE**

# **Basics of the Law**

What Act 120 Requires

# Raw Agricultural Commodities

- Clear and conspicuous
- “Produced with Genetic Engineering”
- Unpackaged
  - On shelf or bin
  - Retailer labels
- Separately packaged
  - On package
  - Manufacturer labels



**What Act 120 Requires:  
Labeling**

# Processed Foods



- One of three labels
    - “Produced with Genetic Engineering”
    - “Partially Produced with Genetic Engineering”
    - “May be Produced with Genetic Engineering”
  - Manufacturer labels package
- 
- Unpackaged processed foods

**What Act 120 Requires:  
Labeling**



animals  
and animal  
products



alcoholic  
beverages

food served at  
a restaurant or  
prepared for  
immediate  
consumption



# What Act 120 Requires: Major Exemptions



## Animal Products

- 100% animal or animal-derived
- For example, steak, chicken, eggs, unflavored milk or yogurt



## Enzymes & Processing Agents

- Any processed food produced with a GE processing aid or enzyme that would otherwise not be subject to the labeling requirement
- For example, GE rennet used in cheese production



## Minimal Quantity

- GE materials account for no more than 0.9% by weight
- For example, spices or minimal thickening agents

**Detail of Act 120 Exemptions:  
No or Minimal GE Content**



## Alcoholic Beverages

Regulated by the provisions of Title 7 of the Vermont Statutes



## Medical Food

Defined in section 5(b)(3) of 21 U.S.C. 360ee(b)(3)

**Detail of Act 120 Exemptions:  
Heavily Regulated**

# Further Exemptions

- Foods prepared for “Immediate Human Consumption”
- Sworn statement certifying food not produced with GE
- Verified by third-party as not produced with GE

**Detail of Act 120 Exemptions:**

**Additional Exemptions**

- Prohibition on using
  - “Natural”
  - “Naturally made”
  - “Naturally grown”
  - “All Natural”
  - Or any similar words that would mislead a consumer
- On package, on signs, or in advertising
- Same foods requiring labeling

**What Act 120 Requires:**

**Prohibition**

- Retailer not liable for labeling processed foods on package
- Retailer not liable for failure to label unpackaged produce if:
  - can obtain a sworn statement from manufacturer
  - within 30-days of notice of violation

**What Act 120 Requires:**

**Retailer Liability**

# **Basics of the Law**

The Draft Rule: Labeling

# Implementing Act 120

- Details on placement of GE disclosures
- Unpackaged processed foods
- Defining certain exemptions
- Scope of “natural” prohibition

## **Goals of Rulemaking**

1. Unpackaged raw agricultural commodities

2. *Unpackaged processed food*

3. Packaged raw agricultural commodities

4. Packaged processed foods

**Draft Rule:**

**Road Map**

- Implement legislative intent
  - Four purposes of law
  - Provide accurate information for consumers
- Minimize burden on the regulated community
  - Address practical concerns of manufacturers and retailers
- Provide *clarity* on the scope and reach of Act 120

## **Goals of Rulemaking**

# 1. Unpackaged raw agricultural commodities

- Raw produce (unpeeled, unshucked)
- “Produced with Genetic Engineering”
- Clear and conspicuous
- Retailer labels
- *On each sign*

**Draft Rule:**

**Labeling**



**SWEET CORN**  
**\$0.75/ear**

*Produced with  
Genetic Engineering*

## 2. Unpackaged processed foods

- Bulk foods; some deli and bakery items
- *Clear and conspicuous*
- *Three labels*
  - *Produced, Partially, May be*
- *On bin, shelf, or container*
- *Retailer labels*

**Draft Rule:**

**Labeling**



\$2.99/lb

Produced with Genetic Engineering

Who labels  
unpackaged  
food?

- Retailers

Who is a  
retailer?

- Offers food for retail sale to the public
- Includes producers who sell directly to the public
- For example, producers who sell at farm stands or farmers markets

**Draft Rule:**

**Labeling Unpackaged Food**

## 3. Packaged raw agricultural commodities

- “Produced with Genetic Engineering”
- Clear and conspicuous
- On the product label
- *Raw produce more than 1/3 covered or wrapped with manufacturer identified*

**Draft Rule:**

**Labeling**

## 4. Packaged processed foods

- Three labels (Produced, Partially, May be)
- *Easily found* on package: compliant on information panel
- *Easily read*: same size as “serving size” on the Nutrition Facts label

**Draft Rule:**

**Labeling**

# Nutrition Facts

Serving Size 2/3 cup (55g)

Servings Per Container About 8

## Amount Per Serving

**Calories** 230      Calories from Fat 40

## % Daily Value\*

**Total Fat** 8g      **12%**

Saturated Fat 1g      **5%**

Trans Fat 0g

**Cholesterol** 0mg      **0%**

**Sodium** 160mg      **7%**

**Total Carbohydrate** 37g      **12%**

Dietary Fiber 4g      **16%**

Sugars 1g

**Protein** 3g

Vitamin A      10%

Vitamin C      8%

Calcium      20%

Iron      45%

\* Percent Daily Values are based on a 2,000 calorie diet.  
Your daily value may be higher or lower depending on  
your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Produced with Genetic Engineering

ELITE  
BUDGET  
NEEDS

## Nutrition Facts

Serving Size 1 cup (245 g)  
Servings Per Container about 2

### Amount Per Serving

**Calories** 180    Calories from Fat 45

	% DV*
<b>Total Fat</b> 5 g	<b>8%</b>

Saturated Fat 1 g

Trans Fat 0 g

<b>Cholesterol</b> 0 mg	<b>0%</b>
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<b>Sodium</b> 590 mg	<b>25%</b>
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<b>Total Carb.</b> 27 g	<b>9%</b>
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Dietary Fiber 8 g	<b>32%</b>
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Sugars 2 g

**Protein** 8 g

Vitamin A 25%	• Vitamin C 6%
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Calcium 8%	• Iron 15%
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\* Percent Daily Values (DV) are based on a 2,000 calorie diet.

Produced with  
Genetic Engineering

## Three Labels for Processed Foods

- “Produced with Genetic Engineering”
- “Partially Produced with Genetic Engineering”
  - *May be used when a food contains less than 75% food produced with GE by weight*
- “May be Produced with Genetic Engineering”
  - *May be used when the manufacturer does not know whether the food contains ingredients produced with GE*
  - *Requires some effort by manufacturer to find out nature of ingredients*

**Draft Rule:**

**Labeling**

Who labels  
packaged food?

Who is a  
Manufacturer?

- Manufacturer

- Produces a processed food or raw agricultural commodity

- Includes

- Importer

- Store brand

- Licensor

- Co-packer

- Licensee

**Draft Rule:**

**Labeling Packaged Foods**

# General Guidelines

A person who *labels* a food is usually responsible for providing the GE disclosure.

Packaged foods are labeled on the package by the *manufacturer*.

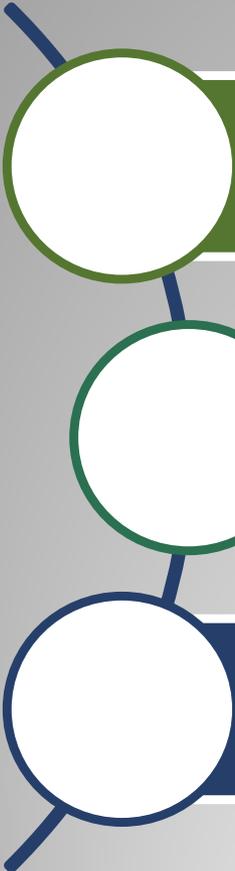
Unpackaged foods are labeled where displayed by the *retailer*.

**Draft Rule:**

**Labeling—The Bottom Line**

# **Basics of the Law**

The Draft Rule: Exemptions



Processed food purchased as a taxable meal  
under Vermont tax law

Unpackaged food sold in a restaurant

Unpackaged food sold in an establishment where  
more than 50% of sales are taxable meals

**Draft Rule Exemptions:**

**Food for Immediate Consumption**

Packaged processed food  
containing meat or poultry ...



... when the label requires USDA  
approval under 21 U.S.C. §§ 451–472,  
601–695 ...



... or approval by the State of Vermont  
under 6 V.S.A. §§ 3301–3318

**Draft Rule Exemptions:  
Regulated by the USDA**

Manufacturer signs sworn statement that food not knowingly or intentionally produced with GE



Manufacturer may rely on previous seller's sworn statement



Buyer keeps statement on file for 3 years

**Establishing that a Food is Not GE:  
Certification by Sworn Statement**

- *Food certified organic by an organization accredited under the USDA National Organic Program.*
- Food verified as not produced with GE by another qualifying organization.
  - Qualifying organizations must apply to the Attorney General.

**Establishing that a Food is Not GE:**

**Verification by a Qualifying Organization**

# Labeling prohibition applies to the same foods that require labeling.

- Manufacturers may not make statements that contain the words “*nature*,” “*natural*,” or “*naturally*”
  - On product labels
  - On signage at the point of display
  - In advertising *at the Vermont retail premises*
- Does not apply to
  - *Trade, brand, or product name*
  - Ingredient list or Nutrition Facts Label

## **Draft Rule:**

# **Labeling Prohibition**

- Manufacturers may make other lawful disclosures on product packaging, including
  - The United States Food and Drug Administration does not consider food produced with GE to be materially different from other foods
  - The food is GE Free

**Draft Rule:**

**Optional Disclosures**

- Rule effective for food sold after July 1, 2016.
- Manufacturer liability is limited in the event improperly labeled food packaged and distributed before July 1, 2016, is still offered for retail sale after the rule goes into effect.
- This limitation only exists until January 1, 2017.

**Draft Rule:**

**Manufacturer Liability**

# **Basics of the Law**

Prospective Timeline

**Summer 2014**

- Solicited public input on rules and labels via online questionnaire

**Fall 2014**

- Gather public feedback on draft rule

**Winter 2015**

- Formally submit rule for legislative approval

**Expected Rulemaking Timeline**

**Winter/Spring  
2015**

- Formal comment and public meeting period

**July 2015**

- Anticipated final rule approval

**Summer 2015**

- Issue guidance on compliance and enforcement

**July 2016**

- The law — including rule — goes into effect

**Expected Rulemaking Timeline**

# Questions and Comments

- Visit the Attorney General's website at [www.ago.vermont.gov](http://www.ago.vermont.gov)
- Under the **GE Food Labeling Rule** link, you can
  - Learn more about Act 120 Rulemaking
  - View answers to Frequently Asked Questions
  - Sign up for the Attorney General's email updates on rulemaking developments

To give input and ask questions, email the Attorney General's GE Food Rulemaking Team at [ago.GEFoodLabelingRule@state.vt.us](mailto:ago.GEFoodLabelingRule@state.vt.us)

**For More Information**