

ALERTS

Reminder: Vermont GMO Labeling Law (Vermont Act 120) Goes Into Effect On July 1

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The Vermont GMO labeling law becomes effective on July 1, 2016, and has a six month “sell through” grace period that ends on Jan. 1, 2017. The manufacturer shall not be liable for failure to comply with the law’s requirements unless there is evidence that the food was distributed to the retailer on or after July 1, 2016. A copy of [Vermont Act 120 is available here](#).

Citing the lack of federal labeling requirements for GMOs, the stated purpose of the Vermont Act include public health and food safety, environmental impacts, avoiding consumer confusion and deception and protecting religious practices.

Here is a synopsis of the new law:

Required for:

- Non-exempt packaged food that contains genetic engineered material accounting for more than 0.9 percent of the total weight of the food
- The packaged processed food is offered for sale through Vermont retailers (manufacturers liable - not retailers)

Label content:

- “Partially produced with genetic engineering” or “May be produced with genetic engineering” or “Produced with genetic engineering”

Exceptions:

- Animal foods (milk**, eggs, meat) even if genetically modified feedstock used (subject to USDA approval)
- Raw agricultural commodities grown/raised/ produced without knowledge or intentional use of foods or seeds produced with genetic engineering
- Processed aids /enzymes (cheese made with rennet)
- Alcoholic beverages
- Certified organic producers or other approved verification of de minimus genetically engineered material
- Non-retail/non-packaged foods, including: food provided to restaurants

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Enforcement:

- The Vermont Attorney General (AG) to make rules, investigate conduct, enter into assurances of discontinuance and bring civil actions.
- Consumer Protection Rule CP 121 was adopted by the Attorney General's Office on April 17, 2015. A copy of [an annotated version of Rule CP 121 can be viewed here](#).
- No private cause of action under Vermont Act 120, but after July 1, 2017, CP 121 does provide a private right of action.
- Manufacturers shall retain compliance records for three years from sale of food and make available to AG upon request
- 30 day corrective action period

AG Penalties:

- \$1,000 per day per product – not multiplied by the number of units

Pending Challenge: A number of food-related trade associations and interested parties have filed a lawsuit against the Attorney General of Vermont seeking to stop the implementation of the act, arguing it is unconstitutional and preempted by federal law. Grocery Manufacturers Association et al v. Sorrell et al Case 5:14 –cv- 117, U.S. District Court of Vermont. The plaintiff's motion for preliminary injunction to delay the July 1, 2016, implementation date was denied, and they have appealed to the Second Circuit Court of Appeals.

****Added ingredients may trigger need for label (e.g. ice cream produced with genetically engineered sugar)**

For more information, contact the Barnes & Thornburg attorney with whom you work; Joan Long at 312-214-4576 or joan.long@btlaw.com; or any member of the firm's Advertising and Marketing practice group.

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