Purpose of Meeting

- 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
Background: What foods are GE?

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

Mostly components

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

Few available direct to U.S. consumers
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.”
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.
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
Overview of Act 120:
Defining GE

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.
“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
Basics of the Law

What Act 120 Requires
What Act 120 Requires:

Labeling

- Clear and conspicuous
- "Produced with Genetic Engineering"
- Unpackaged
  - On shelf or bin
  - Retailer labels
- Separately packaged
  - On package
  - Manufacturer labels
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
What Act 120 Requires:

Major Exemptions

- animals and animal products
- food served at a restaurant or prepared for immediate consumption
- alcoholic beverages
Detail of Act 120 Exemptions: No or Minimal GE Content

**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:

Heavily Regulated

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)
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
What Act 120 Requires:

- 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
• 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
Goals of Rulemaking

Implementing Act 120

- Details on placement of GE disclosures
- Unpackaged processed foods
- Defining certain exemptions
- Scope of “natural” prohibition
Draft Rule:
Road Map

1. Unpackaged raw agricultural commodities
2. Unpackaged processed food
3. Packaged raw agricultural commodities
4. Packaged processed foods
Goals of Rulemaking

• 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
1. Unpackaged raw agricultural commodities

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

**Serving Size** 2/3 cup (55g)
**Servings Per Container** About 8

<table>
<thead>
<tr>
<th>Amount Per Serving</th>
<th>% Daily Value*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Calories</strong> 230</td>
<td>Calories from Fat 40</td>
</tr>
<tr>
<td><strong>Total Fat</strong> 8g</td>
<td>12%</td>
</tr>
<tr>
<td>Saturated Fat 1g</td>
<td>5%</td>
</tr>
<tr>
<td>Trans Fat 0g</td>
<td></td>
</tr>
<tr>
<td><strong>Cholesterol</strong> 0mg</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Sodium</strong> 160mg</td>
<td>7%</td>
</tr>
<tr>
<td><strong>Total Carbohydrate</strong> 37g</td>
<td>12%</td>
</tr>
<tr>
<td>Dietary Fiber 4g</td>
<td>16%</td>
</tr>
<tr>
<td>Sugars 1g</td>
<td></td>
</tr>
<tr>
<td><strong>Protein</strong> 3g</td>
<td></td>
</tr>
</tbody>
</table>

| 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.

<table>
<thead>
<tr>
<th>Calories: 2,000</th>
<th>Calories: 2,500</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Fat</strong>  Less than 65g</td>
<td>80g</td>
</tr>
<tr>
<td><strong>Sat Fat</strong>    Less than 20g</td>
<td>25g</td>
</tr>
<tr>
<td><strong>Cholesterol</strong> Less than 300mg</td>
<td>300mg</td>
</tr>
<tr>
<td><strong>Sodium</strong>     Less than 2,400mg</td>
<td>2,400mg</td>
</tr>
<tr>
<td><strong>Total Carbohydrate</strong> 300g</td>
<td>375g</td>
</tr>
<tr>
<td><strong>Dietary Fiber</strong> 25g</td>
<td>30g</td>
</tr>
</tbody>
</table>

Produced with Genetic Engineering
### Nutrition Facts

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

<table>
<thead>
<tr>
<th>Amount Per Serving</th>
<th>% DV*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calories</td>
<td>180</td>
</tr>
<tr>
<td>Total Fat</td>
<td>5 g</td>
</tr>
<tr>
<td>Saturated Fat</td>
<td>1 g</td>
</tr>
<tr>
<td>Trans Fat</td>
<td>0 g</td>
</tr>
<tr>
<td>Cholesterol</td>
<td>0 mg</td>
</tr>
<tr>
<td>Sodium</td>
<td>590 mg</td>
</tr>
<tr>
<td>Total Carb.</td>
<td>27 g</td>
</tr>
<tr>
<td>Dietary Fiber</td>
<td>8 g</td>
</tr>
<tr>
<td>Sugars</td>
<td>2 g</td>
</tr>
<tr>
<td>Protein</td>
<td>8 g</td>
</tr>
</tbody>
</table>

*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
### Draft Rule: Labeling Packaged Foods

**Who labels packaged food?**

- **Manufacturer**

**Who is a Manufacturer?**

- Produces a processed food or raw agricultural commodity
- Includes:
  - Importer
  - Store brand
  - Licensor
  - Co-packer
  - Licensee
### 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
Draft Rule Exemptions: Food for Immediate Consumption

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

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
• 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
• 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.
Basics of the Law

Prospective Timeline
Expected Rulemaking 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
Questions and Comments
Visit the Attorney General’s website at 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

For More Information