

## Vermont GMO Food Labeling - Is Your Label Ready?

Alert

05.13.2016

By Cicely Lubben and Michelle Corrigan

In less than two months, Vermont's genetically modified organism (GMO) food labeling law, Consumer Protection Rule 121, goes into effect. Starting July 1, 2016, food manufacturers producing food containing GMOs to be sold in the state of Vermont must clearly and conspicuously disclose on the packaging that it is "Produced with Genetic Engineering." Notably, the designation "Partially Produced with Genetic Engineering" can be used when a processed food offered for sale contains less than 75 percent genetically engineered material by weight (excluding added water and salt). The designation "May be Produced with Genetic Engineering" can be used when a food manufacturer, after making a "reasonable inquiry," does not know if the food contains genetic engineering.

### Ignorance is No Defense

A food manufacturer must at least make a "reasonable inquiry" into whether a food is produced with genetic engineering before selling it in Vermont. At a minimum, this means food manufacturers should actively contact suppliers of component food ingredients to determine if they were produced without genetic engineering. Food manufacturers can ask their suppliers to provide a sworn certification that their products are not produced with genetic engineering. Not obtaining such a certification, however, may put the source of the food into question and result in the need for a "May be Produced with Genetic Engineering" disclosure on the label.

The required disclosure under Vermont's GMO food labeling law must be located on the product package so that it is "easily found" when viewing the outside of the package. That means that it must appear in a color that contrasts with the background of the package. It must also be "easily read" by consumers, and placing the disclosure on the information panel of the package should satisfy this requirement. The disclosure also needs to appear in a font size no smaller than the font size of the words "Serving Size" on the Nutrition Facts label, or in a font size no smaller than that of the ingredient list on the label, and should be printed in bold face type. The use of

## Vermont GMO Food Labeling - Is Your Label Ready?

stickers containing the new language on existing packaging is permitted so long as all disclosure requirements are met.

There are several exceptions to Vermont's GMO food labeling law. For example, it does not apply to the following: 1) labels already subject to approval by the USDA, 2) processed foods where only the processing aids or enzymes involve genetic engineering, 3) alcoholic beverages, 4) processed foods with less than 0.9 percent of genetically engineered materials (per total weight of food), 5) foods certified as "organic" by the USDA National Organic Program, or 6) food sold for immediate consumption, such as at a restaurant. Additionally, the law does not apply to food sold to consumers only via the internet.

Failure to comply with Vermont's GMO food labeling law can result in the imposition of civil penalties up to \$1,000 per day, per product. The law also permits lawsuits to be filed by private citizens.

### The Status of GMO Labeling Laws in Other States

Interestingly, Vermont was not the first state to pass a law governing the labeling of food containing GMOs. Maine and Connecticut already have similar laws on their books. Connecticut's law requires that infant formula or baby food sold or intended for sale in Connecticut include clear and conspicuous labeling if it contains any genetically engineered materials. This includes milk or soy-based products. Connecticut's law also provides that seed or seed stock intended to produce food for human consumption shall be deemed misbranded if it contains GMOs and does not bear required labeling. Maine's law requires disclosure in the form of labeling of GMOs at the point of retail sale of food and seed stock, and contains other provisions similar to those contained in Vermont's law.

One very important caveat exists with respect to both the Connecticut and Maine laws – they both contain a "trigger clause." Neither the Connecticut nor Maine laws will take effect until neighboring states pass similar GMO food labeling laws. Specifically, Connecticut's law will only go into effect once other Northeastern states with a combined population of 20 million people adopt similar laws. Maine's law will only take effect if New Hampshire, Vermont, Massachusetts and Connecticut adopt similar laws. Vermont and Connecticut have passed similar GMO food labeling laws, but Massachusetts and New Hampshire have not yet done so. Massachusetts has proposed a similar bill in its legislature, which is currently pending, but New Hampshire has no such proposed bill pending at this time. It should also be noted that Maine's law currently contains an automatic repeal provision if mandatory labeling of GMOs is not adopted by New Hampshire, Vermont, Massachusetts and New Hampshire by January 1, 2018. However, Maine has since introduced a proposed bill that would repeal both the trigger clause and the automatic repeal provision in its law, making Maine's law not contingent upon the actions of any other state. That proposed bill is currently pending in the Maine legislature.

To date, more than 70 bills have been introduced in at least 30 states to require GMO food labeling, or to prohibit genetically engineered foods. Currently, as many as 15 states have GMO food labeling bills pending in their legislatures. The trend appears to show that Vermont will

## Vermont GMO Food Labeling - Is Your Label Ready?

certainly not be the last state to pass a GMO food labeling law. Food manufacturers and sellers should anticipate that similar laws in other states will go into effect in the near future. Although there have been efforts on the federal level to pass legislation governing GMO food labeling, and which may preempt state laws, those efforts have been unsuccessful to date. As a result, any company selling food in Vermont should update their labels with the mandatory language required by Vermont before July 1, 2016.

For more information about Vermont's new GMO labeling law, the proposed or pending GMO labeling laws in other states, or food labeling laws in general, please contact Cicely Lubben, [Michelle Corrigan](#), or the Stinson Leonard Street attorney with whom you regularly work.

### CONTACT

Michelle Corrigan Erikson

### RELATED CAPABILITIES

Product Liability