



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

Todd Daloz

Office of the Attorney General

109 State Street

Montpelier, VT 05609

February 12, 2015

Submitted via email to ago.GEFoodLabelingRule@state.vt.us

Re: Comments on Proposed Consumer Protection Rule 121

Dear Mr. Daloz:

The Food Marketing Institute (FMI) appreciates the opportunity to provide comments on the Proposed Consumer Protection Rule (“proposed rule”) to implement Act 120, which mandates special labeling for foods that are or contain ingredients derived from genetically engineered crops.

Introduction

The Food Marketing Institute (FMI) proudly advocates on behalf of the food retail industry. FMI’s U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit <http://www.fmi.org/foundation>.

Definitions:

CP 121.05 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. Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.~~

FMI believes that the AGO should explicitly state that the regulations define the extent of liability in all civil actions, public and private.

1.21 “Retail Premises”

FMI seeks clarification on whether and how the proposed rule applies to products sold through online retail. FMI agrees that “retail premises” should not include brochures, pamphlets or any other writing where a consumer is unable to make a selection on the premises. FMI requests that the AGO further clarify that take-out and catering menus are not subject to the proposed rule.

121.02 Labeling

Disclosures on packaged, processed foods required by section 121.02(b) 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 by the United States Food and Drug Administration in 21 C.F.R. § 101.9(d) and in any color that contrasts with the background of the package so as to be easily read by consumers. For foods for which a Nutrition Facts Label is not required, such disclosures shall be in a font size at least the same size as the food’s listed ingredients at least 25% larger than the font in 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.

FMI does not see a justification for requiring the disclosure to be in a larger font than the ingredients listed on a food package. There is no indication that the disclosure information is more important to the consumer than the actual ingredients. FMI strongly believes that the AGO should provide flexible font size requirements under the rule.

CP 121.04 Enforcement and Penalties

(b) Manufacturer and Retailer Records Retention

~~Manufacturers and retailers~~ shall retain records sufficient to demonstrate compliance with this rule for ~~three (3) one (1) years~~ six months from the date the manufacturer ~~or retailer~~, respectively, sells the food, and shall make such records available to the Attorney General upon a request pursuant to 9 V.S.A. § 2460. Electronic copies of such records are sufficient to comply with this subsection.

FMI does not believe that retailers should be required to retain detailed records under the rule. Many retailers will voluntarily keep records to demonstrate compliance under the rule, but requiring retailers to maintain records of every item they are selling is unrealistic and incredibly costly. If the AGO determines that records are needed; the choice of records should be flexible. FMI further believes that stores should be able to develop a record that works best in each respective operation. In addition to record flexibility; FMI members do not believe there is a need to keep records for more than 6 months. Unpackaged foods in a grocery store are sold fresh to consumers and would typically be consumed within a week after purchasing a product. Therefore, it is highly unlikely that a consumer would still be in possession of a product longer than 6 months. Further, the maintenance of paper-based records requires time, space and imposes additional costs with no corresponding benefit to the public.

Thank you for consideration of these comments. Please don't hesitate to contact me at sbarnes@fmi.org or (202) 220-0614 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Barnes". The ink is dark and the signature is fluid.

Stephanie K. Barnes
Regulatory Counsel