

DO YOUR FOOD LABELS NEED TO BE UPDATED?

Hodgson Russ Food and Beverage Alert
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Imagine sitting down at your dinner table, ready to dig into the delicious meal you've worked tirelessly to prepare, only to find out that (after you've tasted the first bite) you've used an ingredient that has caused your throat to contract, your skin to break out, or worse, anaphylactic shock.

"But I checked the label!"

Well, up until recently, only eight of the food supply's largest allergens were required to be disclosed on a food item's label. Milk, tree nuts, eggs, peanuts, shellfish, soybeans, wheat, and fish were, and remain, the eight most common food allergens that can cause problems (think stomach) in sensitive individuals.

For years, the Food & Drug Administration (FDA) has monitored the food supply to determine what, if any, substances pose a significant health risk. The Food Allergen Labeling and Consumer Protection Act has been in place for decades and has empowered the FDA to inform consumers about the presence of major allergens in food. But, under this Act, only the foregoing eight allergens were listed as "major" until 2020.

Recently, the FDA expanded its supervision and control of food allergens and issued draft guidance for the food industry to encourage manufacturers to voluntarily declare additional allergens in their ingredient list. It is likely that these "encouraging" disclosures will become a requirement in the coming years. The FDA also took another important step in late 2020 by establishing final gluten-free compliance requirements for fermented and hydrolyzed foods (pickles, soy sauces, and cheese) so that consumers can be confident that the food item they are buying is actually gluten free.

The FDA's increased scrutiny is a direct result of the large number of Class I food recalls seen across the nation. Approximately one third of foods reported to the FDA through its Reportable Food Registry as "serious health risks" involved undeclared food allergens. Since March 2020, the FDA has issued "warning letters" to eight registered food facilities that resulted in Class I recalls. The food facilities are then required by statute to implement food safety preventative controls that reduce or eliminate the hazard of undeclared allergens before food is distributed. For example, Whole Foods Market has recalled more than 30 food products over the last year

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because the presence of major food allergens was **not** indicated on food product labels. Non-compliance can result in revocation of a food distributor's or manufacturer's FDA license, as well as potential fines under Federal law.

For now, the question to ask is – do my labels need to be updated? If you need assistance in mitigating against food label exposure, please reach out to [James Zawodzinski](#) (716.848.1595), [Reetuparna Dutta](#) (716.848.1626), [Andrew Freedman](#) (716.848.1332) or any member of the Hodgson Russ [Food & Beverage](#) practice.