

Congress Acts to Provide Consumers with Clear Information on Food Allergens

EXECUTIVE SUMMARY

On August 2, 2004, President Bush signed the Food Allergen Labeling and Consumer Protection Act (FALCPA) into law. This new law will require clear information on the possible presence of certain food allergens to appear on food product— including dietary supplement – labels starting January 1, 2006.

OVERVIEW

This is the first federal legislation requiring product labels to address food allergies. Beginning January 1, 2006, the new food-labeling rules will require products containing or likely to contain ingredients or proteins derived from any of eight ‘major food allergen’ groups to list the food that is the source of the allergen in plain English. The eight groups are: crustacean shellfish, eggs, fish, milk, peanuts, soybeans, tree nuts and wheat.

Unless the ingredient declaration on a food label already uses the common or usual name of the food source from which the major allergen is derived (e.g. milk, egg, peanuts), the legislation requires that the source be identified on the label in one of two ways:

1. Use the word “Contains” followed by the name of the food source, printed immediately after or adjacent to the ingredient list. For example: CONTAINS MILK.
2. Use a parenthetical statement in the

ingredient declaration to identify the source. For example: CASEIN (MILK), ALBUMIN (EGG).

For tree nuts, fish and crustacean shellfish, the food source is the specific type of nut, fish, or shellfish. For example: for tree nuts – almonds, pecans or walnuts; for fish – bass, flounder or cod; and for crustacean shellfish – crab, lobster or shrimp.

Flavorings, colorings, or incidental additives are subject to this labeling requirement. However, any highly refined oils from a food specified as a major food allergen or any ingredients derived from such highly refined oils are excluded.

A company may petition the FDA to exempt a product from these labeling requirements if it can provide scientific evidence to demonstrate that its product:

- does not contain an allergenic protein, or
- does not cause an allergic response that poses a risk to human health.

In addition, this legislation requires the FDA to define and permit the use of the term “gluten-free” on food labels.

Finally, the FALCPA calls for the FDA to pursue revisions of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including restaurants, grocery stores, delicatessens, bakeries, and school cafeterias.

FOR MORE INFORMATION

Our team continues to monitor FDA and other organizations for additional developments important to our clients. For more information about this development, please contact one of our team members at (202) 342-8400 or via email:

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