

## **Alert** | Food, Beverage & Agribusiness



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### **Sesame to be Added as the Ninth Major Food Allergen on Food Labels**

On April 14, 2021, the U.S. Congress passed the Food Allergy Safety, Treatment, Education, and Research (FASTER) Act of 2021, which, among other aspects of the law, will require food manufacturers to declare “sesame” as a major food allergen on packaging and labeling. President Joe Biden is expected to sign the FASTER Act into law, mandating food manufacturers to update their labels by Jan. 1, 2023. The new designation of sesame as a major food allergen comes as a welcome relief to those suffering from sesame allergies and will require food manufacturers and brand owners to reevaluate their manufacturing practices and labeling to ensure compliance.

In 2004, U.S. Congress passed the Food Allergen Labeling and Consumer Protection Act (FALCPA). FALCPA recognized eight major allergens: **milk, eggs, fish, shellfish, tree nuts, peanuts, wheat, and soybean**. While nearly 1.6 million Americans suffer from sesame allergies, sesame was omitted as one of the initial major food allergens. The FASTER Act now amends FALCPA to protect those with sesame allergies.

There is a large swath of foods manufactured with sesame and in many of those foods, the presence of sesame is undeclared, making those with sesame allergies susceptible to having allergic reactions. Sesame seeds are often identified generically as “spices” or even “natural flavors,” instead of as “sesame.” Presently, foods cooked in sesame oil often do not need to be labeled with the presence of “sesame.” This has made it hard for the over 1.5 million people with a sesame allergy to determine whether a product actually contains sesame. The FASTER Act amends Section 201(qq)(1) of the Federal Food, Drug &

Cosmetic Act by adding sesame as the ninth major food allergen. Thus, food manufacturers using sesame in any way, including as a natural flavor/spice or as a food processing aid, must label their food as containing sesame by [Jan. 1, 2023](#).

In general, pursuant to federal labeling regulations, all ingredients must be declared on a food label (21 C.F.R. § 101.4), unless they qualify as being exempt as incidental additives, which includes certain processing aids (21 C.F.R. §101.100). Generally, processing aids that are present in the final food in insignificant levels and do not have any technical or functional effect in that food are not required to be identified in the ingredient list. Under FALCPA, however, food manufacturers are required to identify the presence of any of the major food allergens contained in the food, even if the presence of the major allergen was due to its use as a processing aid. For example, foods processed with butter must be labeled with the food allergen statement “Contains milk.”

Complying with FALCPA can be done in one of several ways. If the major food allergen is clearly identifiable in the list of ingredients, no further designation is necessary. If the major food allergen is not identifiable in the ingredients list, the major allergen can be included in parenthesis following the common or usual name of the listed ingredients: i.e. “Ingredients: ... whey (milk), sugar...” Alternatively, the other option is to include a “CONTAINS” statement like “Contains: Wheat, Milk, Egg, and Soy.” That statement must start with the word “Contains:” and must immediately follow the ingredients list. Also important to not is that once a “Contains:” statement is used, all food allergens present in the product must be included in the “Contains:” statement to avoid confusion, even if some of them are readily identifiable in the ingredients list.

For more information and updates on the food labeling issues, visit [Greenberg Traurig’s Food, Beverage & Agribusiness Practice page on gtlaw.com](#).

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