



21 December 2015

Project Officer - Plain English Allergen Labelling
Food Standards Australia New Zealand
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Dear Sir/Madam

Review Project – W1070 Plain English Allergen Labelling

Thank you for the opportunity to comment on this review. The Ministry for Primary Industries (MPI) supports plain English allergen labelling. MPI has included an attachment to this submission to illustrate examples of how allergens are labelled on a selection of food products available in New Zealand – Source: Nutriweb Database (2015 data). Please note that this attachment includes brand names which should not be made public with the submission. This also applies to the brand names in the tables provided within this submission.

When stating the problem and potential outcomes it should be noted that clear naming does not just help allergen sensitive consumers make correct choices, but it is also needed to inform anyone who may purchase food or prepare food (for allergic consumers) in the home, at restaurants, for catering and any situations where food is provided or sold. While many allergen sensitive consumers may be well informed about the range of terms that they need to watch for, others - purchasers or suppliers of food are likely to need plain English terms to correctly interpret allergen information on labels or supporting documentation.

MPI has the following comments to make.

Summary of Questions from FSANZ

1. Are the current requirements to declare fish and fish products in Standard 1.2.3 clear on what foods/ingredients must be captured by the declaration? If not, please explain the problems associated with declaring these foods and ingredients on food labels.

MPI has received several queries relating to whether shellfish should be treated as an allergen. Some industry groups have questioned whether shellfish requires mandatory declaration as 'shellfish' are not specifically listed within Standard 1.2.3. It appears that many manufacturers are not aware of the definition for 'fish' (which includes shellfish) within Standard 2.2.3 – *Fish and Fish Products*.

Based on queries received by MPI, it would appear that confusion exists around what foods/ingredients are captured under 'fish and fish products' within Standard 1.2.3. It would be the preference of MPI, that the standard clarifies and

clearly articulates what species/classes are captured under the following terms; 'fish', 'finfish', 'shellfish', 'crustacean' and 'molluscs' and whether all or only some of the species listed require mandatory declaration.

The New Zealand Animal Products Act takes on board the Fisheries Act definitions which are as follows

finfish has the same meaning as in the Fisheries Act 1996

fish means finfish and shellfish

shellfish has the same meaning as in the Fisheries Act 1996

Fisheries Act definitions:

finfish includes all species of finfish of the classes Agnatha, Chondrichthyes, and Osteichthyes, at any stage of their life history, whether living or dead

shellfish includes all species of the phylum Echinodermata and phylum Mollusca and all species of the class Crustacea at any stage of their life history, whether living or dead

FSANZ may also need to consider jelly fish, sea tulips and other invertebrate seafood that isn't included in the groups above. Are these allergenic?

2. Do food manufacturers understand that the allergen declaration requirement for fish and fish products includes finfish, crustacea and molluscs?

No, confusion seems to exist - see response above. Although the definition of 'fish' in Standard 2.2.3 includes shellfish, and 'shellfish' usually comprises of molluscs and crustacea – the allergen declaration for fish and fish products is confusing. Crustacea and their products are listed separately within Standard 1.2.3 as requiring declaration, whereas molluscs are not.

We note that the FSANZ User Guide to Standard 1.2.3 states that 'for the generic name 'fish' and if the ingredient is crustacea – you must declare the specific name of the crustacea'.

3. Is the term 'fish' being used to refer to molluscs and/or crustacea in a 'contains' statement (even if a mollusc or crustacean ingredient is specifically declared in the ingredient list)?

Unsure.

4. Are manufacturers regularly declaring 'gluten containing cereals' in a 'contains' statement, with the specific cereal/s declared in the ingredient list? Is this information helpful for consumers with a cereal-specific allergy, or does it create difficulties for them in making correct food choices?

Information obtained from the Nutriweb Database shows an example of this approach, whereby '**wheat** dextrose' is declared in the ingredient list, followed by a statement that the product contains gluten– (see the Mother Earth Chilli and Lime Flavoured Cashews in Attachment 1). MPI does not know the extent of this practice, but could look for more examples if FSANZ would like to explore this further.

MPI would also like to raise a separate point in relation to gluten declarations, for FSANZ to note and consider at an appropriate time.

MPI is aware that some manufacturers declare “contains gluten”, as well as “may contain (traces of) gluten” sometimes following an “allergy information” statement. We understand that the intention of such statements about gluten is to meet the mandatory declaration requirements under Standard 1.2.3. However, technically such statements fall under the definition of Nutrition Content Claims and the requirements under clause 11(7)(b) of Standard 1.2.7 (and Standard 1.2.8). Although Standard 1.2.7, clause 5 states that standard 1.2.7 does not apply to declarations required by the Act, Standard 1.2.3 requires declarations about “*cereals containing gluten and their products, namely, wheat, rye, barley, oats and spelt and their hybridised strains other...*”. This does not explicitly include ‘gluten’ itself, unless it is intended that ‘gluten’ is captured by the term ‘products’.

If FSANZ agrees that a “contains gluten” statement could be meeting the requirements of Standard 1.2.3 as gluten is captured by the term ‘products’, we recommend the Food Standard Code clarifies the requirements when declaring the presence of gluten for the purpose of meeting standard 1.2.3. A solution could be to amend standard 1.2.3 by including ‘Gluten or’ before “Cereals containing gluten...”, or clarifying that gluten is captured by the word ‘products’. The addition of a Note in Standard 1.2.7 would also help clarify this situation.

The use of the term “gluten” on pack in addition to (not instead of) the specific name of the cereal can be helpful for people (third parties) preparing food for those people with coeliac. These people can be less aware of which ingredients contain gluten, knowing only that the consumer requires a “gluten free diet”. Listing only the cereal name does not help in this situation.

Additional Information:

- Further to the above comments, MPI has been informed by several individuals with coeliac disease that many manufacturers are voluntarily adding the statement ‘contains gluten’ on their food label when the product does not include gluten containing cereals as an ingredient. The industry norm appears to be the use of a ‘may contain’ statement which is more commonly used in situations where there is the potential for cross contamination. May contain statements warn consumers of the possibility of cross contamination, despite the manufacturer not having used any ingredients containing gluten in the manufacturing of the product. A ‘contains gluten’ statement leaves the consumer questioning whether a gluten containing cereal has in fact been used as an ingredient, but was accidentally omitted from the ingredient list.
- MPI is of the view that ‘may contain’ statements should only be used after the manufacturers have conducted a thorough risk assessment, and where they consider there to be a real risk to the consumer. MPI encourages New Zealand manufacturers to consider using the Allergen Bureau *Voluntary Incidental Trace Allergen Labelling* system (VITAL®) to assess the potential impact of allergen cross contamination in their products. VITAL® includes information on the possible need for precautionary allergen labelling statements. <http://allergenbureau.net/>.

5. Are there instances where food labels omit the mandatory declaration for ‘cereals containing gluten’ because the cereal ingredients happen to contain no detectable gluten?

Yes, MPI has had to advise manufacturers that the requirements of Standard 1.2.3 Clause 4 requires a declaration of cereals containing gluten and their products, and that this mandatory declaration is not related to whether or not gluten can be detected in the final product.

6. Are there instances where manufacturers are declaring the presence of 'gluten' (not 'gluten-containing cereals') along with a declaration of the specific cereal elsewhere on the label? If so, then can you comment on why this labelling practice is occurring, and whether it is/is not useful information for consumers with a cereal allergy?

Yes, the below table illustrates how a selection of products are labelling with regard to gluten. This is by no means a representative list but is purely illustrative.

| Product | Ingredients list | Contains Statement? |
|------------|---|---|
| ██████████ | Wheat and barley listed multiple times (as ingredients and sub ingredients of compound ingredients. Cereals bolded. | "contains gluten containing ingredients" |
| ██████████ | Wheat and barley malt extract listed with the cereals bolded. | "Contains cereals containing gluten" |
| ██████████ | Wheat and barley malt extract listed | "contains gluten" |
| ██████████ | Whole wheat, rolled oats, wheat bran, barley malt extract listed | "contains gluten containing cereals" |
| ██████████ | Barley malt extract listed | "contains gluten containing cereals" |
| ██████████ | Oats, wheat, rye, barley flakes and barley malts extract listed with the cereals bolded | "contains....and cereals containing gluten" |

7. Are you aware of food products that declare the name of a cereal on their labels but also declare that they are 'gluten free'? Would such information be unclear to consumers with a cereal-specific allergy, and if so, how?

Yes, MPI received a query relating to a product with a 'gluten-free' declaration however the consumer expressed concern that the product contained an ingredient derived from wheat. The product in question was glucose syrup derived from wheat. The label on the product carried a 'gluten free' claim as the company had determined that it was meeting the conditions in the Food Standards Code (ie no detectable gluten, and no product from malt, and no malted products). The product did correctly state on the label that the glucose is from wheat, as per the requirement under Standard 1.2.3.

MPI is of the view that the presence of such information on product labels is confusing for some consumers with both cereal-specific allergies and coeliac, due to the fact that MPI has received queries relating to this matter.

8. Do food manufacturers understand which tree nuts must be declared on food labels as a means of meeting the tree nut declaration requirements in Standard 1.2.3?

In answering this question, it is interesting to note that the FSANZ User Guide to Standard 1.2.3 references, Schedule 4 of Standard 1.4.2 *Maximum Residue Limits (Australia Only)* which sets out various foods and classes of foods. This Guide may be of assistance to manufacturers when understanding which tree nuts must be declared, however from the queries that MPI receives, it would appear that not all manufacturers are aware of the User Guide, and the relevance of Standard 1.4.2 when declaring tree nuts (and other allergens). Confusion may also exist as

Standard 1.4.2 is Australia Only, and understanding how it might be applicable to the declaration of allergens and the New Zealand setting is not clear. Tree nuts are defined in Standard 1.4.2 as the seeds of a variety of trees and shrubs which are characterised by a hard inedible shell enclosing an oily seed and includes almonds; beech nuts; brazil nut; cashew nut; chestnuts; coconut; hazelnuts; hickory nuts; Japanese horse-chestnut; macadamia nuts; pecan; pine nuts; pili nuts; pistachio nuts; sapucaia nut; and walnuts. Coconut is the fruit of the palm (*Cocos nucifera*). The scientific literature indicates that coconut is not associated with severe adverse reactions. Therefore, for the purposes of Standard 1.2.3, the presence of coconut in a food does not require mandatory declaration. This list differs to that presented in the April 2015 European Union *Food allergen labelling and information requirements under the EU Food Information for Consumers Regulation No. 1169/2011: Technical Guidance* document which lists what nuts require mandatory declaration, and what other types of nuts, and other foods which are not nuts (even though they are called nuts i.e. chestnuts, pinenuts and coconut) and do not require declaration.

We know from communication with the New Zealand Chestnut Council that they often receive queries along the lines of; 'are chestnuts in the same category as peanuts etc regarding potential nut allergies'. The New Zealand Chestnut Council are of the view that chestnuts (*Castanea* species – not horse chestnuts or water chestnuts, which are a different species altogether) are not in the potentially dangerous 'nut allergy' category (both nutritionally and compositionally) and are quite different to all other typical tree nuts. We have also been informed that there is a range of processed chestnut-derived products that are both imported or produced in New Zealand and not all contain a reference to 'tree nuts' on the label. This may be due to inconsistencies between EU and New Zealand classification of 'tree nuts' and whether this includes chestnuts or not.


An approach where Standard 1.2.3 clearly articulates which 'tree nuts' require declaration would avoid any confusion over what is covered by the 'tree nut' mandatory declaration requirement.

9. Which tree nuts are clinically significant for individuals with a tree nut allergy? Has there been any clinical evidence since 2010 to further clarify the types of tree nuts implicated in tree nut allergies in Australia and New Zealand?

Unsure. The Auckland Allergy Clinic and Allergy New Zealand could be contacted for this information.

10. Are manufacturers declaring the presence of tree nuts using the broader term 'tree nuts' in addition to the declaration of the specific tree nuts elsewhere on the label (e.g. a 'contains tree nuts/nuts' statement, with the specific nuts listed in the ingredient list)? Would such an arrangement on a food label assist or hinder tree nut-sensitive consumers in making a correct food choice?

Yes – please see the examples in the attached document (e.g. Mother Earth Chilli and Lime Flavoured Cashews). Declaring "tree nuts" in a contains statement and also declaring the specific tree nuts elsewhere on the label – eg in the ingredients list – could be helpful to allergic consumers and those preparing food for allergic consumers. The below table illustrates how a selection of products are labelling with regard to nuts. This is by no means a representative list but is purely illustrative. Please also refer to Attachment 1.

| Product | Ingredients list | Contains Statement? |
|---|------------------|---|
|  | | "May contain traces of peanuts and or tree nuts" |
| | | "May contain traces of peanuts and or tree nuts" |
| | | "may contain tree nuts, peanuts and sesame" |
| | | "may contain traces of peanuts, sesame seeds and tree nuts" |

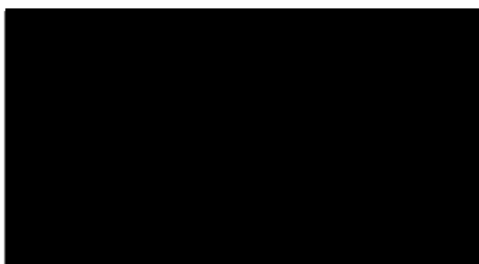
11. Is the use of unfamiliar or unrecognisable terminology for allergen declarations common practice, and/or creating difficulties with the identification of allergens in foods?

We understand from feedback from some consumers that it can be difficult determining whether a food is suitable/not suitable for those with specific food allergies, particularly with ingredient listings that include ingredients such as sodium caseinate, whey protein, casein synonyms by way of example. MPI has been informed that consumers and/or caregivers of children with allergies may not understand that these ingredients contain milk and may incorrectly assume the product is suitable for a child with a milk allergy.

It is MPI's observation that whatever manufacturers are required to put on the label must be user friendly. From a food service perspective chefs need to be able to say to their customers, with some certainty, that they are eating food free of particular allergen/s. If recipes require combining a number of packaged ingredients for a particular dish, then interpreting what's on the labels can become quite a complex task. In this instance, clear and concise labelling will assist foodservice workers in communicating the allergen status of their food to consumers.

12. Do 'contains' statements assist with identifying the presence of an allergen especially in the context of less familiar or less recognisable terminology being used in allergen declarations?

A separate declaration for allergens such as 'Contains milk and milk products' more clearly communicates that a particular food contains an allergen – rather than having to look through an ingredient list which may not be easily understood by the consumer. The "contains statement" could be used to identify the presence of a class of allergen while the specific allergenic ingredient could be listed in the ingredients list, as described for gluten and tree nuts above.



Manager Food Science and Risk Assessment

ATTACHMENT 1: Examples of how allergens are labelled on a selection of food products available in New Zealand – Source: Nutriweb Database (2015 data)

This document only contains a small number of examples for illustrative purposes. MPI has access to this type of information from the Nutriweb data if more specific examples are required. This document has brand names included and therefore we ask that it is not made public with our submission.

Ingredients: Wholegrain Rye Flour (Gluten) (95%), Salt.

Contains: Rye (Gluten).

May Contain: Oats (Gluten), Wheat (Gluten), Sesame Seeds, Soya.

(Gluten bracketed after the specific cereal source in both the ingredients list and the 'contains/may contain statements').

INGREDIENTS: CASHEW NUTS (86%), CHILLI LIME FLAVOUR (451), WHEAT DEXTROSE, DEHYDRATED VEGETABLE OIL, SUGAR, SALT, WHEAT DEXTROSE, DEHYDRATED VEGETABLE OIL, CHILLI (3.5%), FOOD ACID (330), CANOLA OIL, KAFFIR LIME LEAVES (120), CORIANDER, ANTICAKING AGENT (551).
CONTAINS TREE NUTS AND GLUTEN AS INDICATED IN BOLD TYPE. MAY PRESENT PEANUTS, OTHER TREE NUTS, GLUTEN, SOY, MILK, SULPHITES AND SESAME SEEDS.

(Gluten and tree nuts listed in contains statement, specific cereals and nuts declared and bolded in the ingredients list. Contains statement highlights that allergens are bolded in the ingredients list).

INGREDIENTS: PEANUTS, FLAVOUR [SALT, POTATO STARCH, FLAVOUR ENHANCER 621], INACTIVE YEAST, WHEAT FLOUR, YEAST EXTRACT, DEHYDRATED ONION, SPICE, SUGAR, ANTICAKING AGENT (551), DEHYDRATED GARLIC, SPICE EXTRACT, EMULSIFIER (433), FLAVOUR, VEGETABLE OIL, STABILISER (GELATINE, 412), MODIFIED POTATO STARCH, MALTODEXTRIN.
CONTAINS: PEANUTS, WHEAT (GLUTEN).
PRODUCED IN A FACTORY HANDLING CEREALS CONTAINING GLUTEN, MILK PRODUCTS, OTHER NUTS, SESAME SEEDS AND SOYBEAN PRODUCTS.

(Ingredients list declares specific nuts and cereals with no bolding. Contains statement declares specific nut and specific cereal with gluten bracketed after).

INGREDIENTS

Oats (Wholegrain Oats, Oat Crisps (Whole Oat Flour, Rice Flour, Sugar, Malt Extract, Salt)), Apple Paste (Apple Purée (Ascorbic Acid), Apple Juice), Glucose Syrup, Yoghurt Flavoured Coating (Sugar, Vegetable Fat (Emulsifier 492), Milk Solids, Yoghurt Powder (Milk Solids, Culture), Emulsifier (Soy Lecithin)), Rice Crisps (Rice Flour, Sugar, Salt), Brown Sugar, Vegetable Oil, Emulsifier (Soy Lecithin).

Contains Wholegrain Oats 18%, Oat Crisps 18%, Yoghurt Flavoured Coating 14% and Apple Purée 9%.

Contains: Gluten (Oats), Milk and Soy.

(Has two contains statements – only one of which is allergen related, the other is more about characterising ingredients).

INGREDIENTS

White fish (50% minimum), Water, Maize Flour, **Wheat** Flour, Sunflower and Canola Oils, Thickeners (1404,412), Rice Flour, Sugar, Salt, **Gluten**, Yeast, Mineral Salts (450,451), Glucose, **Soy** Protein, Garlic Powder, Onion Powder, Natural Colour (160[b]),

Contains Fish, Wheat, Gluten and Soy.

(Wheat and gluten are both ingredients. Contains statement lists both wheat and gluten. Fish is not described further but is listed in both ingredients list and contains statement. Bolding connects the information in ingredients list and contains statement).

Ingredients: Wheat Flour, Water, Meat (12%) (Beef and/or Mutton), Margarine (Animal Fats and Vegetable Oils, Water, Salt, Emulsifiers (471, 322-Soy), Antioxidant (306-Soy), Colour (160a), Flavour, Acidity Regulators (330, 331)), Thickener (1422), Reconstituted Onion, Carrot, Soy Protein, Salt, Hydrolysed Vegetable Protein, Colours (150c, 160b), Raising Agents (500, 341), Acidity Regulator (451), Emulsifier (481), Yeast, Rice Flour, Sugar, Vegetable Oil, Stabilisers (412, 415), Anticaking Agent (551), Spice Extracts, Maltodextrin.

CONTAINS: GLUTEN (WHEAT) AND SOY
MAY BE PRESENT: MILK

(Ingredients list declares the specific cereals. Contains statement declares gluten but in addition brackets the specific cereal source of the gluten).

Ingredients: Chicken (58%), Water, Flour (Wheat, Maize), Yeast, Salt, Spices, Spice Extract, Mixed Grains (Wheat, Barley), Garlic Butter Filling (8% (Butter (Milk), Garlic, Water, Maize Starch, Soy Emulsifier (322), Onion Powder, Dried Parsley, Salt), Wheat Starch, Wheat Flour, Maize Flour, Modified Starch (1404), Salt, Thickeners (415, 464), Wheat Semolina, Wheat Gluten, Potenta, Mineral Salts (451, 452, 450), Acidity Regulator (330), Vegetable Oil, Sugar, Hydrolyzed Vegetable Protein (Maize, Soy, Wheat, Flavour Enhancer (627, 631)).

Contains: Gluten, Soy, Milk.

May be present: Sesame Seeds.

(Gluten mentioned in contains statement and specific cereals mentioned in ingredients list but not linked to gluten – note wheat gluten is also an ingredient. Butter declared in the ingredients list with (milk) bracketed after it. Milk is listed in the contains statement).

Ingredients: Squid, Mussel, Clam, Shrimp (Mineral Salt (451), Colour(124)), Water Glaze.

(All seafood is bolded in ingredients list (are they all allergens?). No contains statement).

INGREDIENTS
New Zealand Greenshell™ Mussels (*Perna canaliculus*) 43%, Water, Sugar, Food Acid (Acetic Acid), Salt, Natural Flavour, Antioxidant (Ascorbic Acid).
May contain crustacea.

(Mussels listed in the ingredients list. Interestingly crustacea are listed in a may contain statement – presumably due to inadvertent capture of small crabs in the mussel collection).

Ingredients: Protein Blend ((OhYeah!® Blend Consisting of Whey Protein Isolate, Soy Protein Isolate, Milk Protein Isolate, Milk Protein Concentrate, Calcium Caseinate), Hydrolyzed Gelatin), Chocolate Coating (Chocolate Liquor, Maltitol, Cocoa Butter, Sodium Caseinate, Milk Fat, Soy Lecithin (an Emulsifier), Sucralose, Vanillin (an Artificial Flavor), Vanilla and Salt), Almonds, Soy Nuts, Chocolate Caramel (Corn Syrup, Sugar, Cocoa Powder, Crystalline Fructose, Palm Oil, Cocoa Butter, Non-Fat Dry Milk, Lecithin (an Emulsifier), Salt and Natural Flavors), Glycerine, Cocoa Powder, Fractionated Palm Kernel Oil, Soy Lecithin (an Emulsifier), Salt, Sucralose, Peanut Flour and Potassium Sorbate Added as a Preservative.

ALLERGY ALERT: THIS PRODUCT CONTAINS ALMONDS, PEANUTS, MILK, SOY AND IS PROCESSED IN A FACILITY THAT PROCESSES WHEAT INGREDIENTS AND OTHER TREE NUTS.

***NO GLUTEN CONTAINING INGREDIENTS**

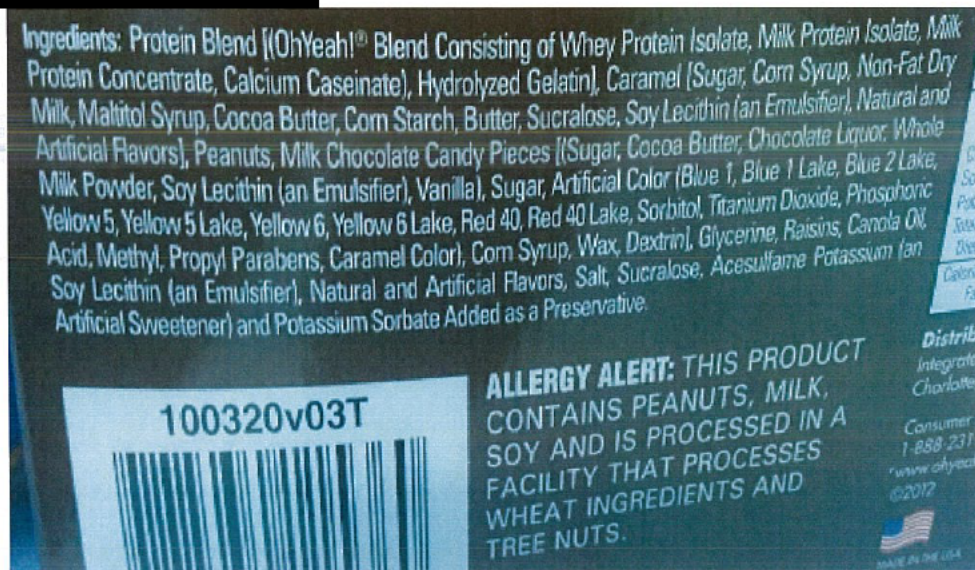
Ingredients: Chocolate 33% (maltitol, chocolate mass, cocoa butter, sodium caseinate, milk fat, emulsifier [soy lecithin], sweetener [sucralose], flavourings, salt), caramel flavoured layer 26% (inulin, polydextrose, water, butter [cream, salt], vegetable fat, nonfat dry milk, emulsifier [soy lecithin], salt, sweetener [sucralose], flavouring), roasted peanuts 14%, maltitol syrup, protein blend (whey protein isolate, milk protein isolate), butter (cream, salt), peanut butter (peanuts, emulsifier [mono and diglycerides], salt, antioxidant [mixed tocopherols]), inulin, flavouring, sweetener (sucralose). FR03.
Contains peanuts, soy, milk. May contain other tree nuts, wheat, sesame seeds.
 Excessive consumption may cause a laxative effect.

(Ingredients list declares specific nuts and milk products (including sodium caseinate). Also lists soy lecithin as an additive. Contains statement a mix of specific (peanuts) and general (milk)).

Ingredients

Turkey (76%), Water, Thickener (1442), Mineral salts (508, 451), **Sodium Caseinate (milk product)**, Salt, Dextrose, Starch, Sugar, Edible casing (from bovine origin), Natural flavour, Vegetable powder, Spice extracts, Flavour enhancer (635).
 Allergens: Milk products.

(Sodium caseinate bolded in ingredients list with (milk product) bracketed after it. Allergen statement states milk products).



(Specific sources of allergens declared in the ingredients list. Allergy alert included declares milk and soy plus the more specific peanuts).

Notably no products were found that declared sodium caseinate or calcium caseinate in the ingredients list without also having a “contains” statement that declared milk products or milk.