Improving the use of ‘may contain’ allergen labelling

by Eoghan Daly, Policy and Technical Advisor, The Institute of Food Safety Integrity and Protection, UK.

When most people buy a pre-packed sandwich from a supermarket or sit down to eat a freshly made lasagne at a café, they do not think much about whether it would cause them pain, harm or even death. People tend to take for granted that their food is safe, both in terms of hygiene and in the accurate declaration of allergens

The situation is not ideal and several food allergies exist. Purchasing food inevitably means a close study of ingredients and warning labels and where food is made on-site, they will have questions for staff about how the food was made.

The situation has improved since the introduction of the Food Information Regulations (2014), which means we can expect accurate information on the 14 allergenic ingredients in all types of food, whether packaged or served as a meal or snack.

But this is not the end of the problem for consumers with food allergies or intolerances. The issue of unintentional presence of allergenic material remains. Use of precautionary ‘may contain’ allergen statements, in particular in the food service sector, is often inconsistent and confusing for consumers.

Labelling difficulties

Since the introduction of the Food Information Regulations in 2014 consumers can expect accurate information on 14 different allergenic ingredients in all types of food, whether packaged or served as a meal or snack. Unfortunately this is not the end of the problem for consumers with food allergies as there is still the issue, due to cross-contamination, of potential and unintentional presence of allergenic material. The vast majority of food businesses work hard to ensure that food is safe, both in terms of hygiene and in the accurate declaration of the presence of allergens. Despite their best efforts some businesses struggle to provide consistent, precise and reliable information about the allergen risks present due to cross-contamination in their supply chain.

Voluntary measures are in place to warn vulnerable consumers of risks, in the form of precautionary ‘may contain’ statements. Deciding when to use a ‘may contain’ statement, however, is not straightforward.

Food businesses that pass on all ‘may contain’ statements, without being confident they are accurate, can ‘devalue’ the warning, reduce choice, and potentially provide false impressions about the allergy risks.

Similarly, blanket approaches that ignore all ‘may contain’ declarations could provide false assurances to consumers with food allergies.

Legal liability

Although the majority of deaths reported from allergic reactions to food are associated with undeclared ingredients rather than as a result of cross-contamination, concerns have been expressed about legal liabilities if a consumer were to have an allergic reaction caused by trace allergens.

The question of liability is of particular concern in situations where a food business decides not to pass on information about the safety of food for their specific circumstances.

Providing ‘may contain’ statements is voluntary but the legal requirement to provide safe food is fundamental. All food business operators are required to carry out risk assessments and have suitable risk management measures in place to ensure they provide ‘safe’ food.

Allergic reactions to the presence of known allergens are a foreseeable risk and, as such, consumers with food allergies are entitled to expect the provision of accurate and reliable information about allergens present as ingredients or as the result of cross-contamination.

In the event of a death or serious harm arising from the presence of undeclared trace allergens, the voluntary nature of precautionary allergen labelling might provide a reasonable defence in a criminal court, if supported by appropriate risk assessment and other due diligence measures.

However, in a civil court the burden of proof is lower, i.e. ‘on the balance of probability’, and an effective defence may be more problematic. A robust ‘due diligence’ defence would require a robust risk assessment of likely cross-contamination hazards.

What can businesses do?

Provision of safe food is a fundamental requirement of food legislation and consumers with food allergies reasonably expect to be provided with information about the safety of food for their specific circumstances. The TiFSiP/CIEH roundtable identified several measures that would improve the use of ‘may contain’ allergen labelling:

- Consistent use of authoritative guidance to obtain better information from suppliers.

FSA Guidance on allergens identifies ways in which a food business can determine whether or not a supplier’s ‘may contain’ information is based on reasonable evidence, or is merely a precautionary statement intended to provide a blanket assurance or limit the (remote) likelihood of future liabilities. Knowing that ‘may contain’ statements are evidence-based would help food businesses to more confidently pass on information to customers and provide greater assurance to those with food allergies.

Continued on page 9
Limiting and simplifying the range of ‘may contain’ descriptors.
Terminology is important, labelling should be consistent. Consensus on the use of a more limited range of ‘may contain’ descriptors, across the food manufacturing and food service sectors, would assist in simplifying the situation, particularly if backed up by consumer education campaigns. The FSA Guidance recommends the use of two phrases ‘may contain’ or ‘not suitable for’.

Improving the consistency of ‘may contain’ labels, and ensuring they are appropriate for allergic consumers, would require food businesses to work with organisations representing consumers with food allergies, such as Anaphylaxis Campaign and/or Allergy UK. The work could link to EU proposals on voluntary labelling (Article 36.3 of Regulation 1169/2011, EU Food Information for Consumers Regulation).

Establishing threshold levels for allergen contaminants to improve risk management and communication.
In Australia and New Zealand the food manufacturing sector uses the VITAL system (Voluntary Incidental Trace Allergy Labelling) to determine the need for ‘may contain’ labelling. It has proven successful.

There have been long running discussions, at EU level, about setting reference doses to inform threshold levels for declaration of food allergen contaminants, but to date little progress has been made.

Agreeing reference doses for allergen contaminant threshold levels for application of ‘may contain’ statements would facilitate more effective risk management and risk communication between manufacturers (suppliers) and their food service customers.

While set reference doses could help, the food service sector would still have to determine when the thresholds were likely to be reached and when ‘may contain’ warnings should be provided.

For example, a small amount of product with trace allergen could be significantly diluted in a final meal and so not reach the set threshold. Decisions around thresholds would be complex as they would require complex dose/impact risk assessments that would be impracticable for most food service businesses.

The issue requires further work to explore whether it would be possible to establish a simplified decision-tree or ‘rule of thumb’ to guide food service businesses about whether ‘may contain’ statements are required.

Any future work would have to establish whether such a proposal would be helpful to food service businesses and consumers with food allergies, whether it is likely to be feasible, and if not, what other options are available to improve the consistency of allergen risk management and risk communication.

Summary

In summary, an EU wide, consistent, threshold based approach for precautionary labelling would be of great value. However, it is unlikely to be achieved in the short term as it would require consensus at a European level.

Clarity and consistency would be improved by rationalising ‘may contain’ descriptors, ensuring their application is based on a real evidence of risk, and clearer more effective communication of their significance to consumers with food allergies.

Most importantly, it would assist vulnerable consumers in making well informed allergen management decisions to protect their health.

A detailed description of each measure, and more information about the issue of ‘may contain’ allergen labelling is available in the white paper which can be downloaded from the TiFSIP website: http://www.tifsip.org/resources/allergens/white_paper