"V" IS FOR VEGETARIAN: FDA-MANDATED VEGETARIAN FOOD LABELING

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Fork: An instrument used chiefly for the purpose of putting dead animals into the mouth.

Ambrose Bierce

I. INTRODUCTION

More than eight million adults in the United States are vegetarians, and around forty percent of all people in the United States regularly seek vegetarian food options while dining. Vegetarianism comes in a multitude of flavors, but a “pure vegetarian,” also called a vegan, does not consume any products that come from animals, including meat, milk, eggs, and gelatin. People practicing a

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2 Figures provided by animal rights group, Mercy for Animals, place the number of vegetarians in the United States at around twenty million and growing. Vegetarian Resource Guide for Restaurants, MERCY FOR ANIMALS [hereinafter VEGETARIAN RESOURCE GUIDE], http://www.mercyforanimals.org/VRGFRNational.pdf (last visited June 12, 2012). However, according to a 2006 Harris Poll conducted for the Vegetarian Resource Group, 2.3% of adults aged eighteen years or older say that they are vegetarian, when “vegetarian” is defined as never eating meat, fish, or fowl. And almost 7% of all people polled claim to never eat meat. Charles Stahler, How Many Adults Are Vegetarian?, 4 VEGETARIAN J. 14, 14–15 (2006), available at http://www.vrg.org/journal/vj2006issue4/vj2006issue4poll.htm.


4 Federally issued dietary guidelines explain the various approaches to vegetarianism:

There are several categories of vegetarians, all of whom avoid meat and/or animal products. The vegan or total vegetarian diet includes only foods from plants: fruits, vegetables, legumes (dried beans and peas), grains, seeds, and nuts. The lactovegetarian diet includes plant foods plus cheese and other dairy products. The ovo-lactovegetarian (or lacto-ovo-vegetarian) diet also includes eggs. Semi-vegetarians do not eat red meat but include chicken and fish with plant foods, dairy products, and eggs.
vegetarian lifestyle may have turned to these dietary restrictions for ethical, religious, environmental, health, or other reasons.5

Currently, the FDA does not require the labeling of food as vegetarian and does not include a definition of “vegetarian” for use in food labeling.6 The Food, Drug, and Cosmetic Act (“FD&C Act”) defines food as “articles used for food or drink for man . . . and articles used for components of any such article.”7 Determining, therefore, what is “vegetarian food” seems only constrained by the FDA’s definition of food itself—no further working definition is available. Further complicating the situation is the FDA’s permissive attitude toward food labeling generalities, such as “natural” or “artificial” flavoring and colorings.8 Many vegetarians find it difficult to identify whether their foods are indeed compatible with their lifestyles.9 An ingredient such as gelatin or rennet could come from either plants or animals, and natural or artificial flavorings, such as “adipic acid (hexanedioic acid), capric acid (decanoic acid), clarifying agents, disodium inosinate, diglyceride, emulsifier, fatty aid, glyceride, lactic acid, . . . [and] polysorbate” may contain animal byproducts or they may be harmlessly sourced from plants or chemicals alone.10


5 See generally Gary E. Fraser & David J. Shavlik, Ten Years of Life: Is It a Matter of Choice?, 161 ARCHIVES INTERNAL MED. 1645, 1645 (2001) (finding that a vegetarian diet, combined with exercise and smoking abstention can add up to eight or five years to a man or woman’s life, respectively); M. Lindeman & M. Väänänen, Measurement of Ethical Food Choice Motives, 34 APPETITE 55 (2000) (assessing why people chose to become vegetarian using scales of “ecological welfare,” “political values,” and religion).

6 See FDA Food Labeling Requirements, 21 C.F.R. § 101.22(h) (2011). The FDA’s decision not to include a definition of “vegetarian” in its regulations under 21 C.F.R. § 101.22(h) has concerned consumers and resulted in petitions for clarifying its existing definitions of terms such as “natural flavoring.” See e.g., VLAN Petition, http://www.fda.gov/ohrms/dockets/dailys/00/mar00/030600/emc0002.rtf (last visited June 12, 2012).


9 Common food ingredients and additives that may come from vegetarian or nonvegetarian sources include disodium inosinate, glycerin, glycerol, cystine, sodium stearoyl lactylate, enzymes, stearic acid, monoglycerides, and diglycerides. Questions About Food Ingredients, THE VEGETARIAN RESOURCE GROUP, http://www.vrg.org/nutshell/faqingredients.htm (last visited June 12, 2012).

Vegetarian consumer groups have suggested that individuals contact manufacturers directly to discern the sources. That is a laborious process and unfairly burdens this segment of the market when other groups—like individuals experiencing food allergies—have access to the information that they need. Vegetarians, in contrast, may not have access to this information, even with a food additive and flavoring dictionary in tow, because complexly named ingredients may be made from animals but be unrecognizable to the average vegetarian consumer. There is no responsibility placed on manufacturers to disclose whether an ingredient is plant or animal sourced.

When devoted vegetarians consume animal flesh or animal byproducts, they may suffer emotional, ethical, or nutritional consequences. The long-term consumption of meat has been linked to detriments to the global environment, personal health, and even feminism. To find out that the hickory flavoring in the

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11 See e.g., Dar Veverka, Just What’s In Those Natural Flavors Anyway . . . ?, VEGSOURCE.COM, http://www.vegsource.com/articles/natural.flavors.htm (last visited June 12, 2012) (emphasizing that the definition of natural flavors can encompass animal byproducts and that consumers should contact manufacturers directly for the best information).

12 See STEPANIAK, supra note 10, at 164–65 (explaining the process whereby vegetarian consumers may ascertain the ingredients of food).

13 Id. at 164.

14 Other countries, such as Taiwan, have placed greater responsibilities on food manufacturers to clearly and accurately label their foods for vegetarian consumers. A 2009 law in Taiwan, for example, requires five different categories of vegetarian food labeling and fines violators up to $6,000 USD. See Taiwan to Enact World’s Strictest Law on Veggie Food Labeling, EARTHTIMES.ORG (June 8, 2009, 11:07 PM), http://www.topnews.in/ taiwan-enact-worlds-strictest-law-veggie-food-labeling-2175647.

15 Committed vegetarians can experience diarrhea, nausea, bloating, and vomiting when they consume meat after being on a vegetarian diet. See Alexander Lane, Do Vegetarians Lose the Ability to Digest Meat?, CHOW.COM (Nov. 28, 2007), http://www.chow.com/stories/10827. If vegetarians turn to the lifestyle for ethical reasons, such as advancing animal rights or minimizing the environmental impact that comes from factory farming, they may be distraught that they have unintentionally killed an animal to fuel their bodies. These committed reasons for turning to vegetarianism are often criticized by sustainable agriculture advocates. See Tom Regan, Vegetarianism and Sustainable Agriculture: The Contributions of Moral Philosophy, in FOOD FOR THE FUTURE: CONDITIONS AND CONTRADICTIONS OF SUSTAINABILITY 103, 104 (Patricia Allen ed., 1993) (arguing that the “V word,” vegetarianism, needs to be considered by sustainable agriculture advocates as being more than “‘weird’ or worse”).

soy barbecue is animal derived can be disturbing and sickening, at the least, to people committed to following a vegetarian diet. More fundamentally, it might run counter to a commitment to animal ethics that they uphold and advance at every meal and through other lifestyle decisions. The purpose of ingredient panels is to assist consumers in making informed dietary choices and the current system does not allow vegetarians to have full access to the information that they need to participate in these decisions.

Several voluntary certification systems for vegetarian foods exist, but as this Article will argue, the current voluntary approach is inadequate. While manufacturers interested in attracting vegetarian consumers can turn to these certifications as enhanced assurances that their products are vegetarian, inconsistent standards and use across the packaged food system make vegetarian consumers wary of what they might be eating. Without accurate reference guides to foods, such as those published by People for the Ethical Treatment of Animals (“PETA”) and Physicians Committee for Responsible Medicine (“PCRM”), vegetarian consumers may shy away from foods that do not bear these certification symbols. Alternatively, vegetarian consumers may eat at their own risk, unsure if the foods they have consumed are in fact vegetarian.

As the number of vegetarian consumers grows to over eight million in the United States, the FDA should take responsibility for encouraging manufacturers to fully disclose the sources of their ingredients and the processes under which they were manufactured. Have the wheat crackers that contain no milk or eggs

(“Research shows that vegetarian diets are well suited to protect the environment, to reduce pollution, and to minimize global climate changes.”).

17 Even researchers who view vegetarianism as a preference have noted how those “preferences” can be transformed into values evoking “disgust.” Paul Rozen et al., Moralization and Becoming a Vegetarian: The Transformation of Preferences into Values and the Recruitment of Disgust, 8 PSYCH. SCI. 67, 71–72 (2006).

18 Third-party vegetarian certifiers include the Vegan Mark, the European Vegetarian Label, the Natural Food Certifiers Vegan Symbol, the Vegan Action Logo, the Vegan Society Trademark, and the UK Vegetarian Society’s Seedling Symbol. See generally Jeanne Yacoubou, Vegetarian Certifications on Food Labels: What Do They Mean?, 25 VEGETARIAN J. 17 (2006) (discussing the various vegetarian certification systems and their limitations).


20 The Coalition for Consumer Information on Cosmetics’s optional “cruelty-free” leaping bunny symbol, placed mostly on toiletry products by participating manufacturers, is another example of an effort to inform and appeal to vegetarian consumers. See About Us, LEAPING BUNNY, http://www.leapingbunny.org/about.php (last visited June 12, 2012).

21 Consumers seem to be increasingly interested in the ethical production of their food. A prime example is organic foods, where people may perceive organic as a sign of environmental stewardship, ethical treatment of workers and animals, and the quality of the product. See generally Gemma C. Harper & Aikaterini Makatouni, Consumer Perception
(according to the recognizable ingredients on the ingredients panel) been produced by a machine that is used for butter cookies? Is the coloring source for the gelatin-free snack pudding derived from beetles? The endless options in the grocery store, coupled with the heightened anxiety and digestive upset that can follow from straying from one’s vegetarianism, make the FDA’s role in planning for and overseeing a vegetarian certification system all the more important.

This Article will explore the case for a standardized vegetarian packaged food labeling and certification system designed and implemented by the FDA. Part II presents the current problems with the FDA’s *laissez faire* approach to vegetarian food certification. Part III of the Article addresses the law giving the FDA the authority and duty to ensure that vegetarian consumers are fully informed of food ingredients. Part IV then presents three case studies—kosher certification, bioengineered foods, and food allergens—that could assist the FDA in designing a consumer-friendly approach to vegetarian packaged foods. Finally, Part V outlines a proposal to assist the FDA in addressing this critical monitoring and labeling issue.

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22 See Yacoubou, *supra* note 18, at 18–22 (identifying that on-site inspections of food manufacturing equipment are rare and even many vegetarian food manufacturers rent equipment used previously for nonvegetarian food items).

II. OVERVIEW OF THE PROBLEM: DOES MY WINE CONTAIN FISH BLADDERS?24

You have just dined, and however scrupulously the slaughterhouse is concealed in the graceful distance of miles, there is complicity.

*Ralph Waldo Emerson*25

As an herbivore, I like to joke with my husband, an omnivore, that one reason that I keep him around is that he samples food for me and discerns its origins and contents as best as he can.26 Vegetarians around the world understand the terror of the unlabeled food buffet,27 but that kind of setting invites the partaker to throw caution to the wind and potentially end up with mysterious meat (or suspiciously meat-like chunks) in the potato salad and bacon rendering in the kale.28 After years of living in Virginia and Oklahoma, my strategy has evolved to sending my husband ahead of me and comparing notes on the buffet’s contents as we go along. Has that strategy saved me the unsavory moment of demurely spitting out macaroni salad into my napkin? No. Today’s chef or food manufacturer fully explores the potential of bacon and other meaty bits.29

24 A commercial for Bill Nye, “The Science Guy’s” TV show (“Stuff Happens”), asks the viewer if she has ever drank fish bladders. Most viewers are shocked to discover that beer and wine may contain ground bladders, also known as isinglass. See Merriam-Webster Dictionary (2009), available at http://www.merriam-webster.com/dictionary/isinglass. The FDA and the Treasury Department’s Alcohol and Tobacco Tax and Trade Bureau (TTB, formerly the Bureau of Alcohol, Tobacco, and Firearms) are responsible for the labeling of alcoholic beverages at the federal level. For more information about TTB’s practices, see TTB Labeling, TTB.gov, http://www.ttb.gov/labeling/index.shtml (last updated Sept. 27, 2011).

25 RALPH WALDO EMERSON, THE CONDUCT OF LIFE 7 (1904).


27 Food buffets can be terrifying for other reasons, including spoilage. See Robert E. Brackett, Safe Handling of Fruits and Vegetables, in SAFE HANDLING OF FOODS 79, 98 (Jeffrey M. Farber & Ewen C. D. Todd eds., 2000) (“Self-serve buffet lines also present a unique combination of food safety hazards. Such serving lines often have cooked meats and poultry, raw produce, and condiments placed close together or adjacent to each other in the display cases . . . creating a risk of cross-contamination.”).

28 In the online comic strip, Diesel Sweeties, one character asks another about her lunch. She replies, “Veggie Burger with Bacon. The Best Sandwich Ever!” When her friend retorts with “That’s Stupid!,” she accuses him of discriminating against “bacovegetarians” because “bacon is a vegetable.” R. Sevens, Bacon is a Vegetable, Diesel Sweeties (2004), http://www.dieselsweeties.com/archive/931.

29 “Real” stand-alone bacon (versus tempeh or tofu “bacon”) would be regulated by the USDA, not the FDA. Bacon is about as ubiquitous in the American diet as the iconic apple pie, fast-food burger, and Twinkies. For a history of America’s obsession with bacon, see Heather Lauer, Bacon: A Love Story: A Salty Survey of Everybody’s Favorite Meat (2009).
Packaged foods present even more obstacles than the buffet, however. Unlike the restaurant situation or the family picnic, packaged food, such as canned goods, have no interactive features.\(^{30}\) There is no one available to quiz on the preparation of the foods and the label does not require full disclosure.\(^{31}\) Ingredients are displayed on the food label, but the FDA allows manufacturers to skirt the source of their baked beans’ “secrets” by speaking in generalities that this Article will explore as potential minefields for vegetarians.\(^{32}\) Manufacturers, for example, are allowed to summarize certain ingredients as “spices,” “flavoring,” or “colorings.”\(^{33}\) Many of these ingredients are derived from animals, yet it would be nearly impossible to discern which are, because we do not ask manufacturers to flag whether their ingredients come from plants or animals.\(^{34}\)

Any vegetarian certification symbol currently on packaged foods comes from voluntary certification organizations, such as Vegan Action, Vegetarian Society, and the American Vegetarian Association, and is optional for manufacturers to seek.\(^{35}\) This community-driven approach leaves vegetarian consumers without reliable unified standards for disclosure. Presumably, only a small fraction of food products bear the designations,\(^{36}\) and with such a paucity of information, vegetarians are still left to guess about the purity of countless other products that they buy.

Food purity, with regard to being fully plant-based, comes from more than ingredients. Vegetarian consumers may also be concerned about how the food is manufactured and whether it is exposed to, and potentially contaminated by, production in a setting that uses animal-based ingredients.\(^{37}\) Much like a Kosher or

\(^{30}\) Just because the canned good is an inanimate object does not mean that it cannot have a profound effect on consumers’ behaviors. See Douglas C. Michael, Self-Regulation for Safety and Security: Final Minutes or Finest Hours?, 36 SETON HALL L. REV. 1075, 1104 (2006) (describing the demand for canned goods coming “almost to a standstill” after Upton Sinclair’s The Jungle was published about the meat-packing industry).


\(^{32}\) See infra Part III.

\(^{33}\) See 21 C.F.R. \$ 101.22(h) (“The label of a food to which flavor is added shall declare the flavor . . . in the following way: (1) Spice, natural flavor, and artificial flavor may be declared as ‘spice,’ ‘natural flavor,’ or ‘artificial flavor,’ or any combination thereof, as the case may be.”).

\(^{34}\) See Verkerka, supra note 11 (“[N]atural flavors can be pretty much anything approved for use in food.”).


\(^{36}\) The author has contacted some of the leading vegetarian certifiers to determine what market share they have but that information is unavailable.

\(^{37}\) Vegetarians may also have to worry about their foods containing unintended low-quality ingredients, introduced through poor manufacturing processes. See, e.g., Katharine Van Tassel, The Introduction of Biotech Foods to the Tort System: Creating a New Duty to
an allergic consumer—issues to be explored in the case studies to follow—
a vegetarian is interested in ensuring that her soy crisps or coconut milk yogurt does
not contain traces of milk, eggs, or meat. The growing voice of food buyers with
allergies convinced the FDA to include designations on labels for foods that
contain soy, milk, or fish. This system could be readily transferred to identifying
facilities where meat or animal byproducts are processed. Parts IV and V will
explore these issues fully.

When considering the scope of the labeling problem, it is important to
remember that vegetarians are not the only consumers who seek and buy
vegetarian-certified products. A growing movement of “flexitarians” and health-
conscious consumers has driven demand for foods that are low fat, high fiber,
nutrient rich, and plant sourced. While not experiencing the same level of
visceral disgust as the vegetarian who finds bacon flavoring in a can of green
beans, these other consumers have similar desires and stakes in knowing the
contents of their foods and making informed choices. The vegetarian labeling
issue, therefore, touches a larger population of consumers than one might think and
raises the recurring question in food law about the facts that should be available to
consumers.

Consumer and animal rights groups, such as PETA, have produced guides to
packaged foods to allow vegetarians to select some “animal friendly” options in
the grocery store. Unfortunately, these guides become dated even before they
reach publication. The number of new food products grows by thousands every
year. This escalation limits options of vegetarians and may push them into buying

approved for human or animal use have been slipping into the food supply through
manufacturing processes, providing the example of vegetarian corn dogs containing mutant
corn). 38 See infra notes 82–158 and accompanying text.
39 See infra Part IV.C.
40 See, e.g., Gary Chartier, The Law of Peoples or a Law for People: Consumers, Boycotts, and Non-Human Animals, 12 BUFF. ENVTL. L.J. 123, 124 (2005) (citing health,
environmental, aesthetic, and economic reasons that people might consume vegetarian
foods).
41 A self-proclaimed “flexitarian” is a “flexible vegetarian” who eats mostly a
vegetarian diet, but sometimes partakes of fish or meat. See Ewa Tomaszewicz, Novel
Words with Final Combining Forms in English – A Case For Blends in Word Formation,
the importance of “process preferences” and that “consumption often is an intensely
personal activity with significant moral consequences”).
43 See, e.g., Vegan Shopping Guide, supra note 19.
44 While new food and drink product launches declined by thirty-percent in 2009,
products making ethical or environmental claims increased by seventeen-percent. Press
Release, Mintel, Food and Drink Product Launches Decline During 2009 Recession (Jan.
a limited set of foods that are more expensive or less desirable for other reasons—but that do bear a vegetarian certification of some kind.

Additionally, the certifications themselves can be confusing. The requirements and symbols differ—from a “V” encased in a heart, to a “Vegetarian Society” logo. And many people interested in embarking on a vegetarian diet may not be aware of these systems, let alone what the symbols on the food packages mean. Even the independent certification organizations may have difficulties ensuring that ingredients from manufacturers continue to be plant sourced because they have few resources and regulatory powers over companies.

Why would manufacturers of packaged foods be hesitant to cooperate with a vegetarian labeling effort? They may worry about positioning themselves in the market as only a vegetarian food. With the proposed development of the FDA’s vegetarian certification standards, manufacturers may express concern that they are being forced to disclose their ingredients and processes, and that in doing so they will be presented with decreased sales or become vulnerable to copycats in the marketplace. Under this view, identifying one’s products as vegetarian could

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45 For a chart of current examples, see Vegetarian Certification Logos, supra note 35.

46 “Consumer concern” is being bandied about more frequently as “novel foods” enter the market. Appropriate, identifiable labeling might be the solution. “For consumer concerns that are linked to ideas about a good society, labeling can only provide a solution if it is seen as an addition to political action rather than as its substitution. Labeling can help consumers take up their political responsibility.” Frans W.A. Brom, Food, Consumer Concerns, and Trust: Food Ethics for a Globalizing Market, 12 J. AGRIC. & ENVTL. ETHICS 127, 127 (2000).


48 The FDA must still approve claims made by the manufacturers of food products as to disease or other material claims. The FDA may prevent a company from advancing speech that is false, misleading, or advocating a violation of the law, and it may restrict speech falling outside of those categories where it has a “reasonable fit” and the restriction accomplishes the purpose of the restriction. See Elizabeth Martell Walsh, Erika King Lietzan & Peter Barton Hutt, The Importance of the Court Decision in Pearson v. Shalala to the Marketing of Conventional Food and Dietary Supplements in the United States, in REGULATION OF FUNCTIONAL FOODS AND NUTRACEUTICALS: A GLOBAL PERSPECTIVE 109, 123 (Clare M. Hasler ed., 2005).
come with the stigma of being allied with a “radical” part of the consumer market.\footnote{See Robert Garner, Animals, Politics, and Morality 60 (Mikael Skou Anderson & Duncan Liefferink eds., 2d ed. 2004) (describing the dividing line between animal-focused vegetarians as the radical ones advocating for animal rights and the conservative ones interested in animal protection).}

Cultural stereotypes about anemic, hemp-clad PETA activists have long been associated with vegetarians, but as more mainstream celebrities, such as Alicia Silverstone, Natalie Portman, Woody Harrelson, and Pamela Anderson, embrace vegetarianism, that stigma is lessening.\footnote{See Jason Corner, The World’s Least Sexy Vegetarian: The Anti-Grahamite Fiction of Melville and Hawthorne, 13 J. Liberal Arts & Sci. 21, 21–22 (2008) (discussing the history of vegetarianism as a juxtaposition to today’s celebrity vegetarian culture); B. Kew, Appropriating Liberation, 11 Soc’y & Animals 29, 35–36 (2003) (enumerating the failures of quasi-vegetarian celebrities to bring animal rights issues to the forefront and to practice vegetarianism consistent with an animal liberation model).} Marketing strategies that emphasize protein, manliness, or meat imagery (e.g., smoky goodness, hickory flavoring, “stick to your ribs” food) could be undercut by placing a “V” for vegetarian or a “dancing carrot” on the can of vegetable stew.\footnote{See, e.g., Philip J. Trochcia & Swinder Janda, A Cluster Analytic Approach for Consumer Segmentation Using the Vegetarian/Meatarian Distinction, 9 J. Food Products Marketing 11, 12, 20 (2003) (suggesting that companies look at the two populations as distinct niches and begin to understand their underlying values, wants, and behaviors).} The likely outcome, however, is that manufacturers could use these designations to reach new segments of the market and to join the ranks of health foods in their marketing strategies.\footnote{Being vegetarian might be an indicator of other market behavior. A recent study found that vegetarian consumers were also more likely to purchase organic products or food items perceived to be natural. Benjamin M. Onyango et al., Purchasing Organic Food in U.S. Food Systems: A Study of Attitudes and Practices, 109 Brit. Food J. 399, 408–09 (2007).}

Manufacturers may also be concerned about the perceived administrative burdens and costs of both documenting and providing this information accurately. These issues are the same ones raised in the food allergens debate, discussed in Part IV of this Article, and many of the same ingredients (e.g., dairy derived, fish derived) could be material to both camps. The needs of consumers to know what their food is and where it comes from should offset any small inconveniences placed on the producers who are profiting from these foods.
III. THE LAW GOVERNING PACKAGED FOODS

*I’m not a vegetarian because I love animals; I’m a vegetarian because I hate plants.*

A. Whitney Brown

State agencies, the Department of Agriculture; the Environmental Protection Agency; the Federal Communications Commission; the U.S. Department of Health and Human Services, and its Food and Drug Administration ("FDA") (also through the Center for Food Safety and Nutrition) are all charged with the regulation of food and its production and labeling. The FDA, however, retains power over the labeling of packaged foods. The overarching goal of the FDA in this area is to keep consumers informed about the contents and claims on foods they encounter in their daily lives. Three statutes—the Federal Food, Drug, and Cosmetic Act ("FD&C Act"); the Fair Packaging and Labeling Act ("FPLA"), and the Nutrition Labeling and Education Act of 1990 ("NLEA")—govern food labels.

Take a canned good off of the pantry shelf and notice the labeling system on it. Usually, it will have a front label panel, also known as a principal display panel...

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54 See generally PATRICIA A. CURTIS, GUIDE TO FOOD LAWS AND REGULATIONS (2005) (providing an overview of the various federal entities involved in the regulation of food, its claims, and its environmental impact).
56 According to the FDA’s website,

The FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation’s food supply, cosmetics, and products that emit radiation. FDA is also responsible for advancing the public health by helping to speed innovations that make medicines more effective, safer, and more affordable; and helping the public get the accurate, science-based information they need to use medicines and foods to maintain and improve their health.

What We Do, U.S. FOOD & DRUG ADMIN., http://www.fda.gov/AboutFDA/WhatWeDo/default.htm (last updated Nov. 18, 2010).
58 Id. § 1451.
60 U.S. FOOD & DRUG ADMIN., supra note 55.
("PDP"): this panel is the one first seen by the consumer when he or she removes it from the supermarket shelf.61 The canned good will also bear an informational panel ("IP"), immediately to the right of the PDP.62 These labels must bear the identity or name of the food and its net quantity.63 In addition, the IP must contain the “name and address of the manufacturer, packer or distributor, the ingredient list, and nutrition labeling.” if this information is not on the PDP.64

Of most importance to vegetarian consumers is the FDA’s approach to ingredient labeling and its critical exceptions to its philosophy of full disclosure in food labeling.65 Just as the FDA sets out detailed requirements for other parts of the food label, it is clear about ingredient disclosure. An ingredient list may appear on the IP or PDP and it must provide ingredients in “order of descending predominance by weight.”66 Ingredients must be listed by their “common” or “usual” name so that the consumer can easily identify them.67

The FDA, however, is more lax when addressing trace ingredients and natural or artificial spices and flavors. Trace ingredients that serve no function in the end product and are incidental to the production do not need to be declared.68 Natural or artificial spices and flavorings can be declared in the main ingredient list by their common or usual names or they may simply appear labeled as “spices,” “flavor,” “natural flavor,” or “artificial flavor.”69 These allowances to manufacturers are the crux of the problem with food labels today. Without these specific declarations, vegetarian consumers do not even have the opportunity to scan a dictionary of food ingredients to see if the item could be animal or plantsourced. It is simply put under the umbrella of “flavor” or “spices” for example, with no hints of origins provided.

In disputes over the appropriateness of food labels, the FDA focuses on the issue of “materiality.” Vegetarians may believe that knowing whether the ingredients in their food are plant or animal derived is “material,” but because there is no system of certification and enforcement, or even a regulatory definition

62 Id. § 101.2(a).
63 Id. §§ 101.3(a), 101.105(a).
64 Id. §§ 101.2(b), (d). The FDA also dictates the allowable font sizes and visual contrast that should be on the packaged food. Id. § 101.2(c). Additionally, “intervening” or nonessential information should not be part of the IP. Id. § 101.2(e).
65 In a study of food label use and its effects on daily nutrition, researchers found that vegetarians use food labels to consume less fat, sodium, and cholesterol than nonvegetarians. Where people have been switched to vegetarian diets for health reasons, convenient and accurate labeling may assist them in achieving the same nutritional benefits. Sung-Yong Kim et al., The Effect of Food Label Use on Nutrient Intakes: An Endogenous Switching Regression Analysis, 25 J. AGRIC. & RES. ECON. 215, 227–228 (2000).
66 21 C.F.R. § 101.4(a).
67 Id.
68 Id. § 101.100(a)(3).
69 Id. §§ 101.22(h)(1)–(2). The author could not locate reliable information about the percentage of these ingredients that could be animal-sourced.
for “vegetarian,” the FDA’s concern focuses strictly on material claims that are made, not on the implications of a manufacturer’s silence. Silence about the plant or animal source of ingredients has not been addressed by the FDA as being material, leaving vegetarians in the lurch. In general, the FDA first looks at whether a food’s label is misleading and then examines whether the misleading information is material. Under Section 403(a)(1) of the FD&C Act, misbranded foods are ones bearing labeling that is misleading or false in any way.\textsuperscript{70} Section 201(n) clarifies label requirements:

If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.\textsuperscript{71}

The legislative history of Section 201(n) does not offer much assistance in defining “material,” but the FDA has generally found materiality to encompass information about the attributes of the food, such as its health risks.\textsuperscript{72} The FDA has also looked at two other categories of relevant attributes—information that might mislead the consumer in light of other statements made on the label (e.g., requirement for quantitative nutrient information when certain nutrient content claims are made about a product); or in cases where a consumer may assume that a food, because of its similarity to another food, has nutritional, organoleptic, or functional characteristics of the food it resembles when in fact it does not (e.g., reduced fat margarine not suitable for frying).\textsuperscript{73}
Concerns about labeling revolve around both the existence of material information and its absence. If a manufacturer, for example, makes claims related to the missing material information, it is subject to the same penalties as if it had made erroneous claims about included information. Therefore, if a manufacturer claimed that a product was vegetarian when it was not, the manufacturer could be subject to penalties imposed by the FDA. This is true even under the current regime, where the FDA has been hands off about a consistent scheme of vegetarian food labeling.


See id.

The penalties for misbranded food include injunctions, fines, seizure, and criminal violations. Id. §§ 331–37 (2006). For example, between 2006 and 2007, several pet food companies manufactured and distributed melamine-contaminated food in the United States. In February 2008, a federal grand jury indicted two Chinese nationals and their businesses, as well as a U.S. company, its CEO, and its president who were involved in the scheme. More than 150 brands of pet food were recalled beginning in March 2007. Walt D. Osborne, Several Firms, Corporate Executives Indicted in Adulterated Pet Food Case, 23:1 FDA VETERINARIAN NEWSLETTER 5 (2008), available at www.fda.gov/AnimalVeterinary/NewsEvents/FDAVeterinarianNewsletter/ucm083974.htm.

See, e.g., Michele Simon, High-Tech Food Fight: The Controversy Surrounding Genetically Engineered Foods, NEW AGE, Mar.-Apr. 1999, available at http://www.appetiteforprofit.com/docs/high_tech_food_fight.html (describing the concerns of vegetarians that the FDA’s hands off approach may even result in consuming vegetarian-appearing foods that have been infused with animal genes). Even where voluntary certification programs exist outside of the vegetarian sphere, such as the Smart Choices program for supposedly healthy foods, these approaches often result in misleading claims and “healthy” logos assigned to foods containing high levels of fat and sugar. See Sarah Skidmore, Industry Backs Off Food Labels After FDA Criticism, ASSOCIATED PRESS, Oct. 24, 2009.
IV. COMPARATIVE CASE STUDIES: A STORY OF PAREVE,78 THE PURPLE TOMATO,79 AND REDBRIDGE80

Nothing will benefit human health and increase chances for survival of life on Earth as much as the evolution to a vegetarian diet.

Albert Einstein81

While the FDA has been absent from the vegetarian food labeling issue, it has been persuaded to respond to labeling concerns identified by other consumer groups. The case studies of kosher foods, bioengineered food, and food allergens all provide helpful examples of how the FDA could act in relation to vegetarian foods and help show what consumers have done to provide their own labeling systems. Each of these groups’ concerns could be considered private issues to be addressed by individual consumers, yet because of the representation and advocacy skills behind these consumer groups, the FDA has been more ready to respond than it has to vegetarian consumers. These examples range from approaches consisting of little to no involvement by the FDA, as is the case with Kosher certification, to more active participation by the FDA, such as in the recent food allergen labeling law.

A. Kosher

Kashrut, the system of Jewish dietary laws, determines what food is to be considered “kosher.”82 The Torah, as well as oral tradition and other rabbinical sources, have shaped the kosher diet.83 Its origins may be linked to ethical,

78 Under Kosher dietary laws, “pareve” (also parve or parevine) means food without animal or dairy ingredients. Pareve foods include fish, however, and therefore would not meet vegetarian food needs. See ENCYCLOPÆDIA BRITANNICA, http://www.britannica.com/EBchecked/topic/443526/pareve (last visited June 12, 2012).

79 Increasing nutritional value is one of the goals of bioengineered foods. In 2008, British researchers engineered a purple tomato that had higher levels of antioxidants than the common tomato; its genes came from snapdragons. Marc Kaufman, Extra-Nutritious Bioengineered Foods Still Years Away, WASH. POST, Nov. 3, 2008, at A12.


81 Patricia Couceiro et al., Eating Pattern of Vegetarian Diet, 6 EINSTEIN 365, 372 (2008). Albert Einstein was a practicing vegetarian. See id. at 366.


83 Id.
philosophical, hygiene, and ritual reasons.\textsuperscript{84} Regardless, the “clean foods” of Kosherism provide a set of challenges for its observers, especially in a time of ever-expanding packaged foods.\textsuperscript{85}

Rather than relying on the FDA, the Jewish community has created its own independent certification systems for kosher foods.\textsuperscript{86} Rabbis, who are part of nonprofit food supervision groups, oversee the process that results in voluntary symbols\textsuperscript{87} placed on packaged foods. Among these are the OU (U encircled by the O),\textsuperscript{88} “Circle K,”\textsuperscript{89} and “Star K.”\textsuperscript{90} These symbols demarcate which packaged foods have been approved by a rabbi—a kosher food expert—and are fit to eat.\textsuperscript{91}

The largest group of consumers of kosher foods, some seventy-five percent, are non-Jews interested in the foods themselves for taste, quality, or other reasons.\textsuperscript{92} Seventh-day Adventists, for example, rely on kosher foods to keep their diets in accordance with religious teachings.\textsuperscript{93} Muslims may also turn to kosher-certified foods for assurances that the items are clean—in both preparation and morals.\textsuperscript{94} Vegetarians and vegans constitute another community that may be


\textsuperscript{85} This Article will not explore the body of kosher laws; its focus is only on packaged foods and the challenges relating to them for kosher consumers.

\textsuperscript{86} A chart of the most common Kosher symbols can be found at YAHWEH’S RESTORATION MINISTRY, http://www.yrm.org/koshersymbols.htm (last visited June 12, 2012.).


\textsuperscript{88} YAHWEH’S RESTORATION MINISTRY, supra note 86. OU stands for the Union of Orthodox Jewish Congregations. For more information on the OU, see Orthodox Union, \textit{Why The World’s Best Known Brands Choose the OU for Kosher Certification}, OU KOHER.ORG, http://www.oukosher.org/index.php/learn/consumer (last visited June 12, 2012).

\textsuperscript{89} YAHWEH’S RESTORATION MINISTRY, supra note 86. The K in a Circle is certification offered by the Organized Kashruth Laboratories.

\textsuperscript{90} Id. The K in a star stands for Star-K Certification in Baltimore, Maryland.


\textsuperscript{93} Id.

\textsuperscript{94} Ran-Dav’s Cnty. Kosher, Inc. v. New Jersey, 579 A.2d 316, 324 (N.J. Super. App. Div. 1990) (“We recognize that there are basically three groups who purchase Kosher products. First, there are the observant Jews who wish to comply with their religion. Second, there are members of other religions or persons with health problems who rely upon the fact that the commonly-known bases of the Kosher designation will be observed.
interested in kosher labeling because they realize that \textit{pareve} products will not contain animal meats or milk products.\footnote{See Sullivan, supra note 92, at 207.} At a first pass, this approach may work well for vegetarians, but it does not guard against consuming fish or eggs, for example.\footnote{NANCY BERKOFF, VEGAN IN VOLUME 39 (2000) (discussing the intersection of the Kosher food system and veganism).} And meats can be certified as kosher, too.\footnote{Id. at 38.}

Kosher laws relate not only to the food’s ingredients, but also to the manner in which it is prepared. These practices dictate standards for the cleanliness and avoidance of cross-contamination between clean and unclean foods.\footnote{See generally LEONARD J. GREENSPOON ET AL., FOOD AND JUDAISM, at xii–xiv (2005) (exploring how food has defined Jewish identity and created cultural unity and friction).} Without going into the nuances of the kosher diet, it is worth noting that the interplay of kosher laws and their certifying agencies is important because a manufacturer agrees not to change its contents or manufacturing processes once the Kosher designation is provided.\footnote{See Shayna M. Sigman, \textit{Kosher Without Law: The Role of Nonlegal Sanctions in Overcoming Fraud Within The Kosher Food Industry}, 31 FLA. ST. U. L. REV. 509, 529–30 (2004) (explaining the contractual relationship established between the KSA and food manufacturers and the process of onsite visits).}

If it does, the manufacturer may be liable at the state level for false advertising and at the FDA level for misbranding. The FDA can pursue misbranded vegetarian foods in the same way, as discussed in Part III.

Process \textit{and} ingredients both become critical to disclose to consumers. In this way, consumers interested in kosher foods share some of the same concerns as those faced with buying food that may be bioengineered, contain allergens, or be derived from animals. In each of these situations, consumers have a need to know about their food in order to follow a personal or spiritual edict for health and wellness. The preparation and cross contamination of the foods can become just as important as the actual ingredients listed on the label panel.\footnote{Case law on the food preparation as “material” issue has been mixed. Under Continental Chemiste Corp. v. Ruckelshaus, the item containing traces of a contaminant must be a food product itself and not another product that could come into contact with food. 461 F.2d 331, 337 (7th Cir. 1972); cf. Grocery Mfrs. of Am. v. Gerace, 755 F.2d 993, 997–98, 1003–05 (2d Cir. 1985) (finding that requiring a manufacturer to label packaged imitation cheese as such did not burden interstate commerce and was in compliance with FDA regulations).}
The case study of kosher foods provides interesting parallels and juxtapositions to the concerns of vegetarian consumers. Many people view vegetarianism as an ethics or belief system, and some vegetarians may be observing these dietary modalities because of their religions—Buddhists, Hindus, or Seventh-day Adventists. But vegetarianism is not often motivated by religion alone. The practice of vegetarianism can be a spiritually neutral process and reflect individual choices more than conformance to religious laws. Unlike kosherism, it does not have a governing religious authority or group of authorities to make determinations about the fitness of the food to be consumed. Most vegetarians rely on the state and its actors to enforce the disclosure of packaged food ingredients and they take its regulations and determinations as safeguards against consuming animals or their by-products. And many vegetarians may not even realize that the FDA does not require full disclosure in labeling, or that spices and flavorings may be animal derived.

101 The power of vegetarian beliefs based on ethics may overlap with spiritual or religious callings, however, because those beliefs are so deeply held. See, e.g., Caroline L. Kraus, Note, Religious Exemptions—Applicability to Vegetarian Beliefs, 30 Hofstra L. Rev. 197, 218, 222–23 (2001) (analyzing the threshold for vegetarianism to rise to a religious exemption from vaccination laws).

102 See, e.g., Phillip Kapleau, To Cherish All Life: A Buddhist Case for Becoming Vegetarian 13 (2d. ed. 1982) (describing the harmony of Buddhism and vegetarianism in the principle of not taking life). Practicing Hindus and vegetarians sued McDonald’s several years ago for using beef tallow in its preparation of vegetarian French fries. Theodore H. Frank, A Taxonomy of Obesity Litigation, 28 U. Ark. Little Rock L. Rev. 427, 432 (2006); see Gary E. Fraser, Diet, Life Expectancy, and Chronic Disease: Studies of Seventh-Day Adventists and Other Vegetarians 2–3 (2003) (“That most Adventists do follow many of the church’s recommendations regarding lifestyle, and have done so for generations, is a testimony to the powerful impact of incorporating the subject of health into a system of religious beliefs.”).

103 See Michael A. Fox, Deep Vegetarianism 16–22 (1999) (describing the origins of secular vegetarianism in the United States); Carrie E. Norman, Reading Foodways as Faithways in Contemporary America, in 2 Faith in America 213, 221 (Charles H. Lippy ed., 2006) (“Today, whether religious or secular in name, most vegetarian organizations reflect a worldview that counters an existing culture characterized by the pollution of artificial food production and meat consumption. They call for the restoration of a pure existence . . . through a change in lifestyle that centers on diet.”).

104 The regulatory system’s interactions with vegetarians are not always adversarial. In March 2000, the USDA decided to allow 100% of the federal school lunch program’s protein requirement to be met by nonmeat sources. Donna Maurer, Vegetarianism: Movement or Moment? 135 (2002) (emphasizing that the new regulation may result in greater availability of vegetarian meals to students).

105 See Laura E. Derr, When Food Is Poison: The History, Consequences, and Limitations of the Food Allergen Labeling and Consumer Protection Act of 2004, 61 Food & Drug L.J. 65, 83–84 (2006) (arguing that the generic terms of spices and flavorings, for example, can conceal potentially allergenic substances and give no hint to their source—animal, plant, or synthetic).
B. Bioengineered Food: 1 Tomato + 1 Snapdragon = 
1 Tasty, Mutant Purple Tomato

Consumers may also be uninformed about the labeling requirements for bioengineered foods or genetically modified organisms (“GMOs”).106 The days of a tomato just being a tomato are already departed, or are hastily making their exit.107 In contrast to kosher foods, bioengineered foods present a challenge that the FDA is addressing, albeit slowly.108

Bioengineered plant-based foods are new plant varieties developed using recombinant deoxyribonucleic acid (“rDNA”) technology.109 As the FDA explained in its 1992 “Guidance to Industry for Foods Derived from New Plant Varieties”:

Recombinant DNA techniques involve the isolation and subsequent introduction of discrete DNA segments containing the gene(s) of interest into recipient (host) plants. The DNA segments can come from any organism (microbial, animal, or plant). In theory, essentially any trait whose gene has been identified can be introduced into virtually any plant, and can be introduced without extraneous unwanted genetic material. Since these techniques are more precise, they increase the potential for safe, better-characterized, and more predictable foods.110

To date, the FDA has taken a more hands-on approach to monitoring the development of new bioengineered food products than it has with Kosher foods, but its current stance is that bioengineered foods present no recognizable hazards

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106 In response to this issue of transparency, the Government Accountability Office has suggested federal interagency coordination to ensure that developments in regulation are keeping pace with advances in technology. They consulted not only with the food industry, but also with key federal agencies and consumer groups. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-09-60, GENETICALLY ENGINEERED CROPS: AGENCIES ARE PROPOSING CHANGES TO IMPROVE OVERSIGHT, BUT COULD TAKE ADDITIONAL STEPS TO ENHANCE COORDINATION AND MONITORING 3, 46–47 (2008), available at http://www.gao.gov/products/GAO-09-60.

107 Scientists recently combined snapdragon and tomato genes to produce a purple tomato containing supercharged levels of antioxidants. Similar advances are slow in coming, as most bioengineering has been put to use to prevent crop disease and pest infestation. Kaufman, supra note 79.

108 Since 1992, the FDA has been examining the safety issues that might arise with bioengineered foods. It has established a procedure for public comment and consultation with food producers. See Larry Thompson, Are Bioengineered Foods Safe?, 34 FDA CONSUMER 18, 19–21 (2000), available at http://www.foodsafety.wisc.edu/assets/pdf_Files/Bioengineered_safe.pdf.


to the consumer. Accordingly, the FDA has not required bioengineered foods to be classified or labeled for disclosure unless material facts about the foodstuff are misrepresented or omitted: “[c]onsumers must be informed, by appropriate labeling, if a food derived from a new plant variety differs from its traditional counterpart such that the common or usual name no longer applies to the new food, or if a safety or usage issue exists to which consumers must be alerted.”

The FDA’s guidance goes on to give the example of a tomato that has been modified by inserting a peanut protein in it. Even if the appearance and flavor of the new tomato remains the same as any tomato, the producer must disclose the existence of peanut proteins on the label if the new tomato is capable of producing an allergic reaction in a group of consumers. The FDA, however, only requires manufacturers to identify bioengineered food if they need to alert the agency and the public to a material fact. To the agency, bioengineering is not generally considered a material fact in and of itself; it is merely a scientific advancement.

The FDA provides an optional premarket consultation process for food producers interested in determining whether or not their foodstuffs are in compliance with its regulations. The need for consultation mostly arises where new plant varieties change nutrition or allergen levels or introduce unapproved food additives. Through these relationships with industry and experts, the FDA

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111 The FDA views bioengineering as an extension of the hybridization that has already been going on with foods since the nineteenth century. See Thompson, supra note 108, at 19, 23.

112 FDA Policy, supra note 110, at 22,991.

113 Id.

114 Id.


116 FDA Policy, supra note 110 (“[T]he agency does not believe that the method of development of a new plant variety (including the use of new techniques including recombinant DNA techniques) is normally material information within the meaning of 21 U.S.C. 321(n) and would not usually be required to be disclosed in labeling for the food.”).

117 Id.


119 See CONSULTATION PROCEDURES, supra note 118. The FDA recommends that all food producers consult with it before releasing a new food onto the market. The FDA considers these things “unresolved issues” that would necessitate legal action if the food were introduced on the market. Id.
is able to keep watch over the safety of the food supply and the changing needs for food regulation.

Consumer issues surrounding bioengineered or genetically modified foods bridge the three case studies presented in this Article, as well as the case for vegetarian foods. By their nature, bioengineered foods are the result of changing “common” or recognized foods. These modifications may be imperceptible to a consumer, so the importance of the FDA’s role in disclosure is heightened. If a snapdragon is integrated with a tomato, for example, the outcome may be a hardier, tastier food, but the consumer with allergies to flowers may not be aware that the purple tomato before her at the grocery store has any snapdragon genes. In this case, the FDA has already addressed the issue of major allergens in its 1992 Guidance and has called for disclosure; snapdragon allergies are not on the FDA’s list of major allergens, but the list could be malleable. If animal by-products become part of this race to maximize the potential of food, vegetarians will become misinformed or uninformed consumers unless the FDA requires disclosure of the “common” food’s now uncommon ingredients. The protections for the vegetarian consumer wishing to avoid squirrel-strengthened mutant squash are less clear. And the same kinds of concerns can arise among kosher

120 21 U.S.C. § 343(i) (2006) (requiring that each ingredient be listed if two or more foods are combined in a single food product).

121 See FDA Policy, supra note 110, at 22,990. The FDA will get involved in regulating bioengineered foods under Section 409 of the FD&C Act where “the objective characteristics of the substance raise questions of safety sufficient to warrant formal premarket review and approval by FDA.” Id. at 22,985.

122 Marc Kaufman, Extra-Nutritious Bioengineered Foods Still Years Away, WASH. POST, Nov. 3, 2008, at A12 (providing the example of British researchers engineering a new purple tomato by inserting snapdragon genes; the new tomato contains more nutrients than a standard tomato).

123 Even the FDA’s 1992 guidance on new plant varieties recognizes that “[l]abeling of foods newly containing a known or suspect allergen may be needed to inform consumers of such potential.” FDA Policy, supra note 110, at 22,987 (emphasis added).

124 See id.


126 While squirrel-infused squash seems like a fanciful example, the commingling of animal and plant genetic material is already present in the food supply. Many vegetarians are against consuming plant foods modified by animal-derived genes. The “Flavr Savr tomato” was the example of this commingling that brought the national media’s attention. Scientists introduced Alaskan flounder genes into the tomato to extend its shelf life. The tomato was approved by the FDA, but its makers pulled it from shelves in 1997 after noticing some “detrimental health effects.” KAREN IACOBBO & MICHAEL IACOBBO, VEGETARIANS AND VEGANS IN AMERICA TODAY 155–56 (2006). The Human Genome Project has noted that one objection to GMOs is the mixing of plant and animal genes. See Genetically Modified Foods and Organisms, HUMAN GENOME PROJECT, http://www.ornl.gov/sci/techresources/Human_Genome/elsi/gmfood.shtml (last visited June 12, 2012). These GMOs are called “transgenic.” Id.; see also Ronald Bailey, At Issue with Tissue: Are Transgenic Plants Containing Animal Genes Suitable for Vegetarians?, 55 CANADIAN CHEMICAL NEWS 21, 21–22 (June 1, 2003) (highlighting that the 33rd World
consumers as they try to determine which foods will allow them to comply with Kashrut. Many consumers are simply unaware of bioengineered foods and may be even less informed when it comes to detecting bioengineered ingredients in packaged foods.

C. Allergens

The issue of imperceptibility strikes not only at the heart of the vegetarian food labeling issue, but also at the food allergens debate. Should manufacturers be required to identify potential allergens so that consumers can make more informed choices? Food allergens cause variable responses in different people, including mild irritation, digestive upset, and life-threatening shock. About two percent of all adults in the United States have food allergies, and the number is closer to six percent of children. According to the Centers for Disease Control and Prevention (CDC), food allergies among children have risen in the last decade. Taken as a whole, these numbers are similar to those of practicing vegetarians, yet as this Article notes, one group has received protection and disclosure of ingredients, while the other has not. This divide may be due to perceptions about the relative importance of vegetarian versus allergen-free dietary practices.

Vegetarian Congress passed a resolution opposing the introduction of animal genes into plants used for food).


See id.

For more community-based resources on food allergies, see generally THE FOOD ALLERGY & ANAPHYLAXIS NETWORK, http://www.foodallergy.org (last visited June 12, 2012).


Id.


See supra notes 2–3 (discussing vegetarian statistics).

Even food allergies themselves can be culturally situated, differing among countries and their citizens. See generally Ilan Dalal et al., Food Allergy is a Matter of Geography After All: Sesame as a Major Cause of Severe Ig-E-Mediated Food Allergic Reactions Among Infants and Young Children in Israel, 57 ALLERGY 362, 362 (2002) (emphasizing that sesame was only second to cow’s milk in causing anaphylaxis in Israel and recommending allergy determinations based on localities and cultural groups); Sangita
one case, the view is that life is being protected if the allergic reaction is severe
enough, while in the other case—that of vegetarianism—preferences are being
honored. However, these preferences are undergirded by concerns and beliefs
about health and ethics that should also be respected. These issues are discussed
further at the end of this section.

Passed in 2004, The Food Allergen Labeling and Consumer Protection Act
(“FALCPA”) addresses growing concerns about allergenic ingredients in packaged
foods. In the interest of ingredient disclosure and consumer health protection,
the FDA requires that manufacturers disclose “major food allergens” to consumers
on packaged food labels. To be considered a major food allergen, the ingredient
has to be from one of the following eight foods or groups: milk, eggs, fish,
peanuts, tree nuts, wheat, Crustacean shellfish, or soybeans. The FDA notes,
“more than 160 foods have been identified to cause food allergies in sensitive
individuals,” but the “‘major food allergens’ account for 90 percent of all food
allergies.” Allergenic foods not listed in FALCPA are not subject to these
labeling requirements. Flavors, colors, and incidental additives derived from
FALCPA’s allergens list are, however, subject to the labeling requirements.

Currently, foods exposed to cross contact with allergenic substances are not
subject to special labeling requirements under FALCPA. The FDA, however, is
assisting industry in identifying these risks and disclosing them when possible.
According to its website geared toward consumers concerned about food allergens,
the agency’s goal with regard to cross contact is to encourage manufacturers to
craft labels that are “not misleading, convey a clear and uniform message, and
adequately inform food-allergic consumers and their caregivers.” As part of this
effort, the FDA held public hearings in 2008 to further explore the issues of
advisory labeling, cross contact scenarios, and the public’s concerns about allergies

P. Patil et al., Chickpea: A Major Food Allergen in the Indian Subcontinent and Its Clinical
and Immunochemical Correlation, 87 ANN. ALLERGY, ASTHMA, & IMMUNOLOGY 140, 140,
143 (2001) (discussing increased chickpea consumption in India and more pronounced
allergic reactions among Indian people).

138 118 Stat. 905 (to be codified at 21 U.S.C. § 321(qq)(1)).
139 U.S. FOOD & DRUG ADMIN., supra note 55, at pt. VI.
140 See Guidance for Industry: Questions and Answers Regarding Food Allergens,
RegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059116.htm.
141 Food Allergies: Reducing the Risks, supra note 131.
142 Id.
143 Id.
related to them. Currently, the agency is considering its next steps to assist consumers concerned with allergens in making more informed food selections.

The overarching goal is to avoid situations where food causes severe reactions like anaphylaxis, which is a ready example to most consumers. While a great deal of food allergies present less severe physical disturbances, anaphylaxis due to food allergens is the most common cause of anaphylaxis among patients presenting at U.S. emergency rooms. The everyday effect of the food allergen regulations to protect a range of reactions from minor disturbances to bodily shock is important.

While vegetarians may not face serious impairments from eating food containing animal products, some of the same disclosure issues that drove increased awareness of food labeling for allergens undergird the call for vegetarian food labeling. The FALCPA identified the following issues as findings supporting the shift to a more regulated food labeling system:

(A) ingredients in foods must be listed by their “common or usual name”;

(B) in some cases, the common or usual name of an ingredient may be unfamiliar to consumers, and many consumers may not realize the ingredient is derived from, or contains, a major food allergen; and

(C) in other cases, the ingredients may be declared as a class, including spices, flavorings, and certain colorings, or are exempt from the ingredient labeling requirements, such as incidental additives.

These concerns are shared by vegetarians and have significance. Vegetarians seek to know how their food was made so that they have enough information to determine if any of its ingredients—intentional or not—are animal derived. They need this information to make healthy and ethical choices about food consumption.

Recent changes in the allergens area toward requiring full disclosure of ingredients and processes are laudable and should be part of an overall shift in the FDA to identify and disclose relevant information on food labels. Their effects extend beyond consumers concerned about allergies. Information about food

145 Id. at 46,302–04.
147 Takemasa Nakagawa, Food Allergens as the Possible Cause of Asthma and Anaphylaxis, 37 INTERNAL MED. 5, 5 (1998).
ingredients can benefit the other consumer bases explored in this article, such as vegetarians and kosher consumers. Similar to people facing food allergies, vegetarians also desire to maintain optimal health.149 The FDA’s lack of responsiveness, however, to vegetarian consumers may be colored by a sense that the community is practicing a nutritional program outside society norms.150 However, the cultural shift toward more plant-based diets and “flexitarian” lifestyles is gaining traction; meat consumption has dropped by seven percent in the past few years.151 The Johns Hopkins School of Public Health, for example, has introduced a “Meatless Mondays” program nationally to decrease meat consumption by fifteen percent for environmental and health reasons.152 The FDA’s resistance to viewing vegetarianism more broadly is damaging to all consumers, strict vegetarians or not, who are interested in knowing the contents of their food, whether it be for health or ethical reasons,153 or for promoting factory

149 Cf. Johanna T. Dwyer, Health Aspects of Vegetarian Diets, 48 AM. J. CLINICAL NUTRITION 712, 715–19 (1988) (finding that vegetarians are at lower risk for obesity, diabetes, heart disease, and hypertension, among other diseases); Timothy J.A. Key et al., Dietary Habits and Mortality in 11,000 Vegetarians and Health Conscious People: Results of a 17 Year Follow Up, 313 BRIT. MED. J. 775, 775 (1996) (finding that vegetarian and health-conscious consumers had about half the mortality rate of the general population after doing a seventeen-year benchmark); Joan Sabaté, The Contribution of Vegetarian Diets to Health and Disease: A Paradigm Shift, 78 AM. J. CLINICAL NUTRITION 502, 505 (2003) (supplement) (noting the transition of nutritionists and physicians from being concerned that vegetarian diets are deficient to understanding plant-based diets as providing preventative and curative effects).

150 See ANNIE POTTS & MANDALA WHITE, NEW ZEALAND CTR. FOR HUMAN-ANIMAL STUDIES, CRUELTY-FREE CONSUMPTION IN NEW ZEALAND: A NATIONAL REPORT ON THE PERSPECTIVES AND EXPERIENCES OF VEGETARIANS AND OTHER ETHICAL CONSUMERS 11 (2007) (white paper). Researchers found that vegetarians in New Zealand experienced many of the same challenges that I have outlined already for United States vegetarians. According to the scientists, vegetarians “noted how time-consuming it is to get exact information on ingredients and wished that a stricter labeling of foods was enforced. Many expressed that they felt they existed on the fringes of New Zealand dominant culture (‘I am a minority’; ‘I feel like a freak’), and numerous people cited the (sometimes good-natured, sometimes genuinely argumentative) taunts they received from their co-workers and meat-eating associates.” Id.


153 Some vegetarian activists use images of animal suffering to leverage the power of their arguments with omnivores. POTTS & WHITE, supra note 150, at 107. In the United States, PETA has been heavily criticized for these kinds of public displays. For more information about factory farming practices, see generally GAIL EISNITZ, SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLECT, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY (2007) (emphasizing the role of deregulation in increasing cruelty in animal processing facilities). See also DONALD D. STULL & MICHAEL J. BROADWAY, SLAUGHTERHOUSE BLUES: THE MEAT AND POULTRY INDUSTRY IN
farming alternatives or increasing environmental sustainability.\textsuperscript{154} For vegetarians, the FDA and the industry’s clouding of ingredients and manufacturing processes presents a Hobson’s choice at each supermarket and each dinner table.\textsuperscript{153}

What is at stake for people with allergens compared to vegetarians who do not have full access to ingredient information? At the minimum, someone from either group could grapple with emotional distress because she has consumed the allergen or nonvegetarian ingredient. She could experience some physical discomfort—a rash, digestive upset, or nausea. The worst-case scenario for people with allergies who consume allergens may be sudden death; the worst-case scenario for vegetarians who consume nonvegetarian products may be earlier death, if the potential detrimental effects are considered cumulatively over each person’s lifespan.\textsuperscript{156} The immediacy of the health effects may be different, but the end result is similar—a shortened lifespan. This kind of approach fits well with growing awareness about the United States’ obesity epidemic and the emphasis on identifying food products as being wise nutritional choices.\textsuperscript{157}

\textsuperscript{154} See \textsc{Potts & White}, \textit{supra} note 150, at 99 (noting the frustrating and confusing experiences that vegetarians can have at supermarkets and restaurants).

\textsuperscript{155} Popular culture is rife with examples of dietary shifts in consciousness and conscience. See \textsc{Jonathan Safran Foer}, \textit{Eating Animals} (2009); \textsc{John Robbin}, \textit{The Food Revolution} (2001); \textsc{Eric Schlosser}, \textit{Fast Food Nation} (2002); \textsc{Steven Striffler}, \textit{Chicken: The Dangerous Transformation of America’s Favorite Food} (2005).

\textsuperscript{156} Numerous clinical studies have shown that vegetarians live longer, healthier lives than their nonvegetarian counterparts and that vegetarianism can reverse chronic disease. See, e.g., H.S. Dod et al., \textit{Effect of Intensive Lifestyle Changes on Endothelial Function and on Inflammatory Markers of Atherosclerosis}, 105 \textsc{Am. J. Cardiology} 362, 366 (2010) (finding that study participants following a low-fat vegetarian diet and exercise plan improved the function of their coronary arteries); Beverly J. Howie & Terry D. Shultz, \textit{Dietary and Hormonal Interrelationships among Vegetarian Seventh-day Adventists and Nonvegetarian Men}, 42 \textsc{Am. J. Clinical Nutrition} 127, 131–33 (1985) (suggesting that the increased fiber intake associated with a vegetarian diet may result in lower risk of developing prostate cancer, among other illnesses); \textsc{Timothy Key} et al., \textit{Mortality in Vegetarians and Nonvegetarians: Detailed Findings from a Collaborative Analysis of 5 Prospective Studies}, 70 \textsc{Am. J. Clinical Nutrition} 516S, 523S–24S (1999) (finding that mortality rates from ischemic heart disease were lower in vegetarians than in meat-eaters); \textsc{Raymond O. West} & \textsc{Olive B. Hayes}, \textit{Diet and Serum Cholesterol Levels: A Comparison Between Vegetarians and Nonvegetarians in a Seventh-day Adventist Group}, 21 \textsc{Am. J. Clinical Nutrition} 853, 861–62 (1968) (finding a correlation between higher consumption levels of animal products and unhealthy blood cholesterol levels).

\textsuperscript{157} See \textsc{Sarah Roller} & \textsc{Raqiyyah Pippins}, \textit{Marketing Nutrition and Health-Related Benefits of Food and Beverage Products: Enforcement, Litigation, and Liability Issue}, 65 \textsc{Food Drug L.J.} 447 (2010); \textsc{Chelsea M. Childs}, Note, \textit{The Federal Regulation of the
As discussed earlier, nutrition researchers have linked long-term meat consumption with increased health problems and shortened life span. Even this argument could be controversial, but both consumer groups should have access to whatever ingredient information they need to make informed dietary decisions. The argument for disclosure could extend beyond consumers interested in observing religious practices, avoiding genetically modified foods, removing food allergens from their diets, or practicing a vegetarian diet. If a group of consumers, for example, was concerned about the long-term effects from the consumption of artificial colorings or chemical-based flavorings, disclosure of ingredients could also be important to their decision-making. These concerns do not seem far outside the norm for most consumers.

V. SOLUTIONS FOR AN OMNIVOROUS PLANET

I did not become a vegetarian for my health, I did it for the health of the chickens.

Isaac Bashevis Singer

Vegetarians need consistent access to information about the animal-free nature of the foods they consume. The FDA is uniquely situated to address these issues and to integrate them into the packaged food labeling system. Until now, the FDA has not required food producers to label their foods as vegetarian, nor has it even offered a voluntary system of oversight because the FD&C Act has not mandated it and because no one has yet successfully petitioned the FDA for these changes. The latter point will become most important to the solutions that this Article proposes.

Some regulators see a third issue in play—vegetarians have enough disclosure to make informed choices by simply looking at the ingredients panel. As this Article has pointed out, however, the ingredients panel does not identify animal-sourced ingredients, nor does it fully disclose the ingredients themselves when it comes to “spices,” “flavorings,” and “colorings.”

“Smart Choices Program”: Subjecting Front-of-Package Nutritional Labeling Schemes to Concurrent Regulation by the FDA and the FTC, 90 B.U. L. REV 2403 (2010).

158 See supra notes 150, 156 and accompanying text.


162 See supra notes 65–77 and accompanying text.
A. Two Paths toward the Carrot

The FDA could take one of two appealing routes. First, it can establish a standardized definition for “vegetarian” and allow companies to use “vegetarian,” or a symbol denoting it, on their food labels. If the designation was used, and a product was not in fact vegetarian, the food could be considered misbranded under the FD&C Act. Alternatively, the FDA can enforce a required vegetarian labeling system for all foods, taking the choice away from manufacturers. The first approach mirrors what was done in the context of gluten-free foods, and the second is more ambitious and controversial. This Article advocates for the latter because of the importance of disclosure to people attempting to follow an animal-free diet. The lack of ingredient labeling thwarts their attempts when a source cannot be determined, whether it is obscured through generic terms, such as “coloring” or “flavoring,” or simply because the ingredient can have more than one source of origin. Vegetarian consumers, therefore, need information from manufacturers about the ingredient’s derivation.

B. The Vegetarian Manifesto: A Federally Mandated System

1. Intentional Ingredients

This Article proposes that manufacturers should be required to disclose any animal-source ingredients, in their products and, if there are none, the product should bear an easily identifiable symbol of its vegetarian certification. Under this federally mandated system, vegetarians would be able to eat according to their ethical or nutritional concerns, just as consumers are able to do with knowledge of calories, fat, and fiber. The FDA changed the landscape of ingredient and

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164 As one small manufacturer pointed out in the context of a public hearing on gluten-free labeling: “[C]ustomers rely very heavily on labels for processed foods. They seek out gluten-free on the label and they will often have complaints about multiple extra hours of time spent on both label reading, shopping, and follow-up calls to the manufacturer just to clarify information.” Public Meeting on: Gluten-Free Labeling, U.S. FOOD & DRUG ADMIN., http://www.fda.gov/Food/LabelingNutrition/FoodAllergensLabeling/GuidanceComplianceRegulatoryInformation/ucm107204.htm (last updated Apr. 22, 2010). She went on to note that vegan and kosher foods suffer similar fates when outside labs with varying procedures and environments dictate what the certification should be. Id. These comments were made when the FDA was still considering whether or not it should be involved in establishing a gluten-free certification on the labels of packaged foods.

165 Even some of the most basic of food terms, such as rennet, do not disclose whether the ingredient is derived from animal or vegetable sources. According to the Vegetarian Society, “[t]he traditional source of rennet is the stomach of slaughtered newly-born calves. Vegetarian cheeses are manufactured using rennet from either fungal/bacterial sources or genetically modified micro-organisms.” Fact Sheets—Cheese, THE VEGETARIAN SOC’Y, http://www.vegsoc.org/page.aspx?pid=495 (last updated Oct. 2010).
nutritional disclosures in these areas and it can do so with vegetarian certification as well.

But given the array of vegetarian eating practices, what definition of vegetarianism should be used? This Article advocates for a system to be devised in which vegan is the least common denominator and provides the working definition of “vegetarian” for the FDA and consumers. Vegetarians who are less strict about their dietary practices would still be informed about their food; vegetarians who eat dairy, for example, could seek out products that contain dairy, but they would know that the product with the vegetarian symbol meets the strictest definition of vegetarianism. Vegan products, by definition, contain no animal flesh and no animal byproducts. Vegans consider animals to be not only vertebrate, but also invertebrate creatures, such as bees, worms, and those yummy beetles that add a punch of coloring to the morning yogurt. The vegetarian analysis should also apply to ingredients made in food labs, either through chemicals or plant and animal combinations. If the resulting ingredient is vegetarian—free from animal flesh or animal byproducts—it should be labeled as vegetarian.

One easy symbol to consider for this system could be a “V” in a circle or simply “veg.” If the term vegetarian carries stigma (although I find that argument to be dubious, as discussed earlier), manufacturers could lobby the FDA to use the designation “plant-sourced,” “free from animal ingredients” or other appropriate and agreeable language. The FDA will have to consider whether consumers might be confused into thinking that “plant-sourced” is the same as “natural” food. It can make the “vegetarian” label easier to understand, however, by emphasizing that “vegetarian” means free from animal-derived ingredients.

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167 See supra note 4 and accompanying text.


169 See supra notes 49–50 and accompanying text.

170 The FDA has refused to adopt the USDA’s definition of natural, allowing manufacturers to label products such as soft drinks as natural. Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms, 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993) (affecting 21 C.F.R. pts. 5, 101) (emphasizing that the meaning of “natural” has been ambiguous and the FDA has not officially defined it); see also Julie Deardorff, All “Natural” Seems to Lose its Fizz in 7-Up, Chi. Trib., May 21, 2006, at Q9, available at http://articles.chicagotribune.com/2006-05-21/features/0605210434_1_high-fructose-corn-refiners-association-cadbury-schweppes (discussing 7-Up’s claims to be “natural”).
2. The Manufacturing Process

One complication that could arise with the vegetarian certification system is that products appearing to be vegetarian on the ingredients disclosure may have been made on machinery or in an environment that produces nonvegetarian items. In these situations, disclosure of the cross contact potential between vegetarian and nonvegetarian items could be suggested by the FDA, much as it is with the “may contain” language that applies to food allergen issues. Optional disclosure is the best first step to encourage manufacturers to increase their awareness about their manufacturing processes without punishing them by imposing too many changes to the regulatory system at one time. Over time, manufacturers would get comfortable using the vegetarian definition and labeling system and could be prodded to go farther in their analysis and comply with the vegetarian definition in all facets of making food.

Demand is increasing for vegetarian foods. Manufactured vegetarian foods account for a multi-billion-dollar market. Additionally, 122 million Americans are interested in the availability of vegetarian meal options while dining at restaurants. Food manufacturers could be persuaded to establish food production systems that are dedicated solely to maintaining standards of vegetarianism. Until that time, however, vegetarian consumers should be as fully informed as possible about how food is made. Manufacturers, under the new regulatory approach, can follow a full and required intended ingredients disclosure and then note any unintentional ingredients introduced in production with a “may contain” warning.

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171 Consumers with allergies have noted that the “may contain” optional labeling system has made them feel limited in the number of foods that they can eat. These “may contain” advisories may be legal posturing for companies worried about miniscule cross contact. See Tanya Wright & Joanne Clough, Food Allergies: Enjoying Life with a Severe Food Allergy 61 (2007). When given a choice between reacting to something identified as a potential contaminant and looking for some other food to eat, many consumers would choose the latter.


173 Id.

174 The Food Allergen Labeling and Consumer Protection Act of 2004, for example, requires that some incidental additives be disclosed, too. The most common example is when food is processed on machinery that is also used for products containing peanuts. In that case, the manufacturer must disclose that the product may contain peanuts. See 21 U.S.C. § 343(w) (2006); see also Derr, supra note 105, at 84–88 (discussing the FDA’s approach to cross-contamination issues and the problems of advisory labeling when cross-contamination is unclear).
3. Vegetarian Consumers’ Next Steps

As noted at the outset of this section, vegetarian consumers have not organized to convince the FDA that vegetarian certification is important and timely. Given the array of vegetarian and animal rights causes that exist in the United States, this population of consumers should be able to successfully bring the issue to the FDA through a petition process. The force of the petition can begin in these grassroots and national organizations and go through community-driven channels to persuade the FDA to adopt needed changes.

Briefly, petitioning the FDA proceeds as follows: an individual or group of consumers submits a written petition to the FDA to take regulatory action. The written petition must include details of the action requested (e.g., rule change, order, or administrative action), the “factual and legal grounds for the petition,” the environmental impact, identifying information of the petitioner(s), and a certification statement. FDA staff members review the 200 or more petitions that are sent to the agency every year and can take a year or more to grant or deny the petitions.

C. The Alternative: Coalition-Driven Changes to Certification

Assume that the consumers fail to persuade the FDA to create a mandatory certification process. Consumers might then turn their attention to manufacturers to convince them of the relevance of a vegetarian certification system. While optional certifications already exist for vegetarian foods, they are inadequate because they are not used consistently and they appear on so few products.

By going to manufacturers and suppliers of food, the consumers can improve the status quo by taking an alternative path. These paths, both consumer driven and coalition driven, may eventually merge into the kind of solution sought under the federally mandated system. First, the consumer groups could convince the optional vegetarian certifying organizations to unite by having the food producers


176 Animal advocacy groups that might want to be involved with this issue include People for the Ethical Treatment of Animals (PETA), Farm Sanctuary, In Defense of Animals, Vegetarian Society, and the National Animal Legal Defense Fund. Vegetarian-oriented publications, such as Vegetarian Times, Herbivore Magazine, and VegNews, would be appropriate outlets for garnering consumer support with the petition process.

177 The petition process is captured on the FDA’s website. See FDA Petitions, supra note 175; see also 21 C.F.R. §§ 10.30, 10.33, 10.35 (2011).

178 FDA Petitions, supra note 175.

179 Id.

180 See supra notes 35–48 and accompanying text.
themselves make requests for greater consistency. Under this approach, certification would remain in the hands of the community, but manufacturers would offer greater participation in exchange for merged, streamlined processes that are easier to administer and more cost effective. Then both manufacturers and consumers would have to focus their attention and resources on only one certifier instead of a dozen. Manufacturers and consumers could work with that certifier to create a centralized screening process for vegetarian certification.

The evolution of the voluntary certification system could push the labeling issue further with the FDA. If manufacturers are recognizing the importance of this information, the FDA may not be far behind. In fact, this approach is what brought together manufacturers and the FDA on food allergens. Through their lobbying organizations and the National Food Processors Association, food industry members were able to generate a consensus document, providing guidelines for labeling. The FDA and manufacturers formed a partnership to limit consumers’ unintended exposure to food allergens. Eventually, resistance to food allergen labeling was minimized and legal requirements assumed the position of attention.

Similarly, a second petition attempt for the FDA’s development of a vegetarian certification system might be more productive if manufacturers and the FDA can generate dialogue similar to that which came out of the allergens issue and resulted in the Food Allergens Labeling and Consumer Protection Act (2004). In that example, legal changes occurred after grassroots and national movements spotlighted the importance of disclosure and the cooperation of industry. In the vegetarian example, concerned vegetarians might be able to convince the FDA and the rest of the public that a unified certification system is

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181 While the numbers vary depending on the origin of the food, in the United States there are upwards of a dozen vegetarian certifiers. See Vegetarian Certification Logos, supra note 35.

182 See Derr, supra note 105, at 102–10 (chronicling allergen-susceptible consumers raising of awareness in the food allergens labeling issue and its impact on legislative and regulatory efforts).


185 These definitional issues are difficult to resolve, however, and the FDA turns to public comment—both from consumers and industry—to resolve them. While a rule about “gluten-free” labeling under the Food Allergen Labeling and Consumer Protection Act of 2004 was supposed to be released in August 2008, the FDA has taken considerable time waiting for feedback on its meetings and the various input collected. The complexity of the allergen issue lies in establishing the appropriate thresholds for acceptable allergen levels. The FDA remains undecided about the “gluten-free” threshold. See Joan Murphy, FAAN Meets with FDA on Allergy Labeling Issues, 51 FOOD CHEMICAL NEWS 15, 15–18 (Apr, 27, 2009).
not only desirable, but also feasible. With the support of food producers, this system would be difficult for the FDA to refuse as untenable.

Even at this point in the evolution of the vegetarian labeling, manufacturers and the FDA may be reluctant to move in the direction of mandated disclosure of animal-sourced ingredients on their labels. By giving the FDA a model of change, however, this coalition-driven approach could eventually shift to being required of all packaged food producers. The shift from optional, yet consistent, to required and unified, is still significant—even if it is a slow progress. Products that falsely claim to be vegetarian under either system could be seized as “misbranded” under the FD&C Act. Manufacturers, therefore, would be encouraged to label their foods accurately and completely. If manufacturers label their products as vegetarian and attract new consumers, only for those consumers to realize that the products are not vegetarian, then they run the risk of legal action against them. If they never identify their products as vegetarian when they are already, they lose a potentially lucrative corner of the market.

VI. CONCLUSION

Currently, vegetarians, as well as other consumers with dietary restrictions, do not have the full information about ingredients needed to make informed dietary choices. A federally mandated system of vegetarian food labeling hinges on having a consistent definition of “vegetarian” and addressing concerns about cross contact that might arise in the manufacturing process. Consumers need to be involved in generating a compelling petition for these changes at the FDA. Unsuspectingly, vegetarians may be consuming food that contains animal ingredients because the current regulatory scheme does not require full disclosure of ingredient sources. Manufacturers can play pivotal roles in ensuring that the FDA takes a consumer-driven petition seriously. Short of a successful petition, consumers should form coalitions with manufacturers to strengthen the existing voluntary certification systems. A cohesive, functioning model of labeling and certification can spur progress at the federal level, as well as in the food industry.

187 The market for vegetarian food products was approximately $2.5 billion in 2008. VEGETARIAN RESOURCE GUIDE, supra note 2, at 5.