

Food Ingredient Lists:

Recent Cases and Issues



9th Annual Food and Drug Law CLE Symposium

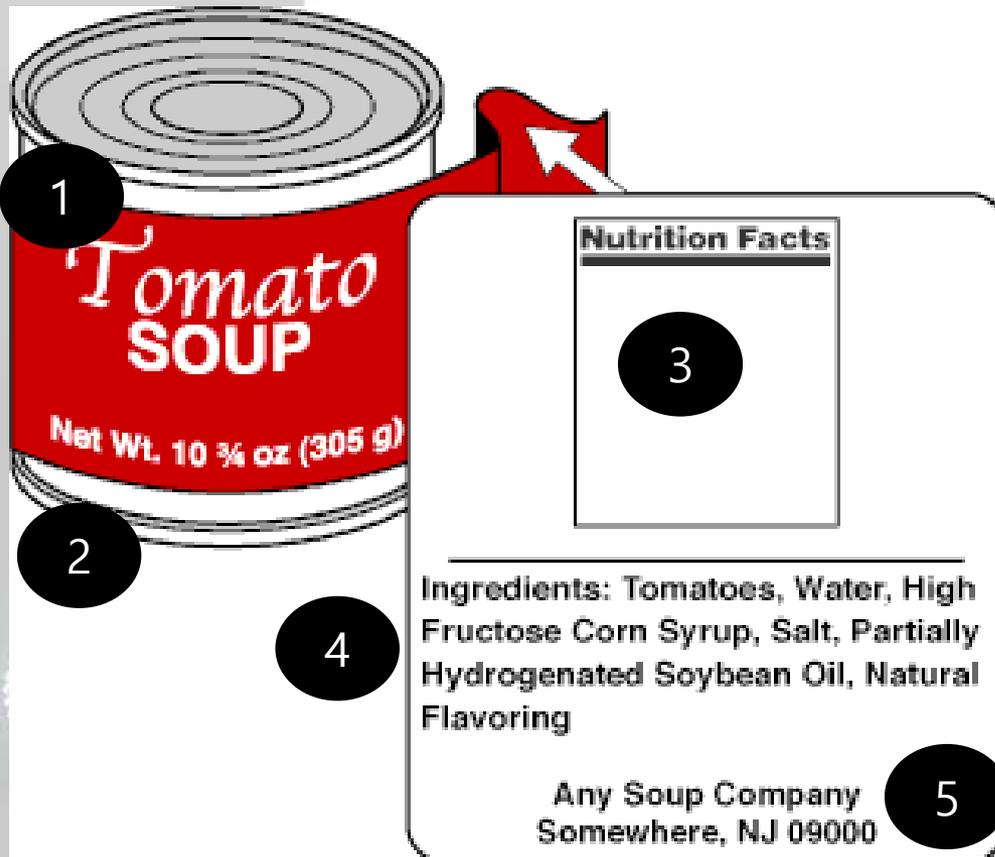
All Matters FDA

April 3, 2019

Matthew Noonan, FDA Compliance Officer

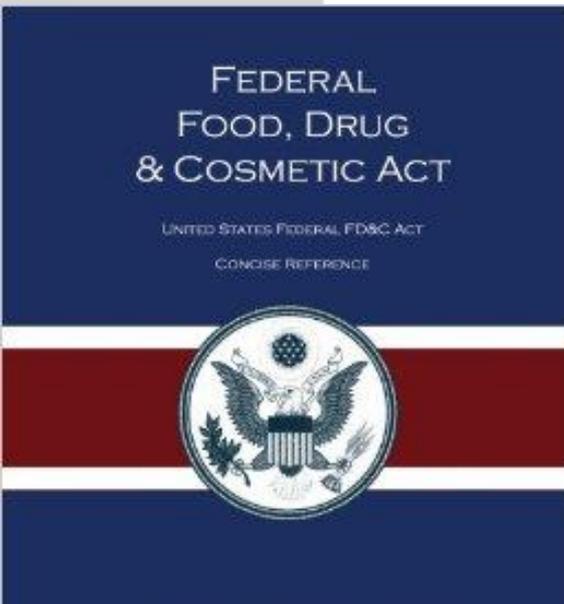
Mandatory Food Labeling Elements

1. Statement of identity
2. Net quantity of contents
3. Nutrition Facts
4. Ingredient list
 - And allergens if applicable
5. Name and place of business



Food, Drug, and Cosmetic Act

- United States Code, Title 21, Chapter 9
- **Notable Sections:**
 - Section 201(f) [21 U.S.C. 321(f)]
 - **Definition of food**
 - ❖ Includes articles used for food and their components
 - Section 402(a) [21 U.S.C. 342(a)]
 - **Adulteration**
 - ❖ Includes food containing a filthy or putrid substance
 - Section 403 [21 U.S.C. 343]
 - **Misbranding**
 - ❖ Includes labeling that is misleading or noncompliant with labeling regulations



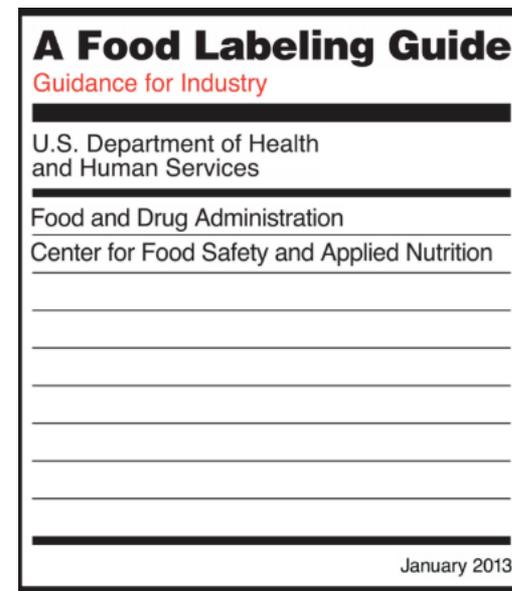
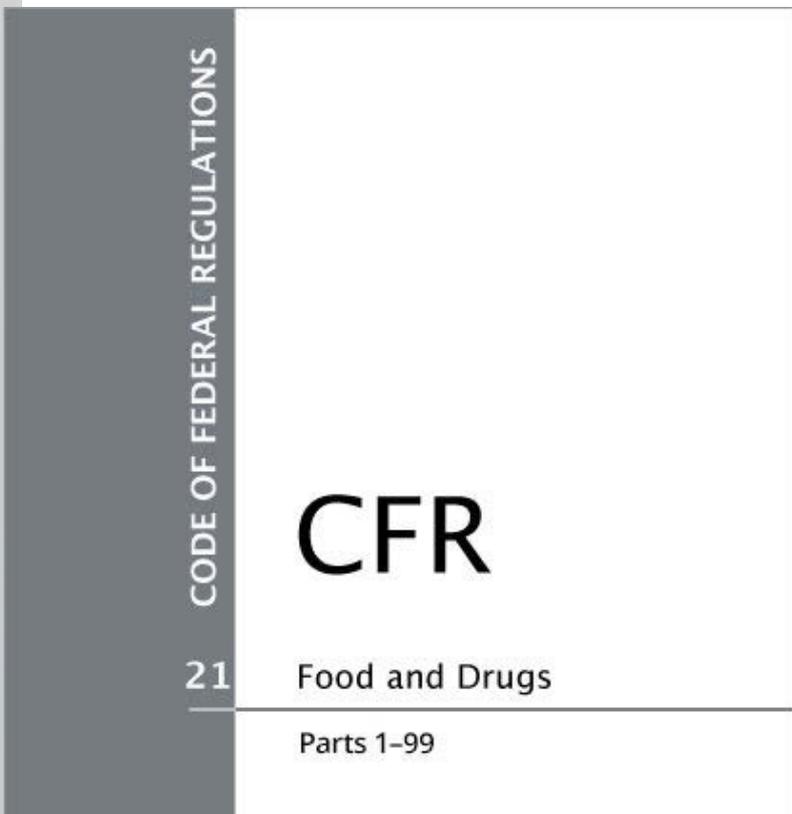
- Code of Federal Regulations

- 21 CFR 101

Food Labeling Regulations and Guidance

- Guidance

- Food Labeling Guide



Ingredient List 2

1 CFR 101.4

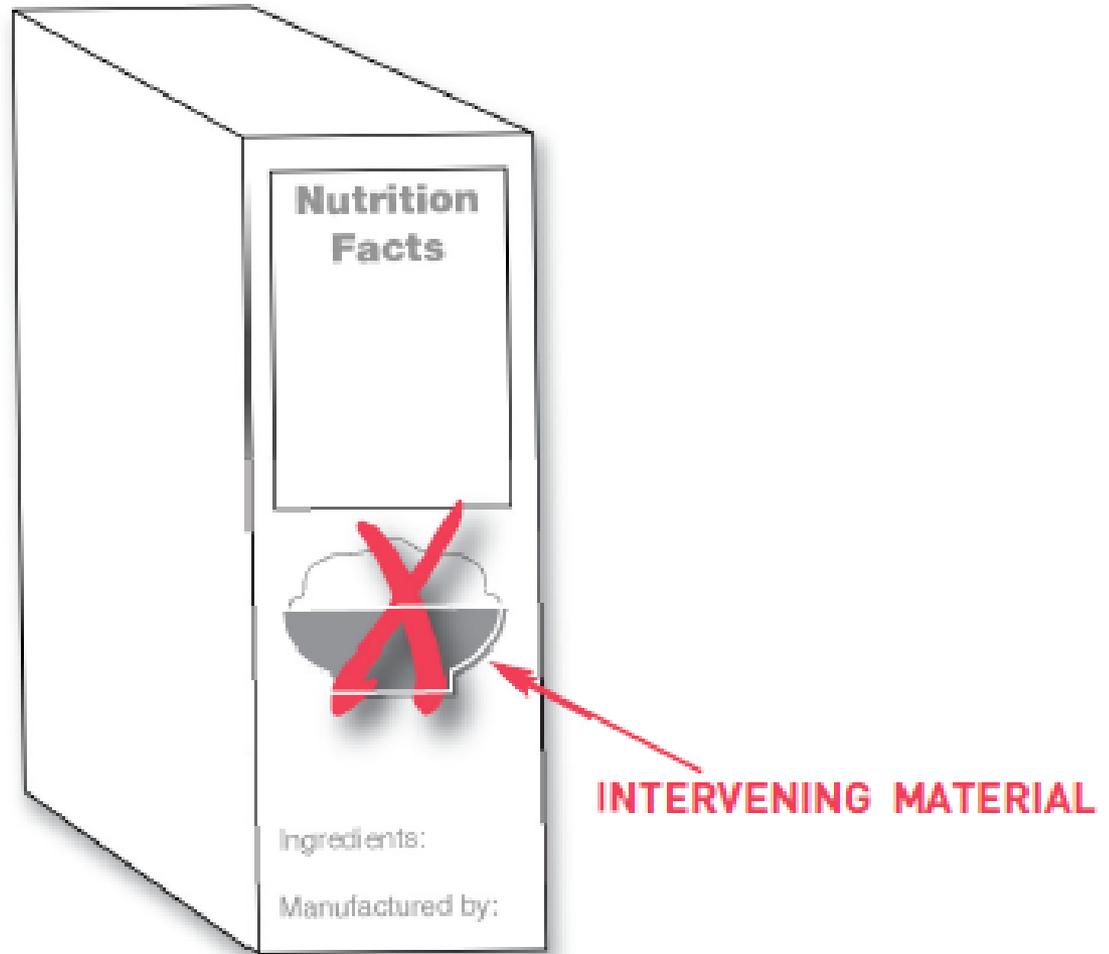


- **Informs consumers of formulation and of all intentional components**
- **Use common or usual name of ingredients and sub-ingredients**



Intervening Material

- **Not permitted** between:
 - Nutrition Facts
 - Ingredient and allergen list
 - Name and place of business



Allergen Declarations



- For 5 foods:

- Declare **name of allergen**

- For 3 food groups:

- Declare **specific type**
 - Fish or crustacean shellfish → species
 - ❖ E.g. bass, flounder, cod
 - ❖ E.g. crab, lobster, shrimp
 - Tree nuts → specific type of nut
 - ❖ E.g. almonds, pecans, walnuts

Is Love an Ingredient?

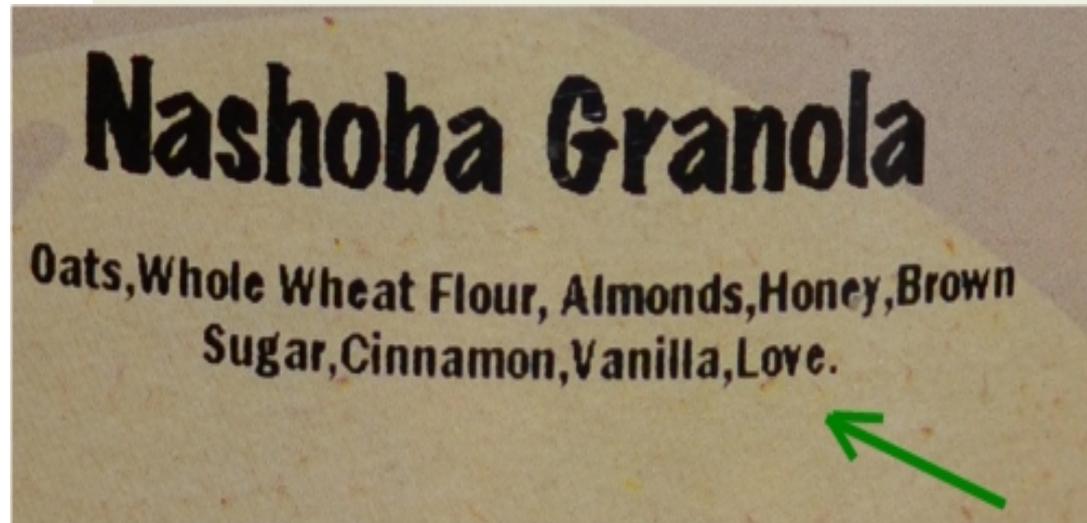


- a) How would you argue that Nashoba Granola **was misbranded?**
- b) How would you argue that Nashoba Granola **was not misbranded?**

Nashoba Brook Bakery

152 Commonwealth Ave
West Concord, MA 01742 USA

www.slowrise.com



Should the Government Outlaw Smiling?



*Percent Daily Values are based on a diet of 2,000 calories a day. Your daily values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g



MADE WITH SMILES AND UNBLEACHED ENRICHED WHEAT FLOUR [FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE (VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID], CHEDDAR CHEESE [(PASTEURIZED CULTURED MILK, SALT, ENZYMES), ANNATTO], VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), CONTAINS 2 PERCENT OR LESS OF: SALT, YEAST, SUGAR, SPICES, AUTOLYZED YEAST, LEAVENING (MONOCALCIUM PHOSPHATE, AMMONIUM BICARBONATE, BAKING SODA) AND ONION POWDER.

- a) How would you argue that Goldfish Crackers are **misbranded**?
- b) How would you argue that Goldfish Crackers are **not misbranded**?

- **Mimolette is a French orange cheese in which mites (tiny nibbling insects) are intentionally added during aging.**

- **Mites create little holes to promote aeration**
 - **Intended to minimize cracking and ripen cheese**
- **Mites contribute a distinctive earthy flavor.**

Bugs in Cheese – Intentionally



Watch [YouTube video](#) of cheese mites in action!



Cheese Mite Dust

- Mites leave a fine brown “dust” on the outside of a cheese wheel.
 - Accumulation of living mites, dead mites, and mite excreta
 - Largely harmless unless consumer has severe allergy to mites
 - Mostly removed during aging and before packaging
 - Via hands, vacuum, or compressed air
 - But some dust is generally left behind
 - ❖ So manufacturer might instruct consumers to cut off and discard rind.



Questions

- Mites may remain inside edible portion.
 - Not declared in ingredient list



- a) How would you argue that Mimolette Cheese **is misbranded?**
- b) How would you argue that Mimolette Cheese is **not misbranded?**
- c) Do you think mimolette should be allowed to be imported into the U.S.?