

RESOLUTION BY THE ALBANY COUNTY BOARD OF HEALTH amending Article IV of the County Sanitary Code to restrict trans fats in food service establishments in Albany County

By: Mr. Murphy

Seconded: Mr. Timmins

WHEREAS, Resolution No. 237 dated May 14, 2007 of the Albany County Legislature requests the Albany County Board of Health and the Health Commissioner to consider a practicable plan to amend the Sanitary Code requiring restaurants and food service establishments to phase out artificial trans fat and,

WHEREAS, a preponderance of scientific opinion provides a solid rational basis for reducing the amount of trans fats to promote the health of citizens in Albany County and,

WHEREAS, the Board of Health has the authority to enact sanitary code amendments pursuant to Public Health Law, Section 347,

NOW, THEREFORE, BE IT RESOLVED that Article IV of the Albany county Sanitary Code be and the same is hereby amended as follows.

Introduction

The Albany County Department of Health enforces provisions of the County Sanitary Code and other applicable law relating to food served directly to the consumer throughout the County, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers and mobile food vending units. The Department also regulates non-retail food processing establishments, such as mobile food vending commissaries.

Background

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are a source of daily food intake for Albany County residents—an estimated one-third of daily caloric intake comes from food purchased in restaurants.¹ Assuring safe and healthy dining options is a public health priority. The Department issues permits and inspects all FSEs in Albany County and non-retail food processing establishments.

The public health concern addressed by this amendment is the presence of trans fat in foods served in restaurants, which represents a dangerous and entirely preventable health risk to restaurant patrons. At this time, citizens who dine in restaurants in Albany County have no practical way to avoid this harmful substance. The Department is charged with preventing and controlling diseases, including chronic disease, through approaches that may address individual behavior or the community environment. By restricting FSEs from serving food that contains artificial trans fat, except for food served in the manufacturer's original sealed package, we can reduce the exposure to an avoidable hazard in the food environment that is associated with increased heart disease risk.

Basis for restricting service of products containing artificial trans fat.

Heart disease is the leading cause of death in New York State. In 2002, more than 67,700 New Yorkers died of cardiovascular disease, accounting for 43% of all deaths. In addition, New York ranks first in the nation in deaths due to ischemic heart disease.² The economic burden of cardiovascular disease is high in Albany County. In 2000, cardiovascular related hospital costs in Albany County exceeded \$29 million. The estimated direct and indirect costs of cardiovascular disease in 2002 were \$278 million. Cardiovascular disease is directly related to multiple risk factors that promote its development, such as smoking, poor diet, and physical inactivity. As shown in Table 1, the prevalence of such risk factors is high in Albany County.²

Table 1: Comparison of cardiovascular risk factor prevalence in Albany County to National Goals²

Risk Factor	Albany County	Healthy People 2010 Goal
Smoking	22%	12%
Physical inactivity	24%	20%
Obesity	17%	15%

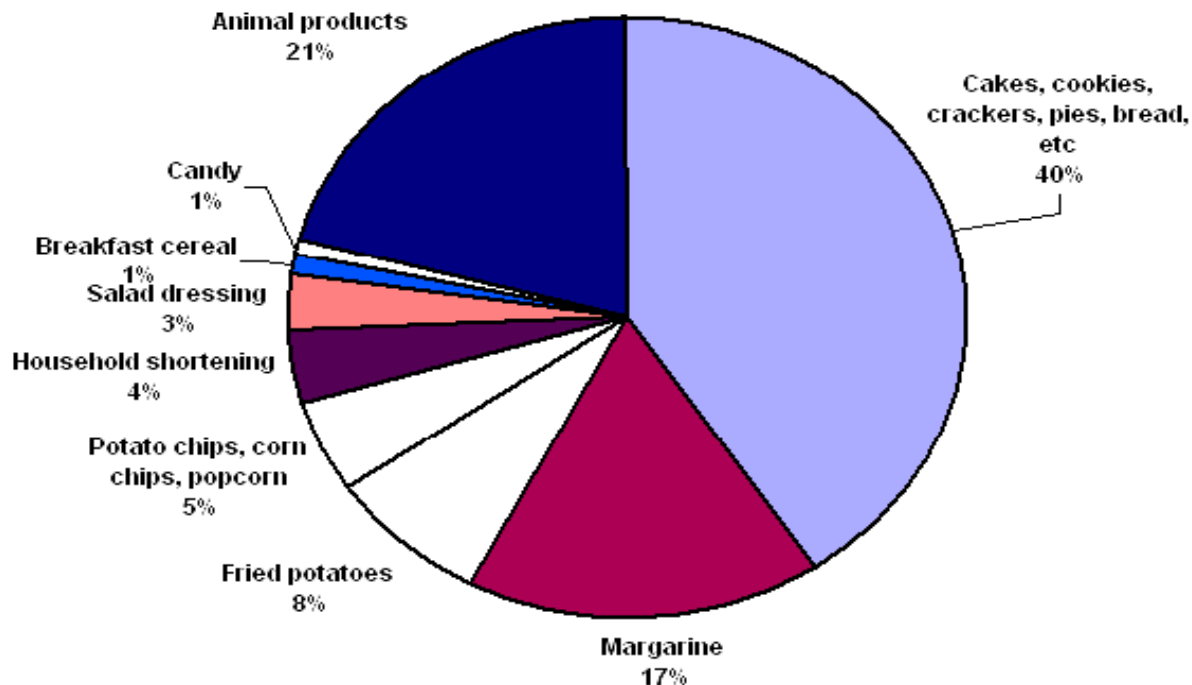
Scientific evidence demonstrates a clear association between increased trans fat intake and the risk of coronary heart disease. Most dietary trans fat is found in partially hydrogenated vegetable oil ("PHVO")—oil that has been chemically modified. Scientific studies which examine the change in cholesterol levels when trans fat is replaced with currently available heart healthy alternatives conservatively estimate a reduction of 6% in coronary heart disease events such as heart attacks.³ Even in the most conservative estimates, based on replacing trans fat primarily by saturated fat - an unlikely outcome given the widespread trend to healthier fats by food producers - a significant although smaller reduction in coronary heart disease events is still expected. Other scientific studies, based upon observing large groups of people over time estimate that up to 23% of coronary heart disease events could be avoided by replacing trans fat with healthy alternatives. Because an estimated one-third of dietary trans fat comes from foods purchased in restaurants, the continued presence of PHVO in restaurant foods represents an important contribution to cardiovascular risk for Albany County diners.¹

Dietary trans fat increases the risk of heart disease by elevating LDL ("bad") cholesterol and lowering HDL ("good") cholesterol.⁴ Because of its negative effect on "good cholesterol," trans fat appears to be even worse than saturated fat. The Institute of Medicine (IOM) reviewed the scientific evidence and concluded that there is "a positive linear trend between trans fatty acid intake and total and LDL concentration, and therefore increased risk of coronary heart disease."⁵ The 2005 Dietary Guidelines for Americans, issued by the United States Department of Agriculture (USDA), recommends that dietary intake of trans fat be "as low as possible"⁶ and the American Heart Association guidelines issued in June 2006 recommend that trans fat intake be kept below 1% of total energy intake.⁷ In January of 2006, the FDA's mandatory listing of trans fat content on the nutrition facts labels of packaged foods came into effect.⁸ Approximately 80% of dietary trans fat is found in industrially-produced PHVO, which is used for frying and baking and is present in many processed foods.⁹ Approximately 20% is naturally occurring and is found in small amounts in dairy and meat products from ruminant animals.

The artificial trans fat found in PHVO is produced when hydrogen is added to vegetable oil in a process called hydrogenation. Common FSE sources of artificial trans fat include: foods fried in partially hydrogenated vegetable oils; margarine and vegetable shortening; prepared foods such as pre-

fried french fries, fried chicken, taco shells and donuts; baked goods such as hamburger buns, pizza dough, crackers, cookies, and pies; and pre-mixed ingredients such as pancake and hot chocolate mix. Common sources of trans fat in the U.S. diet are shown in Figure 1 below:

Figure 1: Sources of Trans Fat in the U.S. Diet⁹



The major source of dietary trans fat, found in PHVO, can be replaced with currently available heart healthy alternatives. Denmark has recently successfully removed artificial trans fat by limiting industrially produced trans fat content in food to 2% of total calories from fat. In addition, in June 2006 the Canadian Trans Fat Task Force issued a report recommending that Canada limit trans fat in food service establishments to 2% of total fat content in margarines and vegetable oils and 5% of total fat content in all other food ingredients.¹⁰ "Zero grams" trans fat packaged foods in the US, both new products and those already in production, have been extensively marketed since the labeling requirement for packaged foods became effective in January of 2006. Many manufacturers have reformulated a number of their existing products that are now widely available as "zero grams" trans fat (defined by the FDA as <0.5 grams per serving) on supermarket shelves. A recent *New England Journal of Medicine* article reports that industry and government representatives agreed that the restriction of trans fat in Denmark "did not appreciably affect the quality, cost or availability of food".³ This experience demonstrates that artificial trans fat can be replaced without consumers noticing an effect.¹¹ Acceptable healthier alternatives to PHVOs include traditional mono and poly unsaturated vegetable oils (e.g., canola, com, olive, etc.) that have not been hydrogenated, as well as newly developed oils such as those made from specially cultivated varieties of soybeans, safflowers, and sunflowers. Further, many of the newer trans fat-free oils have long 'fry lives' and other favored characteristics of PHVOs. Educational and enforcement efforts will seek to promote a shift to healthier fats. In response to increased demand, US companies are expanding production of products that will increase the market supply of alternatives to hydrogenated oils.^{12,13}

Are trans fats bad for kids?

Trans fats increase the risk for heart disease. Therefore, children who start at age 3 or 4 eating a steady diet of fast food, pop tarts, commercially prepared fish sticks, stick margarine, cake, candy, cookies and microwave popcorn can be expected to get heart disease earlier than kids who are eating foods without trans fats.

While a person may not get heart disease until they are in their 40s, research performed at the University of Maryland has shown that kids as young as 8, 9 and 10 already have the high cholesterol and blood fats that clog arteries. By starting healthy eating habits early, parents can help their children avoid heart attacks and stroke.

Is there an amount of trans fat intake that is considered “safe?”

In June 2006, the American Heart Association (AHA) issued its “2006 Diet and Lifestyle Recommendations.” The AHA recommends that ones daily intake of trans fats be limited to 1 percent of total calories, which is equivalent to roughly **2 to 2.5 grams of trans fat per day**. (The AHA also recommends that you limit saturated fat to about 15 to 19 grams per day.)

How much trans fat do are consumed in a day?

Some individuals are consuming virtually none, because they are being selective about what they eat, but many are consuming in excess of 15 grams of trans fat per day.

Are healthier oils readily available for restaurants to make the switch?

Major food conglomerates such as Cargill to Archer Daniels Midland have introduced new cooking oils to replace trans fat. An independent website called FryTest.com has evaluated the many products currently on the market. For frying, restaurants can choose traditional, healthy trans fat-free vegetable oils (such as soy, corn, or canola oils), as well as many new trans fat-free oils made from specific varieties of soybeans sunflowers, and other grains and seeds.

Are Trans fat-free baking shortenings readily available?

Absolutely. At the present time, many bakers use trans fat-free palm oil as shortening. Palm oil contains no trans fat and works very well, but is not a healthy alternative as it is high in saturated fat. While it would be perfectly legal to use trans fat-free palm oil under the proposed regulation, a lower saturated fat alternative should be used if possible for health reasons. There are many trans fat-free lower saturated fat alternatives on the market such as palm and canola blends and healthier shortenings and oils. There is even a [Crisco trans fat-free shortening](#) which has excellent functionality.

Consumer trans fat consumption and the contribution of FSEs

National surveys show that Americans spend almost half (47%) of their food dollars eating out.¹⁴ One third of daily caloric intake comes from foods purchased in restaurants.¹ The continued presence of artificial trans fat in restaurant foods needlessly increases the risk for heart disease for all of our county's residents. Consumer concern about trans fat in food is evidenced by the increase in national sales of products labeled "no trans fat" by 12% to \$6.4 billion for the 52 weeks ended October 2, 2004, compared with the previous 52-week period.¹² Nutrition ranks second after taste as the factor most frequently influencing food purchases.¹⁵ Moreover, artificial trans fat can be replaced with heart-healthier oils and fats without changing the taste of foods.

Why focus on trans fat over other fats?

The Institute of Medicine (IOM) conclusion that there is no safe level of artificial trans fat consumption⁵ is in contrast to other dietary fats which, when consumed in moderation, are a natural part of a healthy diet. Artificially produced trans fat is relatively new to our food supply and confers no known health benefit. Because healthy, inexpensive alternatives exist for the most common source of trans fat, PHVO, their continued use by food service establishments poses an unnecessary public health threat.

Why use 0.5 grams per serving of trans fat as a threshold?

Current FDA labeling regulations allow manufacturers of foods packaged for direct sale to consumers in retail markets to list trans fat content as "0 grams" if the product contains less than 0.5 grams per serving.¹⁶ This allows for the presence of naturally occurring trans fat in meat and dairy foods as well as newer "low trans fat" foods, which may have PHVO listed as an ingredient. The proposed provision intentionally allows for products that have less than 0.5 grams per serving (evidenced either on a Nutrition Facts label or in information provided by the manufacturer) in order to accommodate most of the newly formulated low trans fat margarines on the market, and allows for substitute spreads.

Enforcement:

The Albany County Health Department would investigate complaints and verify compliance. The enforcement provisions of this resolution are similar to the provisions of other Departmental regulations that govern food service establishments. It is anticipated that the resolution would add an extra 10-15 minutes per inspection of restaurants, on average, to enforce this resolution.

Fiscal Impact of a trans fat ban:

Newly marketed trans fat-free oils with longer fry lives may cost more per gallon, but may also last longer, potentially making them cost-neutral. As every restaurant owner knows, it is fry life that determines cost. A \$26 case of trans fat-free oil that has 1.1 times the fry life of a \$23 case of partially hydrogenated oil has the same cost. That single \$26 case of oil will cook thousands of servings of food. Even if there is any additional cost it certainly does not exceed \$5 to \$10 per week even in the largest restaurant. Kentucky Fried Chicken's third-largest franchise owner, John Neal, says the difference in cost is "pennies." An assessment of the amount of time required to enforce this resolution, based upon discussion with the NYC Department of Health, indicate that there would not be a negative fiscal impact upon the Albany County Department of Health staff assigned to enforcement activities of this new resolution.

Provisions of Albany County Sanitary Code:

(a) *Artificial trans fats restricted.* No foods containing artificial trans fat as defined in this section, shall be stored, distributed, held for service, used in preparation of any menu item or served in any food service establishment, mobile and temporary food service, and any mobile food unit commissary, as defined in Title 10, Chapter 1, Part 14 of the NYS Codes, Rules, and Regulations or successor provisions, except food that is being served directly to patrons in a manufacturer's original sealed package.

(b) **Definition.** For the purposes of this section, a food shall be deemed to contain artificial trans fat if the food is labeled as, lists as an ingredient, or has vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. However, a food whose nutrition facts label or other documentation from the manufacturer lists the trans fat content of the food as less than 0.5 grams per serving, shall not be deemed to contain artificial trans fat.

(c) **Labels required.**

(1) *Original labels.* Food service establishments and mobile food unit commissaries shall maintain on site the original labels for all food products:

(i) that are or that contain fats, oils or shortenings, and

(ii) that are, when purchased by such food service establishments or mobile food unit commissaries, required by applicable federal and state law to have labels, and

(iii) that are currently being stored, distributed, held for service, used in preparation of any menu items, or served by the food service establishments covered by this regulation.

2) *Documentation instead of labels.* Documentation acceptable to the Albany County Department of Health from the manufacturers of such food products, indicating whether the food products contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content, may be maintained instead of original labels.

(3) *Documentation required when food products are not labeled.* If baked goods, or other food products restricted pursuant to subdivision (a) of this section, that are or that contain fats, oils or shortenings, are not required to be labeled when purchased, food service establishments and mobile food commissaries shall obtain and maintain documentation acceptable to the Albany County Department of Health, from the manufacturers of the food products, indicating whether the food products contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil or indicating trans fat content.

(d) **Enforcement.**

1) When a food service establishment is inspected by the Albany County Department of Health for compliance with Title 10, Chapter 1, Part 14 of the NYS Codes, Rules, and Regulations it must verify compliance with this regulation.

2) The Albany County Department of Health must investigate each complaint alleging a violation of this regulation and take appropriate action.

3) Any violation of this regulation is a violation of the Albany County Sanitary Code. Enforcement of this provision shall be in accordance with the Albany County Sanitary Code and pertinent sections of the NYS Public Health Law. Each day a violation exists is a separate offense. After an administrative hearing, the Commissioner of the Albany County Department of Health may issue an order consistent with this provision, which may include a monetary

penalty of up to \$1000 when it is determined that the operator of a food service establishment has knowingly and repeatedly violated this regulation.

- (e) **Applicability.** This regulation applies Countywide.
- (f) **Severability.** If the application of this regulation or any part of it to any facts or circumstances is held invalid, the rest of the regulation and its application to all other facts and circumstances is intended to remain in effect.
- (g) **Effective Date.** This regulation takes effect on:
 - (1) January 1, 2009 for oils, shortenings, and margarines with artificial trans fat that are used for frying or in spreads; and
 - (2) July 1, 2009 for:
 - (A) oils or shortenings used for deep frying of yeast dough or cake batter; and
 - (B) all other foods containing artificial trans fat.
- (h) **Delay of Applicability.** The Albany County Health Department may issue a delay the applicability of this regulation to any food covered by subsection (g)(2)(B) after receiving a written request from a food service establishment for up to one year from the date the request is approved if the Department finds that the food service establishment has demonstrated that a suitable replacement product is not widely commercially available. The Department may charge a fee of up to \$150 to process an establishment's request.

ADOPTED BY THE VOTE OF 4 of 7 MEMBERS

I hereby certify that the foregoing is a true and correct transcript of a Resolution duly adopted by the Board of Health on the 3 day of March, 2008, and of the whole thereof.

FILED
NEW YORK STATE DEPT. OF HEALTH
[Signature]
DATE 5-15-08

Dated: Albany, New York
March 25, 2008

James B. Crucetti

JAMES B. CRUCETTI, MD, MPH
Secretary, Albany County Board of Health
Commissioner, Albany County Health Department

Acknowledgement:

The Albany County Department of Health acknowledges the New York City Department of Health and Mental Hygiene for their assistance with the development of the scientific basis for proposing a restriction on trans fats in restaurants that was adapted for use in this Resolution and for their generous assistance during consultations and for use of their educational materials and technical resources.

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