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January 26, 2007

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

SUBJECT: **TRANS FAT REGULATION AND CALORIE LABELING**
(Relates to Agenda Item #S-1, January 30, 2007)

On December 12, 2006, the Board approved a motion by Supervisor Burke, instructing the Director of Public Health, in consultation with County Counsel, to 1) investigate the issues of trans fat regulation and calorie labeling for Los Angeles County, including pros and cons of adopting approaches similar to those of New York City, and the legal authority of the Board to adopt such measures; and 2) report back to the Board with the findings and recommendations within 45 days. On January 9, 2007, the Board approved an additional motion by Supervisor Burke, instructing the Director of Public Health to include in this report the formation of a taskforce to include, but not be limited to, industry representatives from restaurants, fast food establishments, community health organizations, and the Nutrition and Physical Activity Task Force. This is the response to those motions.

Legal Authority

County Counsel has advised that attempts by the County to either regulate the use of trans fats in food sold at retail food facilities or to require that restaurants post calorie and/or nutritional content, would likely conflict with State law, because such local regulation would impose additional requirements on a field occupied by the State. The Legislature has stated its intent to occupy the entire field of food consumed in the State as well as the health and sanitation standards for retail food facilities. This would likely preclude the County from regulating these facilities by either limiting the amount of trans fat in food or requiring facilities to post nutritional content information.

County Counsel further notes that there are several bills pending before the State Legislature, which are aimed at either regulating the amount of trans fat used in the preparation of food within a retail food facility, or requiring that restaurant chains provide nutritional information on their menus. In the event these bills are enacted, then the County would be preempted from acting in that area, since any local ordinance would duplicate or contradict State law.

Summary of Recommendations

In the absence of a legal authority to regulate trans fats and calorie labeling, the Department recommends that the Board 1) instruct Public Health to develop for Board review and approval within 45 days, a voluntary, incentive-based program for trans fat reduction in food sold in retail food facilities, 2) instruct Public Health to work with the Chief Administrative Officer (CAO) and County Counsel to develop contract language which will require operators of food facilities which prepare and serve food in County buildings to comply with limits on trans fats in servings, and 3) support State legislation a) restricting the amount of trans fat in retail food facility food servings and b) promoting the availability of calorie and nutritional labeling by retail food facilities on their menus and menu boards.

Specific Recommendations

The Department proposes to convene the task force as envisioned in the January 9, 2007, Board motion to develop and return to the Board within 45 days with guidelines for a voluntary, incentive-based education and certification program to include:

1) the issuance of a Health Officer communication to all retail food establishments, informing them of the health concerns with using trans-fats and informing them of sources of information which will assist them in reducing artificial trans fats in their food products.

2) the establishment of incentives to encourage restaurants to voluntarily comply with the recommendation; such as recognition for those restaurants that choose to comply by including that information with the facility grades on the Department's web site and providing an official standardized decal that could be posted at the restaurant based on certification by the Department. We will explore the use of an optional fee to cover our costs for this certification of interested food facilities.

3) an education campaign targeted to restaurant owners and their staff to inform them of the health benefits of eliminating trans fats and provide information on alternative cooking oils that could be used.

4) a public education campaign to inform the general public of the health risks associated with trans fats.

The Department recommends that the Board instruct Public Health to work with the CAO and County Counsel to develop language to be added by departments to new or renewal agreements with food service providers operating in County facilities, to limit trans fats in servings.

The Department recommends that the Board instruct its legislative advocates to:

1) support state legislation that regulates the use of artificial trans fats in retail food establishments and provides a reasonable time period for phasing in the conversion to healthier oils and fats.

2) support state legislation that promotes the availability of nutrition information, including calories, on menus and menu boards at the point of purchase for foods and beverages served in restaurants.

The Department further recommends that the Board instruct it to continue to work with key stakeholders to educate consumers on how to better judge caloric content, portion size and to adopt healthier eating patterns throughout the life cycle.

The attachment provides background information about the issues of trans fats and nutritional labeling.

If the Board approves these recommendations, we will return in 45 days with specific information on how to implement the trans fat aspects of these recommendations. In the meantime, if you have any questions or need additional information, please let me know.

JEF:js
PH:612:005

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

TRANS FAT REGULATION AND NUTRITIONAL LABELING

Trans Fats

Artificial trans fats are produced through an industrial process (referred to as partial hydrogenation) that converts vegetable oils into semisolid fats. These fats are often found in margarines, shortenings, baked goods, fried foods, and snack foods. The average consumption of artificial trans fats in the United States is 2-3% of total calories consumed. Naturally occurring trans fats are also found at low levels in meat and dairy products and are consumed in smaller amounts (approximately 0.5% of total calories consumed).

There is strong evidence that the consumption of trans fats increases the risk of coronary heart disease (CHD), the leading cause of death and premature death in the county population. This risk appears to be greater than with other dietary fats, even saturated fats. Trans fats increase the level of bad cholesterol (LDL) and decrease the level of the good cholesterol (HDL). Trans fats also increase the level of triglycerides, cause inflammation within blood vessels, and irritate the internal lining of blood vessels, all of which may further increase heart disease risk. An analysis of four large research studies found that a 2% increase in energy intake from trans fats was associated with a 23% increase in the incidence of CHD (Mozaffarian et al., 2006).

After thoroughly reviewing the evidence linking intake of trans fats to CHD, and in the absence of any known nutritional benefit, the Institute of Medicine and National Academy of Sciences, as well as the National Cholesterol Education Program Expert Panel, recommended in 2002 that trans fats intake should be kept "as low as possible." The American Heart Association has further recommended that "no more than 1 percent of daily calories come from trans fats."

In January 2006, the FDA established a requirement that trans fat content be listed on the labels of all packaged and canned foods. Thus, consumers now have access to this information when they purchase these foods for home preparation. Consumers in restaurants, however, do not know whether they are eating trans fats or, if they are, the quantity they are eating.

Over the past generation, there has been a tremendous increase in the consumption of food in or from restaurants and fast food establishments. Nationally, the percentage of food dollars spent on foods prepared outside the home increased from 26% in 1970 to 47% in 2002. Results of the Los Angeles County Health Survey indicate that one in four children in the county have eaten fast food in the past day.

Efforts to Restrict Trans Fats in Commercial Food Establishments.

In June 2005, the New York City Board of Health launched a year-long trans fat education campaign that called on all food service establishments in the city to voluntarily remove artificial trans fats from the foods they were serving. Unfortunately, despite an extensive educational outreach effort, follow-up surveys found no decrease in the use of trans fats among the city's food establishments.

Given the unsuccessful voluntary effort, the New York City Health Code was amended in December 2006, to restrict the use of artificial trans fat in all food service establishments.[1] The amended code specifies that food items must contain less than 0.5 grams of trans fat per serving and allows for a phase-in period of between 6-18 months depending upon the class of food. The law exempts food served in its original package. The city's health department will provide technical support for restaurants and bakeries, including: 1) a helpline staffed by recognized culinary science experts, 2) training for restaurant personnel, and 3) resource materials (e.g., brochures) with information on alternative oils and fats.

Philadelphia has introduced an ordinance similar to New York City's. The bill would amend the city's health code to allow only trace amounts of trans fat in restaurant food and vending carts. Chicago is also considering a trans fat ordinance. Locally, the cities of Los Angeles and Baldwin Park are investigating the possibility of regulating trans fats in restaurants, although based on the County Counsel analysis, California cities would likely be precluded from such regulation.

At the state level, there are currently two new bills in the Assembly (AB 93 Garcia and AB 97 Mendoza) and one pending in the Senate (SB 40 Romero) that would regulate artificial trans fats in restaurants. In addition, there are two pending bills in the Assembly (AB 86 Lieu and AB 90 Huffman) that would regulate artificial trans fats in schools. Other states that are considering legislation to restrict trans fat in restaurant foods include Massachusetts, Washington, Arkansas, Pennsylvania, New Hampshire, New York, New Jersey, Maryland, Rhode Island, South Carolina, and Connecticut. Florida and South Carolina are considering bills to require disclosure of trans fat use in restaurants. Internationally, Denmark passed a law in 2003 effectively banning artificial trans fats from its food supply.

A number of voluntary efforts are also underway to reduce trans fat consumption in restaurants. In the city of Tiburon in northern California, all 18 restaurants have voluntarily removed artificial trans fats from their food and display decals in their windows to indicate this fact. Westchester County, New York has started a voluntary program requesting restaurants to cook without trans fat.

Some U.S. food chains and other businesses have taken steps to eliminate trans fats from their restaurants. Recently, Wendy's, Kentucky Fried Chicken, Taco Bell, Olive Garden, Red Lobster, Arby's, Ruby Tuesday, Chili's, Loew's Hotels, Royal Caribbean International, Johnny Rockets and Starbucks have announced they will no longer use artificial trans fats or are phasing them out quickly.

[1] New York City is not preempted by state statute.

Recommended Actions on Trans Fats.

County Counsel has advised that attempts by the County to regulate the use of trans fats in food sold at retail food facilities would likely conflict with State law, because such local regulation would impose additional requirements on a field occupied by State law.

In the absence of a legal authority to regulate trans fats, the Department recommends the establishment of a voluntary program with incentives to encourage restaurants not to use artificial trans fats in their food products. Incentives could include recognition for those restaurants that remove artificial trans fats from their food products by listing them on the Department's web site and providing a window decal that could be posted at the restaurant. An education campaign should be done with restaurant owners and their staff to inform them of the health benefits of eliminating trans fats and provide information on alternative cooking oils that could be used. The emphasis of the education campaign for restaurants would be on natural replacement oils such as soy, corn, peanut and olive oils. The new, industrially produced trans fat free oils and shortenings should be discouraged until more research is done on their health effects. A public education campaign should also be undertaken to inform the general public of the health risks associated with trans fats. A well-informed public would be more likely to preferentially patronize trans fat free restaurants, thereby creating a financial incentive for restaurants to comply with the recommendation.

The major advantage of this voluntary approach is that it would provide important information to consumers, allowing them to make an informed choice regarding trans fats in choosing a restaurant. This would put pressure on restaurants to conform to a growing trend.

The voluntary approach has several potential disadvantages. The program would require investment of county resources to do the educational outreach. An optional fee will likely be required to certify a restaurant has the right to post a county authorized decal indicating that they limit trans fat consistent with criteria to be promulgated. Despite this investment, it is possible, based on New York City's experience, that the voluntary approach would be less than optimal. However, the use of incentives would likely increase participation by restaurants.

There is also concern that non-chain restaurants located in low-income communities would be more difficult to reach in educational campaigns and would be more resistant to change. Some of these communities already have disproportionately high rates of heart disease, and the voluntary approach could potentially create even greater health disparities.

For these reasons, the Department also recommends that the Board support state legislation that regulates the use of artificial trans fats in restaurants and provides a sufficient time period for phasing in the conversion to healthier oils and fats.

If the Board approves the establishment of a local voluntary program, the Department will convene the task force comprised of public and private stakeholders to assist in designing the education materials and developing the implementation plan.

Nutritional and Calorie Labeling

Recent data indicate a continuing obesity epidemic in the county with no signs of slowing. Among adults, the obesity rate steadily increased from 14.3% in 1997 to 20.9% in 2005, a net gain of 44 million pounds. A similar trend is seen for children, with the obesity rate rising from 18.9% in 1999 to 23.3% in 2005 among 5th, 7th, and 9th grade public school students countywide (data from the Office of Health Assessment and Epidemiology, Los Angeles County Department of Public Health, and the California Department of Education Physical Fitness Testing Program).

The public health impacts of this epidemic are immense and are likely to continue far into the future. Obesity is the major risk factor for type 2 diabetes. The Centers for Disease Control and Prevention estimates that one in three babies born today will develop diabetes in their lifetimes if steps are not taken to reverse the obesity epidemic. Among Latino and African-American babies, nearly one in two will develop diabetes during their lifetimes. The average man who develops diabetes at age 40 will die 11.6 years earlier than if he had not had diabetes. The average woman who develops diabetes at age 40 will die 14.3 years earlier. In addition to the shortened life span, those with diabetes are at greatly increased risk of chronic illness and disability associated with diabetes-related complications, including blindness, heart disease, kidney failure, skin ulcers, and limb amputation. Obesity also increases the risk of stroke, arthritis, liver and gallbladder disease, and some types of cancer.

Many factors at the individual, family, and community levels are believed to be contributing to the obesity epidemic. At the community level, conditions that discourage physical activity and encourage excessive caloric intake are important targets for intervention. The Department is currently working with a broad range of external partners to address the epidemic and prevent future cases of obesity in children and adults. These efforts include community education and promotion of policies that support physical activity and healthful nutrition in schools, workplaces, cities, and other community settings.

As noted above, there has been a tremendous increase in restaurant and fast food consumption over the past several decades. Portion sizes have also increased dramatically. Research studies have shown a link between frequent restaurant and fast food consumption and excess weight gain. Consumers have been shown to often greatly underestimate the caloric content of foods served in restaurants and fast food establishments. Several studies suggest that providing calorie and other nutrition information to consumers is associated with selection of lower calorie and healthier food items, especially among women.

The FDA requires the posting of calorie content and other nutrition information on all canned and packaged food products sold in the United States except fresh produce, fish, meat and poultry. Three quarters of adults report using nutrition labels and almost half say that the information affects their purchasing decisions. However, consumers do not have this information for menu offerings when eating in restaurants and fast food establishments. Such information, if available at the point of purchase, would provide the opportunity for more informed decisions when making food selections.

Efforts to Require Calorie and/or other Nutrition Labeling in Commercial Food Establishments

In response to the obesity epidemic, New York City amended its health code in December, 2006 to require food service establishments that already make calorie information publicly available for standardized menu items to post this information on menu boards and menus next to each menu item. The requirement will take effect March 1, 2007. The intent is to ensure the calorie information already publicly available will be posted at the point of purchase so that consumers can make informed choices. The provision does not require any food establishments to engage in additional analysis of the nutrition content of its menu items. Food establishments are not precluded from providing additional nutrition information voluntarily. The City's Department of Health and Mental Hygiene's restaurant inspectors will be responsible for enforcing the calorie posting requirement. Public testimony was overwhelmingly in favor of the amendment.

In 2004, California State Senator Deborah Ortiz introduced SB 1171, which would have required fast food and other chain restaurants with 10 or more locations in California to post nutrition information for all standard menu items on menu boards (calorie information only) and printed menus (calories, saturated fats, trans fats, and sodium). The bill did not pass.

In January 2007, California State Senator Alex Padilla introduced a bill (SB 120) that would require chains with 10 or more restaurants in California to provide calorie information on menu boards and total calories, grams of saturated fat plus trans fat, and milligrams of sodium per item on printed menus. The effective date would be January 1, 2009.

Recommended Actions on Calorie and other Nutrition Labeling.

County Counsel has advised that attempts by the County to require that restaurants post calorie and/or nutritional content, would likely conflict with State law, because such local regulation would impose additional requirements on a field occupied by State law.

In the absence of a legal authority to require calorie or other nutrition labeling, the Department recommends that the Board support state legislation (such as the Padilla bill) that promotes the availability of nutrition information, including calories, on menus and menu boards at the point of purchase for foods and beverages served in restaurants.

The Department further recommends that the Board instruct the Department to continue to work with key stakeholders to improve consumer education on key nutritional issues, including better estimation of calories in food and portion sizes, as well as practical ways to improve healthful nutrition throughout the life cycle.