

## Memorandum of Meeting

Date: December 13, 2002; 2:00 p.m.

Subject: *Trans* fat proposed rule

Location: Room 10-64; Switzer Building

Participants:

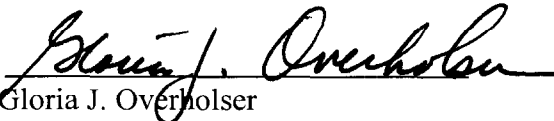
John Bode, Olsson, Frank and Weeda  
Richard Cristol, National Association of Margarine Manufacturers (NAMM)  
Philip Olsson, Olsson, Frank and Weeda (legal counsel to NAMM)  
Daniel E. Troy, Chief Counsel, FDA  
Gloria Overholser, Office of Chief Counsel, FDA

Discussion:

Mr. Philip Olsson requested a meeting to discuss First Amendment concerns related to FDA's notice to reopen the comment period (67 FR 69171; November 15, 2002) on the proposed mandatory use of a footnote stating "Intake of *trans* fat should be as low as possible," when *trans* fat would be listed in the Nutrition Facts panel.

Mr. Troy opened the meeting by opening it up for discussion by the industry participants. Industry representatives stated that there is a general belief among those in industry that the footnote is misleading and that the government interest to require it is poorly defined. The use of the footnote would not further an interest to provide accurate food labeling. Concerns were cited about what is likely to be manufacturers' responses to the footnote, i.e., an increased use of saturated fat in products in an effort to achieve a zero amount of *trans* fat. Industry sees the footnote as a warning statement and is concerned about having negative information on the food label. Industry raised a question about what unintended consequences may occur in consumer consumption with the use of the proposed footnote or with the use of a revised footnote; for example, consumers would seek out foods with no *trans* fat and may end up consuming more saturated fat, and even if additional fats were included in the footnote, such as saturated fat and cholesterol, that may prompt a higher consumption of foods high in sugar. Further, a question was raised about when a footnote would have to appear on a label, such as when there is no *trans* fat in a product.

There was a general discussion about First Amendment case law and analysis. Mr. Troy thanked industry for sharing its views. The meeting concluded at approximately 3:15 p.m.

  
Gloria J. Overholser

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MMZ