

MEMO OF MEETING

Date: December 12, 2002; 1:00 p.m.

Subject: *Trans* Fat Proposed Rule (Docket No. 94P-0036)

Location: Room 6-21, Parklawn

Participants:

Industry:

Richard Cristol, National Association of Margarine Manufacturers (NAMM)  
Bob DeCaprio, NAMM  
Gerard P. Panaro, Biscuit and Cracker Manufacturers Assn.  
Regina Hildwine, National Food Processors Assn.  
Philip Olsson, Olsson, Frank and Weeda (legal counsel to NAMM)  
Shiela Cohn, National Restaurant Assn.  
Robert Reeves, Institute of Shortening and Edible Oils  
Lee Sanders, American Bakers Assn.  
Alison Kretser, Grocery Manufacturers of America (GMA)  
Ann Boeckman, Hogan and Hartson (legal counsel to GMA and Snack Food Assn.)  
Linda Nishida, Independent Bakers Assn.  
Robert Earl, National Food Processors Assn.  
Dave Dexter, Snack Food Assn.

FDA:

Dan Troy, Chief Counsel  
Gloria Overholser, Office of Chief Counsel  
Joseph Levitt, Director, Center for Food Safety and Applied Nutrition (CFSAN)  
Leslye Fraser, Associate Director for Regulations, CFSAN  
Richard Williams, Office of Scientific Analysis and Support, CFSAN  
Virginia Wilkening, Office of Nutritional Products, Labeling and Dietary Supplements, CFSAN

Discussion:

The above trade associations requested the meeting to discuss FDA's notice reopening the comment period on the proposed rule of nutrition labeling of *trans* fat, specifically the Agency's rationale for the proposed mandatory use of a footnote stating "Intake of *trans* fat should be as low as possible," when *trans* fat is listed in the Nutrition Facts panel (see 67 FR 69171, November 15, 2002). In response to that request, Mr. Levitt opened the meeting with a discussion of the steps the Agency has taken in its rulemaking on *trans* fat labeling and how, in the absence of a basis to establish a Daily Value for *trans* fat, FDA proposed to require the footnote when *trans* fat is listed. The footnote would provide one way for consumers to use the recommendation from the

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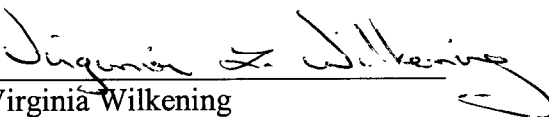
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National Academy of Sciences' recent macronutrient report when choosing foods in the content of a daily diet.

The industry representatives then led a discussion that centered on the following six areas of concern to them:

1. They believe the footnote is a de facto warning label and communicates to the consumer, "Do not eat *trans* fat!"
2. They believe the footnote is misleading in that it raises *trans* fat to a relative level of concern not supported by the science and will create unintended consumer behavior, i.e., less concern about saturated fat, hence more consumption of saturated fat.
3. They believe the stigma of the footnote will push food processors to replace *trans* fat with saturated fat.
4. They believe the footnote will add significantly to an already cluttered label.
5. They believe the footnote reflects a piecemeal approach to implementing the Dietary Reference Intakes and is, at best, premature in light of the study now underway at the Institute of Medicine/National Academy of Sciences on "Use of Dietary Reference Intakes in Nutrition Labeling."
6. They believe the footnote may not pass constitutional muster under the First Amendment.

FDA noted that it would consider these comments as we develop the final rule. FDA also asked the industry representatives to consider alternative language for the footnote that would help consumers understand the relevance of the quantitative amounts of *trans* fat in relation to recommended dietary intake patterns. FDA indicated that inasmuch as there is a great deal of interest in finishing this rulemaking, there would be no extension of the comment period that ends Monday, December 16, 2002.

  
Virginia Wilkening