

Resolution No.: 16-134
Introduced: March 27, 2007
Adopted: May 15, 2007

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH

By: Councilmembers Trachtenberg, Leventhal, Elrich, Ervin, and Knapp

SUBJECT: Board of Health Regulation Restricting Trans Fat Use in Eating and Drinking Establishments

Background

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On April 24, 2007, the County Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that restricting trans fat use is necessary to protect the health of patrons of eating and drinking establishments in the County.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

Artificial trans fats in eating and drinking establishments

(a) **Definitions.**

- (1) Any term used in this regulation has the same meaning as in Section 15-1 of the County Code if the term is defined in that Section.
- (2) **“Artificial trans fat”** means the specific type of fat formed when hydrogen is added to liquid vegetable oil to make the oil more solid. This process is called hydrogenation. For purposes of this regulation, a food contains artificial trans fat if the food:
 - (A) is labeled as containing partially hydrogenated vegetable shortening, margarine, or vegetable oil;
 - (B) lists partially hydrogenated vegetable shortening, margarine, or vegetable oil as an ingredient; or
 - (C) contains partially hydrogenated vegetable shortening, margarine, or vegetable oil.

However, a food with a nutrition facts label or other document from the manufacturer that lists the trans fat content of the food as less than 0.5 grams per serving does not contain artificial trans fat.

- (b) **Artificial trans fats restricted.** Any food containing artificial trans fat must not be stored, distributed, held for service, used in preparing any menu item, or served in any eating and drinking establishment. This subsection does not apply to any food that is served directly to patrons in the manufacturer’s original sealed package.

(c) **Labels.**

- (1) **Original label required.** Except as provided in subsection (2) and (3), each eating and drinking establishment must maintain on site the original label for any food that:
 - (A) contains fat, oil, or shortening;
 - (B) is required by federal or state law to have a label when bought by an eating or drinking establishment; and
 - (C) is stored, distributed, held for service, used in preparing any menu item, or served by the eating and drinking establishment.

- (2) **Documentation instead of labels.** An eating and drinking establishment may provide documentation acceptable to the Department of Health and Human Services from the manufacturer of a food, indicating whether the food contains partially hydrogenated vegetable shortening, margarine, or vegetable oil, or indicating the food's trans fat content.
 - (3) **Documentation required when food products are not labeled.** If any food that is restricted under subsection (b) contains fat, oil, or shortening and a label was not required when the food was bought, an eating and drinking establishment must maintain documentation acceptable to the Department of Health and Human Services from the manufacturer of the food indicating whether the food contains partially hydrogenated vegetable shortening, margarine, or vegetable oil, or indicating the food's trans fat content.
- (d) **Enforcement.**
- (1) Any violation of this regulation is a Class C civil violation. Each day a violation exists is a separate offense.
 - (2) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this regulation.
 - (3) The Department of Health and Human Services must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation when compliance cannot be obtained otherwise.
 - (4) When an eating and drinking establishment is inspected by the Department of Health and Human Services for compliance with Chapter 15, the Department must verify compliance with this regulation.
 - (5) The Director of Health and Human Services may suspend a license issued under Chapter 15 for up to three days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking 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, 2008 for oils, shortenings, and margarines with artificial trans fat that are used for frying or in spreads; and
 - (2) January 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) An eating and drinking establishment may request a delay of up to one year of the applicability of this regulation to any food covered by subsection (g)(2)(B). The Department must grant any request submitted under this subsection. The Department may charge a fee to process an establishment's request.
- (i) **Posting Signs.** Not later than the dates in subsection (g), at least one sign must be posted at each entrance to an eating and drinking establishment indicating:
- (1) whether the eating and drinking establishment complies with the requirements of this regulation; and
 - (2) whether the eating and drinking establishment has been granted an extension under subsection (h).

Any sign need not be permanently attached to a structure. The owner and the person in control of the eating and drinking establishment are both responsible for posting the required signs.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council