

CALIFORNIA CONFERENCE OF DIRECTORS OF ENVIRONMENTAL HEALTH

CALIFORNIA TRANS FAT BAN GUIDELINES *January 2010*

AB 97 by Assembly member Tony Mendoza (D-Artesia) was signed into law in 2008 and added Section 114377 to the California Health and Safety Code relating to the ban of artificial trans fats in California's food facilities (hereinafter "trans fat ban"). Below is an overview of the trans fat ban followed by frequently asked questions and answers. Please read the law in its entirety by viewing Section 114377 of the California Health and Safety Code at <http://www.leginfo.ca.gov/calaw.html>.

OVERVIEW OF CALIFORNIA'S TRANS FAT BAN

Food facilities affected by the California Trans Fat Ban

The trans fat ban applies to all food facilities in California except for public elementary, middle, junior high or high school cafeterias (hereinafter, affected food facilities are referred to as "food facilities"). (NOTE: Public schools, grades K-12, are already prohibited from serving any food containing artificial trans fat pursuant to the passage and signing into law of SB 490 by Senator Elaine Alquist (D-Santa Clara), which became effective July 1, 2009).

Exceptions

- The trans fat ban does not apply to food sold or served in a manufacturer's original, sealed package.
- From Jan. 1, 2010 to Dec. 31, 2010, the trans fat ban does not apply to the deep frying of yeast dough or cake batter.
- As mentioned above, the trans fat ban does not apply to public school cafeterias.

Mandatory maintenance of labels for all foods/food additives containing any fat, oil or shortening

This law requires that every food facility maintain on the premises the label for any food or food additive that is, or includes, any fat, oil or shortening, for as long as this food or food additive is stored, distributed, served by or used in the preparation of food within the food facility. "Label" refers to the label that is required by applicable federal and state law to be on the food or food additive at the time of purchase by the food facility.

Ban of oil, shortening or margarine containing artificial trans fat begins Jan. 1, 2010

Beginning Jan. 1, 2010, no oil, shortening or margarine containing 0.5 grams or more of artificial trans fat per serving for use in spreads or frying may be stored, distributed, served by or used in the preparation of any food within a food facility. *The only exception is that oil, shortening or margarine containing artificial trans fat may be used when deep frying yeast dough or cake batter.*

Ban of all food containing artificial trans fat begins Jan. 1, 2011

Beginning Jan. 1, 2011, no food containing 0.5 grams or more of artificial trans fat per serving may be stored, distributed, served by or used in the preparation of any food within a food facility. *This prohibition also applies to the deep frying of yeast dough or cake batter.*

Definition of what is artificial trans fat free (artificial trans fat free = less than 0.5 grams per serving)

For purposes of the trans fat ban, there is a presumption that a food contains artificial trans fat if the food contains vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, unless the label required pursuant to applicable federal and state law lists the trans fat content as less than 0.5 grams per serving.

Fines for non-compliance

A violation of this section shall be punishable by a fine of not less than \$25 or more than \$1,000.

Please read the California trans fat ban law in its entirety by viewing Section 114377 of the California Health and Safety Code at <http://www.leginfo.ca.gov/calaw.html>

FREQUENTLY ASKED QUESTIONS AND ANSWERS

A. SCOPE

- A1. Question: Are all oils, shortenings or margarines containing 0.5 grams or more of artificial trans fat per serving banned during the first phase of the trans fat ban from Jan. 1, 2010 to Dec. 31, 2010?

Answer: No, only oils, shortening or margarine used in spreads or frying and which contain 0.5 grams or more of artificial trans fat per serving are banned during the first phase (however, the law also exempts oil, shortening and margarine used for deep frying yeast dough or cake batter during the first phase). Beginning Jan. 1, 2011 and thereafter, these food products and all other food and food products containing 0.5 grams or more of artificial trans fat per serving are banned, with the exception of food in a manufacturer's original sealed package.

- A2. Q: Are there certain types of food facilities that are exempt from the trans fat ban?

A: Public elementary, middle, junior high or high school cafeterias are exempt from the trans fat ban. However, they are already prohibited from serving any food containing artificial trans fat pursuant to the passage and signing into law of SB 490 by Senator Elaine Alquist (D-Santa Clara), which became effective July 1, 2009). The California Department of Education is responsible for enforcing the trans fat ban at public school cafeterias. Private schools, grocery stores, bakeries and other retail food facilities are not exempt from the provisions of AB 97. The trans fat ban at those food facilities will be enforced by local environmental health agency staff.

- A3. Q: Are prepackaged items in retail areas exempt?

A: Yes. The trans fat ban does not apply to any food sold or served in a manufacturer's original, sealed package.

A4. Q: Are food products that are manufactured and prepackaged by a retail food facility and for sale to customers subject to the trans fat ban?

A: No, they are not subject to the trans fat ban, but they are subject to the Federal Food Labeling and Packaging Act and the Nutritional Labeling and Education Act of 1990.

A5. Q: Are food products that are delivered in the manufacturers' original, sealed package and then portioned and re-packaged by a retail food facility subject to the trans fat ban?

A: Yes.

A6. Q: Are bakeries exempt?

A: No. The exemption to the trans fat ban applies to certain types of food preparation activities and not to certain types of food facilities. From Jan. 1, 2010 to Dec. 31, 2010, the trans fat ban does not apply to oil, shortening or margarine used to deep fry yeast dough or cake batter.

A7. Q: Are mobile food facilities and temporary food facilities, as defined in Cal Code, required to comply with the trans fat ban?

A: Yes.

A8. Q: Are free food samples made available/served to customers in food facilities exempt (e.g., free food samples distributed at Costco)?

A: No, if the food is removed from the manufacturer's original, sealed package then it is NOT exempt.

B. LABEL MAINTENANCE REQUIREMENTS

B1. Q: For which food items must a retail food facility maintain labels?

A: Every food facility must maintain on the premises the label for any food or food additive that is, or contains, any fat, oil, or shortening.

B2. Q: How is the food facility required to maintain labels?

A: The food facility must maintain the required labels on the premises. While there are no specifics in the trans fat ban as to how to maintain the labels, it is recommended that the food facility keep the labels affixed to the products. A "label book" is also acceptable.

B3. Q: Is a food facility allowed to store label information electronically (e.g., on a web server)?

A: Yes. AB 97 does not preclude or prohibit electronic storage of label information. It would not be a violation to store label information electronically provided the information is on the premises and is available for review by an inspector.

B4. Q: How long does a facility need to maintain labels on the premises?

A: As long as the food or food additive is stored, distributed, served or used in the preparation of food within the food facility.

B5. Q: Are the labels required to be made available for customers to review?

A: No. The food facility need only maintain required labels on the premises.

B6. Q: Are there food products that are exempt from the Nutritional Labeling and Education Act of 1990 (NLEA)?

A: Yes, food products manufactured by small businesses who meet certain criteria (less than 100 employees; less than 100,000 units of product per year in U.S. sales; and no health claims made on product label (fat free, heart healthy, etc.)) are exempt from NLEA and are thus exempt from nutritional labeling requirements for disclosing trans fat content.

However, products exempt from NLEA are not exempt from the trans fat ban. Retail food facility operators who sell unpackaged products that contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil must maintain documentation showing that these products meet artificial trans fat ban requirements.

B7. Q: Proprietary labels have no nutritional information, but often times the facility has a book with partial information (product specification sheets). Is the maintenance of such a book on the premises acceptable in fulfilling the requirement relating to maintenance of labels on the premises?

A: Yes.

B8. Q: If a proprietary label has no nutritional information, but the facility has ingredient labels or specification sheets for the product which lists vegetable shortening, margarine or partially hydrogenated vegetable oil in the ingredient list, would a letter from the supplier stating that the product contains less than 0.5 grams of trans fat per serving meet the requirements of the trans fat ban law?

A: Yes.

C. ARTIFICIAL TRANS FAT BAN REQUIREMENTS

C1. Q: If a food label lists the trans fat content as less than 0.5 grams per serving, but more than one serving is used for a food recipe, does this render the final food product as containing artificial trans fat?

A: No. (Note: the label for any food or food ingredients containing less than 0.5 grams of trans fat would list the trans fat content as 0 grams per the NLEA, making it impracticable for the retail food facility operator to determine the final artificial trans fat content for the finished product.)

C2. Q: If a food label lists the trans fat content as more than 0.5 grams of artificial trans fat per serving, but less than a serving is used to make a final food product, is the food product banned under the trans fat ban?

A: Yes. The law defines what is artificial trans fat free based on what the label literally lists (defined as less than 0.5 grams per serving) and not based on actual usage, irrespective of how many servings are used – either more than one serving or less than one serving.

C3. Q: What is the distinction between deep frying and frying?

A: Deep frying refers to the food item being fully submerged in hot oil.

C4. Q: What are examples of food products that are made from the deep frying of yeast dough or cake batter?

A: Some examples are doughnuts, churros, fritters, hush puppies and funnel cakes.

C5. Q: Is it approved to use a product like soup mix that has more than 0.5 grams of trans fat per serving?

A: Not after January 1, 2011.

C6. Q: If a food has no label (e.g., some large commercial size products may not be required to have labels), how will the trans fat content be determined?

A: If the food ingredient packaging is not labeled with the trans fat information, the retail food facility must maintain on file any product specification sheet(s) that accompany the food or ingredient at the time of delivery. The Sherman Food, Drug and Cosmetic Act section 109960 defines labeling as any label or other written, printed or graphic matter (1) on the food (2) on the food container or wrapper or (3) that accompanies the food.

C7. Q: Do all margarines and shortening contain artificial trans fats?

A: No, there are margarines and shortenings that do not contain artificial trans fat (contain less than 0.5 grams of trans fat per serving). However, the label must indicate this in order for it to be deemed as artificial trans fat free under the trans fat ban.

D. ENFORCEMENT

D1. Q: What will be the enforcement procedures be for trans fat ban violations?

A: Trans fat ban violations will be deemed minor violations. Labeling violations will be abated using a corrective time frame established by the local enforcement agency. Artificial trans fat content violations will also be abated using corrective time frames, and may also be subject to Voluntary Condemnation and Destruction procedures.

D2. Q: How will the inspector verify the “less than 0.5 grams per serving of trans fat” threshold?

A: Inspectors will be reviewing labels. If a food item contains vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, there is a presumption that the food contains artificial trans fat, unless the label required pursuant to applicable federal and state law lists the trans fat content as less than 0.5 grams per serving.

D3. Q: Can food facilities do an initial self-assessment/self-certification?

A: This is not addressed in the trans fat ban law. Local enforcement agencies will have discretion.

E. MISCELLANEOUS AND RESOURCES

E1. Q. Has the food industry already moved away from using artificial trans fats?

A: Yes, prior to the trans fat ban, there has been movement to discontinue the use of artificial trans fats in many restaurants and the entire food industry.