



Voluntary or Regulated?
The Trans Fat Campaign in New York City
Teaching Note

Case Summary

Artificially produced trans fatty acids, commonly known as trans fats, have been used in a wide number of food products—from French fries to microwave popcorn, bread, donuts, cookies and crackers—since the early 20th century. Trans fats were attractive to the food industry because they helped improve the taste and shelf life of fried and baked goods. But by the 1990s, studies had shown that they also had adverse health effects, and increased the risk of heart disease.

Heart disease was the number one cause of death in New York City. In 2005, the Bureau of Chronic Disease Prevention and Control at the New York City Department of Health and Mental Hygiene was looking for a way to combat heart disease. It decided to try to sharply reduce the use of trans fats in New York restaurants. The question was how: through a voluntary effort combined with a public education campaign, or by regulation? Should the Health Department simply tell restaurants about the harmful effects of trans fats, and leave it to them to stop using them? If the department educated the public, would people make the decision to stop eating foods containing trans fats? If, on the other hand, the department chose to regulate, how would it enforce that rule, and how would New Yorkers react to a government agency telling them what they could and couldn't eat?

At the time, few people knew what trans fats were. "As I was starting to talk to people, I realized people don't even know what this stuff is," said Gail Goldstein, deputy bureau director. "How can you restrict it if you don't even know where it is or what it is and why?" Their prevalence in popular foods made it difficult to avoid consuming them, and meant that people were taking in far more than the recommended daily allowance. The American Heart Association

recommendation was 1 percent of total calories, equivalent to some 2 to 2.5 grams of trans fat per day.¹ At the time, the median American intake of trans fats was 2 percent of daily calories.²

Dr. Lynn Silver was head of the Bureau of Chronic Disease Prevention. The case details the experiences of her team and others in the department. It begins with information about trans fats, their use in foods, and the role of the Department of Health in ensuring the wellbeing of New Yorkers. While the decision to limit trans fats use in restaurants was relatively straightforward in terms of its expected epidemiological impact, it was more challenging for the department to figure out the best way to do so, given the political context.

The department decided to start with a public education campaign, combined with an appeal for voluntary restraint to restaurants owners. In spring 2005, the department's restaurant inspectors surveyed restaurants to establish a baseline on the use of trans fats. In summer 2005, the department distributed posters, brochures and a health bulletin describing the dangers of trans fats to food outlets, suppliers, supermarkets and consumers. But a re-survey a year later found virtually no change in restaurant behavior.

So the bureau elected to regulate trans fat use. The case takes readers through both the scientific and the political challenges of regulating food substances. On the technical side, the team had to decide how to measure trans fat use, what limits to impose on its use, and how to write the regulation so it would be fair, feasible and enforceable. On the political side, team members carefully considered what scientific evidence could best bolster the department's presentation to the mayor and the city council. They also strategized on how to respond to predictable public and industry reaction.

Teaching Objectives

Use this case to start discussions about how public health officials can use policy to limit people's intake of harmful ingredients such as trans fats, and whether it makes sense to ban substances outright. What level of control should public health officials should have over what people consume, and specifically what they eat? It is one thing to provide guidelines for healthy eating, allowing people to make their own decisions, and quite another to restrict the use of trans fats by legal means. In 2006, ABC's John Stossel said on the news magazine program 20/20 that the trans fat ban was a "nanny state" intrusion: "Gee, I'm all for good health, but shouldn't it be a matter of individual choice?"

Begin the case discussion by asking what options public health officials in New York City had to limit public consumption of trans fats. In 2003, the Food and Drug Administration (FDA) mandated that food manufacturers use labels to list the amount of trans fat in food. In February 2012, the Centers for Disease Control and Prevention (CDC) issued a report

¹ <http://circ.ahajournals.org/content/114/1/82.long>

² <http://www.nytimes.com/1994/05/16/us/fat-in-margarine-is-tied-to-heart-problems.html>

that showed nationwide trans fat blood levels in white adults fell 58 percent between 2000 and 2009, due in part to labeling and other awareness campaigns. This begs the question of whether an outright ban of trans fats was necessary in New York City, or if it would have been sufficient to simply label foods and provide warnings about harmful effects.

Elliott Marcus, associate commissioner of the Bureau of Food Safety, argued that while labeling might have protected educated consumers from eating trans fat, it would have left certain segments of the population—children, for instance—vulnerable. Studies have shown that minority and low-income neighborhoods typically have a higher number of fast food restaurants than white and higher income neighborhoods, meaning that even with labeling, there was a greater likelihood that minorities and poorer people would continue to consume too much trans fat.

Ask students to discuss whether regulation would be more effective than education to redress this imbalance. Ask them also to consider how the best public awareness education campaign can hope to compete with professional advertising from the food industry, much of which promotes products that are not healthy choices.

The department decided to restrict trans fat use in restaurants, understanding that this created a burden on restaurants to find alternatives. Many restaurant owners said it would be too costly for them to find trans fat-free alternatives. The American Heart Association, for its part, was concerned that alternatives might contain harmful saturated fats. Ask students: if the department plans to ban the use of an ingredient, how much responsibility does it have to find reasonable alternatives? In her research, Goldstein found there were fewer trans fat-free alternatives for baking shortenings than there were for fry oils. Ask students if they think the department should have excluded shortenings from the restriction.

Ultimately, the biggest issue that the Health Department faced was drafting and enforcing the restriction. Use the case to help students understand the nitty-gritty of turning science into policy. In this instance, naturally occurring trans fats in dairy and other products meant the department could not simply ban trans fats outright. How do public health officials reconcile complex scientific facts with the need for easy-to-understand rules? To make enforcement possible, how do they formulate parameters that inspectors can measure?

In proposing the restriction, the department also faced political challenges. The bureau would have to convince the mayor and others at City Hall to do something no other city government had done before—use the law to dictate what New Yorkers could

eat. Ask students to consider what constitutes an accusation of a “nanny state.” Was that charge justified? What kind of data would help the public health officials make the case to the politicians? How would the Health Department prove to the mayor and the public that they were justified in taking such seemingly drastic action, and not overstepping the bounds of government?

Class Plan

Use this case in courses or classes on public awareness campaigns, drafting/enforcing public health regulations or public health policy. Students should consider the challenges to a public health agency of effecting behavioral changes in the public.

Pre---class. Help students prepare for class by assigning the following question:

1. Should public health officials ban certain foods, or should the decision whether or not to eat those foods be left to the consumer?

Instructors may find it useful to engage students ahead of class by asking them to post brief responses (no more than 250 words) to the question in an online forum. Writing short comments challenges students to distill their thoughts and express them succinctly. The instructor can use the students’ work both to craft talking points ahead of class, and to identify particular students to call upon during the discussion.

In---class questions: The homework assignment is a useful starting point for preliminary discussion, after which the instructor could pose any of the following questions to promote an 80--90 minute discussion. The choice of questions will be determined by what the instructor would like the students to learn from the class discussion. In general, choosing to discuss three or four questions in some depth is preferable to trying to cover them all.

a) Is it enough to educate the public about the harmful effects of ingredients such as trans fats and let them make their own decisions about whether to eat them? Why, or why not?

b) Salt, sugar and a host of other foods are also unhealthy; some people felt the department randomly decided to focus on trans fat. Why do you think the department decided to restrict the use of trans fats as opposed to other ingredients?

c) What do you think of the process whereby the department selected a public health campaign target? Was its choice correct?

d) What elements make a public health campaign successful? How much does the science matter in a public health campaign?

e) The department opted initially to leave it up to restaurants to stop using trans fats. What steps might help a voluntary effort succeed? Might incentives work? Which ones?

f) If the Food and Drug Administration has not banned trans fats and requires only that foods containing them be labeled, are local and/or state governments correct to ban trans fats?

g) Many restaurant owners said the cost of reformulating recipes to remove trans fats would be prohibitive, and might force them to shut down. As a public health official, how would you address those concerns?

h) The restriction on the use of trans fats was revolutionary: “Food safety authority in the United States has not really been used to address non-communicable disease and we thought that this was an essential way for food safety to move and to address the problems of the 21st century,” said Dr. Lynn Silver. Do you agree that public health officials should be using laws to prevent people from eating unhealthy foods?

i) When Elliott Marcus, associate commissioner of the Bureau of Food Safety, was first approached to restrict the use of trans fats in restaurants, he was concerned because it would mean extra work for his food safety inspectors. If you were Dr. Lynn Silver, what would you say to convince Marcus to help? Is consensus necessary? How do you build it?

j) The success of the restriction was contingent on the department’s ability to enforce it. What different elements would you need to consider in order to enforce the restriction?

Suggested Readings

Art Carden, “Life, Liberty and The Pursuit of Fatty Foods,” *Forbes.com*, March 4, 2010.

SYNOPSIS: Carden argues that while trans fats are bad, government intervention is worse. By allowing the government to dictate what the public can and cannot eat, we head down a slippery slope that allows the government to take away more and more rights. In enforcing a trans fat ban, Carden says the government is squandering resources that could be put to better use.

<http://www.forbes.com/2010/03/03/trans---fat---regulation---government---opinions---contributors---art---carden.html>

Marc Santora. "Forged by Fire," *New York Times*, April 24, 2005.

SYNOPSIS: A look at the New York Department of Health and Mental Hygiene and how it has used innovative and often politically risky methods, like banning smoking in bars, to improve the health of New Yorkers.

<http://www.nytimes.com/2005/04/24/nyregion/thecity/24feat.html?pagewanted=1& r=1>

Michael Mason, "A Dangerous Fat and its Risky Alternatives," *New York Times*, October 10, 2006.

SYNOPSIS: In this article, Michael Mason looks at a few of the pros and many of the cons of banning trans fats. Experts say the data supporting the restriction is outdated, and that Americans are consuming less trans fat because manufacturers have stopped using it as much. Experts also feel that trans fat alternatives—tropical oils like palm and coconut oil—will create other health problems because they are high in saturated fat.

<http://www.nytimes.com/2006/10/10/health/nutrition/10cons.html? r=1&ref=health&oref=slogin>

Dan Halpern, "Dr. Do---Gooder; First smoking, now trans fats. Health czar Thomas Frieden is determined to save our lives, whether it's good for us or not," *New York Magazine*, December 25, 2006.

SYNOPSIS: This profile of then---health commissioner Thomas Frieden details his fight to restrict trans fats in New York restaurants and his reasons for doing so. According to colleagues, Frieden felt strongly that the health of every New Yorker was his responsibility. He felt that telling people to eat less and exercise more to prevent heart disease and other ailments was ineffective, and so thought that the department needed to take more aggressive steps.

<http://nymag.com/health/features/25642/>