

require the use of more expensive inputs. Some of these comments, from the shortening or baked products industries, gave examples of recently developed commercial shortenings that were lower in *trans* fat than currently used shortenings. Several comments stated that, although alternative shortenings exist, they may not be a practical solution for reformulation because of expense or limited supply of the alternative shortenings and because time and expense for product development for reformulation would still be needed. Other comments stated that the private benefits of reformulation would not exceed private costs unless the declaration of *trans* fat on the food label was on a separate line on the Nutrition Facts panel or was in some way more prominent than in the November 1999 proposal. Some comments emphasized the disadvantages of reformulation for the cookies and crackers category, stating that FDA's estimate of 15 percent reduction in *trans* fat from those products was an overestimate.

In response to the comments about difficulties of reformulation, FDA notes that the analysis for the November 1999 proposal did include the cost of reformulation and the time needed for reformulation, but did not include higher ingredient costs for reformulation. In the long run, ingredient costs may not actually increase, because of increased industrial capacity to produce ingredients made with new technologies. In response to the comments about the cookies and crackers category, FDA acknowledges that its own projection of much higher reformulation for this category than for other baked products may have been unrealistic. Also in response to the comments, FDA notes that the emergence of commercial shortenings with lower *trans* fat content indicates that the reformulation of some baked products is feasible. Moreover, within these baked product categories there is a significant variation in *trans* fat content. Therefore, products with significantly higher than average amounts of *trans* fat compared with competing products will face competitive pressures to reduce the amount of *trans* fat in their products. In response to the comment about prominence of *trans* fat on the nutrition label, FDA notes that, in this final rule, the declaration of *trans* fat is prominent and straightforward, on a separate line below *trans* fat.

After consideration of the comments and our own re-evaluation, we continue to believe that, ultimately, some proportion of baked products will be

reformulated in most subcategories: Crackers, cookies, biscuits, tortillas, quick breads and muffins, doughnuts and sweet rolls, cakes, pies, pancakes and waffles. (In the categories of yeast breads and rolls, it is unlikely that reformulation will occur because yeast breads are relatively low in fat and typically contain less than 0.5 g *trans* fat per labeled serving.) However, there were disparate views among the comments regarding the availability of reformulated shortenings and the technical difficulty of baked product reformulation. Therefore, because of this uncertainty, we have opted for a more conservative approach and are not including a quantitative estimate of reformulation of baked goods in the analysis of the benefits and cost of *trans* fat labeling. We chose not to include a quantitative estimate of reformulation of baked goods so as not to overestimate the benefits of this rule. To the extent that reformulation of baked goods does occur, this analysis will underestimate the benefits of *trans* fat labeling.

Because of the existence of commercial shortenings with lower *trans* fat content, as pointed out in comments, FDA evaluated whether *trans* fat labeling might also result in reformulation of household shortenings to be lower in *trans* fat. Current household shortenings are lower in *trans* fat than current commercial shortenings, with some household products having only about half as much *trans* fat as some commercial products. This fact suggests that the potential for lowering the *trans* fat content of household shortening is not as great as the potential for lowering the *trans* fat in current commercial shortenings. However, some household shortenings are currently making comparative saturated fat claims related to butter, and household shortenings may experience competitive pressure from some reformulated stick margarines due to *trans* fat labeling. Because of the uncertainty, FDA chose not to include a quantitative estimate of reformulation of household shortening so as not to overestimate benefits of this rule. To the extent that reformulation of household shortening does occur, this analysis will underestimate the benefits of *trans* fat labeling.

(Comment 37) Some comments discussed reformulation of other products, including potato chips, corn chips and similar snacks, microwave popcorn, and candy. Several of these comments emphasized the difficulty of reformulating products in these categories because of the expense, the time required, and the need for costly ingredients. Some of the comments

suggested that, because of the difficulties of reformulation, *trans* fat labeling would put these categories of products at a competitive disadvantage. Other comments suggested that FDA's projected decrease in *trans* fat intake was an overestimate because *trans* fat labeling would not apply to a major source of *trans* fat: foods eaten at restaurants, especially French fried potatoes.

FDA did not project quantitative decreases in *trans* fat intake due to reformulation of other products, such as chips, microwave popcorn and candy, because these products contribute a smaller proportion of *trans* fat intake and because FDA did not have enough information to make quantitative reformulation estimates for these product categories. FDA is aware of the development of stable frying oils low in *trans* fat and suitable for chips, and notes that there is interest in development of fats and oils lower in *trans* fat for many product categories (Refs. 120 to 122 and 151). At least one manufacturer has announced the reformulation of its snacks and chips to decrease *trans* fat (Ref. 150). To the extent that these product categories reformulate to decrease *trans* fat, the decrease in *trans* fat intake projected in this analysis will be an underestimate.

FDA acknowledges that a large proportion of the U.S. French fried potato intake is consumed in restaurants. Foods typically consumed in restaurants also include other food sources of *trans* fat. Restaurant food is not subject to mandatory nutrition labeling requirements, unless a nutrition-related claim is made. In its estimate of reformulation, FDA did not project reformulation of French fries or of baked goods. Therefore, FDA's estimate did not assume reformulation of restaurant foods. However, FDA is aware of some interest by restaurants in using the absence of *trans* fat as a marketing device to gain competitive advantage (Ref. 123). If, as seems possible, frying oils and shortenings are developed for reformulation of packaged foods and become available in the market, they may become competitive choices with traditional fats and oils, even for restaurants that do not wish to use absence of *trans* fat for competitive advantage. To the extent that restaurants adopt reformulated baking and frying oils and purchase other products reformulated to be lower in *trans* fat, the decrease in *trans* fat intake projected in this analysis will be an underestimate.

iii. *Quantitative decrease in intake.* Table 2 of this document summarizes FDA's revised estimate of projected decreases in *trans* fat intake due to