



**SNACK FOOD  
ASSOCIATION**  
*An International Trade Association*

9063 '02 DEC 16 P3:52

December 16, 2002

Dockets Management Branch (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, Maryland 20852

**Re: Docket No. 94P-0036; Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Reopening of the Comment Period; 67 Fed. Reg. 69171 (Nov. 15, 2002)**

Dear Sir or Madam:

The Snack Food Association (SFA) appreciates this opportunity to offer comments concerning the Food and Drug Administration (FDA) proposal on trans fat labeling announced in the November 15, 2002 Federal Register. SFA understands that the agency is proposing to require an asterisk (or other symbol) in the percent daily value column for trans fat—which the agency intends to designate as a mandatory nutrient—when it is declared. This asterisk or symbol would be linked to a similar symbol in the footnote section of the Nutrition Facts panel that would be followed by the statement, “Intake of trans fat should be as low as possible.”

SFA believes this proposal is well-intentioned and shares the agency’s desire to provide consumers with meaningful information regarding trans fat. The proposed statement, however, is problematic in its content, format, and presentation. SFA believes that it takes prevailing expert advice on trans fat intake out of context and will be interpreted by consumers as a “warning” to avoid all intake of trans fat by any means necessary to do so. We urge the agency to consider, in lieu of the proposed statement, undertaking educational efforts to assist consumers in fully understanding current dietary guidelines for trans fat consumption.

The Snack Food Association is an international trade association of more than 700 member companies that represent snack manufacturers and suppliers to the snack industry. Snacks produced and sold by SFA members include potato chips, snack bars, tortilla chips, pretzels, cookies, popcorn, crackers, extruded snacks, meat snacks, pork rinds, snack nuts, party mix and other snacks. Retail sales of snack foods in the U.S. total more than \$32 billion annually.

94P-0036

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## CONTENT AND CONTEXT

In the November 15 proposal, FDA states that the proposed footnote is intended to assist consumers in using the quantitative trans fat information to help maintain healthy dietary practices. FDA also states that the source of the statement is the recent National Academy of Sciences/Institute of Medicine (NAS/IOM) report, *Dietary Reference Intakes: Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (National Academy Press 2002) (the “macronutrient report”).

The NAS/IOM macronutrient report recognizes that a certain amount of trans fat will be consumed incidental to a nutritionally adequate diet.<sup>1/</sup> The NAS/IOM advises that consumers should not attempt to adopt the extreme measures that would be necessary to eliminate trans fat entirely:

Because trans fatty acids are unavoidable in ordinary, non-vegan diets, consuming 0% of energy would require significant changes in patterns of dietary intake. Such adjustments may introduce undesirable effects (e.g., elimination of commercially prepared foods, dairy products, and meats that contain trans fatty acids, may result in inadequate intakes of protein and certain micronutrients) and unknown and unquantifiable health risks. Nevertheless, it is recommended that trans fatty acid consumption be as low as possible while consuming a nutritionally adequate diet.<sup>2/</sup>

The statement proposed by FDA, “Intake of trans fat should be as low as possible,” dramatically oversimplifies these NAS/IOM recommendations. SFA is concerned that the statement will not convey the intended message as described in the macronutrient report, but will instead be interpreted by consumers as a warning that trans fat intake must be zero under all circumstances. In this regard, the statement amounts to a de facto daily value of zero for trans fat, which FDA has advised is inappropriate because it does not have sufficient information upon which to establish a reference value. <sup>3/</sup>

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<sup>1/</sup> NAS/IOM, *Dietary Reference Intakes: Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (National Academy Press 2002), at 8-2.

<sup>2/</sup> *Id.* (emphasis added).

<sup>3/</sup> 67 Fed. Reg. 69171 (Nov. 15, 2002) (“[T]he IOM/NAS report did not provide a dietary reference intake (DRI) value for *trans* fat or information that the agency believes is sufficient to support its establishing a daily reference value (DRV) to assist the agency in providing other information on the label, such as a % DV for *trans* fat.”)

## FORMAT AND PRESENTATION

The proposed statement is of particular concern because it is a new and unprecedented element in the footnote section of the Nutrition Facts panel. Because the footnote is a descriptive statement, it constitutes a departure from the numeric reference values (e.g., %DV declarations) traditionally used by FDA. SFA anticipates that its novelty will lead consumers to believe that trans fat is to be emphasized over all other nutrients, including saturated fat and cholesterol. Indeed, from the consumer perspective, there will be a “safe” level of saturated fat because it is assigned a daily value, while trans fat is to be kept “as low as possible.” This presentation indicates that it is acceptable to choose foods high in saturated fat and cholesterol, so long as trans is avoided entirely. A message of this type is inconsistent with prevailing dietary guidelines and FDA’s own conclusion that saturated fat and trans fat pose similar concern from a public health perspective. 4/

Also of concern, the November 15 proposal cites no consumer research regarding the proposed statement, so SFA assumes that the concept may not have been subject to consumer testing to evaluate its effect on understanding and comprehension. Under the Nutrition Labeling and Education Act of 1990 (NLEA), however, FDA is required to ensure that nutrition labeling is “conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet.”5/ The original Nutrition Facts panel was based upon extensive consumer research and related data to ensure that nutrition information would provide meaningful guidance to consumers. 6/ An unprecedented statement of the type FDA is now proposing should be subject to no less.

## RECOMMENDATIONS

In summary, SFA believes the proposed footnote to be a well-intended, but inappropriate, misleading, and unprecedented statement that will not achieve the desired objective of providing meaningful unbiased information to consumers regarding trans fat. SFA acknowledges that some education will be required to assist consumers in fully understanding the amount of trans fat consumption that may be incidental to a nutritionally adequate diet. We believe, however, that it is simply not feasible to convey such a complex message within the current Nutrition Facts panel. 7/

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4/ 64 Fed. Reg. 62746, 62753-55 (Nov. 17, 1999).

5/ NLEA § 2(b)(1)(A).

6/ 58 Fed. Reg. 2079, 2115-2123 (Jan. 6, 1993).

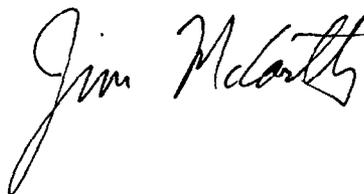
7/ See 58 Fed. Reg. at 2123 (“[T]he agency does agree that the nutrition label cannot be the primary vehicle for providing general dietary recommendations”).

SFA strongly recommends that the agency withdraw the proposed statement and instead undertake or support consumer education efforts that can more effectively convey current dietary guidelines for trans fat consumption. At the very least, the agency is urged to refrain from adopting any type of precedent-setting labeling format until (1) it has the benefit of the forthcoming NAS/IOM report on the use of the new dietary reference intakes (DRIs) in food labeling, and (2) consumer testing data are available to ensure that any proposed addition to the Nutrition Facts panel does in fact enhance consumer understanding of the desired information.

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SFA is committed to the development of food labeling policy that enhances consumer understanding of current recommendations for healthful dietary practices. SFA looks forward to working with the agency on the trans fat and other labeling issues and would be pleased to discuss with CFSAN any of the points made in these comments.

Sincerely,

A handwritten signature in black ink that reads "Jim McCarthy". The signature is written in a cursive style with a large, sweeping initial "J".

James A. McCarthy  
President and CEO