



VIA Electronic Mail and by Hand

July 7, 2003

Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852
ATTN: Docket No. 02N-0275

1001
03
JUL-8
19:10

**RE: Implementing Regulations of PL 107-I 88:
Docket No. 02N-0275, Section 303
(Administrative Detention)**

Dear Sir or Madam:

The Snack Food Association (SFA) is an international trade association representing snack food manufacturers and suppliers. SFA business membership includes, but is not limited to, manufacturers of potato chips, tortilla chips, crackers, corn chips, pretzels, popcorn, extruded snacks, meat snacks, pork rinds, snack nuts, party mix, fruit snacks, cereal snacks, snack bars, and various other snacks. Retail sales of snack foods in the U.S. total more than \$30 billion annually.

SFA strongly supports a rigorous food security system to protect the nation's food supply. Last year during Congressional debate on food security, SFA supported the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. However, we are concerned about some provisions of this draft implementing regulation published in the Federal Register of May 9, 2003. Specifically, SFA appreciates the opportunity to respond to the request for comments on Section 303: Administrative Detention of Food.

We would ask you to take the following points into consideration and make corresponding changes prior to finalization of the draft regulation:

Perishable Food. The proposed rule defines "perishable food" as food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions. This perishable food definition has been modeled after

02N-0275

EMC41

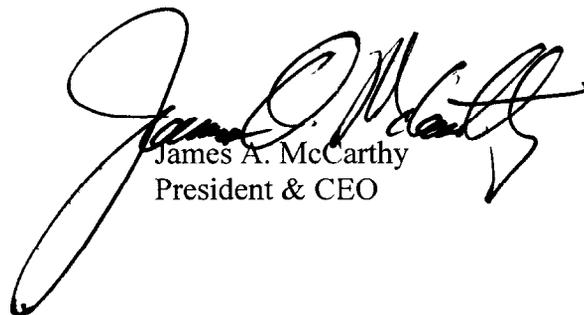
the current RPM definition of "perishable commodity." Snacks would not meet this definition. However, freshness of snacks or snack ingredients detained must be a consideration since, for example, the food may not be detained in ideal storage conditions (i.e., indoor climate of the storage facility). We would urge FDA to define perishable food as those products with a shelf life of 90 days or less. This would allow foods that may become unmarketable during the regular administrative procedure access to the accelerated appeal process.

Transportation. FDA states in the preamble that limited conditional releases would be considered only in rare circumstances and only for the purposes described. Requests would have to state the reasons for movement; the exact address of and location in the new facility; an explanation of why the new address and location would be secure (if FDA has directed that the article be detained in a secure facility); and how the article would be held under any applicable conditions described in the detention order. The proposed regulation does not specify any specific mode of transport to a secured location, and FDA invited comment on the issue. If the distributor does not have direct control of the mode of transport, FDA's limited conditional release should stipulate that the mode of transport not introduce any condition or substance that would adulterate or otherwise deleteriously impact the quality of the detained food.

We appreciate the opportunity to comment on this proposed regulation and are committed to working with FDA and all government agencies to protect the food supply.

If you have any questions, please do not hesitate to contact us.

Respectfully submitted,



James A. McCarthy
President & CEO