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**J. Randy Forbes**  
**United States Congress**

4th District, Virginia

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Mark B. McClellan, M.D., PhD  
Commissioner of Food and Drugs  
Food and Drug Administration  
5600 Fishers Lane  
Rockville, Maryland 20857

Re: Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 68 Fed. Reg. 5428 (February 3, 2003)

Dear Commissioner McClellan:

The FDA has proposed rules under the Public Health Safety and Bioterrorism Preparedness and Response Act of 2002 that would require U.S. importers to provide prior notification to the FDA for food "imported or offered for import into the United States." I am concerned that the rules are not consistent with the intent of Congress, and that they would create significant economic harms without appreciable benefit to U.S. consumer safety. These FDA requirements for prior reporting for food shipments that are not being delivered to a U.S. importer and are not going to be consumed in the U.S., but are merely "in-transit" and on their way to delivery in a foreign country, appear to be redundant, unworkable, and harmful to the economy without benefiting consumers in any way.

As the FDA's NPRM states, Congress intended the Bioterrorism Act "to enhance the security of the U.S. food supply," "to ensure that consumers in the United States do not eat food that is contaminated," and "to protect consumers in the United States from food imports that may be at risk" (emphasis added). Unfortunately, the FDA has proposed rules affecting not only food importers but also transportation providers. Requirements that transportation providers be responsible for certain disclosures on food imports bound for other destinations or for re-export go far beyond what was intended by Congress and do not adequately promote the goal of the Act - to protect U.S. consumers. These requirements would impose heavy burdens on carriers, ports and commerce.

It is important to know what food imports are coming to the United States for consumption here, but it is also important to keep our ports and shipping lines running smoothly. It is vitally important that the new FDA rules are implemented in a manner that ensures that U.S. ports and marine terminals do not become congested with cargo that is being held by the FDA because of compliance issues and also that these new rules do not adversely impact transportation providers. The FDA must ensure that its mandate to enhance the security of the U.S. food supply does not impose complex, redundant, and unworkable reporting rules on "in-transit" food imports.

I strongly encourage the FDA, in its rulemaking, to clarify that the regulation's information filing requirements do not apply to "in-transit" cargo that is not being delivered to a U.S. importer.  
Thank you for your prompt attention to this matter.

With kind regards, I am,

J. Randy Forbes  
Member of Congress

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