



## **SFA ISSUES SUMMARY** **September 2008**

### **COUNTRY OF ORIGIN LABELING PROVISION FOR PROCESSED PEANUTS**

In the 2002 Farm Bill, a provision was included that would mandate country of origin labeling (COOL) for unprocessed meats, fish, fruits and vegetables covered by the Perishable Agricultural commodities Act, and for peanuts. During the original legislative negotiations, it was understood that COOL's provisions with regard to peanuts would apply to only roasted, unshelled peanuts sold from a bin at retail. However, the language was later determined to apply to all snack peanuts sold.

The COOL provisions of the 2002 farm bill proved controversial enough that Congress twice delayed its original implementation date of September 30, 2004 – first for all covered commodities until September 20 2006, and then until September 20 2008 for all covered commodities except for seafood and fish. SFA was supportive of these efforts to postpone the implementation of the COOL provisions.

In October 2004, USDA issued an interim final rule implementing COOL for seafood. In June 2007, USDA sought comments on application of the seafood rule to all other covered commodities. SFA partnered with other industry organizations and submitted comments. During that time, SFA and its member companies worked with Administration officials to educate them on the impact that the proposed rule would have on peanuts.

Subsequently, the 2007/2008 farm bill, which reaffirmed the September 30, 2008 date of implementation, added both macadamia nuts and pecans under the provisions of COOL.

On August 1, 2008, USDA published an interim final rule, with a 60 day comment period, for the implementation of COOL. In that IFR, USDA specifically notes that cooked, roasted, dry roasted, and honey roasted peanuts are all considered processed food items.

Also in that IFR, USDA announced that, rather than enforce regulations, it would conduct industry outreach and education programs for the first six months to assist retailers and suppliers in complying with the requirements of COOL.

### **SFA Position**

SFA supports the final language on the processing exemption for peanuts and nuts, and will work with USDA to provide education to covered parties. SFA will also work Capitol Hill to preserve the processed commodities exemption from COOL.



## **BIOFUELS POLICY AND INPUT COSTS**

Biofuels enjoy a broad range of support from the federal government, from research grants, to tax credits, to regulatory exemptions, to mandated use. Indeed, the current Renewable Fuel Standard (RFS) proscribed by statute mandates the use of 36 billion gallons of biofuels to be used by 2022, including biodiesel.

The “food or fuel” pull on commodities created by the RFS has added to increased input costs for the snack food industry across the board. In fact, the industry is facing a crisis driven by high commodity costs. Key ingredients from corn, to wheat, to soy oil, to cheese have skyrocketed in price. All these items directly impact our bottom line and profitability.

While we note that the causes of commodity inflation are varied and complex, the RFS is clearly a significant factor as it effectively forces significant acreage of crop land into production of feedstock for biofuels rather than food and feed commodities. Indeed, this has provided a major economic shock to the commodity sector. This crisis will only worsen as the RFS is scheduled to start mandating biodiesel production and the production of ethanol from non-corn starch feed stocks, like food grains and other feed grains.

For example, the RFS will specifically require 1 billion gallons of biodiesel use by 2012. That is more than double current production and enough to consume approximately one-third the total edible vegetable oil production in the US. Vegetable oil is a key ingredient for the manufacture of snack foods. Furthermore, the EISA creates other direct incentives to convert other food commodities into ethanol under the “advanced biofuels” category, such commodities include wheat, sugar, rice, dry milk, among others that are used in snack manufacturing.

### **SFA Position**

SFA supports efforts to reduce the impact biofuels have on food costs. Earlier SFA joined with other associations in letters and calls to key members of Congress and to the President opposing the expansion of food crops for use as fuels. Daryl Thomas testified before a Congressional committee to express our industry’s concerns with the impact that biofuels are having on commodity prices. Earlier this year SFA made this a major issue at the 2008 Day in DC Spring Summit and recently (September 2008) sent a letter to President Bush reemphasizing our concerns with the effect of the biofuels policy on food prices.

## **OPPOSE LIMITING CHOICE FOR FOOD STAMP PROGRAM PARTICIPANTS**

The nutrition title of the 2008 farm bill changes the name of the food stamp program to the Supplemental Nutrition Assistance Program (SNAP). The Food Stamp Program was first authorized in 1964. Combined with the Women Infants and Children (WIC) and the Child Nutrition Program (CNP), SNAP is part of a nutrition program budget that accounts for sixty percent of USDA's total spending.

Despite the program's relative success and extensive growth over recent years, SFA has remained concerned about efforts by Congress to make revisions that would limit choice by SNAP participants.

To combat this threat, last year the Snack Food Association took the lead and convened a coalition of allied companies, trade associations and non-profit groups aimed at monitoring the Farm Bill reauthorizing process. The group was tasked with ensuring that no particular food or category of food was singled out. The coalition actively engaged key Members of Congress and their staffs, and conducted several meetings on Capitol Hill to educate them on the issue.

During the farm bill discussion there were threats in both the House and Senate, to add language to the farm bill which would have either limited, or required the study of limiting food stamp purchases of different foods. SFA, working with the coalition, was successful in their efforts to educate members on the impact of their legislation. Consequently, no new prohibition for food stamp purchases has been adopted in the farm bill.

In addition to SFA's Food Stamp Coalition's efforts, USDA and other nutrition-related organizations have advocated the preservation of choice in the SNAP. On March 1, USDA's Food and Nutrition Service released a paper entitled *Implications of Restricting the Use of Food Stamp Benefits*. The paper cites several reasons why imposing restrictions on the FSP is not feasible, chiefly among them are the inevitability of increased costs and program complexity, the difficulty in choosing which foods should or should not be available, as well as the efficacy of such revisions in aiding the fight against overweight and obesity. The American Dietetic Association also issued a statement regarding the program declaring, "...ADA supports policies preserving choice in a way that raises nutritional standards and outcomes."

### **SFA Position**

SFA opposes any revision to the Supplemental Nutrition Assistance Program that would limit choice for participants.

### **FOODS OF MINIMAL NUTRITIONAL VALUE:**

Currently, the USDA has the authority to regulate the sale or service of Foods of Minimal Nutritional Value (FMNV) but only during meal times in foodservice areas. FMNVs are also known as “competitive foods.”

On March 6, 2007 Senator Tom Harkin (D-IA) introduced S.771, the ***Child Nutrition Promotion and School Lunch Protection Act of 2007***. The legislation would require, through amendment of the Child Nutrition Act of 1966, that:

- USDA redefine, through regulation, “Foods of Minimal Nutritional Value” (FMNV),
- Change the name from “Foods of Minimal Nutritional Value” to “Foods of Poor Nutritional Value,”
- Would revise criteria used by USDA to define which foods fall under the classification of FMNV.

By opening up the process to define what foods should be included, the potential that several snack foods could fall under a new definition was probable. In addition to adding foods covered under the FMNV umbrella, S.771 would have expanded the definition so that it would apply to all foods sold outside the school meal programs, on the school campus, and at any time during the school day.

With momentum lost, S.771 was offered as an amendment in December 2007 to the then-pending Senate Farm Bill. Although this effort represented the broadest reform of foods sold in schools since the USDA first implemented nutritional guidelines in the 1970’s, the amendment was eventually not accepted into the Farm Bill.

### **SFA Position**

SFA believes that the reauthorization of the Child Nutrition Act is the best method to amend this definition and review the role that snacks play in children’s diets at schools. We want an open-dialogue in Congress on whether it is necessary to change this important definition through legislation, or allow the USDA. to set the nutritional standards and enforce the regulations with only guidance from Congress. However, we do think that a new definition of Foods of Minimal Nutritional Value is necessary.

## **SFA SUPPORTS FOOD SAFETY LEGISLATION:**

The Snack Food Association and other national food associations have recently endorsed legislation to ensure the safety of the food supply. Recent outbreaks of food borne illness in a number of sectors in the food processing and agriculture industries have lead the industry to voluntarily call for enhanced food safety measures and powers to be granted to the US Food and Drug Administration.

Specifically, the food processing industry supports the recently introduced Safe Food Enforcement, Assessment, Standards and Targeting Act, or Safe Feast Act, introduced by Representatives Costa (D-California) and Putnam (R- Florida), H.R. 5904.

In summary, this bill would do the following:

1. Every food company would be required to establish a food safety plan, which would include a risk analysis be conducted to identify potential sources of contamination, identify appropriate food safety controls and document those controls.
2. Every food importer would be required to police their foreign suppliers with a food safety plan made available to the FDA.
3. Grant the FDA recall authority for Class I food safety violations where the company has refused to conduct a voluntary recall and the food poses a risk of adverse health consequences. The Secretary of Health and Human Resources (HHS) would also have the power to suspend the registration of bad actors who pose an imminent health hazard through the sale of contaminated food. However, the bill also contains important due process protection to companies affected.

In contrast to a draft bill being proposed by House Energy and Commerce Chairman, John Dingell (D-Michigan), H.R. 5904 does not call for user fees on food companies to pay for enhanced food safety inspection, it does not include the criminal and civil penalties outlined nor does in set up many new regulatory mandates and specific controls over food processors as outlined in Dingell's bill.

## **SFA Position**

SFA supports the Costa, Putnam bill, H.R. 5904 and opposes the Dingell bill as drafted.

## **SODIUM:**

Presently, there continues to be ongoing dialogue on an appropriate level of daily sodium intake and the necessity of reducing sodium intake for the general population. Noting that salt consumption has drifted upward over the past 30 years to the point where Americans are now consuming about 4,000 milligrams of sodium per day, the consumer advocacy group, Center for Science in the Public Interest has been vocal to the FDA to revoke sodium's GRAS (Generally Recognized as Safe) status. Additionally the American Medical Association has also urged the FDA to revoke the GRAS status, develop regulatory measures to limit sodium in processed and restaurant foods, and calls minimum 50% reduction in the amount of sodium in processed foods, fast food products and restaurant meals to be achieved over the next decade.

To address its policies regarding salt and sodium in food, the FDA held a public Hearing on November 29, 2007 to solicit comments about potential future regulatory approaches. As excessive sodium in the American diet has been cited by the scientific community as a contributory factor in the development of hypertension and cardiovascular disease, CSPI petitioned that FDA make changes in the regulatory status of salt, require limits on the amount of salt in processed foods, and require health messages related to salt and sodium in food products.

The 2005 Dietary Guidelines recommend that the general population consume no more than 2,300 mg/day and that persons with hypertension, blacks, and middle-aged and older adults consume no more than 1,500 mg/day.

While it is unlikely that the FDA will revoke salt's GRAS status, it is possible that FDA could revise current nutrient content labeling of food packages. The Hearing, the first in 25 years to consider measures to cut sodium levels in food, was an information-gathering session and provided an opportunity for attendees to review FDA's request for comments (Federal Register, October 23, 2007) (Attachment 2). FDA recently closed the comment period on August 11, 2008, which was extended from March 28, 2008.

Separate from FDA, The Institute of Medicine, a Unit of the Food and Nutrition Board of the National Academies of Science, announced that they were seeking (by August 29, 2008), the nomination of individuals to serve on an expert committee that will review and make recommendations about various means that could be employed to reduce dietary sodium intake to levels recommended by the 2005 Dietary Guidelines for Americans.

## **SFA Position**

SFA opposes any effort to revoke the GRAS status of sodium in processed food. SFA believes the appropriate forum to consider nutrient guidelines for sodium is through the U.S. Dietary Guidelines, which will be revised in 2010.

## **DIETARY GUIDELINES 2010:**

In January 2005, the USDA and Department of Health and Human Services (DHHS) released the sixth edition of the ***Dietary Guidelines for Americans***, a science-based blueprint for promoting good nutrition and health. The Guidelines are the basis for Federal nutrition policy and provide advice for Americans, ages two years and older, about food choices that promote health and prevent disease, set standards for the nutrition assistance programs, guide nutrition research and education efforts, and are the basis for USDA nutrition promotion activities. T

All nutrition assistance programs, a multitude of nutrition education and promotion programs Government-wide, as well as private sector nutrition education and promotion, use the Guidelines as their focal point. It is critical that the Guidelines be both scientifically up-to-date and in touch with the realities of contemporary living. Congress has mandated, in Public Law 101-445, that USDA and DHHS review the Guidelines at least every five years. Both Departments alternate administrative leadership of this review. USDA has the administrative lead for the 2010 Guidelines.

USDA's Center for Nutrition Policy and Promotion has already begun to prepare planning strategies for the 2010 Dietary Guidelines. USDA will use these strategies to lead interagency coordination and to implement a new evidence-based system that will be used by the Dietary Guidelines Advisory Committee when reviewing the most recent scientific literature. Historically, this committee has developed dietary recommendations through the examination of scientific research by using a "critical review" approach. However, the 2010 Dietary Guidelines Advisory Committee will use a more rigorous and transparent approach that is known as an "evidence-based review." This evidence-based approach has been used for many years in the medical community and is recognized as the gold standard for developing public health guidance. When the 2010 Dietary Guidelines Advisory Committee meets, it will for the first time use an evidence-based approach in developing dietary guidance. The result will be that policymakers, opinion leaders and the general public can have increased confidence in the dietary guidance developed by the Federal Government.

## **SFA Position**

SFA will be monitoring deliberations and outcomes throughout the revision process.

## **US SUGAR POLICY ADDING COST OF FOOD MANUFACTURING**

US sugar program represents a flawed policy that increases the costs of using sugar. It does so by limiting imports through strict quotas, imposing marketing allotments – a supply control scheme abandoned by every other supported commodity in the US – and providing price supports. All three are intended to increase the cost of using sugar.

Under the price support program, sugar processors are granted federal loans for nine months, using sugar as collateral. Essentially they are guaranteed a price equal to the per pound price known as the “loan rate,” as they can repay their federal loans by forfeiting the sugar to the government if the market price is lower than the loan rate.

Under the marketing allotments, re-instituted by the 2002 farm bill, after being suspended by the 1996 farm bill, sugar processors are assigned a certain volume that they may sell. Extra sugar that may be produced is blocked from the market place.

Finally, under the sugar tariff rate quota (TRQ) system, the US limits through prohibitive tariffs, sugar imports above a certain quota level. The domestic price of sugar in the US maintained above the world price by this import quota system. According to a study conducted by the food and commodity research firm ProMar International,

The above approaches have been abandoned by virtually all other commodities, except for sugar. Moreover, several proposals have been made to further limit the supplies of sugar and increase the costs, including imposing a new limit of the amount of imported sugar that could come in from Mexico despite the 15 year phase in of the North American Free Trade Agreement (NAFTA) that allowed the sugar sector to adjust to potential Mexican imports. Further, it has been proposed that sugar above the marketing allotments be disposed of outside the food sector by mandating such sugar be made into ethanol. These proposals and the current sugar program are opposite of what a growing food and snack manufacturing industry need to remain competitive and to provide employment growth.

### **SFA Position**

The SFA supports reform to current sugar policy to be made more market-oriented and transparent. None of the proposed changes to the sugar program in the current farm bill meet those criteria.

## **TRANSPORTATION REGULATORY ISSUES**

A number of transportation regulatory initiatives are in the pipeline that may pose challenges for commercial fleet operators. While some of these have been pending for months and even years, several are reaching completion and the prospect of a more regulatory-minded Congress and new Administration means these rulemakings may take a turn that will place additional burdens on businesses.

### **DRIVER HOURS OF SERVICE**

The Federal Motor Carrier Safety Administration (FMCSA) is preparing a Final Rule on driver hours of service (HOS) which could have a significant impact on fleet operations. In December, 2007, FMCSA issued an Interim Final Rule (IFR) which retains two provisions of the HOS rules which were published first in 2003 and re-issued in 2005. These include the increase in consecutive driving time from 10 to 11 hours and the 34-hour “restart” provision. Without the IFR, these two provisions would have become null and void as of December 27, 2007 due to an adverse court decision emanating from litigation brought by safety advocacy groups and the Teamsters. In other words, the issuance of the Interim Final Rule made it possible for drivers to legally continue to drive up to 11 hours within a 14-hour, non-extendable window from the start of the workday, following 10 consecutive hours off duty, and to “restart” calculation of the weekly on-duty time limits after the driver has at least 34 consecutive hours off duty. These are important features which have permitted operators some flexibility in rules that otherwise tightly restrict the hours they may drive on a daily and weekly basis. In February 2008, SFA submitted formal comments to the Federal Motor Carrier Safety Administration supporting the agency’s action to retain the existing driver hours of service rules while it develops a Final Rule in response to the on-going litigation. While the current Administration seems inclined to retain the two provisions as a part of a Final Rule, it is unclear what course a future Administration may take

### **SFA Position**

SFA will continue to support retention of the 11-hr. driving time and 34-hour restart provisions and oppose any future revisions to the HOS rules that place unnecessary burdens on fleet operators.

## **FAIR LABOR STANDARD ACT-MOTOR CARRIER EXEMPTION**

SFA successfully worked with a coalition of industry allies to try and restore the motor carrier exemption to the Fair Labor Standards Act for drivers of commercial vehicles less than 10,001 lbs.

Statutory reinstatement of the motor carrier exemption was highly unlikely in the current Congress. Coalition efforts were, thus, focused on creating a safe harbor provision in law that would protect companies from litigation from August 2005, when the exemption was inadvertently repealed; to August 2006.

This effort faced significant challenges from the unions and the plaintiffs' bar. Despite this we were successful in generating broad support for the modified fix, described above.

## **SUPPORT RELAXATION OF TRUCK SIZE AND WEIGHT RULES**

Rising fuel costs, the need to reduce energy consumption and limit greenhouse gasses, and worsening highway congestion have focused the attention of policymakers on the need for more productive commercial vehicles.

The U.S. has fallen behind other industrialized nations when it comes to this issue. For example, Canada allows loaded trailers to weigh up to 95,000 lbs., Mexico up to 107,000 lbs. and the European community up to 97,000 lbs. while the U.S. federal limit has remained at 80,000 lbs. for decades.

U.S. DOT estimates that the widespread use of 6-axle 97,000 lb. vehicles would result in a 19% decrease in fuel consumption and emissions while limited expansion of the use of so-called longer combination vehicles would net a 12% reduction in fuel consumption and emissions. This translates to less reliance on foreign oil and fewer CO2 emissions.

Moreover, U.S. DOT is projecting a nearly doubling of truck traffic over the next 20 years. This at a time when congestion is already impacting the cost and efficiency of truck transport and the reliability required by just-in-time shipping.

With respect to safety, two decades of new truck safety regulations combined with new technologies have made trucking safer on a per mile traveled basis. Longer combination vehicles, currently in use on some western states and elsewhere under permit programs have better safety records than conventional trucks. And there is no evidence that heavier payload trucks, now in use in many states under grandfather provisions or on off-Interstate routes are any less safe than other trucks. Even more importantly, use of more productive vehicles means fewer trucks and therefore less car-truck exposure.

A number of groups, including the American Trucking Associations and Americans for Safe and Efficient Trucking are gearing up to address this issue as a part of the debate over the next Highway Bill, due to be reauthorized next year.

### **SFA Position**

SFA supports efforts to reform federal and state truck size and weight regulations to allow the use of more productive commercial vehicles.

## **INVESTMENT IN SURFACE TRANSPORTATION**

Federal surface transportation programs (“the Highway Bill”) expire in 2009 and are due to be reauthorized by Congress. It is generally understood that support for highway and bridge infrastructure is facing a financial crisis. In short, no one knows where the vast sums of money will come from that are needed to maintain and improve the nation’s aging and overburdened transportation systems. The U.S. is currently spending less than \$90 billion a year from all sources. The National Surface Transportation Policy and Revenue Study Commission has concluded that at least \$250 billion is needed each year to maintain and improve the highway system and sustain economic growth. Historically, fuel taxes have been the principal source of revenue, but raising these taxes to the full extent needed, especially during bad economic times, is not politically feasible. Fuel taxes will almost certainly be increased, but this will need to be supplemented with other revenue sources. Expanded use of tolling, weight-distance taxes for commercial trucking, public-private partnerships, infrastructure investment banks and public bond offerings are all under consideration.

The challenge for large commercial fleet operators is to focus government action on the need for infrastructure support without placing a disproportionate burden of paying for it on the backs of these companies. This may be especially difficult given the currently-projected makeup of the 111<sup>th</sup> Congress.

### **SFA Position**

SFA will work with other business organizations, Congress and the new Administration to develop responsible funding mechanisms for infrastructure maintenance and improvement that will support business activity and facilitate economic growth without placing a disproportionate share of the cost on commercial fleet operators.

## **STATE SNACK TAXES**

Again in 2007, the Maryland Assembly was prepared to consider a snack tax as part of a combination of taxes on products and services to help close a state budget gap during a special session last fall. In 1996, SFA lead a coalition of food associations, companies and others in repealing a snack tax in Maryland that had been enacted in 1991.

Fortunately, SFA and the coalition it helped create in the early 1990's, the Don't Tax Food coalition, immediately jumped into action and prevented a snack tax from being added into the package of taxes in Maryland last fall. Jim McCarthy and Vice Chairman Daryl Thomas made trips to Annapolis to meet with friendly legislators and make our case for opposing a snack tax. Additionally, Jim McCarthy testified before the Maryland House of Delegates Ways and Means Committee against the tax.

While SFA and our Don't Tax Food Coalition were successful in defeating an attempt to revise the Maine snack tax in 2006, the state's joint taxation committee held a session in January on a bill that was carried over from last year that proposes to remove certain food products from the list of exempted items from the states sales tax. SFA and the coalition will continue to monitor these activities and rally the food industry in the state, including the Maine Potato Commission, to fight any attempt to tax snacks there.

### **SFA Position**

SFA will continue to fight taxation on snack foods where snacks are singled out for taxation. SFA anticipates additional snack taxes being proposed in light of many budgetary shortfalls in the states.