

held longer than 7 days under normal shipping and storage conditions.) Examples of this type of food include fluid milk that has not been ultra-pasteurized; live fish, lobster, crab, other crustaceans, shellfish; and fresh fruits and vegetables (Ref. 5).

- *Food having a shelf life of between 8 and 30 days.* Food with this shelf life that we regulate include some fresh and processed dairy products, including soft cheeses such as cottage cheese; some bakery items, such as bread, rolls, cakes, pies, and cookies; poultry; and some fruit and vegetable products (Ref. 6). These examples are derived from a list of examples developed by Hurst et al., but do not include products listed as examples in our RPM definition of "perishable commodity."

- *Food having a shelf life of between 30 and 90 days.* These types of food include dairy products, such as butter, margarine, natural hard cheese, processed hard cheese, and ice cream; eggs; some picked food; processed salads; some fruit and vegetable products; cured meats; fatty meats such as luncheon meats, ground beef, lamb and pork; fatty fish such as mackerel; shellfish; giblets; some frozen bakery food, such as cake batter, pie shells, fruit pies, yeast breads and rolls, frozen bread and roll dough; fried snack food such as potato chips; frozen convenience food such as pre-cooked combination dinners and frozen french fries; dried bakery products such as cookies and crackers; beverages such as ground coffee that is not vacuum packed; canned pickled fish; powdered cream; and fats and oils such as mayonnaise, salad dressing, and vegetable shortening (Ref. 6).

- *Food having a shelf life of over 90 days.*

The only type of enforcement action for which we have readily available data on the type of food involved is imported food that we have refused entry into the United States. Therefore, we used these data for analysis, because we expect the distribution of food by type for domestic food to be similar. The food categories in these data do not correspond precisely to the shelf life categories just discussed. If a food category covered more than one shelf life category, we assumed that an equal amount of the product in that category belonged to each relevant shelf life category. Based on these assumptions and definitions, approximately 20 percent of the imported food that we refused entry into

the United States from August 2001 through July 2002 was perishable under the definition in this proposed rule, 20 percent of the food had a shelf life of 8 to 30 days, 30 percent had a shelf life of 31 to 90 days, and 30 percent had a shelf life of 91 days and over.

The rate of value loss over time varies with the type of food involved. To simplify our analysis, we assumed that all perishable food (i.e., food with a shelf life of up to 7 days) would lose a fixed amount of its starting value each day, such that its value would drop to zero by the end of day seven. This corresponds to a value loss of about 14 percent of the starting value per day. The comparable rates for products with a shelf life of between 8 and 30 days, and between 31 and 90 days, were 3 percent and 1 percent, respectively. We tentatively assume that products with a shelf life of 91 days or more will not lose value during an administrative detention.

In order to apply these rates of value loss, we need the starting value of the food that we would administratively detain. We previously assumed that we would administratively detain 0 to 1 million pounds of food per administrative detention action. The value of this quantity of food would vary considerably with the type of food involved. To estimate an average value, we used the average value of a line of imported food because those data were readily available. After estimating the average value of a line of imported food, we then divide that value by the previously estimated average size of a line of imported food, which was 15,000 pounds, to get an average value per pound. We then multiply that value by 0 to 1 million pounds to arrive at the average value of the amount of food that we might administratively detain.

According to U.S. Commerce Department data, the value of imports of food, feeds, and beverages into the United States in 2001 was approximately \$47 billion (Ref. 7). To relate the total value to the value of an average line for those types of food, we extrapolated data on the number of lines in the OASIS system for the three quarters of FY 2002 for human and animal food to estimate a total of approximately 4 million lines for human and animal food by the end of FY 2002. This implies an average value per line of about \$11,000. We did not have information on the value of other

types of imported food, such as dietary supplements or live animals. Therefore, we assumed that the average value per line for all types of food is approximately \$11,000. If an average line is 15,000 pounds, then this corresponds to a value per pound of \$0.73. Therefore, the value of 0 to 1 million pounds would be \$0 to \$730,000. Based on the rates of value loss given earlier, the average loss of value per administrative detention action would be \$0 to \$102,000 (14 percent loss per day x \$730,000) per day for perishable food, and \$0 to \$22,000 (3 percent loss per day x \$730,000) per day for nonperishable food.

We have set the maximum timeframe for all administratively detained food, including perishable food, at 30 days. Therefore, we calculated the loss of value for all food based on 0 to 30 days of additional storage. As we discussed earlier in the preamble, we intend in the case of perishable food to send a seizure recommendation to the DOJ within 4 calendar days after we issue an administrative detention order, unless extenuating circumstances exist. However, we do not know how often extenuating circumstances will exist, or how much time will elapse between our recommendation and the subsequent seizure.

We do not estimate any change in the loss of value if we substitute an administrative detention action for a class I recall request, because we previously assumed that substituting an administrative detention action for a class I recall would not change the amount of time a firm would store the food in question. Therefore, any loss of value resulting from taking action against food that was actually not violative would be the same under either type of action. In contrast, there is no storage associated with moving directly to a seizure action or referring a matter to State authorities. Therefore, any loss of value from storage associated with an administrative detention action would be an additional cost in those cases.

We provide estimates of the value loss for food in table 4 of this document. We estimate the maximum loss of value as the maximum number of actions in which the product is not violative, multiplied by the maximum loss per action: \$730,000, the average total value of a shipment.