

CUSTOMS BROKERS & INTERNATIONAL FREIGHT FORWARDERS



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**ASSOCIATION OF WASHINGTON STATE**  
**P.O. Box 3554**  
**Seattle, WA 98134**

May 13, 2004

Division of Dockets Management (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville MD 20852

Re: Comments on Prior notice of imported food under The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, reopened.

**Docket Numbers 2002N-0267 and 2002N-0278**

As an association, we represent the interests of customs brokers, international freight forwarders and certain importers in the Seattle and Tacoma Washington area, and we are addressing these comments to the Food and Drug Administration on their behalf.

1) Personal effects / Personal use shipments— Under current regulations, commercially produced food imported for the personal use of an individual, even if included in a shipment of personal effects, requires PN. The stated intent of PN is to extend security to food and food products entering the public domain. Since these foods will not enter the public domain, and therefore pose no hazard to the public, then the subject act should have no jurisdiction over these shipments and they should not require PN.

2) Sample shipments – Under current regulations, food imported by a company for the sole purpose of testing, is subject to PN. The stated intent of PN is to extend security to food and food products entering the public domain. Since these foods will not enter the public domain, and therefore pose no hazard to the public, then the subject act should have no jurisdiction over these shipments and they should not require PN. It should be specified that the samples imported must be for use solely by the importer and cannot be distributed to any other party(ies). Said shipments can be marked on the invoice(s) "Samples, not for distribution" – or a similar statement signed by the importer.

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3) Holding period for those goods without prior notice. We contend that the holding period be no longer than the original required PN timeframe. For example, 2 hours by truck. As stated, the purpose of prior notice is solely to provide a sufficient timeframe for FDA to assess any threats posed by said imported materials. Therefore, the holding period should not exceed this time period because a) it does not increase the safety to the public, and b) this potentially will hold thousands of shipments at their arriving locations, with the possibility of bottlenecking ALL freight movement(s). At the very least, an assessment should first be made before a holding period is introduced / instituted to ascertain the percentage of shipments that are still not in conformity with the PN regulations, and from that determine the potential for harming the movement of all freight into and out of the U.S.

4) The filer should be notified when an entry is refused due to inadequate notice – According to CDR Domenic J. Veneziano, Director of the Prior notice Center, “The receipt of a confirmation number does not necessarily mean that you filed Prior notice as required by the interim final rule. In order to get your shipment into the country we have automatically provided Confirmation numbers back to you when you submitted through ABI.” A method must be in place to notify the filer when an entry is refused due to inadequate notice. At this time, it is the responsibility of the carrier, rather than CBP or FDA, to notify interested parties of the refusal. This method places an unnecessary burden on carriers, who in this case are acting merely as a middleman with no interest in the goods and their resultant clearance status through FDA. We understand that this will not change by the full enforcement scheduled on August 12<sup>th</sup>. We anticipate a huge amount of held shipments, which will cripple international transportation globally. Either full education must be made to the filers, or the enforcement date must be postponed until such a time as this feedback can be given to the filers. We understand that approximately half of all PN transmissions are inadequate. Obviously there is a problem that must be addressed and well before August 12<sup>th</sup>. We suggest shipment level feedback to the filer and education seminars AND detailed written instructions on the proper filing of PN.

5) Overtime filing of PN - PN entry of air shipments, truck shipments and rail shipments leaving destination locations after 5pm on weekdays, and from Friday 5pm until Monday 8am will require enormous expenditures in man hours, fuel and money, in the form of transportation to and from work locations, and overtime office hours by brokers, forwarders and importers. This could be as much as half or more of all PN required import shipments. We base this on a standard work week of Monday through Friday, 8am through 5pm. And we also note that Friday evening shipping dates are popular with all cargoes including perishables. PN will increase difficulties in particular for the highly perishable cargoes which by their nature cannot afford any delay, and for which exact product types and quantities may not be known until the cargoes have actually loaded on the plane. It will put a strain on airline cargo space for cargo that may then need to move via flights with weekday arrivals, produce a hardship for the shippers and consignees of perishables cargo, and require relevant staffing at origin locations for those flights that are leaving after 5pm their time on weekdays. As such, we request that PN be considered as properly filed when transmitted on the first business day following a weekend, holiday or snowday.

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6) Correction of errors – At this time, a simple clerical error or mistake of fact may require the cancellation of a PN entry, and the filing of a replacement one. This creates enormous additional work which is particularly burdensome on PN entries that are so large that they may require hours to input. The original PN entry must be accessible by the filer to update and or correct as the need arises.

7) At this time there is no procedure for handling refused merchandise. It seems likely that for those highly perishable shipments that are held past their commercially viable time period, or those samples that are small and commercially without value, these cargoes will quickly fill any warehouse and G.O. warehouse with cargo that no one will claim. There is also no mechanism in place to handle cargoes that will be required to be refrigerated or frozen upon arrival. Any perishable cargo seized or held that is not properly stored, may no longer be commercially viable once it is released or sold at auction.

8) Prior notice filed after cargo arrival. Since the PN program will not accept PN filed after cargo arrival, the filer must enter an incorrect date of arrival which is on or after the date of arrival. This skews FDA information, records and gets the filer in the habit of submitting false information. This edit must be taken out. If filers are FORCED to submit PN entry with an incorrect date of arrival, how can FDA determine if the date was filed timely or not? Further, ABI will not accept PN on shipments that have already arrived. This leads to the more time consuming filing of PN online, and also leads to a corruption of the correct data. The edits for date sensitive PN on ABI must be taken out.

9) Requiring separate prior notices for each FDA line on an entry creates unnecessary additional work. Separate notices should not be required for similar food types, all covered by a single FDA product code, and all manufactured by the same registered facility simply because there are different package sizes. It seems doubtful that an 8oz can of sardines can be found safe for the public and subsequent importation when a 16 oz can is refused admission. All products covered by the same FDA product code should require a single PN entry.

10) Prior notice confirmation should include a reference provided by the filer. We expect that this will be either an customs entry number or an I.T. / T&E number. PN approvals may be difficult to reference for those firms that are making multiple PN entries, particularly when identical merchandise for the same importer and consignee are imported.

11) Gray Market food shipments. In many cases the only identifiable product information is that which is on the product itself. This information may not be known by the seller / shipper, and the actual manufacturer as listed on the label may not wish to disclose any further information. In this case, the only solution would be to ban the importation of gray market food shipments, or accept the manufacturers name as listed on the label as adequate information. Since the importation into the U.S. of Gray Market food is substantial, we suggest the latter.

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12)Refused cargo and lack of education - We note that shipper's and consignee's are completely unprepared for a rejection of their cargoes come May 19<sup>th</sup> because prior notice has not been made. As an association, we are collectively receiving late documents daily. We have seen little efforts being made by FDA and CBP towards the proper education of the trade community and anticipate a bottleneck of cargoes which have not filed proper PN on or after May 19<sup>th</sup>. Further, we have no indication of what repercussions that an importer may face. Is there an intended penalty for goods arriving without proper PN?

The importing community is not only concerned with the safety of the public as a whole, but also in food supply that we take into our own homes. We want to protect our food supply, but as professionals dealing with the movement of cargo, we also recognize that the current method of reporting this information is unnecessarily burdensome. There are other methods which could achieve the same affect, with less disruption of trade, confusion and duplication of work. With this in mind, we respectfully submit the above suggestions and welcome a larger participation in the PN process.

We appreciate your consideration of our points,

Sincerely,  
PGA/FDA Chair  
CBIFFAWS

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