Distribution & LTL Carriers Association

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

Docket Number: 02N-0277; Records
Section 306 of Bioterrorism Act of 2002

Enclosed please find the comments of the Distribution & LTL Carriers Association on the proposed rules on records in the above referenced FDA docket.

Sincerely,

Kevin M. Williams

02N-0277 C32

Before The
U.S. Food and Drug Administration

(Docket No. 02N-0277- Records)

"Record- keeping Requirements under Section 306 of the Bio-terrorism Act of 2002"

***The Distribution & LTL Carriers Association** submits these comments on the proposed record- keeping rules of the Food and Drug Administration (FDA) for transporters of food. This national trade association represents for-hire local and regional trucking companies that transport less-than- truckload shipments of all kinds of freight, including food products that are canned or packaged and need to be transported to distribution facilities or retail outlets. Therefore, our carrier members will be subject to these record-keeping requirements. Regional LTL carriers generate revenue in excess of $20 billion annually, employ over 50,000 professional truck drivers and handle millions of shipments throughout the country.*

At the outset, we question why these proposed rules apply only to domestic, for-hire transporters. Foreign transporters that enter the United States from either Canada or Mexico, as well as domestic private transporters, which transport food products that are owned by their company or affiliated company, are not covered. We believe these record-keeping rules should apply uniformly to all transporters: domestic and foreign; for-hire and private. Accordingly, Section 1.326 should be modified to list private and foreign transporters as subject to the records requirements.

Today, so-called private carriers transport approximately fifty (50) percent of all our nation's goods and that percentage may well hold true for food products as well. Moreover, approximately thirty (30) percent of the goods coming into the U.S. from Canada are transported by Canadian carriers. On our southern border, Mexican drayage companies haul a significant percentage of the freight into the commercial zones in California, Texas, New Mexico and Arizona. Therefore, if the FDA is serious about tracking the movements of these food products, the final regulations should also require domestic private transporters and foreign transporters entering the U.S. to maintain these same records proposed under section 1.351.

We further recommend that the FDA clarify and modify several parts of the proposed record-keeping requirements. Specifically, Section 1.352 provides that a transporter must identify the "responsible individual" from the firm that tendered the food product, received the

food product and within its own company. Our initial interpretation was that the FDA wanted the name of the person in the customers' shipping and receiving departments who signed for the load and the driver of the truck. Therefore, this information would vary with each shipment. However, at a recent meeting held on June 17th at the headquarters of the American Trucking Associations in Alexandria, Virginia, FDA Regulatory Leader, Ms. Leslye Fraser, explained that this responsible individual is a manager or supervisor who would be able to promptly help the FDA trace a shipment upon request. We believe a supervisory person is more appropriate and it should be clarified in the final rule either by providing a definition of a "responsible individual" or through examples of persons who may qualify. The key criterion is that this person should be able to assemble the information for or about the shipper, the shipment, the receiver and the activity by the transporter. The driver and loading dock personnel are unlikely to be able to do so.

We also believe an "adequate description of the food" under Section 1.352(a) should not entail a requirement that the transporter of the food gather information about the product lot or code numbers. That is the shipper's responsibility and they will be able to furnish it to the FDA. There is no need for the transporter to also have it. The carriers and their drivers are not in a position to know the lot or code numbers, absent the shipper putting that information on the bill of lading or other shipping document which is given to the trucking company.

The Federal Motor Carrier Safety Regulations, codified at 49 C.F.R. Sections 373.101 & .103, require motor common carriers to issue both a bill of lading and a freight/expense bill for each shipment. Copies of those regulations are attached. These documents identify the consignor and consignee, the origin and destination points, the date of the shipment, the number of packages and require a description of the freight. The bill of lading is signed by both the truck driver and a shipper representative, and this document serves as a receipt for the goods, as well as the contract for carriage when a separate contact has not been negotiated with the customer. The freight bill or invoice will also contain this identifying information and be sent to the paying customer. As is evident from the attached sample bill of lading, this document already contains the necessary information to trace any shipment by using either the carrier's pro number, the shipper's bill of lading number, the date of the shipment, the customer, or other means. Trucking companies already collect this information to provide a basis for receiving payment, as well as for handling any cargo loss or damage claim that may arise.

Consequently, we request that the FDA's final rules specifically provide that compliance with theses FMCSA rules satisfies the requirements of Section 1.352. The attached uniform bill of lading should be listed or acknowledged by the FDA as satisfying the requirements of Section 1.352. Accordingly, Subsection (4) should be deleted and Subsection (3) should be revised to only require "an adequate description of the food to allow tracing."

Finally, we recommend that the record retention requirement in Section 1.360 be modified to require that these records for both perishable and nonperishable foods be retained for one year. The proposed rule sets it at one year for perishable food and two years for nonperishable food. Retention for one year is the FMCSA requirement for bills of lading and freight bills. It is difficult to imagine a situation were a food product that has been delivered to

a store is not purchased and consumed within a year and therefore it is not necessary to keep these records for a longer period of time.

With these revisions, the FDA will be able to perform its duties under this law without imposing unnecessary paperwork costs and burdens on transporters.

Respectfully submitted,

Kevin M. Williams
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Dated: June 19, 2003

Due: July 8, 2003

(To be Printed on White Paper)

UNIFORM STRAIGHT BILL OF LADING

ORIGINAL—NOT NEGOTIABLE

Carrier's Pro No. (1) 513-12345
Shipper's Bill of Lading No. (2) BL1234
Consignee's Reference/PO No. (3) AB14
Carrier's Code (SCAC) (5) RFFI

Name of Carrier (4) Robyn's Fast Freight, Inc.

RECEIVED, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request:

From (6) Beckster Manufacturing Date (7) 6/30/98

Street (8) 12 Main Street City (8A) Centreville County (8B) Fairfax State (8C) VA Zip (8D) 20124

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said carrier agrees to carry to destination, if on its route, or otherwise to deliver to another carrier on the route to destination. Every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to (9) "C.O.D." XYZ Corp

On Collect on Delivery Shipments, the letters "COD" must appear before consignee's name.

Destination Street (10) 1211 Broad Street

City (10A) New York County (10B) Catskill State (10C) NY Zip (10D) 10001

Delivering Carrier (11) Robyn's FFI Trailer No. (12) RF-1888

Additional Shipment Information (13) Delivery by 10:00 a.m.

Collect on Delivery $ (14) 10,000.00 and remit to: (14A) Beckster Mfg.
Street (14B) 12 Main Street City (14C) Centreville State (14D) VA

C.O.D. charge to be paid by (15) Shipper ☐ Consignee ☒

Handling Units No. Type	Packages No. Type	✪ HM	Kind of Package, Description of Articles, Special Marks and Exceptions (Subject to correction)	Weight (Subject to Correction)	Class or Rate Ref. (For Info. Only)	Cube (Optional) (22)
(16) 10 skz	(17) bxs	(18)	(19) Boxes, Cordless Phones,	(20) 1,500	(21) 100	33.73 cu ft
			NMFC 62820 Sub 1			
			RVNX $3.00 per pound			

✪ Mark "X" to designate Hazardous Materials as defined in DOT Regulations.

NOTE (1) Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:

(23) The agreed or declared value of the property is specifically stated by the shipper to be not exceeding $3.00 per pound.

(23A) **NOTE (2) Liability Limitation for loss or damage on this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(A) and (B).**

(23B) NOTE (3) Commodities requiring special or additional care or attention in handling or stowing must be so marked and packaged as to ensure safe transportation with ordinary care. See Sec. 2(e) of NMFC Item 360

Freight charges are PREPAID unless marked collect
(24) CHECK BOX IF COLLECT ☑

FOR FREIGHT COLLECT SHIPMENTS:
If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement:
The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.
Beckster Mfg.
(25) (Signature of Consignor)

Notify if problem enroute or at delivery (26) John Robyns 888-888-8881 888-888-8889 (for informational purposes only)
Name Fax No. Tel. No.

Send freight bill to: (27)
Company Name City Street State Zip

Shipper (28) Beckster Mfg. 6/30/98
Per (Sig.) J. T. Beckster

Carrier (29) Robyn's Fast Freight, Inc.
Per (Sig). J. T. Robyns Date 6/30/98

Shipper Certification	Carrier Certification
This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the DOT. Per (30) Date	Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the DOT emergency response guidebook or equivalent document in the vehicle. Per (31) Package Nos. Date (32)

SAMPLE

Federal Motor Carrier Safety Administration

Regulations

§ 373.101 Motor Carrier bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names of consignor and consignee.

(b) Origin and destination points.

(c) Number of packages.

(d) Description of freight.

(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight)The carrier shall keep a record of this information as prescribed in 49 CFR part 379.

[55 FR 11198, Mar. 27, 1990, as amended at 56 FR 30874, July 8, 1991; 62 FR 15423, Apr. 1, 1997]

Federal Motor Carrier Safety Administration

Regulations

§ 373.103 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(a)(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).

(a)(2) Date of shipment.

(a)(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).

(a)(4) Number of packages.

(a)(5) Description of freight.

(a)(6) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

(a)(7) Exact rate(s) assessed.

(a)(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.

(a)(9) Route of movement and name of each carrier participating in the transportation.

(a)(10) Transfer point(s) through which shipment moved.

(a)(11) Address where remittance must be made or address of bill issuer's principal place of business.The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 379. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(b)(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.