

Comments on the Interim Final Rule concerning Prior Notice of Imported Food under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act); Reopening of Comment Period

**Food and Drug Administration
Docket No.: 2002N-0278**

These comments are in response to the reopening of the comment period for the Interim Final Rule concerning Prior Notice of Imported Food. The following outlines a specific circumstance that is problematic and costly for Canadians because of the new rules and then we provide suggestions for possible solutions. These comments are offered with regard to the intentions outlined in the Federal Register notice.

Transshipment

This issue involves transshipments through the United States from Canada to Canada. The following outlines the circumstances of a kind of business operation that involves the shipment of food products from Ontario to western Canada. The shipments are by truck. They are frequent, four times per week, and each trailer load contains a wide variety of food products among other consumer products. On the day of shipment, orders are released from the company system at 9:00 a.m. after which they are picked, packed and weighed. After weighing there is approximately one hour before the truck leaves on its way. The time available to prepare the prior notice then is only one hour before departure. It is not until after weighing that there is certainty of what products and quantities are on each shipment. There are between 150 to 300 individually packaged orders per shipment, each containing various products, and each subject to prior notice application.

In the past, the carrier's route would take the trucks through the United States meaning the cargo would be transhipped through the U.S.A. under bond. This routing saves 300 miles per trip. Due to the implementation of the prior notice rules for food products the shipper now must transit through Canada. Due to the large size of each shipment, the variation of types of food products, and the small amount of time for preparation of the shipment documentation and data, it is virtually impossible to meet the prior notice requirements. The extensive data and times frames for submission required by the prior notice rules force the routing change as the shipper can not meet the requirements. Food entered for Canada to Canada transshipment is subject to the requirements even though the food products merely transit U.S. territory and are not offloaded or entered for consumption.

The routing change means an additional 300 miles and 6 hours driving time for each truck. This has a number of significant negative ramifications. It is an additional demand on the drivers in terms of fatigue and stress, there is increased wear on the equipment, increased fuel consumption, increased emissions and most concretely there are significant increased costs. For one company such increased costs amount to approximately \$60,000 per year. This is an increase in shipping costs directly attributable to the new prior notice requirements.

Possible Solutions

The procedure now in place for Canada to Canada shipments through the United States is referred to in the United States Code of Federal Regulations, 19CFR123.42. A copy is attached. This procedure tightly controls the entry and exit of such shipments and both U.S. and Canadian Customs authorities are involved. Also, as this is encoded in the regulations, it is subject to all Customs and Border Protection inspection and penalty enforcement action. The goods are under seal the entire time they are in the United States and therefore can not become a threat to health and safety. An exemption for such shipments would be a solution.

In addition, shipments under the Customs and Border Protection programs already in place and designed to ensure security and compliance (C-TPAT and FAST) should be exempt as these shipments have already undergone thorough supply chain verification and have been determined to be low-risk. Therefore, we request consideration also be given to exemptions for certified low-risk shipments.

Conclusion

The prior notice requirements have a significant negative effect in the situation described above. This is a new problem directly resulting from the new prior notice rules. This is a major added burden to Canadian commerce with added costs and more stress for the shippers and carriers. We respectfully request consideration of an exemption.

[Code of Federal Regulations]
[Title 19, Volume 1]
[Revised as of April 1, 2004]
From the U.S. Government Printing Office via GPO Access
[CITE: 19CFR123.42]

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TITLE 19--CUSTOMS DUTIES

CHAPTER I--BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF
HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

PART 123_CUSTOMS RELATIONS WITH CANADA AND MEXICO--Table of Contents

Subpart E_United States and Canada In-Transit Truck Procedures

Sec. 123.42 Truck shipments transiting the United States.

(a) Manifest required. Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8\1/2\. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) Procedure at Canadian port of departure. The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) Procedure at United States port of arrival--(1) Presentation of manifest. The driver shall present a validated United States-Canada Transit Manifest, Customs Form 7512-B Canada 8\1/2\, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to U.S. Customs at the United States port of exit.

(2) Sealing or waiver of sealing. Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with Sec. 18.4 of this chapter. If a truck cannot be sealed effectively and sealing is

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deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) Procedure at United States port of exit. The driver shall present the three validated copies of the manifest to the U.S. Customs

officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) Procedure at Canadian port of reentry. The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512-B Canada 8\1/2\, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port of exit, the driver will be allowed to return to that port to have it certified.

(f) Proof of exportation from United States. The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S.

(g) Forwarding procedure. Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (Sec. Sec. 18.1-18.8 of this chapter).

[T.D. 81-85, 46 FR 21991, Apr. 15, 1981, as amended by T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]