Comments on Federal Register Notice Availability:
Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness Act of 2002; Joint Food and Drug Administration-Customs and Border Protection Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes

The U.S. Business Alliance for Customs Modernization (BACM) welcomes the opportunity to comment on the "Joint FDA-CBP Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes," as invited in the Federal Register of April 14, 2004 (69 FR 19765). BACM is a coalition of U.S. companies that import and export extensively, filing over 2 million entries valued at more than $130 billion per year. BACM is dedicated to modernization of U.S. Customs laws, regulations and policies and is committed to the facilitation of trade to the greatest extent possible consistent with customs compliance. Please see the end of these comments for a full list of BACM member companies.

BACM is highly encouraged by the actions of the FDA and CBP in outlining the current plan to increase integration and examine whether the FDA can amend the timeframe requirements in their prior notice interim final rule (68 FR 58974, October 10, 2003) to match the advanced notice timeframe requirements for arrivals by road, rail or air that are currently required by the CBP's advance electronic information rule.

BACM supports the idea of increased integration between the FDA and CBP in regards to their risk targeting techniques and actions. BACM understands that the current plan includes the following as a summary of some of the planned steps towards that integration:

1) Co-locating all FDA prior notice staff with CBP's National Targeting Center. We believe this is a positive step in that the two agencies' personnel who are accountable for the risk analysis process can easily interact and share information that is appropriate and allowed under current regulation.
2) Further refinement to FDA's targeting rule sets in CBP's Automated Targeting System (ATS). BACM strongly urges the continued refinement of the FDA targeting rule sets in order to maintain a viable risk analysis system to flag specific shipments for security concerns. We support the continuing plan to target shipments for which little is known while maintaining expedited processing for those shipments and importers that are well known and have provided the agencies with the means by which they can assure general compliance. In addition, BACM strongly supports the idea that food products subject to the FDA's prior notice requirements must be eligible for the full expedited processing and information transmission benefits allowed with CTPAT, FAST, and any similar programs established in the future.
3) Additional training of FDA staff in targeting techniques. BACM supports any initiatives for additional training that will increase the efficiency and effectiveness of the border crossing systems.
4) Targeting support from CBP and other federal law enforcement analysts at the NTC. BACM supports this initiative.
5) Enhanced communications and cooperation with CBP to facilitate information exchange and ensure fast access to foods that are subject to prior notice holds. This will be critical to the food industry as any delays will translate into added costs and inefficiencies to their current supply chains.

BACM supports the overall plan as outlined in the publication. In summary, we understand that FDA and CBP will work to assess current practices used to receive, review and respond to prior notice submissions during the first three months of full enforcement. BACM supports the action, but believes that any short term assessment must take into account the problems involved with the current systems. This could easily impact the assessment process as current practices could appear to be inadequate when they are not. Secondly, FDA will identify what changes to work practices and staffing would be necessary to receive, review and respond within reduced time frames that match current CBP time frames under the Trade Act of 2002. BACM fully supports this process and encourages FDA to provide for any changes that may be needed to allow these critical timing reductions. Thirdly, FDA will implement necessary changes and make appropriate adjustments to ensure reduced time frames. BACM would encourage both agencies to

make sure that they allow for the proper communications with the trade industry prior to planning for or implementing any changes as a result of the above assessments. That way all the interests and requirements of all the parties involved in the process can be assessed and the best, most efficient changes can be implemented. Lastly, issue a prior notice final rule in March 2005 that will respond to all comments received on the prior notice IFR, this plan and the additional open comment periods.

The plan also states that the agencies are emphasizing that "the evaluation of whether to reduce the timeframes for prior notice review will depend on the level of compliance industry achieves during the assessment." While BACM agrees with this statement in part (in that agency processing and staffing time requirements would be directly related to the ability of the trade to provide their prior notice submissions as accurately and efficiently as possible) we do not believe it is appropriate for the agencies to place the burden of compliance entirely on the trade. The trade's ability to provide the information required also depends on the systems working properly, the efficiencies of the government personnel involved, the educational outreach levels and the feedback individual importers receive in relation to their current processes. These are areas that are controlled and managed by the agencies and so must also be considered when assessing the probability of reducing timeframes.

Sincerely,

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