



American Moving and Storage Association

1611 Duke Street, Alexandria, Virginia 22314-3482

Tel (703) 683-7410 • Fax (703) 683-7527

Web: www.promover.org

www.moving.org

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Department of Health and Human Services
Food and Drug Administration
Division of Dockets Management (HFA – 305)
5630 Fishers Lane
Room 1061
Rockville, MD 20852

RE: Docket No. 02N – 0278
RIN 0910 – AC 41
Prior Notice of Imported Food

Dear Sir or Madam:

The American Moving and Storage Association (“AMSA” or “Association”) submits its following comments in response to the referenced Notice of Interim Final Rule and Request for Comments which appears at 68 Fed. Reg. 58974 (October 10, 2003), issued by the Department of Health and Human Services’ Food and Drug Administration (“FDA” or “Agency”). The Agency was directed to implement the interim final regulations by Section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107 – 188 (“BTA” or “Act”). In its notice requiring prior notice of food that is imported or offered for import into the United States, FDA solicits comments on the interim final rules that are intended to give FDA additional tools to help it prevent a food-related bioterrorism event or other public health emergency.

I. IDENTITY of COMMENTOR

AMSA is the only national trade association representing the household goods moving and storage industry. AMSA has approximately 3500 members, including international and national van lines with agency networks; independent national and regional van lines; and local agents affiliated with a van line network. AMSA’s members are domiciled, and provide relocation and warehousing services, throughout North

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America and strategic points throughout the world. The moving and storage segment of the motor carrier industry operates more than 50,000 tractors and trucks, and close to 5,000 warehouses and storage facilities. More than 2.7 million domestic moves are undertaken each year, of which the professional moving industry handles about 890,000. More than 300,000 international moves are also performed each year, virtually all by professional movers. This industry segment contributes more than \$8 billion to the national economy. The sheer size and scope of the industry's operations, the background and intent of the Act, and the adverse impact of certain of the interim final rules upon the industry's operations, suggests that there is room to explore some limited relief for the industry.

The household goods moving and storage industry generally provides relocation services for individuals and for corporations on a national account basis. Some movers perform non-household goods services, such as commercial office relocation, new furniture transport, tradeshow and electronics exhibits services, and automobile transportation. AMSA is unaware, however, of any commercial food transportation or storage provided by household goods movers, and will thus exclude food transportation or storage from the scope of these comments.

II. OVERVIEW of COMMENTS

AMSA recognizes the complex series of proceedings that have been initiated by many federal agencies since the events of September 11, 2001, which are designed to protect the health and safety of those who live and work within the United States. Several proceedings are designed to assure and verify the identity of individuals in order to offer a measure of protection to our society without burdening the underlying economy or social fabric of the country, such as, for example, rules that limit the acquisition of hazardous materials endorsements to commercial drivers licenses possessed by professional truck drivers. The combined product of the referenced proceeding and a closely related one, Registration of Food Facilities, appearing at 68 Fed. Reg. 58893 (October 10, 2003), evidences some consideration for the manner in which this segment of the economy operates and the way transporters of household goods in particular operate. There is room, however, for additional consideration of the adverse and costly consequences that will be felt by this industry and its customers in the absence of minor changes to the interim final regulations. The change addressed by these comments involves exempting from the prior notice requirement those personal household goods shipments containing food items owned and intended to be consumed by the household goods shipper and not intended for sale or distribution.

III. SPECIFIC COMMENTS

A. Exemptions.

Household goods shipments are brought into the United States every day. Typically these shipments consist of an individual's personal and household belongings and nothing more. If food items are included in the shipment, however, observation of the Act's requirements is triggered. An individual's residence is exempt from the requirement of registering as a food facility, and a motor carrier is similarly exempt from having to register as long as it is carrying food items in the course of its business as a conveyance, versus as a storage facility. See 21 CFR 1.227(b)(2). Despite the exemptions from having to register, prior notice must be given that food items are arriving for a border crossing, but such notice is burdensome and will unnecessarily delay household goods shipments or subject them to detention, segregation, and penalty.

The extent to which food items are included in a shipment of household goods depends upon the household being moved and the diligence involved in packing, which may differ from country to country. Some household goods shipments are packed by the owner, so a carrier will not know the specific contents of packed boxes. An owner may pack dishes, pots and pans, and serving trays in boxes, and might also include boxes of dry cereal or canned goods inside the boxes. In this example the mover has no specific knowledge that food items are included in the shipment. In another example, a mover may pack food items in boxes, but while some packers may assiduously inventory the presence of all food and nonfood items, others may not. These examples may account for an unwitting violation if prior notice is required but not given. The resulting segregation of food items from the remainder of the shipment will be costly, time consuming, and disruptive.

B. Religious Considerations.

If left unchanged, the interim final rule will be especially burdensome for those of the Mormon faith who need to move. Their faith counsels them to store in their homes sufficient food of different types to last at least one year to help in the event of personal or natural disaster. Foods that should be stored include grains, legumes, powdered milk, salt, sugar or honey, and water, and most food items can be dry-pack canned. Under the interim final rules, stored food will become a huge obstacle for those who need to move and wish to comply with the prior notice informational requirements but find it virtually impossible to do so.

C. Broadening the Admissibility Standard.

Food items that are included in an individual's household goods shipment and are intended to be consumed by that individual are unlikely to be adulterated, contaminated, or misbranded, and would likely independently meet FDA's admissibility standard. Such items should therefore be exempted from the coverage of the prior notice requirement.

Interim final rule section 1.277 establishes exclusions from the prior notice requirement, and clearly excludes food that is carried or otherwise accompanied by an individual for his or her personal use. This includes food intended to be consumed by the individual, family and friends, and food that is otherwise not for sale or distribution. The interim final rule also contemplates the exclusion of unaccompanied food that is made by an individual and sent, unaccompanied, to an address in the United States for nonbusiness purposes. AMSA suggests that the final rule be broadened to include both of these exclusions as a single additional category, *i.e.*, unaccompanied food that is included in a shipment of personal household goods; is owned by and intended to be consumed by the shipper of household goods, family or friends; and is not to be offered for sale or distribution.

D. Congressional Intent and Agency Rationale

FDA recites Congress' intent not to subject to prior notice requirements food brought into the United States in personal baggage for personal use, yet refuses to arrive at the same result for food imported that arrives by common carrier for personal use on the grounds that such a result would require too broad of an exclusion from the prior notice requirement. See 68 Fed. Reg. 58992 et seq. The Agency's reasoning is flawed as it applies to household goods shipments, however. FDA's reasoning assumes that food shipped by an individual and traveling by common carrier is destined to another individual – a consumer, for his or her personal use. Under this assumption, there exists a “shipper” as that term is used in the Federal Food, Drug, and Cosmetic (“FD & C”) Act, and a receiver. In a household goods shipment, however, personal food items that may be included and are shipped by an individual are not shipped to a separate receiver. Rather, household goods are being “shipped” to the “shipper” – to the same individual albeit at a new location. There is in fact no “recipient”, and there is no “shipper” as that term is used in the FD & C Act. In this context, any food items being “sent” are actually being carried for the sender's (shipper's) own personal use. The only reason why a shipper would not have actual physical possession of the food items, as would be the case with accompanied personal cabin baggage, would be the physical inability of an individual to carry thousands, or tens of thousands, of pounds of household goods on his or her person.

For some foods – wine collections, exotic foods, and spice collections – compliance with the informational requirement will be a burdensome chore to determine, recall, or reconstruct all of the information required. Food receiving an exemption, however, as suggested above, could be included in a shipment of household goods without the possibility of detention, segregation, fine, or other consequences in the event it has been overlooked during the packing process, otherwise not been declared, or discovered during an inspection. It would relieve household goods shippers of the onerous obligation of attempting to secure product identity and manufacturer information for food items. And it would be coextensive with the existing exemption from the registration requirement for private individual residences. The regulations in fact contemplate an exemption for the placement of food items in a household goods

shipment because a “de minimus” exclusion, which FDA concededly does not recognize, exists for commercial importers and attaches only to food manufacturing and processing, versus private individual residences.

IV. CONCLUSION

For the foregoing reasons, AMSA suggests that the interim final rules be modified to allow an exemption from the prior notice requirement for unaccompanied food that is included in a shipment of personal household goods; is owned by and intended to be consumed by the shipper of household goods, family or friends; and is not to be offered for sale or distribution.

AMSA respectfully reserves the opportunity to comment further in this proceeding when the opportunity arises.

Respectfully submitted,

AMERICAN MOVING and
STORAGE ASSOCIATION

A handwritten signature in black ink, appearing to read "Robert G. Rothstein", is written over a horizontal line.

By: **ROBERT G. ROTHSTEIN**
Vice President and
General Counsel