



**TRANSPORT
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May 14, 2004

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

Re: Comments on Interim Final Rule regarding Importation of Food

Docket No: 2002N-0278

Dear Sirs:

Please find attached comments on behalf of Sunbury Transport Limited, New Brunswick Southern Railway Company Limited, Eastern Maine Railway Company and Montreal Maine & Atlantic Railway Limited regarding FDA's Interim Final Rule requiring Prior Notice of Imported Food.

I am writing specifically on behalf of Sunbury Transport Limited, New Brunswick Southern Railway Company Limited, and Eastern Maine Railway Company. Montreal Maine & Atlantic Railway Limited is submitting a similar transmittal letter under separate cover.

Thank you for your consideration of our views.

Sincerely,

Dale Thibodeau,
V/P & G/M-Irving Transportation (Land
Group)

2002N-0278

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DOCKET NUMBER 2002N-0278

COMMENTS

ON

INTERIM FINAL RULE

REGARDING

PRIOR NOTICE OF IMPORTED FOOD

UNDER THE

PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND
RESPONSE ACT OF 2002

BY

SUNBURY TRANSPORT LIMITED

NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED
EASTERN MAINE RAILWAY COMPANY

MONTREAL MAINE & ATLANTIC RAILWAY LIMITED

May 12, 2004

BACKGROUND

Historically the Canadian National Railway and the Canadian Pacific Railroad competed across Canada over main line rail lines that stretched from the Atlantic Coast to the Pacific. In eastern Canada the Canadian National system operates from Montreal to eastern Canada's Maritime Provinces and the ports of Halifax and Saint John via a route that is entirely within Canada. The Canadian Pacific line was a more direct line connecting Montreal to the Maritimes and the port of Saint John, New Brunswick via a rail line that was built in part across the northern portion of the State of Maine. In 1994 Canadian Pacific elected to cease operations over much of their main line system east of Montreal and elected to transfer operations to several smaller, more efficient carriers. Today, Montreal, Maine & Atlantic Railway Limited (MMA) based in Bangor, Maine operates over the former CP main line from St. Jean, Quebec to Brownville Junction, Maine. From Brownville Junction, Maine to Saint John, New Brunswick the rail line is operated by Eastern Maine Railway Company (EMRC) and New Brunswick Southern Railway Company Limited (NBSR). Together the three carrier systems provide a highly competitive rail link between Maritime Canada and Montreal competing against the much larger Canadian National System.

In 2003 MMA, EMRC and NBSR commenced a rail intermodal service in which trailers are placed on rail cars and moved directly between Saint John, New Brunswick and Farnham, Quebec. The railroads provide the service under contract with a trucking company, Sunbury Transport Limited, for a wide range of customers and the dedicated train is referred to as the "Sunbury Train". The service presently moves approximately 150 loaded trailers per week over the rail line and is expected to grow. All trailers move in a special train dedicated solely for the Saint John to Farnham move. The trailers are sealed and the train does not stop in the United States to add or take off volume. Approximately half of the trailers contain food as defined by the FDA regulation. Many trailers contain a variety of food products such as various snack foods and other retail food products. None of the food is destined for the United States and all trailers carrying food move from Canada to Canada traversing the northern part of Maine in the process.

COMPETITIVE FACTORS

All shippers using the Sunbury Train have multiple options for moving food and other products between the Maritime Provinces and the rest of Canada. They can move it directly by truck or they can move it via rail using rail intermodal services offered by Canadian National or by the combination MMA/EMRC/NBSR route. Both CN and MMA/EMRC/NBSR offer highly competitive services. Both services, because they are so competitive are operations that generate very small returns for the carriers and neither service can shoulder additional costs or burdens. Under the FDA Interim Final Rule concerning Prior Notice of Imported Food, customers contracting with Sunbury Transport for movement of trailers via the so called "Sunbury Train" will be required to participate in the FDA program even though their products are originating and

terminating in Canada or they can route their traffic via Canadian National and not be burdened by any FDA reporting requirements or rules. Canadian National is a large North American rail system stretching over thousands of miles with annual revenues in the billions of dollars. MMA, EMRC and NBSR are very small entities stretching over just a few hundreds of miles. The FDA regulations as presently structured in the Interim Final Rule will have serious negative impacts on at least 50% of the traffic presently moved in the Sunbury Train. There are simply insufficient savings between the Sunbury Train and services operated by the competing Canadian National to justify participation in the FDA process by customers. Rather than participate many will move their goods via other routes.

REGIONAL IMPACT

MMA a U.S. rail carrier based in Bangor, Maine operates rail lines throughout Northern Maine. The railroad primarily serves the forest products industry but does also serve a variety of other industries. MMA has operated in Maine for just over a year. It purchased its rail lines because the railroad that previously served the region went bankrupt and was forced to liquidate. Since its creation, MMA has been highly successful in reestablishing shipper confidence in the rail freight services in the northern part of the states but its long term success is contingent on the railroad's ability to broaden and strengthen its traffic base.

Northern Maine is a rural and economically challenged part of the state where success of a rail freight operation rests on its ability to compete for any business that is available. The difficulty of operating in the region is born out by the bankruptcy of MMA's predecessor, Iron Road Railroad, and the sale of the rail system to Iron Road in the early 1990's by its predecessor, the Bangor and Aroostook Railroad. It is both a difficult region to operate a railroad successfully and it is a difficult region that is highly dependent on having access to an efficient rail system.

The Sunbury Train is one service that MMA, working in conjunction with EMRC, NBSR and Sunbury has used to broaden and expand its traffic base. By working together the team has been successful in attracting truck traffic that traditionally operated either over the road or via the competing Canadian National system and moving it via MMA. The Sunbury Train is one approach MMA has taken to broaden the railroad's revenue base and any actions that negatively impact the competitiveness of the service will have negative impacts on MMA and its efforts to restore efficient rail freight services to northern Maine.

EMRC operates from Brownville Junction in an easterly direction over the former main line of the Canadian Pacific Railroad to a point near the Canadian Border at Vanceboro, Maine a distance of approximately 100 miles. EMRC has successfully maintained this critical link preserving a vital through main line rail route across northern Maine that contributes essential revenues necessary to support the rail infrastructure in Northern Maine. EMRC also links two important rail systems in Maine, the MMA and the Springfield Terminal Railway assuring that numerous markets throughout Maine have

efficient rail access to markets throughout Canada. Without the EMRC operations it is likely that major sections of the Northern Maine rail system would not be able to generate sufficient revenues to survive.

RECOMMENDED CHANGES

Operations of MMA/EMRC/NBSR meet the goals of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Historically, cars originating on MMA or on NBSR in Canada that were destined to a Canadian destination moved through customs with a Canada to Canada designation. At no point in the transportation process were cars or trailers diverted to U.S. destinations. EMRC, NBSR, Sunbury and MMA recognize that this approach, although historically effective, is no longer acceptable. EMRC, NBSR, Sunbury and MMA, however, urge the FDA to modify the existing Interim Final Rule such that the goals of Homeland Security can and will be met and such that the competitive position of EMRC, NBSR, Sunbury and MMA are not negatively impacted by existing regulations.

MMA, EMRC and NBSR are investing in the Automatic Manifest System (AMS). This system will provide CBP with detailed cargo information through an Electronic Data Interface. Information contained in AMS will provide data to allow for risk assessment and should be sufficient to meet the requirement for prior notice for FDA. Under AMS, cargo moving from a Canadian point of origin to a Canadian destination and transiting through the United States ("transit shipments") via rail is required to move under bond and must move Canada to Canada. Shipments cannot be diverted to U.S. destinations.

The goals of the FDA to protect Homeland security are understandable and we support those efforts. However, the Interim Final Rule as written with respect to transit shipments will cause serious competitive harm to both the U.S. and Canadian carriers associated with moves between Maritime Canada and Quebec through northern Maine. MMA, EMRC and NBSR recommend that FDA exempt transit shipments through Northern Maine from the Interim Final Rule reporting requirements and believe that an exemption can be implemented without compromising Homeland Security. In the event that an exemption for "transit shipments" is not acceptable and the FDA believes that additional measures are required, we recommend that the FDA include in regulations a requirement that any shipment that moves as proposed above must be moved to a Canada destination before future re-entry into the U.S, essentially prohibiting any diversion of a rail car while in the U.S. By requiring such a move, a diversion, even with CBP knowledge, will not be allowed and thus cannot happen without prior notice to FDA. In the event the FDA is not willing to make a change in the rule applying to all transit shipments as described above, the parties respectively request that the FDA recognize the unique nature of the situation in Northern Maine and agree to an exception as described for Canada to Canada shipments across Northern Maine via the MMA/EMRC/NBSR systems.