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COMMENTS BY  
MAINE DEPARTMENT OF TRANSPORTATION  
REGARDING  
FOOD AND DRUG ADMINISTRATION INTERIM FINAL RULE REGARDING  
PRIOR NOTICE OF IMPORTED FOOD  
DOCKET NUMBER 2002N-0278

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May 12, 2004

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Northern Maine is served by a rail network that for nearly a decade has been characterized by instability. In the past decade, the railroad system has changed hands three times and has suffered through a period of decline and bankruptcy. In January 2003 after a difficult period of failure and bankruptcy, the railroad system was sold to a new carrier, the Montreal, Maine & Atlantic Railway, Limited (MMA). MMA is based in Bangor and operates a railroad that runs from the port of Searsport, on Maine's coast north to the northern tip of Maine in Van Buren and from Brownville Junction, Maine, located in north central Maine west to St. Jean, Quebec, near Montreal. The Brownville Junction to St. Jean is a portion of the former main line of the Canadian Pacific Railroad that runs from Montreal to Saint John, New Brunswick. In Brownville Junction, the MMA connects with a carrier based in Saint John called New Brunswick Southern Railroad (NBSR), in Canada and Eastern Maine Railroad for the portion of the system that operates in Maine. The NBSR system runs east from Brownville Junction, Maine to Saint John, New Brunswick also over the former main line of the Canadian Pacific Railroad. Working together, the two railroads provide a through rail service for traffic that originates and terminates in Canada and operates across the northern part of the state of Maine. The MMA/NBSR route competes directly with the Canadian National Railway (CN) that operates a highly competitive main line rail line between Maritime Canada, including Saint John, New Brunswick and Montreal. The CN line is located entirely within Canada and thus traffic operating within Canada on CN is not subject to the FDA regulations.

MMA is a critical part of Maine's transportation system. They move large volumes of heavy commodities such as pulp and saw logs over relatively short distances between the woodlands where logs are harvested and saw mills or paper mills. They also serve several large paper mills that are the largest employers in Northern Maine. One of the paper mills is also just emerging from bankruptcy. Loss of the rail system would represent a critical if not fatal blow to at least one of the paper mills and would force many thousands of tons of heavy forest products onto a local road system that is already highly stressed. The public cost would be enormous.

While the rail traffic generated within the state of Maine by MMA is substantial, it is not, by itself, sufficient to assure the financial success of the railroad. The only way that that can be assured is to assure that MMA can continue to compete for through traffic that moves from Canada to Canada across northern Maine. In the past year, they have demonstrated their ability to compete and have successfully added new services that have attracted new business to the railroad.

One particular business that not only provides substantial public benefits by moving heavy trucks by rail rather than over our road system is a new intermodal train that moves trailers on rail flat cars from Saint John to a rail terminal near St. Jean. What started as a small enterprise has grown to one that is now handling on average 150 loaded trailers per week and it is still growing. Trailers are loaded onto flat cars in Saint John for the westbound move and in Farnham, Quebec for the eastbound move and moved in a dedicated train through Quebec, across northern Maine and through New Brunswick.

Other than for changing crews the trains do not stop to load or unload while in the United States.

It is our understanding that approximately 50% of the trailers are carrying food as defined by the FDA, nearly all of which is packaged food destined to retail establishments. It is also our understanding and belief that if companies whose commodities move from Canada to Canada are forced to participate in the notification process, even though they have no intention of importing food into the United States, they will seek alternative routes. Further, it is highly likely that competing services, such as the CN service would offer a service with a cost competitive option that would cause a significant level of business to move away from the Northern Maine route.

While the Maine Department of Transportation fully supports the goals of the FDA to protect our nation's food supply, the Department also urges the FDA to adopt a reasonable approach that protects the ability of our rail system that is so critical to our state to compete for Canada to Canada business. This can be done in several ways.

First, FDA can and we believe should exempt rail shipments of food that move in bond across Maine from the prior reporting requirements presently required in the Interim Final Rule. Shipments moving by rail in bond cannot be delivered to points within the US and must move Canada to Canada. The food products in trailers on rail cars cannot enter the nation's food supply.

In the event that FDA is somehow concerned that food products moving in rail cars in bond can somehow be diverted through a notice to customs officials that somehow escapes notice by FDA, the Department urges the FDA to adopt a change to the rule that specifically requires that no rail cars can be diverted while in the United States requiring that any such shipment must be moved into Canada. Once moved to Canada such a shipment would be subject to the FDA notice requirements and could not enter the US without meeting FDA requirements.

Finally, in the event that the FDA is not willing to change the Interim Final Rule in the manner proposed that applies to all rail transit shipments, the Department strongly urges the FDA to adopt a change that reflects the unique situation in Northern Maine. Such a change could provide an exemption for all transit moves across Maine or a change could very specifically require that any shipment carrying food moving across Northern Maine via the former Canadian Pacific Maine line cannot be diverted while in the United States and must be returned to Canada prior to entry to the U.S.