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JUL 13 2004

July 13, 2004

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

Re: Docket No. 2002N-0278

Dear Sirs:

Enclosed please find comments regarding the above Docket Number submitted on behalf of Sunbury Transport Limited, New Brunswick Southern Railway Company Limited, Eastern Maine Railway Company and Montreal, Maine & Atlantic Railway Limited. In addition to the enclosed a copy was faxed to your fax number 301 827 6870 at 2:15 pm on July 13, 2004.

If you have any questions about the enclosed please don't hesitate to contact me at the above address or at 978 371 8046.

Sincerely


F. Colin Pease

02N-0278

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DOCKET NUMBER 2002N-0278

SUPPLEMENTAL 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(NBSR)
EASTERN MAINE RAILWAY COMPANY(EMR)

MONTREAL MAINE & ATLANTIC RAILWAY LIMITED(MMA)

July 13, 2004

BACKGROUND

On May 12, 2004 the above parties submitted comments to the FDA urging that the FDA exempt transit shipments from the proposed regulations and specifically pointing out the many unique features of the Sunbury Transport intermodal service that operates between Farnham, Quebec and Saint John, New Brunswick via a rail route that moves through northern Maine. Since submitting the initial comments the parties have determined that there are additional features to the Sunbury service that should be brought to the attention of the FDA. The following is being submitted as additional comments and should be considered as augmenting those already submitted. As noted in our earlier submission, the service presently moves approximately 150 loaded trailers per week 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. For each shipment the originating railroad submits a manifest to customs that identifies the train number, the train crew, the number of each trailer on the train and the commodity in each trailer.

ADDITIONAL FACTORS

Companies shipping food products by truck between Maritime Canada and Quebec and western Canada have several competitive options. They can move products directly by truck or they can move it via rail intermodal services offered by Canadian National or by the combination MMA/EMRC/NBSR route which is the only route that operates through the northern part of the State of Maine..

Sunbury Transport ships many intermodal trailers between Farnham, Quebec and Saint John, New Brunswick via the MMA/EMR/NBSR route that contain food products. The shipments often move directly to retail facilities and carry a wide range of commodities, including a wide range of food products manufactured by many different manufactures. Commodities in one shipment may have different owners. Loads usually originate at large warehouse facilities where loads are consolidated in order to meet the needs of each destination facility. While inbound loads to these large warehouse facilities are often single commodity loads such a truck load of pet food or canned soups, outbound shipments often contain many different products. The consolidated loads are created to meet the inventory needs of the particular recipient and thus may include a very wide range of products including a wide range of food products.

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. While the customer may be the manufacturer of

some of the food products, it is more likely that the customer is one step removed from the manufacturing process. It is also very possible that the railroad's customer i.e. Sunbury or a public warehouse, may not be the owner of the product. Under the proposed FDA regulations each owner must provide advance notice. In the case of an intermodal shipment this could require multiple notices from multiple owners, a process that is extremely cumbersome and competitively destructive. As pointed out above, a customer that wishes to move trailers by rail to and from Maritime Canada can do so on an all Canadian route via a competing service over the Canadian National Railroad.

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 depriving the MMA and northern Maine of much needed business.

RAILROAD OPERATIONS

Trailers moving on the Sunbury Train will be loaded onto rail cars in Farnham or Saint John and moved by rail to Farnham or Saint John. They will move in a dedicated train and they cannot be unloaded from the rail cars except in Farnham or Saint John. They will move in a train that is monitored by the railroads and that is clearly identified to customs.

MMA, EMRC and NBSR have invested in the Automatic Manifest System (AMS) and the system will commence operations on July 19, 2004. For transit shipments the AMS system will identify the port of exit from Canada and the port of entry into the United States and then the port of exit from the United States and the port of entry back into Canada. The system will provide the Standard Transportation Commodity Code identifying the commodity and the information provided by AMS should provide CBP sufficient data automatically track a transit shipment to verify that the loaded trailer moved from Canada to Canada. As stated in the May submission 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.

INTERIM FINAL RULE

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. In our previous submission MMA, EMRC and NBSR recommended that FDA exempt transit shipments through Northern Maine from the Interim Final Rule reporting requirements and continue to believe that an exemption can be implemented without compromising Homeland Security. The prior submission further recommended changes that met the FDA goals of protecting Homeland security while also protecting the ability of the parties to this submission to compete in the marketplace.

In addition to the recommendations in the May submission the parties specifically urge that for rail intermodal shipments between Farnham and Saint John, FDA should agree that data submitted to the CBP via AMS constitutes advance notice under the FDA regulations. AMS will provide notice that an intermodal trailer containing food products is moving via intermodal rail from Canada to Canada via Maine. Trailers moving via the Sunbury train presently travel in bond while traveling through Maine and trailers cannot be diverted to a U.S. destination. Finally trailers move in a dedicated train that moves only between Farnham and Saint John. All the above factors assure that Homeland security will be protected, the goals of FDA will be met and the parties can continue to compete in the marketplace.