



**Comments in response to the NPRM dated February 5, 2014: “Sanitary Transportation of Human and Animal Food”**

**Docket No. FDA–2013–N–0013**

**RIN 0910–AG98**

**Comments of**

**Agriculture Transportation Coalition**

The Agriculture Transportation Coalition (or “AgTC”) hereby submits these comments in response to the Food and Drug Administration (“FDA”) Notice of Proposed Rulemaking (“NPRM”) regarding the sanitary transportation of human and animal food published in the Federal Register in this docket on February 5, 2014.

The AgTC has been identified by a leading transportation and logistics publication as “the principal voice of agricultural exporters in US transportation policy.” The AgTC’s membership includes companies that represent virtually all agriculture products and many forest products exported from the United States. These products are grown, raised, processed, packaged and shipped from all regions of the U.S., to all markets worldwide, where they typically face competition from similar products sourced elsewhere.

Transportation constitutes a substantial component of the total landed cost of U.S. agriculture and forest products, and thus plays a critical role in determining the competitiveness of our U.S. exports in foreign markets.

The proposals in this NPRM will directly impact virtually every member of the AgTC, by requiring, at the least, new recordkeeping subjecting them to oversight and enforcement by FDA. A price increase of even a few cents on a U.S. export can mean the foreign buyer will source from a non-U.S. business. The proposals in the NPRM will increase costs for our members.

**Recommendation**

We request the *explicit exemption* of human and animal food bound for export from the Proposed Rule subject to the caveat below. The Rule *implies* exemption, but since exports are not comprehensively listed as an exception to the Rule, interpretation has been varied and a source of confusion in the agriculture exporter community.

The scope of the Rule applies to food and feed that is “consumed or distributed” in the United States. Food bound for export travels by vehicle or rail car to reach ports of exit, but is neither

consumed nor distributed until it reaches foreign soil. Therefore, many of our farmers and ag exporters assume their exports are implicitly exempt.

However, the list of exceptions in the Proposed Rule exempts only certain exporting circumstances:

- (1) Food that is transshipped through the United States to another country; or (2) food that is imported for future export and that is neither consumed nor distributed in the United States.

**We recommend adding a third exemption:**

- (3) Human and animal food that moves under Customs and Border Protection (CBP) export reporting procedures including Automated Export System (AES) and is therefore neither consumed nor distributed in the United States.

Agriculture products in compliance with CBP export reporting and documentation procedures ensures that cargo bound for export will not be diverted into the U.S. supply for domestic consumption.

Many commodities are shipped in standard ocean containers (known in the industry and FEUs and TEUs), which are owned by foreign ocean carriers. This means that the shipper, carrier, and receiver as identified in the Rule do not have ownership over the ocean-going container, which often travels on a truck or rail chassis before reaching a port for export. This complicates the relationships and documentation required in the Rule between shipper and container holder for exports.

**How Ocean Exports Work**

Exports are carried overseas in 40'x8'x8' (FEU- forty foot equivalent unit) metal containers, or 20x8x8 (TEU-twenty foot equivalent unit) metal containers. These containers are owned or leased by the steamship lines, each steamship line has thousands of these containers. Most are "dry" (non-refrigerated), some are "reefers" (refrigerated). With the exception of steamship lines carrying cargo to Hawaii, Alaska, and Puerto Rico, all the steamship lines are foreign companies.

An exporter, when planning to ship, calls the steamship line to make a "booking". The shipper describes the cargo generally (reefer or dry) and the carrier agrees to provide the container at the marine terminal or at an inland container yard. There will typically be hundreds of containers at these locations.

The exporter sends a truck (some exporters have their own trucks, but most have a third party trucker do this) to pick up the container. The "truck" is only the cab. The trucker goes into the marine terminal- this is a DHS secured area, operated by a "marine terminal operator", with work conducted by longshoremen. The truck gets a "chassis" (trailer), then is given a container by the longshoremen. The exporter and the trucker have no ability to get out of his cab, to inspect the container, or to choose the container, until he gets out of the terminal.

The trucker hauls the container to the exporter's location, which might be very close to the port

or could be many hours (even a day) away. When the container arrives, that is the first time the exporter sees that container, and its condition.

The exporter assures that the container is suitable. If it needs cleaning, repair, etc. the exporter does it - the alternative of sending the trucker back to the terminal or container yard to return it, and hope to get a better one, is risky, costly and delays shipment at least a day.

The exporter puts the product into the container, obeying state and federal and carrier weight restrictions, and blocking the cargo so it doesn't shift during the lengthy voyage. He then must seal the container with a DHS-approved seal (the exception to the sealed cargo rule is onions, which must travel with the container door off). Once sealed, it is unlawful for ANYONE to break the seal and open the container before arrival at final destination overseas, other than CBP/DHS inspectors or the authorities in the receiving country

The seal number is a vital part of the export documentation, along with the container number, mandated by Census and CBP/DHS. This information, including the container and seal number is transmitted electronically to the ocean carrier and to CBP/Census. This information is also transmitted to the government authorities of the destination country. Unless the information is correct and accepted, it cannot enter the terminal gates, and cannot be loaded on the ship.

The sealed container is then trucked to the port; if documentation is correct (matches the information which the steamship line has), then it gets into the terminal, where it sits before being loaded on ship, and sails. For inland origins, the truck enters the container yard (if the data matches), onto the rail, and the rail to the marine terminal. By law, no one breaks the seal at any time.

In some cases, exports are loaded into truck trailers or rail cars, which then travel to location close to the port, and are "transshipped" into containers. As above, once loaded into the containers, they are sealed, and remain so, for the remainder of the voyage.

The Agriculture Transportation Coalition appreciates the opportunity to submit comments to the Food and Drug Administration on the current NPRM, and to emphasize a point of vital interest to and impact on U.S. agriculture exporters. We hope that our assessment of the Rule's confusing language towards exporters and discussion of ocean containers will assist FDA in clarifying the role of the ag exporter, and to issue explicit exemption on their behalf in the Final Rule.

Respectfully Submitted,

Peter Friedmann  
Executive Director