

Before The
Department of Health and Human Services
Food and Drug Administration

Docket No. FDA-2013-N-0013
Sanitary Transportation of Human and Animal Food

RIN 0910-AG98

Comments of
National Motor Freight Traffic Association, Inc.

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Tel: (301)404-8382
E-mail: jmbagidell@msn.com
Fax: (410) 489-9873

Counsel for National Motor Freight
Traffic Association, Inc.

Dated: May 16, 2014

Due: May 31, 2014

1.

I.

Identity and Interest of National Motor Freight Traffic Association, Inc.

National Motor Freight Traffic Association, Inc. (NMFTA) is a Virginia corporation, with offices located at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. NMFTA is a trade association and includes among its members some 450 motor carriers which are authorized to operate in interstate and foreign commerce. The member carriers primarily transport general commodities which would include the authority to transport and can and do transport human and animal food which are addressed in the Food and Drug Administration's (FDA) proposed rule. FDA's proposed rule would address, in part, requirements for the transportation of the involved commodities by motor carriers. NMFTA's Articles of Incorporation, as pertinent authorize it to initiate and/or participate in regulatory proceedings, such as this, which could affect the interests of its members. NMFTA's comments are in support of FDA's tentative conclusion that shelf stable food that is completely enclosed in a container should be excluded from the scope of the proposed rule.

II.

FDA Properly Would Exclude "Shelf-Stable Food" from the Proposed Regulations

Proposed Section 1.904 would define "shelf-stable food" to mean a food that can be stored under ambient temperature and humidity conditions and, if the package integrity is maintained will not spoil or become unsafe throughout its storage life. (FDA Notice, p. 31.) Moreover, as pertinent, proposed Section 1.904 would define "transportation" as any movement of food in commerce by motor vehicle (FDA Notice, p. 33); and, further, proposed Section 1.904 would define "transportation operations" to mean all activities associated with food transportation that may affect the sanitary condition of food including the cleaning, inspection, maintenance, loading and unloading of, and operation of vehicles and transportation equipment (FDA Notice, p. 34). Importantly, as pertains to proposed Section 1.904, FDA states that:

This proposed definition would further provide that transportation operations do not include any activities associated with the transportation solely of shelf stable food that is completely enclosed by a container
(FDA Notice, p. 34.)

2.

That proposed exception apparently was the result of FDA's review of findings released in 2007 in conjunction with the U.S. Department of Transportation's Interstate Food Transportation Project. While that project identified areas of concern in food transport relevant to the likelihood of food contamination, most of the specific instances where food transportation problems were found to exist involved smaller box trucks. It was pointed out that "there were 'little or no areas of concern' identified with larger (semi-tractor trailer) trucks inspected during the project's survey." (FDA Notice, p.10.)

NMFTA's member carriers operate the large tractor trailer combinations which are recognized as not presenting the risk of adulteration apparently experienced with the smaller box trucks. Moreover, most only handle what is identified as shelf-stable food that is transported in boxes or bags. As FDA has properly found:

We have tentatively concluded that shelf stable foods completely enclosed by a container are at little risk of adulteration during transportation. They do not require temperature control and as such, are not at risk of microbial spoilage or the growth of microorganisms of public health significance, and they are not directly exposed to the transportation environment due to their being fully enclosed by their container, e.g. a metal can, a glass or plastic bottle, or a sealed bag or box. Therefore, we have tentatively concluded requirements for sanitary transportation practices do not need to apply to such foods.
(FDA Notice, p. 35.)

That description accurately portrays the nature and packaging of the human and animal food transported by NMFTA's member motor carriers.

It is abundantly clear, as tentatively concluded by FDA, that shelf stable food is not of the nature that require segregation or isolation to be protected from contamination during transportation operations. Their packaging precludes the contamination that could result in the adulteration of unprotected food by filth, chemical, or microbial contaminants. (Compare FDA Notice, p. 48.)

III.

Conclusion

Shelf stable food does not present the risk of contamination or adulteration which is the focus of FDA's proposed regulations. Furthermore, the motor carrier vehicles in which these

3.

commodities are transported are not the category of equipment which has given rise to the perceived need for the proposed transportation practices to ensure that the involved category of food at risk is not adulterated or contaminated while in transit. Accordingly, NMFTA strongly supports FDA's tentative conclusion that shelf stable food is not included within the proposed regulations.

Respectfully submitted,

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Tel.: (301) 404-8382
E-mail: jmbagidell@msn.com
Fax: (410) 489-9873

Counsel for National Motor Freight
Traffic Association, Inc.

Dated: May 16, 2014
Due: May 31, 2014