**IWLA**

The Resource for Warehouse Logistics

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


Reference:      U.S. Food and Drug Administration's Proposed Rule,
                Sanitary Transportation of Human and Animal Food
                Docket No. FDA-2013-N-0013
                RIN:  0910-AG98


To:  Whom It May Concern:

The International Warehouse Logistics Association (IWLA) appreciates this opportunity to submit the following comments in response to the U.S. Food and Drug Administration's Proposed Rule on the Sanitary Transportation of Human and Animal Food (79 FR 7005, February 5, 2014).


## The International Warehouse Logistics Association

IWLA represents warehouse-based third party logistics (3PL) providers.  A large number of IWLA members operate food-grade warehouse facilities for the storage, handling, and distribution of food products for manufacturers, processors, distributors and retailers.

3PL warehouses operate pursuant to Article 7 of the Uniform Commercial Code (UCC), which has been adopted in all 50 states.  Article 7 governs the contractual relationship between warehouses and product owners.  In short, a 3PL warehouse does not own or take title to the products held in its possession; the 3PL warehouse is simply a service provider who enters into contracts to store goods with the owner or consignee of products (hereinafter referred to as "the product owner").  At all times, the 3PL warehouse does not have authority under the UCC to direct the sale or disposition of the product because it is acting only as a service provider or "bailee" to the product owner.

Food products in these warehouses may be finished products packaged for the consumer or packaged ingredients intended for delivery to another food production facility. Food products are generally stored in sealed packages, such as cartons, drums, or totes  -- often in pallet-sized increments.  The product owner determines the type of packaging used and is responsible for packaging and labeling prior to arrival at the warehouse.

The 3PL typically handles hundreds of stock keeping units (SKUs) on behalf of numerous product owners.  Contrary to some outdated perceptions, modern 3PL warehouses are busy distribution centers that may load and unload hundreds of truckloads of goods, involving thousands of pallets and millions of pounds of freight each year.

IWLA appreciates the fact that the FDA is trying to provide flexibility in the proposed regulations. We agree that this will help the industry to continue to develop the most efficient and effective sanitary transportation practices. We also agree with your decision to exclude fully packaged shelf stable foods, since they pose a minimal risk to food safety, given the protective packaging and the absence of temperature control requirements.

The one area that we believe FDA should provide greater clarification is the definition of "shipper." We know from the discussion in the proposed rule that FDA intends that the definition captures the person with knowledge of all the factors concerning the food relevant to its sanitary transport, such as "its packaging and holding temperature requirements." Yet, the FDA has defined the "shipper" in such a way that it could include a range of supply chain intermediaries that do not have independent knowledge of these factors about the food and are reliant on the owner of the product to convey that information.

The FDA's definition of "shipper" is "a person who *initiates* a shipment of food by motor vehicle or rail." What does *initiate* mean? When a warehouse-based 3PL removes three pallets of packaged frozen shrimp from the warehouse and prepares it to be loaded on to a truck arranged for by the owner of the product, who in this example is *initiating* the shipment? What if the 3PL calls for the truck, at the direction of the product owner? And, what if the 3PL is listed as the shipper on the Bill-of-Lading? Under the current definition, we do not think the answer is clear. And, it seems a 3PL warehouse could be interpreted as "the initiator," i.e., the shipper, even though the warehouse owner does not have the knowledge or control over the product to assure its safe transportation.

By way of background, IWLA members (who are warehouse-based 3PLs) often serve as the distribution center for our customers, who are the manufacturers, wholesale-distributors or importers of the food product. A 3PL *never* holds title to the products in its warehouse. We store the food products according to the instructions of the customer, who has the knowledge of the food and its ingredients and is in a position to know the temperature control requirements or other measures necessary for its proper care.

The 3PL never makes the decision as to when to ship a product, how to ship it or where to ship it. When it is time to ship an order to the consignee, typically, the customer instructs the 3PL warehouse to prepare X number of pallets to be picked up on a specific date. In this case, the customer (owner)or other party arranges for the trucking company to pick up the shipment at the 3PL warehouse. Less frequently, the customer asks the 3PL to arrange for the transportation. In both circumstances, we rely on the customer to provide us with necessary information on the sanitary transportation requirements for that shipment.

In our view, the proposed definition may place responsibility on the wrong person. We think the definition of a "shipper" should be clearly defined as a person with ownership of the food product. Although the "owner" will change at various points in the supply chain, the owner will always be a single definable party with knowledge of the food product. That is the person who should be deemed the "shipper" with responsibility for the safe transportation of the food product. This definition is more accurate than having the defining factor be the person who *initiates* a particular segment of the transportation. It also leads to a more consistent and holistic approach to the safety of food throughout the supply chain, rather than placing responsibility on a cast of so-called "shippers" which can change each time a new leg of the journey begins.

Nor should the FDA rely on shipping documents to determine the "shipper" for purposes of this rule. A 3PL warehouse may be named on the commercial Bill-of-Lading as the consignee or the shipper, even though we have no ownership interest and are not a true party in interest. We urge the FDA to make a distinction between "title" to the food product versus "possession" of the food product. It will not further food safety to have supply-chain intermediaries, who possess but do not own the food, responsible for decisions about the proper temperature control or packing instructions for a food product. This is not meant to imply that the 3PL warehouse should not be responsible for proper storage, handling, loading or unloading of the food in accordance with FDA and customer requirements. We only caution the FDA not to make 3PL warehouses legally responsible for decisions or actions that are beyond their knowledge or control. The warehouse operator's specific knowledge of the product is limited to the information provided by the owner in written or verbal form.

With a new definition based on ownership, the shipper (owner) may well contract with other parties to perform the various functions assigned to the shipper (communicating to the trucking company the requirements for sanitary transportation, visual inspection of the vehicle for cleanliness, and so on). However, the ultimate responsibility should remain with the shipper (owner), since that is the one person with knowledge of the food product. Under this scenario, the 3PL warehouse may often be the person chosen by the shipper to perform some of its functions, but we would be doing so under the direction of the party with direct knowledge of the food product -- the shipper.

Thank you for your consideration of IWLA's comments and please let us know if we can provide any additional information.

Sincerely,

Steve W. DeHaan, CAE
President and CEO