



January 18, 2005

Via Facsimile: (202) 493-2251

Dockets Management System
U.S. Department of Transportation
400 Seventh Street, S.W.
Nassif Building, Room PL-401
Washington, DC 20590-0001

Re: Docket No. RSPA-91-13289 (FS-1)

Dear Sir or Madam:

The American Trucking Associations, Inc. ("ATA") is pleased to submit the following comments in response to the Research and Special Programs Administration's ("RSPA") supplemental notice of proposed rulemaking entitled *Safeguarding Food From Contamination During Transportation* (hereinafter "Proposed Rule").¹ ATA submits these comments on behalf of itself, the Agriculture and Food Transporters Conference ("AFTC"), the National Tank Truck Carriers ("NTTC") and the Truckload Carriers Association ("TCA") (hereinafter collectively referred to as "ATA").²

The Proposed Rule is intended to implement the Sanitary Food Transportation Act of 1990. ATA supports RSPA's decision to address the safe transportation of food and food products by referencing in its regulations the requirements of the U.S. Department of Agriculture ("USDA") and the Food and Drug Administration ("FDA") that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car. We are concerned, however, with RSPA's cross reference to USDA and FDA regulations with no additional guidance as to which regulations specifically apply to the transportation of food. We are also concerned with RSPA's incorporation of various voluntary guidelines into the regulatory text. Finally, we recommend that RSPA develop a mechanism whereby the carrier can determine that food being tendered is in compliance with all applicable USDA and FDA regulations. We address each of these issues below:

¹ See 69 *Federal Register* 76423 (December 21, 2004) to be codified at 49 C.F.R. Part 121.

² ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, such as AFTC, NTTC and TCA, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

A. Cross Reference to Existing USDA and FDA Regulations

Although the preamble to the Proposed Rule indicates that RSPA intends to reference those existing regulations promulgated by USDA and FDA that apply to the transportation of food, the regulatory cross reference goes far beyond regulations applicable to transporters.

RSPA is proposing to address the safe transportation of food and food products in commerce by referencing in its regulations requirements of the [USDA] and the [FDA] *that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car.*³

In fact, proposed section 121.10 actually cross references all of the regulations promulgated by USDA and FDA. The more than 5,100 pages of regulatory text incorporated by the Proposed Rule covers a diverse set of regulations that have nothing to do with the transportation of food, including regulations applicable to destruction of diseased animals, veterinarian accreditation, registration of drug producers, registration of cosmetic establishments, use of color additives, and irradiation. In fact, there are more regulations referenced in the Proposed Rule that will not apply to carriers than regulations that are applicable to carrier activities.

ATA believes that RSPA must take the time to identify those specific regulations that are applicable to the transportation of food products. In conducting the cost analysis required by the Regulatory Flexibility Act, RSPA concludes that there are no new compliance costs associated with the Proposed Rule. ATA believes that the cost to a small business of reviewing more than 5,100 pages of regulatory text is significant and will unnecessarily burden most small trucking companies. This burden would be greatly reduced if the Proposed Rule incorporated only those FDA and USDA regulations that govern the transportation of food.

B. Incorporation of Guidance

ATA supports RSPA's efforts to inform the regulated community as to the existence of various guidance documents that may assist carriers in their efforts to safeguard food from contamination during transportation. We believe that the preamble to the Proposed Rule should describe these guidance documents and inform the reader on how to obtain copies of them. The Proposed Rule, however, actually references the guidance documents in the regulatory text. ATA believes that this is improper and will complicate the enforcement of the regulations governing the safe transportation of food.

Section 121.15 provides that each person who transports food *should* utilize guidance documents and materials promulgated by FDA and USDA. This recommended practice has no place in regulatory text and could lead to confusion during roadside

³ 69 *Federal Register* 76424 (December 21, 2004)

inspections, as state inspectors who may not have the benefit of receiving RSPA training directly, seek to require compliance with the voluntary guidance documents referenced in the regulations.

C. Shipper's Responsibilities

The marketplace has historically dealt with the potential for contamination during transportation. For years, food grade shippers have imposed a number of performance standard service requirements on carriers as a precondition of doing business. For example, shippers and carriers of food grade products in bulk have established regimes including (but no limited to) sampling and testing, temperature controls and monitoring, paperwork chain of custody, internal inspections of cargo tanks, etc.

It is important to distinguish those functions that are within the purview of the transporter and those that are the responsibility of the person who offers food for transportation. The preamble to the Proposed Rule indicates that RSPA does not intend to alter the traditional responsibilities of transporters in this rulemaking:

This proposed rule imposes no new compliance costs on the regulated industry; it merely states that persons who offer for transportation *or transport* food or food products must comply with current USDA and FDA requirements for such transportation.⁴

As a practical matter, application of the referenced requirements to motor carriers would be a huge burden on the trucking industry. Even the most sophisticated carrier lacks the resources (in terms of either personnel or technology) to assure that tendered food grade products meet current USDA and FDA requirements at the time they are offered for transportation.

To resolve this issue, ATA suggests that RSPA require shippers ("offerers") to provide certification to the carrier (at the time of loading) that the shipment meets "current USDA and FDA requirements." In this regard, we note that the hazardous materials regulations may serve as an appropriate "model" for such certification.⁵

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ATA supports the concept of cross referencing the existing regulations promulgated by FDA and USDA that are applicable to the transportation of food; however, RSPA should pinpoint those regulations that actually apply to such transportation rather than merely cross reference every regulation promulgated by the two agencies. ATA also supports RSPA's efforts to identify useful guidance to assist carriers

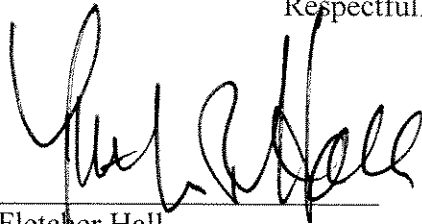
⁴ 69 *Federal Register* at 76426 (emphasis added).

⁵ See e.g., 49 CFR § 172.204 (a).

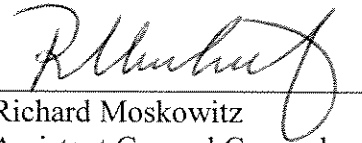
in their mission to safeguard food from contamination; however, voluntary guidance documents should not be referenced in the regulatory text. Finally, ATA believes that RSPA should require shippers to certify that food tendered to a transporter is in compliance with all applicable FDA and USDA regulations at the time such food is offered for transportation.

If you have any questions concerning these comments, please contact Richard Moskowitz at 703-838-1910.

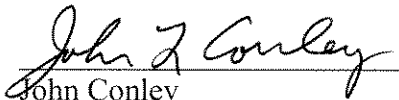
Respectfully submitted,



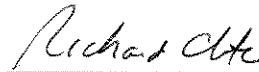
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