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*Office of Inspector General*

*Audit Report*

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**Review of Departmental Actions  
Concerning the Sanitary Food Transportation  
Act of 1990**

**Research and Special Programs Administrations**

**Report Number: TR-1998-100**

**Date Issued: March 27, 1998**





**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General

# Memorandum

Subject: ACTION: Review of Departmental Actions  
Concerning the Sanitary Food Transportation  
Act of 1990  
Report No. TR-1998-100

Date: March 27, 1998

From:

*for*

Lawrence H. Weintrob  
Assistant Inspector General For Auditing

Reply  
to JA-1  
Attn.  
of:

To: Acting Research and Special Programs Administrator

This report presents our findings on actions taken by the U.S. Department of Transportation (DOT) and the Research and Special Programs Administration (RSPA) to implement the Sanitary Food Transportation Act of 1990 (the Act). In December 1997, the Chairman of the Senate Committee on Commerce, Science and Transportation, asked the Office of Inspector General (OIG) to determine “the extent that DOT is fulfilling its obligations under the law, including the promulgation of food transportation safety regulations and enforcement activities to date.” The Chairman also requested OIG’s opinion on whether provisions in the proposed National Economic Crossroads Transportation Efficiency Act (NEXTEA) to transfer responsibility for food transportation safety from DOT to the U.S. Department of Health and Human Services (HHS) have merit and are in the public interest.

## RESULTS

We found that DOT has not implemented or enforced all the provisions of the Act.

Specifically, we found that:

- DOT did not issue regulations by the July 31, 1991, deadline.

DOT delegated rulemaking authority to RSPA on February 20, 1991. On May 21, 1993, RSPA issued a notice of proposed rule-making that addressed the safe transportation of food products in highway and rail

transportation (see Appendix). However, no final regulations were issued under the Sanitary Food Transportation Act of 1990.

- DOT has not developed a comprehensive training program for safety inspectors.

RSPA partially complied with this provision by developing a training video for DOT inspectors showing hazards in transporting food. However, RSPA's Associate Administrator for Hazardous Materials Safety acknowledged that, although the video increased awareness about food safety, it was not a comprehensive training program.

- DOT did not develop the required lists of "non-food products not unsafe"; "unsafe non-food products"; "waivers"; and "coordination procedures."

DOT did not develop the required lists. RSPA's Associate Administrator for Hazardous Materials Safety stated during the Fiscal Year 1995 House Appropriations Committee budget hearing: "We have not been able to identify a specific problem that we should address and that has been part of our problem." In the May 21, 1993, Federal Register, RSPA described its inability to develop a list of non-food products: RSPA stated it ". . . has not identified any non-food products that are acceptable to be carried in a tank vehicle [dedicated vehicle] and therefore is not proposing an 'acceptable non-food product list.'" RSPA's Associate Administrator for Hazardous Materials Safety also said that the legislation was too broad, requiring RSPA to develop lists that would, in effect, include every product. Because no lists were developed, waivers were not needed. Further, because no regulations or lists were issued, there was nothing to coordinate so there were no coordination procedures.

- DOT did consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency on how to implement the Act.

DOT conducted inter-agency meetings following passage of the Act, including meetings by the Transportation Technical Analytical Group (TAG), a 1995 task force that sought to define the problem of food transportation safety and recommend practical solutions. RSPA's Associate Administrator for Hazardous Materials Safety also said there were numerous, undocumented inter-agency meetings during that period.

We concluded that because (1) DOT has not acted to implement the Sanitary Food Transportation Act of 1990, and (2) DOT lacks the expertise to effectively regulate food transportation safety, while FDA does have the requisite expertise, capability, and a directly related primary mission, transferring oversight for food transportation safety to FDA is reasonable and in the public interest.

## BACKGROUND

In 1989, a series of news reports revealed that some trucking companies carried garbage and chemicals in the same truck with food. A 1990 General Accounting Office study revealed that trucking companies were not required to keep records of these mixed loads. Congressional hearings into food transportation safety also identified concerns about a practice called “backhauling,” or trucks carrying garbage or other contaminants after delivering food and then returning to food delivery.

To address these concerns, Congress passed the Sanitary Food Transportation Act of 1990, codified in 49 U.S.C. 5701 et seq., which required the Secretary of Transportation to issue regulations to promote the safe transportation and storage of food by truck and rail.

With passage of the Act, DOT joined the Food and Drug Administration (FDA) in HHS and the Food Safety and Inspection Service (FSIS) in the U.S. Department of Agriculture (USDA) as the federal agencies with collateral responsibility for oversight of food transportation safety. Specifically, the Act required that DOT:

- issue regulations, by July 31, 1991, describing “dedicated vehicles,” or vehicles that haul only food and are prohibited from hauling other loads;
- implement a training program for its safety inspectors;
- consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency on how to implement the Act; and,
- develop lists of “non-food products not unsafe”; “unsafe non-food products”; and “waivers and coordination procedures.”

Although no rules have been issued under the Sanitary Food Transportation Act of 1990, the requirements of the Act for regulations describing dedicated vehicles were at least partially addressed prior to 1990. Under the Hazardous Materials Transportation Uniform Safety Act of 1990, RSPA published regulations that

stipulated that a carrier may not transport hazardous materials, labeled as poison, in the same vehicle with food or animal feed. Also, a railcar carrying poisonous materials that shows any leakage must be thoroughly cleaned after unloading before that railcar can be returned to service, unless the railcar is used exclusively for poisonous materials (49 CFR 173.25(c) & 177.841(e)).

Although there is limited data on safety risks caused by improper transportation and storage of food, two incidents have been linked to improper transportation and storage of food. For example:

- In 1994, a salmonellosis outbreak affecting 224,000 people was blamed on cross-contamination of pasteurized ice cream transported in tanker trailers that had hauled non-pasteurized liquid eggs.
- In 1997, several bodies of deceased stowaways were found in three ships carrying cocoa beans and raw sugar. In at least one case, cargo was spoiled by the decomposed bodies. This incident illustrates a weakness in the Sanitary Food Transportation Act of 1990, because the Act does not cover shipments by sea and air.

In 1997, the proposed National Economic Crossroads Transportation Efficiency Act (NEXTEA) included provisions to transfer primary oversight of food transportation safety from DOT to FDA. This has been the Administration position repeatedly stated by three Secretaries of Transportation. On May 17, 1990, in a letter to the Chairman of the Committee on Commerce, Science and Transportation, the Secretaries of Transportation, Health and Human Services and Agriculture and the Administrator of the Environmental Protection Agency stated the Administration's views on the Sanitary Food Transportation Act:

. . . The Administration believes that the roles assigned are not consistent with the expertise, experience and functional responsibilities of the relevant agencies. The legislation under consideration gives all the authority for rulemaking and enforcement to the Department of Transportation, requiring only consultation with other agencies.

The Administration believes that the other agencies should share responsibility for this program. The Department of Transportation does not have experience in the food safety area. The Administration believes that HHS' Food and Drug Administration (FDA), the Department of Agriculture (USDA) and the

Environmental Protection Agency need to play the primary role in determining food safety.

In a July 11, 1995, letter by the Secretary of Transportation to President of the Senate, the Secretary reiterated the Administration position:

During my tenure at the Department, I have been persuaded that food safety can best be assured by concentrating this important responsibility in the federal agency with the requisite expertise and resources. HHS (Department of Health and Human Services) agrees with this approach, and has worked with us to craft a proposal to transfer the necessary authority, while retaining an appropriate assistance role for the Department.

The Administration sought changes of the Sanitary Food Transportation Act in the Fiscal Year 1995 Budget. While Congress did not adopt these proposals, there was recognition that implementation by DOT was problematic. The Conference Report on the Fiscal Year 1995 Department of Transportation Appropriations Act stated:

. . . the conferees are concerned that full implementation of the existing law could result in an entirely new food safety inspection bureaucracy with its concomitant costs within the Department of Transportation, when the requisite technical experience, operational framework, and inspection personnel already exist within the Departments of Health and Human Services and Agriculture. The conferees direct the Department of Transportation to move expeditiously, in consultation with the Departments of Agriculture and Health and Human Services, to resolve how the intent of SFTA can best be met and how enforcement responsibilities for the safe transportation of food should be distributed among the three agencies. Further, the conferees urge the authoring committees to take prompt action on any legislation needed to implement a shared enforcement arrangement.

No further action was taken on the RSPA notice of proposed rule-making after this time, pending a change of responsibilities.

## DISCUSSION

### HHS/FDA should have primary responsibility for food transportation safety.

We reviewed the proposed transfer, under NEXTEA, of primary responsibility for food transportation safety from DOT to HHS/FDA. We found that (1) DOT does not have the expertise to implement the Act, (2) performing food inspections could be incompatible with significant aspects of the Department's safety inspection operations, and (3) FDA does have the requisite expertise, capability, and a directly related primary mission for regulating food safety.

### DOT does not have the requisite expertise to implement the Act.

We found DOT does not have, and has not developed, the expertise needed to oversee the safe transportation and storage of food. This was reported to Congress in the testimony of various RSPA Administrators before the House Appropriations Committee in 1990, 1991, and 1994. These officials explained that RSPA does not employ either the biochemists or food safety specialists that would be necessary to oversee food transportation safety and the large number of these individuals needed for an effective program would require a major allocation of resources. Furthermore, DOT safety inspectors, while trained in overseeing the safe handling of large quantities of hazardous materials, are not trained to identify small quantities of contamination in food. This training would require further resources and could detract from the primary mission of vehicle safety.

### Food safety inspections could be incompatible with DOT safety inspections.

We also found that conducting food safety inspections are different from inspecting vehicles carrying hazardous material, and combining the two operations could be inappropriate. For example:

- DOT safety inspections of commercial vehicles are concerned with external features such as lights or brakes which directly affect the safe operation of the vehicle. Food safety inspections are concerned with the closed interior of a cargo tank or a container which may not always be attached to the tractor at time of a safety inspection.
- Although DOT inspections do include commercial vehicles with food cargo, these inspections are not conducted at "critical control points" in a comprehensive food safety program. Because DOT safety inspections are not performed at these control points, it may not be possible to identify contaminants. Furthermore, it could in some cases have the unintended

consequence of actually causing spoilage because it can take up to three hours for an opened, refrigerated container to return to the correct temperature.

- In addition to the lack of training in food inspection, DOT safety inspectors do not have access to specialized equipment to detect low levels of contamination in food. For example, a typical 8000 gallon cargo tank may hold as much as 21 gallons of residue. Detection of residual contamination by certain cleaning detergents in subsequent food shipments might not be possible by sight, taste, or smell, but would require specialized equipment that RSPA safety inspectors do not have.

Because of the above, we concluded that incorporating procedures and operations to conduct food safety examinations could be incompatible with current safety inspection operations.

FDA has the requisite expertise to oversee food transportation safety.

Oversight of food transportation safety has traditionally been USDA's and FDA's responsibility. USDA has oversight of meat and poultry safety under the Federal Meat Inspection Act (21 USC 601 et seq) and the Poultry Products Inspections Act (21 USC 451 et seq.) FDA has general authority over adulteration and misbranding food in interstate commerce under the Federal Food, Drug and Cosmetic Act (21 USC 331 et seq) and the Public Health Service Act (42 USC 264). FDA has more than 4,000 food safety inspectors, and FDA's and FSIS's Hazard Analysis and Critical Control Point System pinpoints critical points in food production and distribution where problems would most likely occur. Furthermore, if NEXTEA is enacted, FDA would be required to further develop and implement regulations to ensure the safe transportation and storage of food whether this food is transported by road, rail, air, or sea. Procedures to improve safe food handling during transportation that would be developed under NEXTEA include:

- Restricting transportation of cargo commingling food and hazardous materials;
- Requiring regular information-sharing between shippers and carriers about safe food handling;
- Mandating specific requirements for shippers and carriers concerning record-keeping, reporting, and compliance with inspections;
- Requiring training for inspectors to help them identify potential hazards to food safety;



- Requiring DOT inspectors to notify FDA and USDA of possible food contamination; and
- Preempting state or local statutes concerning food transportation safety if these laws are weaker than federal law.

Rather than training a new cadre of inspectors at DOT, resources should be directed to agencies already having that expertise. As the Secretary of Transportation stated in an April 17, 1997 letter to Speaker of the House, proposing the streamlining of federal responsibilities for ensuring the safety of food shipments in NEXTEA:

. . . the Department of Health and Human Services, which would set practices to be followed by shippers, carriers, and others. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

## METHODOLOGY

To determine if DOT complied with the Act, we interviewed officials in RSPA and the Office of the Secretary of Transportation. To determine if the proposal to transfer responsibility for food transportation safety from DOT to FDA is in the public interest, we interviewed officials with USDA, FDA, and the Office of Management and Budget. We also researched these issues by reviewing the history of the Act and subsequent legislative and regulatory activity on this subject.

## AGENCY COMMENTS

We met with RSPA's Associate Administrator for Hazardous Materials Safety and discussed the results of our review. In addition, we also provided the opportunity for the RSPA Chief Counsel and Deputy Associate Administrator for Hazardous Materials Safety to comment on our review and conclusions. RSPA management agreed with our results and conclusions. Agency comments were considered and incorporated in this final report.

We appreciate the courtesies and cooperation extended by RSPA. If you have any questions, please call me on 366-1992, or Patricia J. Thompson, Deputy Assistant Inspector General for Surface Transportation on 366-0687.

## APPENDIX

RSPA Regulatory Action under the Sanitary Food Transportation Act

<b>Action</b>	<b>Date</b>	<b>Federal Register Cite</b>
Advanced Notice of Proposed Rule Making	02/20/91	56 FR 6934
Extended Comment	03/21/91	56 FR 11982
Period End 4/29/91		
Advanced Notice of Proposed Rule Making Comment Period End	03/26/91	
Notice of Proposed Rule Making	05/21/93	58 FR 29698
Public Hearings Notice	05/21/93	58 FR 29698
Notice of Proposed Rule Making Comment Period End	10/18/93	
Next Action	Undetermined	

Source: Federal Register, Vol. 62, No. 80, Friday, April 25, 1997, page 22151.