

Equipping Your Supply Chain for FSMA: Allocating Responsibilities under the FSMA Transportation Rule

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In the late 1980s, stories of garbage hauled in the same trucks regularly used to transport fruits and vegetables caused public outrage. Outbreaks of foodborne illnesses, including a salmonellosis outbreak that affected 224,000 consumers, have been attributed to contamination of transportation vehicles. Recently, a major U.S. foodservice distributor was penalized after its practice of storing seafood, milk and raw meat in unrefrigerated sheds was uncovered.

To mitigate the food safety risks associated with transportation practices, Congress passed the Sanitary Food Transportation Act of 2005 (“**SFTA**”) and again addressed food transportation practices in the Food Safety Modernization Act of 2011 (“**FSMA**”). Earlier this month, in one of the final rules issued to implement FSMA, the FDA released its final rule on Sanitary Transportation of Human and Animal Food (“**FSMA Transportation Rule**” or “**Rule**”). The final FSMA Transportation Rule reflects the FDA’s response to many of the industry’s concerns, in that the FDA refocused its efforts on transportation practices that cause food safety risk, rather than also addressing practices that might lead to quality defects or spoilage of food products.

Now is the time for food product manufacturers, processors, carriers, brokers, distribution centers, and others involved in food product and ingredient supply chains to determine what requirements apply to their business practices and to address how they will implement the FSMA Transportation Rule. After all, under the FSMA Transportation Rule, if transportation occurs under conditions that are not in compliance with the Rule, the food will likely be adulterated under the federal Food, Drug and Cosmetic Act. Responsible parties may be subject to fines and other liability. In addition, violations of the FSMA Transportation Rule may also support freight claims against carriers, or claims against other responsible parties in the supply chain alleging the negligence or other misconduct of a responsible party.

[Read the full alert.](#)

For more information, please contact the attorney listed below.