

temporary regulations REG-155608-02) contains errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations (REG-155608-02), which was the subject of FR Doc. 04-25237 is corrected as follows:

1. On page 67082, column 2, in the preamble, under the paragraph heading "Commingle Assets", line 8, the language "account to be treated as a tax exempt." is corrected to read "account to be treated as a tax exempt organization."

#### § 1.403(b)-8 [Corrected]

2. On page 67096, column 3, § 1.403(b)-8, paragraph (d)(2)(ii), line 4, the language "account) § 1.403(b)-6(d) are satisfied" is corrected to read "account) and § 1.403(b)-6(d) are satisfied".

3. On page 67096, column 3, § 1.403(b)-8, paragraph (d)(3), line 4, the language "includes any assets that other than stock" is corrected to read "includes any assets other than stocks".

#### § 1.414(c)-5 [Corrected]

4. On page 67099, column 3, § 1.414(c)-5, paragraph (d), line 7, the language under the nursing home may be under" is corrected to read "the nursing home may be under".

Cynthia E. Grigsby,

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).*

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## NATIONAL MEDIATION BOARD

### 29 CFR Part 1210

#### Administration of National Railroad Adjustment Board Functions and Activities—Fee Proposal

**AGENCY:** National Mediation Board.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** The National Mediation Board (NMB) extends an invitation to interested parties to attend an open meeting with the Board and its staff on Tuesday, January 11, 2005. The Board meeting will be held from 9 a.m. until 12 noon. The meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor

Relations Board, 1099 14th St., NW., Washington, DC 20570. During the public meeting, the NMB invites interested persons to share their views on the possible establishment of a fee schedule by the NMB for the provision of certain arbitration services, primarily affecting minor labor disputes in the rail industry.

**DATES:** The meeting will be held on January 11, 2005, from 9 a.m. to 12 noon. Due to time and seating considerations, individuals desiring to attend the meeting, or to make a presentation before the Board, must notify the NMB staff, in writing, no later than 4 p.m. on Tuesday, January 4, 2005.

**ADDRESSES:** The public meeting will be held in the Margaret A. Browning Hearing Room, (Room 11000), National Labor Relations Board, 1099 14th St., NW., Washington, DC 20570. Requests to attend the meetings must be in writing, and must be addressed to Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250—East, Washington, DC 20005. Attn: NMB Docket No. 2003-01. Written requests may be sent electronically to the following e-mail address: [arb@nmb.gov](mailto:arb@nmb.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board (telephone 202-692-5057).

**SUPPLEMENTARY INFORMATION:** The National Mediation Board will hold an open public meeting on Tuesday, January 11, 2005, from 9 a.m. until 12 noon. The purpose of the public meeting will be to solicit the views of interested persons concerning the possible establishment of a fee schedule by the NMB for the provision of certain arbitration services, primarily affecting minor labor disputes in the rail industry.

On Monday, August 9, 2004, the NMB published a Notice of Proposed Rulemaking (NPRM) (69 FR 48177), proposing among other things, the establishment of certain fees for providing arbitration services. See 69 FR 48182-48183. These fees are proposed to be codified at 29 CFR, 1210.12(b). Because of the public interest that was generated by the Board's fee proposal, and because the NPRM provided the first opportunity for direct public comment on the specific contents of a fee proposal, the NMB is providing another opportunity for interested persons to provide their views to the Board on this important matter.

Individuals desiring to attend the meeting must notify the NMB staff, in writing, at the above listed physical or e-mail address, by the deadline noted. If an individual desires to make a presentation to the Board at the meeting, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted no later than 4 p.m. on Tuesday, January 4, 2005. In lieu of making an oral presentation, individuals may submit a written statement for the record.

To attend the meeting, all potential attendees must include in their request: (1) Their full name and (2) organizational affiliation (if any). Attendees are also reminded to bring a photo identification card with them to the public meeting in order to gain admittance to the building. Due to time and potential space limitations in the meeting room, the NMB will notify individuals of their attendance and/or speaking states. (*i.e.*, preliminary time for their presentation) prior to the meeting. Time allocations for oral presentations will depend upon the number of individuals who desire to make presentations to the Board. Individuals should be prepared to summarize their written statements at the meeting.

**AGENDA:** The meeting will be limited to issues relating to the NMB's proposal regarding the establishment of a fee schedule for certain arbitration services as contained at proposed 29 CFR 1210.12 "Fees", appearing in the **Federal Register** on August 9, 2004, at 69 FR 48182-48183. A copy of the full NPRM, including the proposed section on "Fees", may be obtained from the NMB's Web site at <http://www.nmb.gov/arbitration/arb-rulemaking.html>.

Dated: December 16, 2004.

**Roland Watkins,**

*National Railroad Adjustment Board Administrator.*

[FR Doc. 04-27861 Filed 12-20-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 121

[Docket No. RSPA-91-13289; FS-1]

RIN 2137-AC00

#### Safeguarding Food From Contamination During Transportation

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** RSPA is proposing to address the safe transportation of food and food products in commerce by referencing in its regulations requirements of the U.S. Department of Agriculture and the Food and Drug Administration of the U.S. Department of Health and Human Services that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car. This action is intended to implement the Sanitary Food Transportation Act of 1990.

**DATES:** Comments must be received by January 20, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site. You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the address indicated below for "Hand Delivery."

*E-mail:* Include the Docket Identification Number, RSPA-91-13289 (FS-1), in the subject line of the message.

*Fax:* 1-202-493-2251.

*Mail:* Docket management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

*Hand Delivery:* To the Dockets Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* You must include the agency name (Research and Special Programs Administration) and docket number (RSPA-91-13289 (FS-1)) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you should include a self-addressed stamped postcard. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided, and will be accessible to Internet users. Please see the Privacy Act section of this document.

**FOR FURTHER INFORMATION CONTACT:** Helen Engnum, Office of Hazardous

Materials Standards, RSPA, 202-366-8553.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Sanitary Food Transportation Act of 1990 (SFTA; 49 U.S.C. 5701 *et seq.*) requires the Secretary of Transportation (the Secretary) to promulgate regulations to promote the safe transportation of food products. Among other requirements, SFTA requires the Secretary, in consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to: (1) Issue regulations with respect to the transportation of food, food additives, drugs, devices, and cosmetics, as defined in the Food, Drug, and Cosmetic Act, in motor vehicles or rail cars that are used to transport either refuse or non-food products that could make the food unsafe as a result of such transportation; (2) issue regulations governing the construction and use of cargo tanks and rail cars used to transport food products, including prohibiting the transportation of food products in cargo tanks and rail cars used to transport non-food products that would make the products unsafe; and (3) designate and publish a list of non-food products that may not be transported in cargo tanks and tank cars that are also used to transport food products. The Secretary delegated the authority to issue regulations under SFTA to the Research and Special Administration (RSPA, us). 49 CFR 1.53(i).

##### **II. Federal Food Safety Responsibilities**

The U.S. Department of Agriculture (USDA) is responsible for regulating meat, poultry, and eggs and egg products under authority of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (21 U.S.C. 1031 *et seq.*). In carrying out its responsibilities, USDA conducts inspections of warehouses, transporters, retail stores, restaurants, and other places where meat, poultry, and egg products are handled and stored. The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) has responsibility for food safety (including transportation) under the Food, Drug, and Cosmetics Act (21 U.S.C. 332 *et seq.*). In carrying out its responsibilities, FDA conducts inspections of establishments not otherwise regulated by USDA that manufacture, process, pack, or hold

foods. FDA also inspects vehicles and other conveyances, such as boats, trains, and airplanes, in which foods are transported or held in interstate commerce.

##### **III. Previously Published NPRM**

On May 21, 1993, we published an NPRM (58 FR 29698) proposing regulations to implement SFTA. The NPRM proposed to restrict a cargo tank, tank car, or portable tank to the carriage of either food products or non-food products. We did not identify any non-food products that would be safe to transport in a tank vehicle that carries food products and, therefore, did not propose an "acceptable non-food product list." For other motor vehicles and rail cars, the proposal would forbid the transportation of food products in the same vehicle as Division 6.1 (poisons) and Division 6.2 (infectious substances) materials, and hazardous and solid wastes. However, the NPRM proposed to permit these unacceptable materials to be transported in vehicles also used to transport food products provided the vehicle is free of any contaminating residues. We received 80 comments in response to the NPRM from food producers and processors, chemical companies, transportation companies, and state government agencies. The commenters addressed proposals in the NPRM applicable to communication standards, recordkeeping requirements; vehicle utilization standards; design and material standards for construction of cargo tanks, portable tanks, and tank cars; minimum insurance or liability requirements; lists of "acceptable non-food products" and "unacceptable non-food products"; and a waiver program. Commenters generally opposed the proposals in the NPRM. Several commenters recommended that DOT defer to FDA and USDA on food safety issues. For example, the National Food Processors Association, on behalf of twenty food related trade associations, stated that implementation of SFTA should be transferred from DOT to FDA and USDA. The National Institute of Oilseed Products and Hudson Tank Terminals Corporation recommended that RSPA incorporate by reference the FDA regulations applicable to food safety. Exxon Chemical Americas stated that "the current FDA strictures prohibiting 'adulteration' are sufficient to insure the safety of [food] additives." Conagra stated that "Detailed specifications for food contact surfaces [of tanks and tank vehicles] is unnecessary, particularly in light of the existence of regulations already promulgated by the Food and Drug

Administration and the U.S. Department of Agriculture.” GE Medical Systems stated that compliance with FDA regulations “adequately protects medical devices from contamination during transportation,” and FDA’s required reports of any malfunction of a medical device make a separate “DOT incident reporting system” unwarranted.

#### IV. Proposals in This SNPRM

Since publication of the NPRM in 1993, the Department, in coordination with USDA and FDA, has concluded that the expertise for ensuring the safety of our nation’s food supply, including transportation, lies with USDA and FDA. These agencies agree that the public interest regarding the safe transportation of food will be more effectively served and better addressed by building on the present statutory authority, existing enforcement and technical expertise, and operational framework already established within USDA and FDA. Implementation of a food transportation safety program under DOT would require unnecessary duplication of personnel and funds to promulgate regulations and to conduct certain training, research, and testing activities and could result in duplication, overlap, or conflict with current or pending HHS or USDA regulations.

Moreover, both FDA and USDA have regulations in place or have issued guidelines and recommendations that address the sanitary food issues highlighted in SFTA. For example, on July 25, 1996 (61 FR 38805), USDA published a final rule requiring food processors who handle meat, poultry, or egg products to implement Hazard Analysis and Critical Control Point (HACCP) systems to identify points in the food production process where contamination or adulteration could occur and implement measures to reduce or eliminate the possibility of contamination (9 CFR Part 417 and related provisions in 9 CFR Parts 304, 327, and 381). The hazard analysis required by the USDA HACCP regulations must address food safety hazards that can occur before, during, and after entry of the food or food product into the establishment, including hazards that can occur during transportation. USDA regulations require transport vehicles used to transport meat, poultry, and egg products to be reasonably free of foreign matter (such as dust, dirt, rust, or other articles or residues) and free of chemical residues so that products will not be adulterated. Further, any cleaning compound, lye, soda solution, or other

chemical used in cleaning a transport vehicle must be thoroughly removed prior to its use (*see* 9 CFR Parts 326 and 381).

On January 19, 2001 (66 FR 6138), FDA adopted regulations requiring juice processors to develop and implement HACCP systems for their processing operations (9 CFR Part 120). The regulations are similar to the USDA HACCP regulations and require each processor to conduct a hazard analysis of food hazards that can be introduced both within and outside the processing plant environment, including food hazards that can occur before, during, and after harvest and during transportation. In addition, FDA regulations establish current good manufacturing practices for manufacturing, packing, or holding human food. These regulations include requirements for protecting food from contamination or adulterations during manufacture and transportation. FDA requires finished food to be stored and transported under conditions that will protect it against physical, chemical, and microbial contamination (*see* 21 CFR 110.93).

Both USDA and FDA have issued guidelines to assist food processors to comply with the HACCP and good manufacturing practices regulations. USDA’s Food Safety and Inspection Service (FSIS) on August 4, 2003, issued “FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products” (FSIS Guidelines; 68 FR 45789). The FSIS Guidelines address food safety measure that should be taken by shippers from the point of food production through delivery. Among other measures, the FSIS Guidelines recommend that processors and distributors identify all points of vulnerability where there is the potential for vulnerability or contamination to occur and define controls to prevent product adulteration and contamination during transportation and storage. The FSIS Guidelines address the design and construction of vehicles used to transport food and sanitizing and maintaining food transportation vehicles. Importantly, the FSIS Guidelines recommend that transport vehicles, containers, and conveyances should be designated and marked “for food use only” and be used only for transporting foods and, if feasible, restricted to a single commodity. The FSIS Guidelines also include recommendations for loading and unloading facilities, loading and unloading procedures, in-transit procedures to prevent contamination or

adulteration, and unloading procedures. Finally, the FSIS Guidelines include recommendations for enhancing food security before, during, and after transportation.

On April 24, 2003, FDA published “Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices” (Juice Guidance; 68 FR 20159). The Juice Guidance was developed to assist producers and users to develop measures to prevent, reduce to acceptable levels, or eliminate the risk of contamination or recontamination of juice products during bulk transportation. The guidance describes five major areas of concern with bulk transport systems, special considerations for tankers, and examples of control measures for loading and unloading juice products into tankers. The Juice Guidance recommends that a producer or user conduct a hazard analysis focused on five areas of concern with bulk transport: (1) Sanitation operations, (2) equipment design, (3) equipment maintenance, (4) employee practices, and (5) loading and unloading areas. The Juice Guidance includes recommendations for designing vehicles used for the transportation of bulk amounts of juice products, preventive maintenance programs to ensure proper functioning of equipment and integrity of food contact surfaces, and measures for cleaning and sanitizing tanker trucks used to transport juice. The Juice Guidelines recommend that producers use tankers that are dedicated to the transportation of juice products. The Juice Guidelines also include recommendations for loading and unloading a tanker.

Taken together, the USDA and FDA regulations and implementing guidance adequately address the overarching SFTA goal of protecting food and food products from contamination during transportation. Indeed, the USDA and FDA regulations and implementing guidance address many of the specific provisions of SFTA, including the contamination or adulteration of food with non-food products, identification of vehicles used to transport food and food products, the use of dedicated vehicles, and the design of vehicles used to transport food and food products. Substantive DOT regulations in this area are, therefore, not necessary. Accordingly, in this SNPRM, we propose to reference the USDA and FDA regulations and state that persons who offer for transportation or transport food or food products must comply with the USDA and FDA regulations applicable to such transportation. This approach maintains current food safety

responsibility with the agencies that are best equipped to meet that responsibility. We will continue to work with USDA and FDA to assist them as necessary to assure that food and food products are transported safely. To this end, DOT will establish procedures for transportation safety inspections for the purpose of recognizing suspected incidents of contamination or adulteration of food, and will train DOT personnel in the appropriate use of the procedures. DOT will promptly notify FDA or USDA, as applicable, of any instances of potential food contamination or adulteration identified during safety inspections.

USDA/FSIS and FDA both plan to work with DOT to create a memorandum of understanding to ensure that the agencies work together effectively to assure that the Nation's food supply is safe and secure, particularly in the distribution channels involving transportation. FSIS and FDA will provide practical information regarding their regulations and activities concerning food safety and security. Drawing from vulnerability assessments and technical studies related to food safety and security, FSIS and FDA will work with DOT to develop a program to protect against vulnerabilities. Further, FSIS and FDA will provide guidance to and coordinate with DOT on sharing of significant information resulting from DOT safety inspections. FSIS and FDA will work with DOT to develop standard training for transportation inspectors to enable them to recognize suspected incidents of contamination or adulteration or other potential food safety or security concerns encountered during their inspections and to report these incidents to FSIS or FDA.

In this SNPRM, we propose to add a new Part 121 to Subchapter B of Title 49 of the Code of Federal Regulations. As proposed, Part 121 includes definitions applicable to the transportation of food and food products and states that persons engaged in such transportation must comply with USDA regulations in 9 CFR Parts 1 through 599 and FDA regulations at 21 CFR Parts 1 through 1299.

In addition, in this SNPRM, we propose to include in Part 121 a recommendation that persons engaged in the transportation of food or food products utilize food safety standards and guidelines promulgated by FDA and USDA, including FDA guidance documents on food security applicable to dairy farms and milk processors, food producers and processors, and bulk transporters of juice; and USDA safety and security guidelines for the

transportation and distribution of meat, poultry and egg products.

## V. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This SNPRM is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was formally reviewed by the Office of Management and Budget. This proposed rule is also significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). 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.

### B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

### C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

### D. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The SNPRM imposes no new transportation costs. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*Need for the SNPRM.* SFTA requires the Secretary of Transportation to promulgate regulations to promote the safe transportation of food products.

*Description of Actions.* In this SNPRM, we are proposing to state that persons who offer for transportation or transport food or food products in commerce must comply with USDA and FDA regulations applicable to such transportation. In addition, we are including a recommendation that persons engaged in the transportation of food or food products utilize food safety and security standards and guidelines promulgated by FDA and USDA.

*Identification of potentially affected small entities.* Businesses likely to be affected by the SNPRM are the more than 22,000 establishments that comprise North American Industrial Classification System (NAICS) Group 311, which includes food processors and manufacturers, and the more than 2,300 establishments that comprise NAICS Group 312, which includes beverage processors and manufacturers. In addition, the SNPRM will have an impact on over 43,000 specialized trucking companies (NAICS 48422). Finally, the proposals in this SNPRM will affect approximately 1.9 million farmers and farming operations.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the proposed sanitary food requirements. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that about 97 percent of food and beverage processors and specialized trucking entities are small businesses. SBA has not established definitions for farms and farming operations. Therefore, we are using the definition used by USDA; USDA defines small farms as those with revenues under \$500,000. Using this criterion, about 96 percent of all farms are considered small entities. These entities would incur no increased costs to comply with the provisions of this SNPRM.

*Reporting and recordkeeping requirements.* This SNPRM includes no new requirements for reporting or recordkeeping.

*Related Federal rules and regulations.* As noted earlier in this preamble, both USDA and FDA have comprehensive sanitary food regulations and guidelines. Rather than impose new and possibly conflicting requirements, we are incorporating the USDA and FDA standards into the DOT regulations.

*Alternate proposals for small businesses.* The Regulatory Flexibility

Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of sanitary food transportation, it is not possible to establish exceptions or differing standards and still accomplish the objectives of SFTA.

This SNPRM was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, the SNPRM proposes no new requirements; rather it incorporates existing requirements of other agencies into the DOT regulations.

**Conclusion.** We conclude that while this SNPRM applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. There are no new compliance costs associated with the proposals in this SNPRM.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### *F. Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

#### *G. Paperwork Reduction Act*

This SNPRM imposes no new information collection requirements.

#### *H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### *I. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions

significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule.

#### *J. Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

#### **List of Subjects in 49 CFR Part 121**

Food, Transportation.

In consideration of the foregoing, we propose to amend subchapter B of title 49, subtitle B, chapter I, as follows:

1. Revise the heading for subchapter B of title 49, subtitle B, chapter I, to read as follows:

#### **Subchapter B—Food Safety and Oil Transportation**

2. Add part 121 to subchapter B of title 49, subtitle B, chapter I, to read as follows:

#### **PART 121—FOOD SAFETY REGULATIONS**

Sec.

121.1 Purpose and scope.

121.5 Definitions.

121.10 General requirements.

121.15 Use of guidance documents and material.

**Authority:** 49 U.S.C. 5701–5714; 49 CFR 1.53.

#### **§ 121.1 Purpose and scope.**

This part prescribes requirements for persons who offer for transportation or transport food and food products by rail car or motor carrier in commerce.

#### **§ 121.5 Definitions.**

For purposes of this part:

**FDA** means the Food and Drug Administration of the U.S. Department of Health and Human Services.

**Food** and **Food product** have the same meanings as in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

**Motor vehicle** means a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used on the highways for the transportation of passengers or property.

**Person** means an individual, firm, copartnership, corporation, company, association, or joint-stock association

(including any trustee, receiver, assignee, or similar representative) that offers for transportation or transports food or food products in transportation.

**Rail car** means a car designed to carry freight by rail and includes a box car, flat car, gondola car, hopper car, or tank car.

**Transports** and **Transportation** mean any movement of property in commerce by motor vehicle or rail car.

**USDA** means the U.S. Department of Agriculture.

#### **§ 121.10 General requirements.**

No person may offer for transportation or transport food or food products by motor vehicle or rail car except in conformance with applicable requirements governing such transportation in 9 CFR parts 1 through 599 and 21 CFR parts 1 through 1299.

#### **§ 121.15 Use of guidance documents and material.**

Each person who offers for transportation or transports food or food products by motor vehicle or rail car should utilize guidance documents and materials promulgated by FDA and USDA, including, but not limited to: FDA Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; FDA Guidance on Food Security Preventive Measures for Food Producers, Processors, and Transporters; FDA Guidance on Food Security Preventive Measures for Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations, and Fluid Milk Processors; and USDA Food Safety and Inspection Service Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products.

Issued in Washington, DC, on December 16, 2004, under authority delegated in 49 CFR 1.53(i).

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 04–27904 Filed 12–20–04; 8:45 am]

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