

Re: food safety bill section by section  
Thu, October 22, 2009 6:39:34 AM

From: Consider This <considerthis@verizon.net>View Contact  
To: "Jamison, Brooke (Gillibrand)" <Brooke\_Jamison@gillibrand.senate.gov>  
Cc: Christina Aranglo WTEN News <christina.arangio@wten.com>

In researching the FDA Food Safety Modernization Act I found that SEC. 112. SANITARY TRANSPORTATION OF FOOD is flawed. Section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)) is flawed in several ways one being, the wording of the Definition Bulk Vehicle. Nowhere in this definition is Dry Vans or Refrigerated Trucks/Trailers/Railcars and these vehicles move over 65% of our food supply. They may be implied but not named and therefore not enforceable because the transportation industry will say the act was too vague and we did not understand, as they have in the past.

One of the other major downfalls is this act is not clear on how the FDA is going to separate food transportation vehicles from other transportation vehicles. The way I understand it the Secretary will make lists of non-food items that can and can't be transported in these vehicles. This tells me that we will not have dedicated vehicles to transport our food products and that the FDA is going to depend on the record keeping which is flawed. It is one of the same flaws of the Sanitary Food Transportation Act of 2005. This flaw has been documented by Diane B. McColl and Noelle C. Sitthikul (Ms. Sitthikul is an Associate Attorney with the law firm of. Hyman, Phelps & McNamara, P.C., ... ) who wrote this Background Scope of the 2005 SFTA Food Issues (<http://www.hpm.com/pdf/MCCOLLSITTHIKUL1.PDF> ). It states: "The Bioterrorism Preparedness and Response Act of 2002 (BTA) generally requires transporters to maintain records of the immediate previous sources and immediate subsequent recipients of food. 21 C.F.R. §§ 1.326(a), 1.337, 1.345, 1.352. A "transporter" is a person having "possession, custody, or control of an article of food in the United States for the sole purpose of transporting the food, whether by road, rail, water, or air. *Id.* § 1.328. In a recent guidance document, FDA acknowledged that the agency can access these records only when the BTA statutory criteria are met (i.e., "when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals"). FDA, Guidance for Records Access Authority Provided in Title III, Subtitle A, of the [BTA] (Nov. 2005). The 2005 SFTA should have no effect, therefore, on FDA's existing authority to access transporter records under the BTA".

This means that while the FDA is trying to retrieve the records, people are paying for health problems and funerals while the transportation industry say the act was too vague and we did not understand.

If you are interested I have suggested a way to uphold Dedicated Vehicles Guidance for Industry. I wrote this suggestion to Congressmen John Sweeney in 6/6/2000: "All trailers have to be inspected once a year and have an inspection sticker affixed on them to prove

it has been inspected. To uphold a Dedicated Vehicles Guidance for Industry, an amendment could be written that states, "when a trailer is inspected that is going to haul food or food products that touch the food, that trailer should have a letter F on the inspection sticker that is affixed to that trailer." The rest of the system is already in place. We have D.O.T. inspection stations all over these United States. When a truck is pulled into these inspection stations it is weighted, then the inspectors checks the manifest for the load that it is hauling and inspects the vehicle. What would be so hard in having the inspector look at the inspection sticker to see if this vehicle should be hauling the freight that is in it? When an inspector looks at the driver's manifest and then checks the inspection sticker, if there is an F on the inspection sticker and there are chemicals in the trailer or other toxic substances the trailer would be impounded and the inspection sticker stripped from the trailer. The company should also be heavily fined."

To ensure that food is not transported under conditions that may render the food adulterated I believe that we need to uphold a Dedicated Vehicles Guidance for Industry. There is no sense in stopping contamination of our food in the Food Industry and dropping the ball when it comes to the transportation of that food!  
Brook I, hope you and Senator Gillibrand will fight a better, clearer transportation section of this bill.

If you would like other suggestions from a more than seventeen-year veteran of the trucking industry or clarification of my comments please contact me.

Charles Lake  
51...  
[considerthis@verizon.net](mailto:considerthis@verizon.net)

**From:** "Jamison, Brooke (Gillibrand)" <Brooke\_Jamison@gillibrand.senate.gov>  
**To:** "considerthis@verizon.net" <considerthis@verizon.net>  
**Sent:** Wednesday, October 21, 2009 1:05:18 PM  
**Subject:** FW: food safety bill section by section

Section 112 deals with transportation safety.