

FOOD & AGRIBUSINESS

ARE YOU EXEMPT? FDA ANNOUNCES WAIVERS FOR CERTAIN BUSINESSES SUBJECT TO THE SANITARY TRANSPORTATION RULE

by Sarah S. Firnschild

The FDA Food Safety Modernization Act (FSMA) rule on Sanitary Transportation of Human and Animal Food is now final and on April 5, 2017, the FDA published three waivers for certain qualifying businesses.

The Sanitary Transportation of Human and Animal Food rule establishes requirements for shippers, loaders, carriers by motor or rail transportation, and receivers involved in transporting human and animal food to use sanitary practices to ensure the safety of that food.

The waivers carve out exceptions for businesses whose transportation operations are subject to other State-Federal safeguards. Specifically, these exceptions include:

- Businesses holding valid permits that are inspected under the National Conference on Interstate Milk Shipments' Grade "A" Milk Safety Program, only when transporting Grade "A" milk and milk products.
- Food establishments authorized by the regulatory authority to operate when engaged as receivers, or as shippers and carriers in operations in which food is delivered directly to consumers, or to other locations the establishments or affiliates operate that serve or sell food directly to consumers. (Examples include restaurants, supermarkets and home grocery delivery services.)
- Businesses transporting molluscan shellfish (such as oysters, clams, mussels or scallops) that are certified and inspected under the requirements established by the Interstate Shellfish Sanitation Conference's (ISSC) National Shellfish Sanitation Program (NSSP) and that transport the shellfish in vehicles permitted under ISSC authority.

These waivers were published after being described in the proposed and final rule. FDA considered comments on the waivers and found that the waivers would not result in the transportation of food under conditions that would be unsafe for human or animal health, or contrary to the public interest.

For those not subject to these exemptions, small businesses have until April 6, 2018, to comply with the rule, while all other businesses are expected to be in compliance as of April 6, 2017.

To monitor compliance, the FDA will carry out inspections, and the Department of Transportation will also establish procedures for transportation safety inspections to be conducted by DOT or state personnel. The FDA encourages detailed recordkeeping and proper

employee training in order to ensure compliance with the rule. Now is a good time for businesses to review their record-keeping policies and training programs and update as needed.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the food and agribusiness. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered here.

FOR MORE INFORMATION CONTACT:



Sarah S. Firnschild is an associate in Dickinson Wright's Columbus office. She can be reached at 313.223.3025 or sfirnschild@dickinsonwright.com.



James E. Lozier is a Member in Dickinson Wright's Lansing office and the chairperson of the Dickinson Wright Agri Business & Food Safety Group. He can be reached at 517.487.4775 or jlozier@dickinsonwright.com.