

FDA Rule on Sanitary Transportation of Human and Animal Food

Requirements and Best Practices Training Module for Motor Carrier Personnel



Helping motor carriers cope with regulations, safety and contracts



Uniform Food Safety Transportation Protocol

Overview

- In addition to the carrier duties and responsibilities outlined by awareness training, shippers and brokers (by agreement in writing) can delegate other Food Safety Modernization Act (FSMA) requirements to carriers under the Food & Drug Administration (FDA) rule on the sanitary transportation of human and animal food.
- Although some duties apply only to large carriers until April 2018, shippers and brokers can – and likely will – insist that all carriers, regardless of size, meet these standards to protect their interests.
- All truck drivers, whether employees or contractors, should understand these requirements and ensure compliance to prevent delivery rejections and claims.

FSMA and the FDA rule

- Establishes requirements for shippers, loaders, receivers and carriers by motor or rail vehicle involved in transporting human and animal food to use sanitary practices to ensure the safety of that food
- With some exceptions, applies to shippers, receivers, loaders and carriers that transport food in the United States
- Establishes requirements for vehicles and transportation equipment, transportation operations, records, training and waivers

Vehicles and transportation equipment

- Design and maintenance of vehicles and transportation equipment must ensure that food does not become unsafe
- Must be suitable and adequately cleanable for intended use and capable of maintaining temperatures necessary for safe transportation of food

Transportation operations

- Shippers, receivers, loaders and carriers must take measures to ensure food safety, including:
 - Adequate temperature controls
 - Preventing contamination of ready-to-eat food from touching raw food
 - Protection of food from contamination by non-food items in the same load or previous load
 - Protection of food from cross-contact – i.e., the unintentional incorporation of a food allergen

Training

- Training of carrier personnel in sanitary transportation practices and the documentation of the training
- Required when the carrier and shipper agree that the carrier is responsible for sanitary conditions during transportation

Recordkeeping

- Maintenance of records of written procedures, agreements and training
- Required retention time depends on the type of record and when the covered activity occurred, but it is never more than 12 months

Not subject to the FDA rule

- Shelf-ready non-refrigerated shipments completely enclosed by a container
- Frozen foods
- All transportation activities performed by a farm (except for-hire transportation, such as backhauls)
- Transportation of human food byproducts used for animal feed food without further processing
- Transport of live food animals, except for molluscan shellfish (such as oysters, clams, mussels and scallops)

Not subject to the FDA rule (*cont'd*)

- Food that is imported for future export and is neither consumed or distributed in the United States
- Transportation of compressed food gases (such as carbon dioxide, nitrogen or oxygen used in food and beverages) and food contact substances

Key points about FDA rule

- Focuses solely on practices that make food dangerous to consume, not on those that affect food quality
- Intended use of the vehicle or equipment (e.g., transporting animal feed versus human food) and the production stage of the food being transported (e.g., raw materials versus finished products) are relevant in determining the applicable sanitary transportation requirements
- The shipper and carrier can agree to a temperature monitoring mechanism for foods that require temperature control for safety

Uniform Food Safety Transportation Protocol

- What is the UFSTP?
- What purpose does the UFSTP serve?
- How does the Protocol work?

What is the UFSTP?

- Recognizing that the FDA rule invites industry to establish “best practices” standards, a committee including carriers, shippers, brokers, and warehousing firms developed the Protocol to combine in a single document FDA’s requirements for carriers and the requirements that shippers would delegate to carriers.
- The Protocol reflects FSMA compliance standards that subscribing carriers agree to meet and that can be incorporated into contracts for transportation of perishable commodities.

What purpose does the UFSTP serve?

- Details minimum standards for meeting all requirements and delegable duties under the FDA rule.
- Written to be adaptable by carriers for all perishable food shipments, regardless of commodity or size of carrier.
- Allows a participating carrier to establish it is FSMA-compliant and properly licensed and insured.
- Allows shippers and brokers to easily use subscribing carriers, avoid confusion and delays in vetting carriers for spot-market loads.
- Can eliminate confusing and conflicting standards and establish a baseline for compliance.

How does the Protocol work?

- Carriers carefully review the Protocol's terms, requirements and warranties and apply for participation, subject to executing the Protocol and providing certificates of insurance.
- An independent third party (TransComply) publishes a list of carriers that (1) have committed to the Protocol's terms; (2) hold active FMCSA operating authority and (3) maintain minimum levels of insurance coverage.
- Shippers and brokers use the list in vetting carriers, potentially incorporating UFSTP terms into contracts by reference.

What carrier duties does the Protocol cover?

- Equipment and temperature control
- Delegable shipper requirements
- Maintenance of records

Equipment and temperature control

Carriers must:

1. Make sure that equipment design and maintenance ensures food does not become unsafe or contaminated and that trailers are clean.
2. Ensure proper storage of vehicles and trailers when not in use.
3. Be able to provide operating temperature evidence (downloadable reefer).
4. Be able to identify previous cargo in bulk vehicle upon request.
5. Appoint competent supervisory personnel to ensure safe operations and parameters dictated by shippers are followed.

Delegable shipper requirements

Carriers must:

1. Precool refrigerated storage as required by shipper.
2. Follow agreed shipper specifications and temperature set forth in writing by shippers.
3. Follow other shipper provided procedures for sanitary transportation (e.g. “commodity specific”) requirements.
4. Meet shipper equipment specifications (e.g. downloadable reefer at destination, bulk head).

Records and maintenance

Carriers must:

1. Develop and implement written cleaning, sanitizing and inspection procedures.
2. Develop and implement temperature and other requirements for bulk.
3. Establish and maintain training records (FSMA awareness training – need for certified training and evidence).
4. Retain records for 12 months.
5. Keep records if part of affiliated group for 12 months.
6. Make records available to shipper upon request.
7. Keep records as originals, true copies or in electronic format.

Key points about FSMA and the Protocol

- FSMA and the Protocol ensure training and adoption of best practices in handling perishable commodities and regulated food stuffs.
- FSMA and the Protocol do not change a shipper or broker's contract rights to require the assumption of special claims handling requirements, waiver of duty to mitigate, offsets, etc., nor does it require a carrier to surrender existing claims procedures.
- FSMA and the Protocol are helpful in specifying that shipments which may have been contaminated “must be inspected” before placed into the stream of commerce.

Key points about FSMA and the Protocol (*cont'd*)

- The rule doesn't change current practices much.
- FDA did not set temperature ranges or commodity specific rules. Those issues are left up to the shipper or broker to provide in writing.
- FSMA and the Protocol make downloadable temperature recorder and recordkeeping a requirement.
- Expressly provides that if shipment may have been contaminated, it must be inspected before put back in the food chain.

What are some practical effects?

- Temperature readings and printout will become more significant in determining liability.
- FSMA eliminates mistaken claim that all rejected foodstuff shipments must be destroyed without mitigation.
- Shipper, broker and warehousing firms still get to dictate terms in writing – so you must watch what you sign!
- FSMA does not require seal integrity or prescribe that loads must be destroyed based on ambient trailer temperature records alone.
- The emphasis FSMA places on temperature records will focus claims attention onto trailer temperatures as a source of potential claims litigation.

What are some practical effects? (*cont'd*)

- FSMA does not require seal integrity or prescribe that loads must be destroyed based on ambient trailer temperature records alone.
- The emphasis that FSMA places on temperature records will focus claims attention on trailer temperatures as a source of potential claims litigation.
- Although FSMA duties and Protocol terms do not apply to some shipments, anticipate that those standards will set shipper and broker expectations for all refrigerated and foodstuff shipments.

How can drivers reduce risk of loss?

1. Ensure trailer is properly pre-cooled if required and document ambient temperature at time of loading.
2. Be sure to note if trailer was shipper load and count on bill of lading. If required to pulp and are not allowed, be sure to note.
3. Ensure reefer is properly set and full of fuel.
4. Confirm required temperature settings and default to constant run rather than start/stop reefer settings if shipment is fragile.
5. Do not accept mixed loads to be maintained at separate temperatures unless transit times and bulk heads permit.

How can drivers reduce risk of loss? (*cont'd*)

6. Keep seal integrity log, record reason for seal to be broken and circumstances.
7. If load is rejected, assess damage before shipment is moved from dock, require consignee to specify extent of damage, and take pictures.
8. Reefer records are important and can demonstrate whether core temperature of shipment at loading was higher than specified.
9. Understand the difference between core temperature and ambient temperature of trailer.
10. Upon rejection ensure detailed notes are made on delivery receipts, reapply seals, leave reefer at set temperature and running.

How can drivers reduce risk of loss? (*cont'd*)

11. Call carrier to get immediate inspection if possible (FSMA requires only that shipments which may be contaminated must be inspected before it can be sold for best advantage).
12. For insurance purposes, documenting whether the reefer unit breakdown may be key.
13. Be sure you can provide and save temperature control records.
14. If your bill of lading states that there is a recorder on the load, ask before leaving the shipper.

NOTE: These 14 suggestions are not exhaustive or required – they are suggestions only and not part of the Protocol.

Final thoughts

- Neither the Protocol nor FSMA address commodity-specific handling procedures for produce and do not trump industry best practices. Written shipper requirements must be adhered to.
- **Beware of what you are signing and agreeing to!**

For more information about the Uniform Food
Safety Transportation Protocol, please visit
www.ufstp.com

