

enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled

Federalism (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 13, 2005.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§§ 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 [Removed]

2. Sections 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 are removed.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Chapter I, Subchapter B

[Docket No. PHMSA-91-13289 (FS-1)]

RIN 2137-AC00

Safeguarding Food From Contamination During Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA), the successor agency to the Research and Special Programs Administration (RSPA), is withdrawing the notice of proposed rulemaking published on May 21, 1993, and the supplemental notice of proposed rulemaking published on December 21, 2004. In those notices, the Agency proposed to implement the Sanitary Food Transportation Act of 1990 by amending its regulations to address the safe transportation of food and food products in commerce. On August 10, 2005, the President signed the Sanitary Food Transportation Act of 2005, which transferred authority for regulating the safe transportation of food from the U.S. Department of Transportation to the U.S. Department of Health and Human Services.

FOR FURTHER INFORMATION CONTACT: Helen Engrum, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanitary Food Transportation Act of 1990 (SFTA); required the

Department of Transportation (DOT) to promulgate regulations to promote the safe transportation of food products. (Pub. L. 101-500, 104 Stat. 1213 [Nov. 3, 1990]). Among other requirements, SFTA required DOT, in consultation with the Department of Health and Human Services (HHS), the Department of Agriculture (USDA), and 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 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), 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.

II. Current Rulemaking

On May 21, 1993, the Agency published a notice of proposed rulemaking (NPRM) to implement SFTA. (58 FR 29698). Commenters generally opposed the proposals in the NPRM and recommended that DOT defer to the HHS' Food and Drug Administration (FDA) and USDA on food safety issues.

After considering the comments to the NPRM, the Agency concluded the expertise for ensuring the safety of our nation's food supply, including transportation, lies with USDA and FDA. Based on its work with USDA and FDA, DOT determined that the public interest would 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 have required unnecessary duplication of personnel and funds to promulgate regulations and to conduct certain training, research and testing activities. It could result in duplication,

overlap, or conflict with current or pending FDA and USDA regulations.

After a thorough review of the alternatives, the Agency issued a supplemental notice of proposed rulemaking (SNPRM) on December 21, 2004 proposing to direct compliance with the existing requirements of FDA and USDA for the sanitary transportation of food. (69 FR 76432). In the SNPRM, the Agency proposed to add a new part 121 to subchapter B of Title 49 of the Code of Federal Regulations to include definitions applicable to the transportation of food and food products and to refer to requirements of USDA (9 CFR parts 1 through 599) and FDA (21 CFR parts 1 through 1299) that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car. We also proposed to recommend use of guidance documents and materials promulgated by FDA and USDA related to food transportation safety and security. This approach would have prevented duplication or conflict with existing regulations and would have assured primary responsibility for food safety would rest with FDA and USDA.

In response to the SNPRM, we received approximately 17 comments from food associations, highway and rail associations, freight companies, the Dangerous Goods Advisory Council, and several state governments' departments of agriculture. The majority of comments strongly supported DOT's efforts to implement SFTA by relying on the agencies that are best equipped to address these issues. The commenters agreed safeguarding food and food products from contamination during transportation in commerce is best handled and carried out by USDA and FDA. Several commenters suggested revisions to USDA and FDA requirements to address perceived shortcomings in those regulatory programs. However, such revisions were not proposed and thus are outside the scope of the rulemaking.

III. Sanitary Food Transportation Act of 2005

On August 10, 2005, the President signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA—LU; Pub. L. 109-59, 119 Stat. 1144). Subtitle B of Title VII of SAFETEA—LU—the Sanitary Food Transportation Act of 2005—amended the Federal

Food, Drug, and Cosmetic Act to assign the regulatory authority for food transportation safety to HHS and to require DOT, in consultation with HHS and USDA to establish procedures for transportation safety inspections to identify suspected incidents of food contamination or adulteration. Accordingly, DOT's responsibilities in this area are limited to (1) developing and implementing a training program for its inspectors that perform commercial motor vehicle or railroad safety inspections, and (2) notifying HHS or USDA, as applicable, of any instances of potential food contamination or adulteration identified during safety inspections. DOT is no longer required to issue regulations applicable to the safe transportation of food.

Accordingly, PHMSA is withdrawing the May 21, 1993 NPRM, and December 21, 2004 SNPRM and terminating this rulemaking docket. Consistent with the re-allocation of food safety responsibilities in SAFETEA—LU, we will continue to work with USDA and FDA on inspection and enforcement issues. To this end, the three agencies plan to enter into a memorandum of understanding to ensure the agencies work together effectively to assure the Nation's food supply is safe and secure, particularly in the distribution channels involving transportation. USDA's Food Safety and Inspection Service (FSIS) and FDA will provide practical information regarding their regulations and activities concerning food safety and security. 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.

Issued in Washington, DC on December 20, 2005, under authority delegated in 49 CFR 1.53(i).

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer.

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