

CPG Sec. 545.300 Foods, Rail Car Sanitation – Adulteration

BACKGROUND:

One of the field offices learned during an industry workshop that rail companies were not adequately cleaning cars being spotted for use in transporting foods. The rail companies told the food shippers that the shippers would have to clean the cars or else the railroads would not furnish any cars.

General Counsel has previously reviewed the problem of developing evidence for prosecution concerning rail car sanitation and is of the opinion that Section 703 of the act was not intended to exempt carriers from liability in cases where the carrier's own acts cause the adulteration or misbranding of articles in interstate commerce.

General Counsel offered the following comments which we quote:

"...it does appear logical that Congress, in order to provide the protection of the public intended by the Act, did exempt interstate carriers from the consequences of merely receiving, carrying, holding, or delivering articles which were already adulterated or misbranded when delivered to them, a state of affairs that the carrier in most instances could not ascertain, but it has not intended to grant a complete exemption from liability for actually causing the adulteration or misbranding of articles while in their custody."

POLICY:

The Food and Drug Administration has the responsibility for initiating regulatory action, if a carrier has caused a product under our jurisdiction to become adulterated or misbranded. The adulteration may be caused by a failure to properly clean vehicles prior to delivering the vehicle to food, drug, or cosmetic shippers. The adulteration may consist of filth or of poisonous substances such as pesticide chemicals.

REGULATORY ACTION GUIDANCE:

The following represents the criteria for recommending legal action to CFSAN/Office of *Compliance*/Division of Enforcement (HFS-605):

1. There is definite proof that the carrier was responsible for the act of adulteration (filth, pesticide contamination). This should, of course, be based on a thorough inspection of the vehicle with appropriate collection of samples, exhibits, photos, etc.

and

2. Immediate inspection of the shipper firm shows that the adulteration of the goods in the suspect vehicle could only come from the vehicle used for transportation.

In any case where pesticides or other poisonous chemicals are involved you may wish to coordinate your investigation with local representatives of the Department of Transportation as penalties for furnishing unfit vehicles contaminated with "Class B Poisons" are also possible under the laws that department enforces even when no provable adulteration occurs.

Material between asterisks is new or revised.

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