

Regulatory Alert: FDA Issues Retail Waiver for Sanitary Food Transportation Act Regulations

Retailers Generally Exempt from Requirements

April 10, 2017

On April 6, 2017, the U.S. Food and Drug Administration (FDA) published in the [Federal Register](#)¹ a notice that the agency was waving retailers from requirements of the Sanitary Food Transportation Act (SFTA) regulations.² FDA issued a [document dated March 2017](#) responding to comments on the retail waiver and other waivers. The waivers were effective immediately.

The waiver covers three classes of persons:

1. Food establishments holding valid permits, only when engaged in transportation operations as receivers, or as shippers and carriers in which food is relinquished to consumers after transportation from the establishment.
2. Shippers, carriers and receivers who hold valid permits and are inspected under the National Conference on Interstate Milk Shipments Grade “A” Milk Safety Program, only when engaged in transportation operations involving Grade “A” milk and milk products.
3. Businesses certified and inspected under the requirements established by the Interstate Shellfish Sanitation Conference’s National Shellfish Sanitation Program (NSSP), only when engaged in transportation operations involving molluscan shellfish in vehicles that are permitted by the State NSSP certification authority.

Key questions and answers for how the waiver [impacts retail establishments](#) are below:

What types of retail establishments are covered under the waiver?

Retail grocery stores, restaurants and other establishments with valid permits or authorizations to provide food directly to consumers.

¹ 82 Fed. Reg. 16733 (April 6, 2017).

² 21 CFR Part 1 Subpart O

What activities does the waiver extend to for retail establishments?

- Receiving food: where food is received at the store location itself, or at a location where the store receives and immediately transports the food to the food establishment.
- Acting as a shipper and carrier of food where food is transported from the establishment as part of the normal business operations of a retail establishment, such as:
 - Delivery of food directly to consumers by the establishment or third-party delivery services.
 - Delivery of the food to another location operated by the authorized establishment or an affiliated establishment where the food is to be sold or served directly to consumers.

What are examples of retail activities that are excluded from SFTA under the waiver?

- Receiving deliveries of food (regardless of source) at retail stores.
- Transporting food from store-to-store (in personal vehicles, trucks, vans or otherwise).
- Home grocery delivery from stores by the store itself, or a third-party delivery service picking up food from the store.
- Store pickups at wholesale facilities, distribution centers or other retail stores (e.g. manager departs store in vehicle to pick up food from a wholesale facility, distribution center, or another retail location and returns to the store).

What are examples of activities that are not excluded from SFTA under the waiver?

- Receiving deliveries of food at distribution centers, manufacturing plants, central kitchens or packing facilities.³
- Shipments of food to stores originating from distribution centers, transported by vehicles dispatched by distribution centers.
- Shipments of food to stores originating from central kitchens, manufacturing plants or packing facilities.
- Backhauls to distribution centers, warehouses, packing facilities or processing facilities.
- Shipments of food to distribution centers, warehouses, manufacturing plants or packing facilities initiated by manufacturers or other vendors.
- Home delivery services originating from distribution centers or wholesale facilities.

³ NSSP

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