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BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

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Good morning, Mr. Chairman and members of the Subcommittee. I am Alan Roberts, Director of the Office of Hazardous Materials Transportation in the Research and Special Programs Administration (RSPA) at the Department of Transportation (DOT). I am pleased to be here today to discuss the issue of food safety in transportation and the Department's views on the two bills referred to the Committee, S. 1751 and S. 1904, and similar legislation pending before Congress.

There are few issues on which there is such universal agreement as on the importance of food safety. Reasonable minds may differ on the most effective means to ensure the high standard of food quality that we Americans have come to expect, but few can question the value of maintaining that standard. The Department of Transportation unequivocally endorses the Congressional objectives implicit in the bills that have been introduced to limit commercial practices which may compromise the quality of the Nation's food supply. We do, however, have serious reservations concerning the regulatory approach suggested in those legislative initiatives.

Because the commercial practices that are of concern to all of us occur during transportation, many hold the view that the Department of Transportation should take the lead role in addressing this issue. We do not share this view. I would like to provide some general background on the Department's authority and experience on this issue.

The Hazardous Materials Transportation Act of 1974 (HMTA) provides the primary legislative authority for assuring the safe transportation of hazardous materials by all modes of transportation. Generally, the Secretary's authority to implement the Act has been delegated to RSPA, except that enforcement responsibilities are shared by the Department's modal administrations. The Act requires the Secretary to establish a regulatory program to carry out the purposes of the Act and to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Under the HMTA, a hazardous material means a substance or material which the Secretary of Transportation has determined may pose an unreasonable risk to health, safety, and property. The term "hazardous material" includes hazardous substances and hazardous wastes subject to the Environmental Protection Agency's (EPA) Hazardous Waste Manifest Requirements. The term generally does not include municipal solid waste or garbage.

The Department's Hazardous Materials Regulations (HMR) include a comprehensive system of regulations pertaining to the preparation of shipping papers, placarding of vehicles, preparation and use of packagings, marking and labeling of packagings, loading of vehicles, and other transportation operations. The intent of the regulations is to communicate the presence of hazardous materials during transportation, reduce the potential for accidents during transportation, and reduce consequences should an accident occur.

Our statutory mandate is to regulate the transportation of hazardous materials to protect the public adequately against the risks involved in transporting those materials. Our authority under the HMTA does not extend to regulating the health and safety aspects of food or consumer commodity transportation, and we do not have the technical expertise or the regulatory experience to do so. We believe that the issue is a public health concern that should be addressed by the agencies with the necessary expertise and existing regulatory responsibility for food safety, including the Food and Drug Administration (FDA) within the Department of Health and Human Services, and the Department of Agriculture (USDA). These agencies have existing authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.), and other statutes to regulate the handling and transportation of food. In addition,

these agencies have the core expertise necessary to address this problem. Their technical knowledge, supported by a staff of experienced food safety experts, and their institutional memory of previous food safety issues, is unmatched throughout the Federal government.

Obviously, addressing the issue of food safety would require assistance from other agencies. The Department of Transportation would expect to share its expertise on vehicle design and operating practices, as well as handling and transportation of hazardous materials. Similarly, the EPA is the Federal expert on all matters concerning solid waste. Only the FDA and USDA, however, are experienced in applying such information to the question of food safety. We believe it would be neither appropriate nor cost-effective to develop duplicate food safety expertise within DOT.

Although the practice of backhauling has been publicized only in the last year, the Department has been aware for some time of the potential concerns related to the joint use of vehicles for transporting hazardous materials and products intended for consumer consumption. EPA conducted a study in 1987, in consultation with the Department, and issued a report to Congress entitled "Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials." Although the report did not address the transportation of solid

waste, it identified only a few incidents of contamination over a 30-year period in the United States, and concluded that existing regulatory and other incentives were adequate, at that time, to minimize or avoid contamination.

Recently, the Department has been involved in a cooperative effort with other Federal agencies, including FDA, USDA, EPA, and the Interstate Commerce Commission, to share information and concerns regarding the practice of backhauling. As a panel, we have testified before House Committees that are also concerned about the issue. In addition, we have met with representatives of the tank truck motor carrier industry who have established an ad hoc committee on food transportation to examine this problem. We support efforts to develop a consensus industry standard which I am sure you will be hearing about later today.

Turning to the specific bills that are the focus of this hearing, the Department has several comments. Both S. 1751 and S. 1904 include broad prohibitions on the use of refrigerated motor vehicles and cargo tanks to transport both food and nonfood products, although each contains authority for the Secretary of Transportation to waive the prohibitions if a waiver would not be contrary to the public interest. Both bills require that the Secretary issue regulations within a few months of enactment to implement the prohibitions and waiver

provisions, and both require the Secretary to study and report to Congress within 180 days of enactment on additional measures that may be needed to ensure food safety.

We are opposed to the creation of the additional statutory authority called for in these bills. We believe the existing authority under the Federal statutes referenced earlier is adequate to regulate the handling and transportation of food. We also believe that the FDA and USDA should continue to be responsible for implementing the objectives of these bills, with the assistance of the Department. The Federal agencies with expertise should use their existing authority to work with industry to eliminate any practices that would jeopardize food safety, and we stand ready to assist them in that effort.

That concludes my statement. I would be happy to answer any questions you may have.