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# SETTING THE TABLE

Current Issues in Food Transport, Storage and Security from Benesch's Transportation & Logistics Practice Group

## I Really Need A License For That?!

### Regulators Crack Down on Liquid Food Commodity Transporters



Kelly E. Mulrane

The new "Tank Vehicle" definition, which became effective and enforceable in all 50 states last summer, will likely have a disproportionate effect on the food commodity transportation sector

due to the tendency to transport milk, creams, food syrups, and other liquid food products in a wide variety of tanks, intermediate bulk containers ("IBC's"), and bladder bags. Those who are proactive in understanding the new definition and its impact are sure to have a competitive advantage over those who learn of it through law enforcement.

On May 9, 2011, the Federal Motor Carrier Safety Administration ("FMCSA") published a final rule ("Final Rule") amending the definition of a Tank Vehicle. The new definition expands the type and number of vehicles hauling tanks that now require a driver to carry a Tank Vehicle endorsement on his or her CDL.

The currently effective definition of Tank Vehicle in 49 C.F.R. § 383.5 reads in part:

Tank Vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or

tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis . . . .

After many questions and requests for clarification, the FMCSA explained that the new definition applied to a vehicle transporting IBC's, bladder bags, or any other tanks of the requisite size containing any liquid or gaseous material whether temporarily or permanently attached to the vehicle or chassis. FMCSA also stated that empty IBC's and tanks that are manifested either as empty or as residue on a bill of lading are not covered under the new definition, and a driver of such tanks would not need the endorsement. On September 26, 2013, the FMCSA published another Notice of Proposed Rule Making recommending incorporation of the additional guidance, and a new Final Rule was anticipated to be published in the Federal Register in November 2014, but it has yet to be published. Nonetheless, law enforcement are aware of the breadth of the rule and will be enforcing it accordingly. As the most common size IBC can contain at least 275 gallons, a driver transporting as few as four loaded IBC's would be covered under the new definition. In short, such a driver must have the tank endorsement on his or her CDL.

Motor carriers will be on the front lines of enforcement of the new definition. They will be receiving tickets impacting their CSA BASIC scores, as well as enduring delays which, in the worst cases, may lead to food product spoilage and potential litigation. Despite the inconvenience and challenges, the most pragmatic solution for motor carriers is to make a concerted effort to increase the pool of endorsed drivers. (The requirements for a driver to obtain a Tank Vehicle endorsement can be found in 49 C.F.R. § 383.119). Motor carriers who have, or who quickly develop, a deep pool of endorsed drivers will have a competitive advantage as they will be highly attractive to food commodity shippers, brokers, and freight forwarders as the Final Rule becomes widely enforced. Shippers, brokers, and freight forwarders of food commodities need to be aware of the rule to ensure they are contracting with duly endorsed drivers for necessary loads.

The Benesch Transportation & Logistics team stands ready to advise you on how to address this new rule in your business.

#### For more information

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