

Transporting Alcohol - Staying Above the Influence

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One of the first questions we ask of new for-hire motor carrier clients is: “What are you hauling?” The typical trigger words that cause lawyers and trucking consultants to perk up should not come as a surprise: hazardous materials, foodstuffs, firearms, waste, pharmaceuticals, and so on. While such commodities are highly regulated and therefore demand attention, at least part of the regulatory burden for such commodities exists at the federal level, which can lend itself to a more streamlined approach to become or stay compliant. One regulated commodity that tends to be obscured in such discussions is alcohol and alcoholic beverages. Outside of alcohol import/export issues, the regulation of alcohol transportation is governed and therefore segmented largely at the state level. Often overlooked, motor carriers transporting alcohol may need to obtain a specific alcohol transportation license or permit on a state-by-state basis.

The transportation of alcoholic beverages takes varied forms—from middle mile bulk transportation to last mile residential delivery of individual bottles. We customarily treat residential delivery of alcohol in a separate category than traditional truckload services, because states and cities customarily have separate permitting/licensing requirements for residential delivery, similar to retailing. Although truckload and less-than-truckload shipments of alcohol are typically engaged in interstate commerce, motor carriers should stay attuned to the regulations of each particular state in which they will stop or even pass through during the route.

Approximately half of the lower 48 states require a permit or license to transport alcohol into, through, or out of the state. The scope of such a permit and license varies. Some states only require a license or permit to transport certain types of alcohol (i.e., spirits) as opposed to beer and wine, and others may only require a permit or license in order to stop and deliver alcohol within the state, not necessarily to travel through the state carrying a load of alcohol. Not surprisingly, each state’s application for a license or permit takes a similarly unique approach. Some states require a motor carrier to be registered with the state’s secretary of state, obtain intrastate operating authority (if required), and potentially even submit a penal or surety bond in order to be properly licensed to transport certain types of alcohol. Simply, there is no one-size-fits-all approach when seeking and obtaining a transportation license or permit for alcohol, and particular attention should be paid to each specific state’s regulations and guidance to avoid roadside surprises.

In addition to the regulatory labyrinth required for day-to-day operations, state alcohol transportation permits and licenses are often a labor-intensive aspect of due diligence when motor carriers are purchased. Our approach is always to avoid surprises during diligence, so we focus on all state licenses and permits that are held or should be held by the target motor carrier, including for the transportation of alcohol. If such licenses and permits are held, the answer to questions regarding pre-close and post-close notices and the effect of the surviving entity’s structure on such licenses or permits is often not clear from the face of a state’s regulations. Staying ahead of the regulations

often requires consistent contact with the target motor carrier, with deal counsel to assess the structure of the transaction, and most importantly with the regulators to mitigate any risk of post-close operational pauses.

Benesch has extensive experience in obtaining alcohol transportation licenses or permits in each state that requires one, and communicates consistently with each state agency to navigate all aspects of the application procedures and notice requirements in different types of transactions.

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