



1156 15TH Street, NW · Suite 500 · Washington, DC 20005
T 202.457.0825 · F 202.457.0864 · www.aradc.org

November 25, 2013

Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: Docket FMCSA-2013-0140: Commercial Driver's License: Definition of a Tank Vehicle Used for Determining the License Endorsement Requirement

Dear Administrator Ferro:

On behalf of the Agricultural Retailers Association (ARA), I am submitting comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking to change the definition of a tank vehicle.

Statement of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Agricultural retailers and distributors are scattered throughout all 50 states and range in size from local family-held businesses and farmer cooperatives to larger companies with hundreds of retail outlets across the USA. ARA members play an important role feeding the world.

Background

FMCSA designates vehicles as tank vehicles to show which ones require a tank vehicle endorsement to operate on public roads. The standards a tank vehicle endorsement applicant must meet are listed in 49 C.F.R. 383.119. ARA recognizes that establishing the proper scope of the "tank vehicle" definition is an essential highway safety regulatory function. However, the "tank vehicle" definition should capture those vehicles that present the unique safety risks that the endorsement's required training is designed to prevent.

On May 9, 2011, FMCSA published a final rule on "Commercial Driver's License Testing and Commercial Learner's Permit Standards" that included a new definition of tank vehicle which required additional drivers to obtain tank vehicle endorsements on their commercial learners' permits (CLPs) and CDLs. FMCSA indicated it made this change in response to a February 12, 2008 petition from the Commercial Vehicle Safety Alliance (CVSA). ARA joined the American Trucking Associations (ATA) and others petitioning FMCSA to amend its new definition due to the adverse impact it would have on industry with no or minimal increased safety benefits. The guidance issued by the agency on May 24, 2012 to clarify the "tank vehicle" definition was insufficient to address the concerns raised by ARA and other segments of the transportation industry. The adopted FMCSA definition expanded the definition of a tank vehicle far beyond CVSA's request and covers vehicles that are manifestly not tank vehicles. Specifically, among those vehicles included under the earlier definition were dry van trailers

hauling empty or filled cylinders and intermediate bulk containers (IBCs) designed for the carriage of liquids and gases.

Proposed Revision to “Tank Vehicle” Definition

ARA appreciates the FMCSA’s recognition of issues raised by the 2011 changes and is proposing additional changes to provide greater clarity to the “tank vehicle” definition. ARA supports most of the proposed revisions. Specifically, ARA supports the following:

- FMCSA’s proposal to regulate tanks with an individual capacity of 1,000 gallons or more;
- FMCSA’s proposal to regulate trucks carrying permanently attached tanks with an aggregate capacity of 1,000 gallons or more; and
- FMCSA’s proposal not to regulate portable intermediate bulk containers (IBCs) that are manifested as empty or filled only with residue.

ARA does not support FMCSA’s efforts to include commercial vehicles transporting IBCs with an individual capacity of 1,000 gallons or less as tank vehicles. ARA supports ATA’s petition that caused FMCSA to issue these additional changes. Prior to the issuance of this notice of proposed rulemaking, FMCSA stated it did not intend to regulate portable IBCs with an individual capacity under 1,000 gallons as they do not raise the same level of safety concerns. Portable IBCs do not raise the center of the truck’s gravity compared to a traditional tank truck and do not pose a surge or slosh risk. ARA believes that excluding portable IBCs with an individual capacity under 1,000 gallons will simplify enforcement and eliminate unnecessary and costly regulatory burdens without impacting safety.

The CVSA Petition that prompted FMCSA to revise the “tank vehicle” definition related to tank surge safety for permanently attached tanks. CVSA did not advocate for anything more than a CDL for drivers transporting portable IBCs. Trucks carrying portable IBCs do not raise the trucks center of gravity and they do not present surge / slosh risks. Excluding these portable tanks will simplify enforcement.

Agricultural retailers take great care in choosing the safest fleets to transport essential crop protection and plant nutrient materials to their farm and ranch customers. ARA members’ employ experienced and well-trained commercial drivers operating with a historically strong safety record. The portable IBCs are normally transported either full or empty or only residue. They do not usually transport partially filled tanks. FMCSA has not provided any proven safety rationale or data that should require our industry to obtain an extraneous endorsement on their Commercial Driver’s Licenses when moving these shipments, which are patently not tank vehicle shipments. ARA requests FMCSA support the recommendations submitted by ATA to ensure the proper scope of the tank vehicle definition and prevent these regulations from being expanded beyond what is necessary to address actual safety risks. ARA believes transporting portable IBCs with an individual capacity under 1,000 gallons should only require a CDL, as has historically been the case.

Sincerely,



Richard D. Gupton
Sr. Vice President, Public Policy & Counsel