

Notes from National RTAP Peer Call: Interstate Regulations - July 15, 2015

Panelists:

- Stephanie Gonterman, Vice President, Isaacs & Associates
- Randy Isaacs, Principal, Isaacs & Associates
- Angie Jones, General Manager, Grant County Transportation District
- Robin Phillips and Liz Taylor (National RTAP Facilitators)

Resources:

- CTAA's National Resource Center for Human Service Transportation, Motor Carrier Regulations Fact Sheet (very helpful!):
web1.ctaa.org/webmodules/webarticles/anmviewer.asp?a=344&z=71
- National Bus Traffic Association: www.bustraffic.org
 - You can become a member (only \$100 if you're a non-profit and a private carrier sponsors your membership).
 - NBTA facilitates the accounting and revenue sharing and helps with interline ticketing.
 - Interline ticketing allows a passenger to travel on more than one carrier on a single ticket. The entire trip can be on a single ticket even when crossing state lines. NBTA makes sure each carrier is paid for its portion of the trip, based on the pro-rated mileage each carrier operates.
- Federal Motor Carrier Safety Administration (FMCSA): <http://www.fmcsa.dot.gov/>

Questions:

See below for notes on some of the key items of interest discussed in the call including: insurance requirements, vanpools, how to apply for FMCSA operating authority, etc.

What is your experience developing a route/service across state lines?

- *Angie Jones:* Her agency, the Grant County Transportation District, is in Eastern Oregon, 8 miles across the OR/WA border (about 174 miles from Walla Walla, Washington). She has been attempting to set up a veterans' shuttle sponsored by the Highly Rural Veterans Grant program. To get to the closest vet medical center, she needs to cross the border into WA. Crossing into WA with a transit vehicle (whether demand-response, fixed route, or occasional) still requires FMCSA operating authority.

When Angie went to get the authority, the biggest barrier was the insurance requirement. Besides the \$5 million in insurance coverage, FMCSA did not accept the Special Districts pooled insurance her agency has. Grant County Transit is a member of the Oregon Special District Association and FMCSA has difficulty with insurance pools used by special districts, even if their insurance is adequate through the Special District pool, (municipal pooled insurance) for crossing state lines. Grant County Transit went to Senator Wyden about their special district insurance issue with FMCSA. The Senator supported resolving the

inconsistency, particularly as it was a veteran's issue. Angie's authority is still pending, however the insurance issue is resolved. FMCSA is accepting pooled insurance from municipal corporations.

- *Stephanie Gonterman*: Most agencies they (Isaac & Associates) work with have private insurance. The insurance companies help operators process the paperwork needed to get authority from FMCSA. An agency in Maine recently was able to get operating authority in under 8 weeks, but they had private insurance. FMCSA and USDOT may be getting together for a national bill to remove the barriers, but it must get approval on a state by state basis. If FMCSA will accept municipal pool insurance or special district insurance, it will be a game changer for agencies trying to cross state lines.
- NOTE: Stephanie and Robin are confirming the adjustment in FMCSA policy. If this is the case, and rural transit systems are now able to use public insurance pool coverage to meet the FMCSA authority insurance requirements, it is a significant change and will open up opportunities for public private partnerships and regional network development.

Can you clarify FMCSA insurance requirements vs. state requirements?

- *Randy Isaacs*: FMCSA requires \$5 million insurance. If you are an FTA grantee and comply with your state's limit, even though it's less than \$5 million, you do not have to meet FMCSA's insurance requirement, but you do have to file for FMCSA operating authority.
- *Stephanie*: In other words, while agencies still need to get FMCSA operating authority to operate interstate service or to interline with an intercity bus carrier, they only have to meet the liability limits set by the state(s) in which they operate. For the citation in the FMCSA regulations, see §387.33 on page 52651 (page 45 of the PDF) of the Federal Register from August 23, 2013, available here: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-23/pdf/2013-20446.pdf>

What does it mean to have FMCSA operating authority?

- *Randy*: FMCSA measures the fitness of a bus operator to transport passengers across state lines. When crossing state lines your service may fall under the regulation of the federal government (FMCSA), because of old interstate commerce laws, and with that comes oversight of issues of safety, including fitness of duty and hours of service for drivers (which relates to other insurance and safety regulations of FMCSA). Therefore, some transit vehicles need operating authority from FMCSA for their service to legally cross state lines.

What do you do to get FMCSA operating authority?

- *Angie*: Talk to your state DOT, go to FMCSA website (see above) and obtain a USDOT number, submit various forms (including OP1 form and BOC3) and registration, get insurance and work with your insurance company to help complete some of the paperwork.

A lot of paperwork is involved, some is complicated. You can't do it all online - some forms need to be printed signed and mailed to FMCSA.

- *Stephanie:* If you are an FTA grantee under certain programs and want the fee waiver, you can't do it online - much of it needs to be done manually and sent via FedEx, especially to waive the fee. Write on the top of your forms that you're an FTA grantee and include your grantee info, send the form via hard copy, and they will waive the fee. There are several forms that are required.

Once you apply, does your FMCSA authority ever expire?

- *Stephanie:* if your insurance is kept current and there are no safety issues/violations, your authority stays in place.
- *Angie:* The MCS-150 form must be updated every 2 years.

Are FTA Section 5310 subrecipients exempt from FMCSA authority if they are transporting their clients and not charging a fare?

- *Randy:* This likely will have to be answered by FMCSA. If you are accepting any money to pay for the trip, it is a transaction and they would say they have authority over that.
- *Angie:* Grant County Transit got federal grant funding, so they fell under the regulations, whether they got revenue from the passengers or not. The size of the vehicle also matters.

Do tribal transits need FMCSA authority when crossing state lines?

- *Randy:* Yes, the same FMCSA rules apply when crossing state lines.
- *Stephanie:* Many tribal transits use private insurance, so the insurance issue isn't as much of a problem.

How is a vanpool program affected when it crosses state lines? An existing vanpool program attached to MPO in CO (been around 20 years) that uses the CIRSA (Colorado Interagency Risk Sharing Agency, a pooled governmental insurance carrier) tried to create a service up to WY, but CIRSA wouldn't cover them once they crossed into WY, so they couldn't provide the service. They were told to get private insurance for the specific vans (7-8 passenger vans) doing that service. Do they need to go to FTA and/or FMCSA for approval?

- *Randy:* If you receive grant funding from FTA, you may be subject to these regulations. It depends on various factors, so you should check with FTA and FMCSA. Also note that an agency did this (they created a non-profit or sub-division of their organization and got private insurance for a portion of their fleet), and after a year the private insurance company contacted them and said they would cancel their coverage for the smaller portion of the fleet

if they didn't get coverage through the private company for the entire fleet (which they refused to do, and the insurance company canceled the insurance). So be aware of those market forces and negotiate with your insurance company with full understanding. You can make cancellation based on fleet percentage or number of vehicles insured a breach of contract if you put it in the contract. There are negotiable terms that the insurance company trying to get your business might agree to.

- *Robin*: FTA supports these services, but would require them to meet any FMCSA requirements. She suggests talking to CASTA (Colorado Association of Transit Agencies) - sounds like a state regulatory issue rather than a federal one.