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FMCSA REGULATIONS AS THEY APPLY TO FTA SECTION 5310/5311 PROVIDERS: A HANDBOOK

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CHAPTER 1 INTRODUCTION, HISTORY, AND FUTURE-ACTIONS

1.1 INTRODUCTION

1.1.1 Purpose

This digest offers guidance to state and local governments, transit agencies, and others who provide transportation services supported by FTA Section 5310 and 5311 grants. Section 5310 grants provide local operators with funding for public transportation for those who are elderly or have disabilities. Section 5311 grants provide funding to transit providers in rural areas. The digest is intended to help these operators and providers sort out which regulations from both the Federal Motor Carrier Safety Administration (FMCSA) and the FTA apply to them, as well as help them understand how to address those regulations cost-effectively.

1.1.2 The Issue

The FMCSA regulates interstate commerce, while the FTA regulates public transportation. When these areas overlap, such as when public transportation travels between states, there can be cause for confusion. Moreover, FMCSA regulations have traditionally been geared toward commercial businesses that operate in interstate commerce and are not inherently

designed for small public transit agencies providing specialized services. As such, FTA 5310 and 5311 grantees have found it difficult, confusing, and sometimes prohibitively expensive to meet FMCSA requirements when traveling interstate. On occasion, this has resulted in operators being cited by state highway patrols for unknowingly violating FMCSA regulations. This digest is intended to minimize those problems and provide a clear, concise account of how to meet all necessary regulations.

1.1.3 Using this Digest

This digest is a resource for FTA grantees to determine the applicability of FMCSA regulations to their operations. Reading it straight through from cover to cover is unlikely to be particularly useful for the average 5310 and 5311 provider. Rather, the digest is intended as a reference so that when a provider is determining how to comply with a particular regulation, the provider can look up the regulation in this digest and find a simple explanation of what is necessary.

1.1.4 Digest Organization

The digest presents a brief history of the FMCSA and provides information about up-

coming regulatory changes that may affect FTA grantees. This chapter is intended to provide context for the often confusing and overlapping regulations that follow. Chapter 2 of the digest provides the basics of what will be most useful for 5310 and 5311 providers. Each area of regulation is explicitly detailed with associated regulations and their applicability to FTA grantees. The following topics are covered:

- Registration/Licensing,
- Financial Responsibility,
- Operational Safety Requirements, and
- Interlining with Interstate Carriers.

Chapter 3 consists of supplementary information as follows:

- A Frequently Asked Questions (FAQs) section,
- A walkthrough of the application for motor passenger carrier authority and the motor carrier identification report,
- A list of firms that provide FMCSA process agents,
- A checklist of forms that are required in-vehicle and at the grantee's place of business,
- An FMCSA service center and field office roster,
- A sample hours of service grid,
- A sample driver vehicle inspection report,
- An application checklist,
- A glossary, and
- A flowchart of applicable FMCSA regulations.

Industry members requested this supplementary information, believing the information would be useful for the intended audience.

1.2 BACKGROUND

This section presents information helpful to understanding the content of this digest. The first part is a brief history of how and why FMCSA was created. This provides some context for understanding the reasons behind current FMCSA regulations and their potential overlap with FTA regulations. The second part describes the 5310 and 5311 grant programs and explains why confusion exists between the two sets of regulations.

1.2.1 History of FMCSA

The Interstate Commerce Commission Termination Act of 1995 terminated the Interstate Com-

merce Commission (ICC). Licensing and certain motor carrier functions were initially transferred to the FHWA within the U.S. DOT. FMCSA was established on January 1, 2000, within the DOT by the Motor Carrier Safety Improvement Act of 1999. All functions and responsibilities involving motor carrier safety were transferred to this new administration. The Act established Federal Motor Carrier Safety Administration (FMCSA) in order to reduce the number and severity of large-truck-involved crashes through more commercial motor vehicle inspections and compliance reviews, stronger enforcement, testing, record keeping, and sanctions. Certain provisions for FTA grantees that had been recognized by the ICC were not carried over to FMCSA requirements.¹ This helped create some confusion in the enforcement of and adherence to FMCSA regulations for 5310 and 5311 carriers.

1.2.2 FTA Section 5310 and 5311 Grant Programs

The primary purpose of this digest is to assist service providers receiving 5310 or 5311 funding grants administered by the FTA. These programs are longstanding and were recently reauthorized for another 6 years by the federal surface transportation legislation known as SAFETEA-LU. Each program is explained below.

- **Section 5310** provides funding to meet the special transportation needs of elderly persons and persons with disabilities. This funding program provides capital assistance to eligible grantees, including private nonprofit agencies, public bodies approved by the state to coordinate services for elderly persons and persons with disabilities and public bodies that certify to the

¹The ICC Termination Act of 1995 made a special provision for FTA 5307, 5310, or 5311 grantees traveling interstate. These grantees would be subject to the highest level of financial responsibility required by the states traversed by the grantee, rather than the minimum levels of financial responsibility set forth by FMCSA. However, FMCSA has not issued notice of that change to its field offices, nor have they updated the existing regulations to account for this special provision. This has led to confusion among insurers who cover these FTA grantees and has affected intercity service extension operations. This issue will be discussed in more detail in Chapter 2.

Governor that no nonprofit corporations or associations are readily available in an area to provide the service.² Funds are apportioned based on each state's share of the populations of those who are elderly or have disabilities. Capital projects are eligible for funding. Most funds are used to purchase vehicles, but acquisition of transportation services under contract, lease, or other arrangements and state program administration are also eligible expenses.

- **Section 5311** provides funding for public transportation in nonurbanized areas, defined as areas with fewer than 50,000 people. Eligible grantees include public bodies and private non-profit organizations. Section 5311 financial assistance may be used for expenses related to capital, administrative, operating, program administration, planning, and technical assistance. The state must use 15% of its annual apportionment to support intercity bus service, unless the Governor certifies that these needs of the state are adequately met.

FTA restricts 5310 and 5311 funding based on language in federal transportation laws. These restrictions constitute one set of regulations faced by these programs. However, a 5310 or 5311 provider may also be subject to FMCSA regulations, particularly if the provider's service crosses state lines.

Both 5310 and 5311 programs frequently provide grants to small, often not-for-profit entities with limited resources. Unlike major transit providers, these agencies typically are ill-equipped to manage a large regulatory burden. This digest is intended to help them manage that burden cost-effectively.

1.3 FUTURE ACTIONS-UNIFIED REGISTRATION SYSTEM

FMCSA is working to replace four current identification and registration systems with a single, on-line Unified Registration System (URS) so as to consolidate and simplify current Federal registration processes and to increase public access to data about interstate motor carriers, property brokers, and freight forwarders. The URS would apply to every motor carrier, freight forwarder, and broker required to register with DOT under 49 CFR 390.19 or 49 U.S.C. 13901, except certain Mexican carriers. The entities

covered by this system would be required to register with FMCSA and periodically update registration information provided on a newly proposed registration form. Section 5307, 5310, and 5311 grantees would be eligible to use the URS to simplify the registration process. This proposal applies to entities already subject to FMCSA Commercial Regulations, the Federal Motor Carrier Safety Regulations (FMCSRs), and the Hazardous Material Regulations (HMRs).

In 1996, the agency issued an advance notice of proposed rulemaking (NPRM) announcing plans to develop the replacement system. Several factors delayed the completion of the NPRM, including the stipulation that the Single State Registration System (SSRS) could be eliminated only if fees from the proposed system replace lost revenue to states (estimated to exceed \$100 million). Other issues were the need to establish a minimum apportionment for all states and completing other agency rulemakings that would have a bearing on the proposed replacement system (e.g., NAFTA, New Entrant, Hazardous Materials Permitting rules). Finally there were efforts to lessen the economic burden to small entities (e.g., seeking alternative means of financing the safety audit so its cost could be eliminated from the fee structure), and obtaining OST approval for the proposed fee structure.

Congress passed SAFETEA-LU on August 10, 2005, and imposed additional requirements for the URS. Most notably, Congress directed the Secretary to appoint a Board of Directors composed of federal, state and motor carrier industry representatives to develop, set fees for, and define rules for operating the Unified Carrier Registration System Plan and Agreement—the replacement system for the SSRS. FMCSA is modifying the URS rule to incorporate SAFETEA-LU requirements and respond to comments to the 2005 NPRM.

Ideally, the URS will be a simpler and easier registration system and could make some of the information in this digest obsolete; however, to the extent that it does so, it should also make the registration system easier and less confusing for all parties, including FTA grantees.

CHAPTER 2 FMCSA REGULATIONS AND HOW THEY APPLY TO 5310 AND 5311 PROVIDERS

This chapter looks at specific FMCSA regulations and their application to transit providers under 5310 and 5311 grant programs. The first part of the

²<http://www.fta.dot.gov/files/Sec5310.doc>.

chapter deals with general applicability issues. This first section provides a basis for understanding why certain regulations may apply to certain providers. Details about the applicability of specific regulations are discussed in the remainder of the chapter. The following topics are covered in detail:

- Registration/licensing,
- Financial responsibility,
- Operational safety requirements, and
- Interlining with interstate carriers.

This digest discusses general applicability as well as the requirements for compliance for each of these topics. Readers should have enough information to ensure that their organizations comply with all necessary regulations, while not burdening themselves with measures not required.

2.1 APPLICABILITY

This section summarizes how and why FMCSA regulations apply to FTA providers, but it does not provide specifics on the requirements each of these providers must meet if the regulations do apply to them. These specifics are provided later in this chapter.

2.1.1 For-Compensation

FMCSA defines a **for-compensation** motor carrier as an entity engaged in transporting goods or passengers for compensation. There is no such thing as a transit provider operating under the 5310 or 5311 programs not operating for compensation. All 5310 and 5311 operators, by definition, receive some federal grant money for operating their services, and this grant money is sufficient to qualify all providers as “for-compensation” carriers. **Even if no farebox revenue is collected, no state provides a subsidy, and drivers operate the vehicles on a volunteer basis, if any federal grant money is used to support the service in any way, it is subject to the FMCSA regulations detailed in this chapter.**

Receipt of FTA grant money qualifies all Section 5310 and 5311 grantees as “for-compensation” motor carriers.

Other definitions can be found in the Glossary in Section 3.9.

2.1.2 Determining Applicability Based on Design/Use of Vehicle

The applicability of an FMCSA regulation will often depend on how many passengers are potentially being transported. The language in several regulations links applicability to whether a vehicle is “designed or used” to transport more than a certain number of people. This means that if a vehicle is *designed* to carry more than a certain number of passengers, then it must meet these regulations. If the vehicle is designed to carry fewer than that number of passengers, but is actually *transporting* more than that number, the vehicle is subject to the regulations (and to fines for carrying more than its intended number of passengers). To not be subject to these regulations, the vehicle must both be *designed* for fewer than the number specified **AND** *transporting* fewer than the number specified.

In general, if carriers are engaged in interstate travel, are for-compensation (meaning all 5310/5311 providers), and operating a vehicle designed or used for nine or more passengers (including the driver), then they must meet all the requirements detailed in this chapter.³ Exemptions are noted in individual sections where applicable.

Section 3.10 provides a flowchart detailing the applicability of FMCSA regulations based on design and use of vehicles.

Note: Transit carriers operating vehicles designed for fewer than 9 passengers and carrying fewer than 9 people do not need to meet the requirements detailed in this chapter.

2.1.3 Exemptions for Local Units of Government

Local units of government are exempted from what are commonly known as FMCSA’s operational safety requirements. FMCSA defines a **local unit of**

³In the past, a for-hire carrier operating a 9–15 passenger vehicle in interstate commerce that traveled more than 75 air miles would be subject to FMCSA safety regulations. The recent SAFETEA-LU reauthorization removed the 75 air-mile qualification, and the rule will be revised in the upcoming rulemaking.

government as a city, town, borough, county, parish, district, or other public body created by or pursuant to state law with total population of 3,000 individuals or less. Local units of government are exempted from the following:

- Rules governing applications for Operational Authority (Part 365)—Operating authority application;
- Safety Fitness Procedures (Part 385)—New Entrant Safety Monitoring;
- Federal Motor Carrier Safety Regulations, General (Part 390)—Markings (USDOT#);
- Driver Qualifications (Part 391)
 - Responsibilities of drivers,
 - Driver qualification file, and
 - Certificate of medical examination;
- Hours of Service (Part 395)
 - Maximum driving times and
 - Driver’s record of duty status;
- Vehicle Inspection, Repair, and Maintenance (Part 396)
 - Driver vehicle inspection reports,
 - Periodic inspection, and
 - Inspection of vehicles in operation.

Governmental operators must still comply with the following FMCSA requirements discussed in further detail in this chapter.

- Rules governing applications for Operational Authority (Part 365),
- Financial Responsibility (Part 387),
- Commercial Drivers License (Part 383), and
- Controlled Substances and Alcohol Testing (Part 382 and/or FTA Part 655).

Note: The exemptions for local units of government outlined in this section do not apply to governmental subcontractors, even if they are non-profit organizations.

2.2 APPLICATION FOR OPERATING AUTHORITY

This section provides details on applying for operating authority, including which carriers must apply, licensing and MC numbers, eligibility for registration fee waivers, and how to obtain a fee waiver.

2.2.1 Which Carriers Must Apply

Motor carriers traveling interstate that meet either of the following criteria must apply for operating authority:⁴

- 10,001+ pounds or
- Designed or used to carry nine or more passengers (including the driver).

2.2.2 Licensing and MC Numbers

Before beginning operations, grantees must file for operating authority in order to obtain a licensing or Motor Carrier (MC) number. They may either complete the OP-1(P) application for motor passenger carriers on paper (See Section 2.4.2), or over the internet at <http://safer.fmcsa.dot.gov>.

Once the application is received and accepted, a grantee should receive a letter from FMCSA informing them of their MC number and any additional information needed to comply with FMCSA’s registration requirements.

After the grantee’s insurance company has filed the correct insurance form and the grantee’s process agent has filed the BOC-3 Designation of Process Agent form, an official operating authority certificate and/or permit will be sent to the grantee.⁵ The grantee may begin operations on receipt of this official certificate and/or permit.

Section 3.8 provides a checklist of actions that grantees must take to apply for operating authority.

Because of the difficulties in obtaining a fee waiver through the internet (see Section 2.2.4 below), 5310 and 5311 grantees are encouraged to apply for operating authority on paper.

2.2.3 Registration Fee Waiver Eligibility

All FTA grantees are eligible for a registration fee waiver when applying to FMCSA for operating authority. This means that Section 5310 and 5311

⁴Carriers must also be “for-compensation” but, as established in Section 1.1, all Section 5310 and 5311 grantees are considered to be operating for-compensation.

⁵For the BOC-3 form, see <http://www.fmcsa.dot.gov/documents/boc.pdf>.

