

Appendix 7.B – Supplemental Information on Charter Service Restrictions

As introduced in Chapter 7, the use of FTA-funded vehicles and facilities to provide charter services is prohibited except under specific circumstances defined in FTA's Charter Service rule, 49 CFR Part 604 (<http://edocket.access.gpo.gov/2008/pdf/08-86.pdf>). These specific circumstances are summarized below; for additional guidance, subrecipients should contact MTA and refer to FTA's charter service web page, <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service>.

Exemptions

The following types of service are *exempt* from the charter service rules:

- Subrecipients transporting their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests to and from transit facilities for oversight purposes.
- Subrecipients transporting their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.
- Subrecipients in non-urban areas transporting their employees, other transit system employees, transit management officials, and transit contractors and bidders for training to destinations outside the service area.
- Subrecipients of FTA funding are exempt from the FTA charter rules for charter services that support "program purposes." "Program purposes" are defined as "transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals)." "Program purposes" do not include exclusive service for groups formed for purposes unrelated to the special needs of the targeted populations. If a subrecipient wishes to provide charter service to a group or organization whose purpose is unrelated to the special needs of the three targeted groups, then the full FTA Charter Service rule applies, and the service is not exempt.

Services which fall under any of the above exemption categories are always exempt from the Charter Service rule.

If a service is not exempt, it still might allowable under one of the exceptions, described in the next section.

Exceptions

In addition to the previously described exemptions, the FTA Charter Service rules allow some charters to be operated under certain circumstances, referred to as **exceptions**. These exceptions require certain procedures and documentation, as noted for each type of exception.

- **Government officials on government business** -- A subrecipient may provide up to 80 hours of charter service per year to government officials (Federal, State, and local) for official government business, which can include non-transit related purposes, if the service is within the subrecipient's own geographic service area and the subrecipient does not generate revenue from the charter service, except as required by law.

If more than 80 hours are requested - If an FTA subrecipient wishes to provide more than 80 hours of charter service to government officials for government officials in a year, they may petition the FTA Administrator for permission to do this. The petition must contain:

1. date and description of the official government event and the number of charter service hours requested;
2. explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); and
3. evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area. (see section titled "When No Registered Charter Provider Responds to Notice From an FTA Recipient" for notification requirements.)

The petition must be sent to the FTA Administrator by facsimile to (202) 366-3809 or by e-mail to ombudsman.charterservice@dot.gov.

The FTA Administrator will review petitions that meet the requirements, seek additional information as necessary, and issue a written decision. If approved, the subrecipient must retain a copy of the Administrator's approval for at least three years and include it in the subrecipient's quarterly report posted on the charter registration website.

Recordkeeping - Subrecipients must maintain the following records for each charter trip provided to government officials for at least three years:

- name, address, phone number, and email address of the government organization
 - date and time of service
 - number of passengers (specifically noting the number of government officials on the trip)
 - origin, destination, and trip length (miles and hours)
 - any fee collected
 - vehicle number for the vehicle used to provide the service
 - a clear statement identifying that the charter service was provided under the government officials on government business exception
- **Qualified Human Service Organizations (QHSOs)** -- A subrecipient may provide charter service to a QHSO for the purpose of serving individuals with
 - mobility limitations related to advanced age (i.e., seniors),
 - disabilities; or
 - low income.

An organization becomes a QHSO by either receiving funding, directly or indirectly, from any of the 64 Federal programs listed in Appendix A of 49 CFR Part 604 or by registering on the FTA charter registration web site at least 60 days before the date of the first request for charter service (i.e., the subrecipient is not permitted to provide the charter service until at least 60 days have passed since the QHSO registered on the FTA site).

Recordkeeping - Subrecipients must maintain the following records for each charter trip provided to a QHSO for at least three years:

- name, address, phone number, and email address of the QHSO;
- date and time of service
- number of passengers
- origin, destination, and trip length (miles and hours)
- any fee collected
- vehicle number for the vehicle used to provide the service
- a clear statement identifying that the charter service was provided under the QHSO exception

- **Leasing FTA-funded equipment and drivers** -- A subrecipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service **only if they receive the MTA's prior approval**, the proposed arrangement will comply with all of FTA's requirements pertaining to vehicle leasing detailed on page VI-5 of FTA circular 9070.1G, and the following four conditions exist:
 1. the private charter operator is registered on the FTA charter registration web site;
 2. the registered charter provider owns and operates buses or vans in a charter service business;
 3. the registered charter provider received a request for charter service that exceeds its available capacity (of either number of vehicles or number of accessible vehicles operated by the registered charter provider); and
 4. the registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area (i.e., the FTA recipient cannot lease out the vehicles if another registered charter provider could do so).

Subrecipients May NOT Engage in Leasing Activity without PRIOR MTA Approval. Subrecipients that engage in leasing without prior MTA approval are subject to losing the funding involved.

Recordkeeping - Subrecipients must maintain the following records for each instance of leasing FTA-funded vehicles or drivers to a registered charter provider for at least three years:

- name, address, phone number, and email address of the registered charter provider
- number of vehicles leased, types of vehicles leased, and vehicle identification numbers
- documentation presented by the registered charter provider in support of each of the above four conditions
- a clear statement identifying that the charter service was provided under the vehicle/driver leasing exception

- **When no registered charter provider responds to notice from an FTA recipient** – If a subrecipient receives a request to provide charter service that does not qualify for one of the preceding exemptions and exceptions, but the subrecipient is still interested in providing the service, there is another possible exception. Under these circumstances, the subrecipient could provide formal notice (as described below) of interest in providing the charter service, and if no registered private operator responds to the notice, the subrecipient would be allowed to provide that service.

[If the subrecipient is not interested in providing the requested charter service, they can decline, and may wish to refer the requestor to FTA’s charter registration web site to find a provider.]

Providing notice of interest in providing a requested charter service – To qualify for the preceding exception under the charter rule, the subrecipient must go to the FTA Charter Registration website and identify the registered charter providers in the subrecipient’s geographic service area that must be notified.

The subrecipient must then send an email to each of the identified firms providing:

- customer name, address, phone number, and email address (if available);
- requested date of service;
- approximate number of passengers;
- type of equipment requested;
- trip itinerary and approximate duration; and
- fare the subrecipient intends to charge for the service.

If the request for charter service was received by the subrecipient by 2 p.m., the notice must be emailed to the registered charter providers by the close of business that day. If the request for charter service was received by the subrecipient after 2 p.m., the notice must be emailed to the registered charter providers by the close of business the following day.

If a subrecipient receives an “undeliverable” notice in response to its email notice, the notice must be sent via fax with a fax confirmation documentation.

If no registered charter provider responds within the specified deadlines, the subrecipient can provide the service. The response deadline is 72 hours for service to be provided within 30 days, or 14 calendar days for service to be provided more than 30 days in the future.

If a registered charter operator responds, the subrecipient cannot provide the service (even if the private operator does not ultimately provide the service).

This notification process must be undertaken for each such request.

Recordkeeping - Subrecipients must maintain the following records for each charter trip provided in the event no registered charter provider responds to subrecipient's notice for at least three years:

- electronic copy of the e-mail notice and the list of registered charter providers that were sent the e-mail notice of the requested charter service
 - record of any undeliverable email notice and confirmation of the fax sent
 - name, address, phone number, and email address of the group chartering the trip
 - date and time of service
 - number of passengers
 - origin, destination, and trip length (miles and hours)
 - any fee collected
 - vehicle number for the vehicle used to provide the service
 - a clear statement identifying that the charter service was provided under the "no registered charter provider responds to notice" exception
- **By agreement with all registered charter providers** -- A subrecipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.

If a new charter provider registers in the geographic service area subsequent to the initial agreement, the subrecipient may continue to provide charter service under the previous agreement with the other charter providers up to 90 days without an agreement with the newly registered charter provider.

Any of the parties to such an agreement may cancel the agreement at any time after providing the subrecipient a 90-day notice.

Recordkeeping - Subrecipients should maintain the following records for at least three years following any charter activity provided under this exception:

- written agreements with all registered charter providers in their geographic service area
- details about individual charter trips as listed above
- a clear statement identifying that the charter service was provided under the “by agreement with all registered charter providers” exception
- **Upon FTA Administrator approval of a petition** - An FTA recipient may petition the FTA Administrator, as described below, for an exception to the charter service regulations to provide charter service directly to a customer for:
 - Events of regional or national significance - The petition must be submitted to the FTA Administrator least 90 days before the first day of the event, include a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, a certification that the recipient has exhausted all of the registered charter providers in its geographic service area, and be submitted at least 90 days before the first day of the event.
 - Procedures for notifying registered charter providers are described under “When No Registered Charter Provider Responds to Notice From an FTA Recipient.”
 - Hardship (available only in rural and small urban areas in cases where the deadhead time of the registered charter provider exceeds total trip time from pick-up to drop-off, including wait time) -- The petition must describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service.
 - At the discretion of the FTA Administrator, for unique and time sensitive events that are in the public's interest (e.g., funerals of local, regional, or national significance) -- The petition must describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

Petition requirements - In addition to the requirements specific to each of the above types of petitions, the petition must include the following:

- date and description of the event;
- type of service requested and type of equipment;
- anticipated number of charter service hours needed for the event;

- anticipated number of vehicles and duration of the event.

The petition must be sent to the FTA Administrator by facsimile to (202) 366-3809 or by e-mail to ombudsman.charterservice@dot.gov. The FTA Administrator will review petitions that meet the requirements, seek additional information as necessary, and issue a written decision. If approved, the subrecipient must retain a copy of the Administrator's approval for at least three years and include it in the subrecipient's quarterly report posted on the charter registration website.

Recordkeeping - Subrecipients must maintain the following records for each charter trip provided under an FTA-approved petition for at least three years:

- copy of the petition
- copy of the Administrator's approval
- details about individual charter trips as listed above
- a clear statement identifying that the charter service was provided under the FTA Administration petition exception

Reporting Requirements for All Charter Service Exceptions

If a subrecipient provides charter service under the exceptions (i.e., outside the exemptions), it must report all such service to the FTA by posting the required records on the FTA charter registration web site 30 days after the end of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

Specific origin and destination information may be generalized for safety and security reasons. In this case, the record of the service must describe the reason why the specific origin and destination information was excluded.

Complaints and Remedies

A private operator can file a complaint against an FTA subrecipient for failing to follow these regulations. There is a formal complaint procedure, detailed in 49 CFR Part 604. If the FTA finds a violation, it may determine a remedy that could include withholding of funds, barring a recipient from receiving future funds, or suspension/debarment. A matrix of dollar penalties per violation, ranging from \$499 to \$25,000, was published as Appendix D (<http://edocket.access.gpo.gov/2008/pdf/E8-18444.pdf>) to 49 CFR Part 604.

Additional Resources Related to Charter Service Restrictions

The Charter Service section of FTA's website includes links to resources providing additional guidance and clarification of the rules.

<https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service>

Subrecipients are especially encouraged to read Appendix C to 49 CFR Part 604, "Charter Service Questions and Answers."

<http://edocket.access.gpo.gov/2008/pdf/08-86.pdf>