

16. CHARTER BUS

PURPOSE OF THIS REVIEW AREA

Recipients are prohibited from using FTA-funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Recipients are allowed to operate community-based charter services pursuant to certain regulatory exceptions.

QUESTIONS TO BE EXAMINED

1. Does the recipient operate or maintain charter bus service outside of an exemption or exception?
2. If the recipient operates charter bus service under an authorized exception, does it maintain notices and records and has it reported charter bus service to the Federal Transit Administration (FTA) on time?
3. Does the recipient ensure subrecipient, contractor, or lessee compliance with charter bus service and records requirements?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Charter service log, along with a clear statement identifying which exception the recipient relied upon when it provided charter service
- List of real property (including facilities) and equipment used in charter bus operations for:
 1. recipients
 2. subrecipients
 3. contractors
 4. lessees
- Listing of subrecipients, contractors, and lessees that operate charter service

CB1. Does the recipient operate or maintain charter bus service outside of an exemption or exception?

BASIC REQUIREMENT

Except under limited exceptions, recipients may not use FTA assistance to operate or maintain charter bus service.

APPLICABILITY

Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER

The regulations define charter service as follows:

- (1) Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service:
 - A third party pays a negotiated price for the group
 - Any fares charged to individual members of the group are collected by a third party
 - The service is not part of the regularly scheduled service or is offered for a limited period of time
 - A third party determines the origin and destination of the trip as well as scheduling

(2) Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration and:

- A premium fare is charged that is greater than the usual or customary fixed-route fare, or
- The service is paid for in whole or in part by a third party

The charter regulations include exemptions and exceptions.

Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. The charter service regulation exempts the following services:

CHARTER SERVICE EXEMPTIONS
1. Transportation of Employees, Contractors, and Government Officials: Recipients are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.
2. Private Charter Operators: The prohibitions do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under the over-the-road bus accessibility program or to non-FTA-funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance.
3. Emergency Preparedness Planning and Operation: Recipients are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests for emergency preparedness planning and operations.
4. Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to recipients that use Federal financial assistance from FTA for program purposes, that is, transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities) under Section 5310, 5311, 5316, or 5317. "Program purposes" does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.
5. Emergency Response: Recipients are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.
6. Recipients in Non-Urbanized Areas: Recipients in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements. The charter regulation treats as exceptions the following community-based charter services included in the below table. The recipient must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

CHARTER SERVICE EXCEPTIONS				
Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
1. Government officials on official government business	Yes (if the recipient petitions the Administrator for additional charter service hours)	Yes	Yes	<p>If additional charter service hours are needed (beyond the 80 annual service hours allowed), the recipient must petition the Administrator. The petition must include:</p> <p>Date and description of the official government event and the number of charter service hours requested</p> <p>Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances)</p> <p>Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area</p>
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request
3. Leasing FTA funded equipment and drivers	No	Yes	Yes	Evidence that registered charter providers have exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area
4. When no registered charter provider responds to notice from a recipient	Yes	Yes	Yes	None

CHARTER SERVICE EXCEPTIONS				
Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
5. Agreement with registered charter providers	Yes (if a newly registered charter provider joined the UZA after the initial agreement)	No	No	Properly executed agreements with all registered charter providers in recipient's geographic service area
6. Petitions to the Administrator	Yes	No	No	Recipient must demonstrate how it contacted registered charter providers and how the recipient will use the registered charter providers in providing service to the event. Recipient must also certify that it has exhausted available registered charter providers' vehicles in the area

The charter regulations do not apply to equipment that is solely funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

INDICATORS OF COMPLIANCE

- a. *During the review period, did the recipient provide unscheduled service to a third party for a negotiated price or to the public for events or functions at a premium fare? If no, move to question CB3.*
- b. *If yes, did any of the six exemptions included in the exemption chart above apply?*
- c. *If no exemptions apply, do any of the six exceptions included in the exception chart above apply?*
- d. *If no exemptions or exceptions apply, is the service operated and maintained using only locally funded assets?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's website, printed public information, and local telephone listing to determine if charter service is advertised. Obtain and review the recipient's source of funds provided in the Financial Management and Capacity review area to determine if charter revenue is recorded. Obtain and review the recipient's charter service logs for charter service provided. If the recipient is operating under an exemption further follow-up is not required.

Review the recipient's listing of assets used for charter service (i.e., facilities and equipment) and cross reference to the Federal asset listing provided in the Satisfactory and Continuing Control review area to verify that federally funded assets are not used in charter service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it operates charter service that does not comply with the requirements under a limited exemption or exception.

DEFICIENCY CODE CB1-1: Charter service not operated under exemption or exception

SUGGESTED CORRECTIVE ACTION: The recipient must cease operating charter service that does meet an exemption or exception. If the recipient wishes to continue to provide charter service, the recipient must submit to the FTA regional office procedures for ensuring that services are consistent with an exemption or exception allowed under the charter regulation and evidence that the procedures have been implemented.

The recipient is deficient if it operates service with locally funded equipment but stores or maintains it in an FTA-funded facility.

DEFICIENCY CODE CB1-2: FTA-funded facility(ies) used in charter service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for ensuring that locally funded equipment used to provide charter service is not stored and/or maintained in an FTA-funded facility.

GOVERNING DIRECTIVE

49 CFR Part 604.2 Applicability

(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its 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.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

49 CFR Part 604.12 Reporting requirements for all exceptions

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart 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.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

49 CFR Part 604-Appendix C (f) Miscellaneous (65). Frequently Asked Questions

Q: If a recipient operates assets that are locally funded, are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

CB2. If the recipient operates charter bus service under an authorized exception, does it maintain notices and records and has it reported charter bus service to the FTA on time?

BASIC REQUIREMENT

All recipients that operate charter service under an authorized exception are required to maintain notices and records for at least three years and report to the FTA quarterly.

APPLICABILITY

Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER

Recipients providing charter service under the following four exceptions must report to FTA on charter activity:

- Government officials (604.6)
- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9)

Recipients must post the required records on the FTA charter website within 30 days of the end of each calendar quarter as follows:

- October 1 to December 31: January 30
- January 1 to March 31: April 30
- April 1 to June 30: July 30
- July 1 to September 30: October 30

The recipient reports for itself and its subrecipients, contractors, and lessees, except subrecipients that are also direct FTA recipients for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website.

When charter service is provided under one or more of the exceptions under this regulation, the recipient, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The recipient may maintain the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The recipient may exclude specific origin-to-destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

INDICATORS OF COMPLIANCE

- a. What records does the recipient maintain of charter bus service provided in the past three years?*
- b. Has the recipient reported all charter bus service quarterly? .*

INSTRUCTIONS FOR REVIEWER

Review the recipient's source of funds provided in the Financial Management and Capacity review area to determine if charter revenue is recorded. Review the FTA charter registration website to verify which exceptions were relied upon to provide the charter service and if the subrecipient reported service provided. Obtain and review the recipient's electronic charter service records, along with a clear statement identifying which exception the recipient relied upon when it provided the charter service and compare to the information entered on the FTA charter registration website for consistency. Review the FTA charter registration website to verify that the recipient reported timely, 30 days after the end of each calendar quarter (i.e., January 30, April 30, July 30, and October 30).

Note: Reporting is only required when a recipient, subrecipient, contractor, or lessee provides charter service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not maintain notices and records for at least three years.

DEFICIENCY CODE CB2-1: Charter bus records and notices not maintained

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for maintaining notices and records for at least three years and evidence that the procedures have been implemented.

The recipient is deficient if it did not report to the FTA quarterly for all applicable exceptions on time.

DEFICIENCY CODE CB2-2: Charter reports not submitted on time

SUGGESTED CORRECTIVE ACTION: The recipient must submit the missing quarterly reports in the FTA charter reporting website. The recipient must submit to the FTA regional office procedures for submitting the required information for all applicable exceptions on time.

GOVERNING DIRECTIVE

FTA Charter Service Quarterly Exceptions Reporting Form and Instructions 49 CFR Part 604.2 Applicability

(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its 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.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

49 CFR Part 604.12 Reporting requirements for all exceptions

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart 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.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

CB3. Does the recipient ensure subrecipient, contractor, or lessee compliance with charter bus service and records requirements?

BASIC REQUIREMENT

Except under limited exceptions and exemptions, contractors, lessees, and subrecipients may not use FTA assistance to operate or maintain charter bus service. Those that do operate charter service under an authorized exemption or exception with FTA-funded assets are required to maintain notices and records for at least three years and report to the recipient quarterly.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

The recipient must ensure that all subrecipients, contractors, and lessees comply with charter bus service, notice, and reporting requirements. See above for detailed explanation of charter bus requirements.

INDICATORS OF COMPLIANCE

- a. *How does the recipient ensure that contractors and lessees comply with FTA charter requirements?*
- b. *How does the recipient ensure that contractors and lessees maintain records for charter bus service provided for three years and obtain the necessary information to report charter service quarterly?*
- c. *How does the recipient ensure that subrecipients comply with FTA charter requirements?*
- d. *How does the recipient ensure that subrecipients maintain records for charter bus service provided for three years and obtain the necessary information to report charter service quarterly?*

INSTRUCTIONS FOR REVIEWER

For subrecipients, contractors, and lessees selected for a site visit:

- Search the FTA charter website to determine if the recipient reported that the subrecipients, contractors, and lessees provided charter service.
- Review the subrecipient agreements, contracts, or lease agreements for charter bus provisions and verify that the recipient fully communicated its policy and the charter rules related to FTA-funded assets. Review the recipient's oversight procedures and oversight files to determine how the recipient verified compliance with charter regulations.
- Review the subrecipient's, contractor's, and lessee's websites and public information materials to determine if charter service is provided. During the site visit(s), discuss charter service.
- During facilities tours determine if locally funded assets used in charter bus service are stored in FTA-funded facilities or if FTA-funded assets are used in charter bus service and not reported.

- Discuss charter record-keeping and reporting requirements and practices. Using a quarterly report submitted in the FTA Charter Registration website: (1) identify any service provided by a subrecipient, contractor or lessee, and (2) obtain the subrecipient's, contractor's or lessee's charter logs and confirm what is reported with the record.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that contractors and lessees comply with the charter service requirements.

DEFICIENCY CODE CB3-1: Insufficient oversight of contractor and/or lessee charter service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that contractors and lessees comply with the charter bus service requirements and evidence that the procedures have been implemented.

The recipient is deficient if it does not ensure that contractors and lessees that operate charter bus service maintain records for three years and provide the necessary information for submitting quarterly reports timely.

DEFICIENCY CODE CB3-2: Insufficient oversight of contractor and/or lessee charter records and reporting

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that contractors and lessees maintain records for charter bus service provided for three years and provide the recipient the necessary information for submitting quarterly reports timely.

The recipient is deficient if it does not ensure that subrecipients comply with charter service requirements.

DEFICIENCY CODE CB3-3: Insufficient oversight of subrecipient charter service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients comply with the charter service requirements and evidence that the procedures have been implemented.

The recipient is deficient if it does not ensure that subrecipients that operate charter bus service maintain records for three years and provide the necessary information for submitting quarterly reports timely.

DEFICIENCY CODE CB3-4: Insufficient oversight of subrecipient charter records and reporting

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients maintain records for charter bus service provided for three years and provide the recipient the necessary information for submitting quarterly reports timely.

GOVERNING DIRECTIVE

2 CFR 200.318(b)

“Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

2 CFR 200.331 Requirement for pass-through entities

All pass-through entities must: ... (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations,

and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- 1) Reviewing financial and performance reports required by the pass-through entity.
- 2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on site reviews, and other means.
- 3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- 1) Providing subrecipients with training and technical assistance on program-related matters;
- 2) Performing on site reviews of the subrecipient's program operations; and
- 3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Did the recipient on behalf of itself or a subrecipient, contractor, or lessee request an advisory opinion from FTA's Office of Chief Counsel? If yes, what was the outcome? Was the advisory opinion followed?
2. Did any registered charter provider request a cease and desist order against the recipient, subrecipient, contractor, or lessee? If yes, what was the outcome? Was the cease and desist order followed?
3. Did any registered charter provider, or its duly authorized representative, file a complaint with the Office of the Chief Counsel against the recipient alleging noncompliance with the charter regulation? If yes, did the recipient file an answer within 30 days of the date of the FTA notification?
4. Does it appear that any subrecipients, contractors, or lessees are providing charter bus service outside of an authorized exemption or exception?
5. Did background research or site visit observations reveal any other potential charter bus issues or concerns not covered above?

REFERENCES

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

USEFUL WEBLINKS

1. Charter Home Page (includes dockets, reporting forms and instructions, and other resources)

2. Charter Registration Website
3. Questions and Answers
4. Regulations.gov
5. FTA Charter Reports