

**FEDERAL CHARTER RULE GUIDANCE FOR
MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT)
SECTION 5310 AND SECTION 5311 SUBRECIPIENTS**

INTRODUCTION

On January 14, 2008, FTA released its final rule on charter service. The final rule amends regulations which govern the provision of charter service by recipients of federal funds from FTA. The final rule clarifies the existing requirements, sets out a new definition of charter service, allows for electronic registration of private charter providers, includes a new provision allowing private charter operators to request a cease-and-desist order, and establishes more detailed complaint, hearing, and appeal procedures.

This document provides information for transit agencies that receive federal funding from the Michigan Department of Transportation (MDOT) under Sections 5310 and 5311. For the purpose of this MDOT guidance, throughout this document the term “transit agency” means any agency that receives Section 5310 or 5311 federal funding from MDOT (or from a local agency that receives its funding from MDOT.)

For your reference, the section of the federal charter rule is provided in the parentheses.

For additional information, visit the FTA Charter Bus Service Rule and Guidance website at:

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

PURPOSE OF THE CHARTER REGULATIONS (§604.1)

The purpose of charter regulations is to protect private charter operators from unauthorized competition from recipients of federal financial assistance.

APPLICABILITY

How does a transit agency determine if the charter regulations apply to their services? Use the following steps as a guide.

Step 1: Does your transit agency receive FTA financial assistance? If YES, the charter regulations probably apply. Move on to Step 2.

Step 2: Look at the exemptions. If the service meets an exemption, it is NOT regulated charter and none of the regulations apply. If it does not meet any of the exemptions, then the regulations may apply. Move on to Step 3.

Step 3: Look at the definition of charter service. If the service fits within that definition, then the regulations apply (i.e., the service is regulated charter). Move on to Step 4.

Step 4: Determine if the activity meets one of the exceptions. If so, you may provide the service, but the regulations still apply, which means you have specific record keeping requirements and you are subject to complaints and findings of violations.

Step 5: If it does not meet an exemption or an exception, the service is prohibited.

Remember - you may not provide charter service if a registered charter provider indicates an interest in providing the service, even if the registered charter provider does not ultimately reach an agreement with the customer.

It is possible that a complaint will be filed against an agency that performs service that is exempt or that meets an exception. However, the complainant must show by a preponderance of the evidence that the agency provided charter service and that such service did not fall within one of the exemptions or exceptions.

The regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained with only local funds.

EXEMPTIONS (§604.2)

An exemption is when the service is not considered regulated charter. The charter regulations do not apply.

The federal charter regulations do NOT apply in the following situations:

1. A transit agency that is 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.
2. Private charter operators that receive, directly or indirectly, federal financial assistance under FTA programs or other specified programs.
3. A transit agency that is 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.
4. A transit agency that uses federal financial assistance from FTA, for program purposes only. ("Program purposes" is defined as transportation that serves the needs of either human service agencies or targeted populations such as seniors, individuals with disabilities, and/or low-income individuals.)
5. 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. For the first 45 days, the transit agency is exempt. If the

emergency lasts more than 45 days, the transit agency has to follow specific procedures in the rules to continue the service.

6. Transit providers in a non-urbanized area that are 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.

CHARTER DEFINITION (§604.3)

“Charter service” means, but does not include demand response service to individuals:

1. Transportation provided by a recipient 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 characteristic of charter service:
 - a. A third party pays the transit provider a negotiated price for the group.
 - b. Any fares charged to individual members of the group are collected by a third party.
 - c. The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or
 - d. A third party determines the origin and destination of the trip as well as scheduling; or
2. Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:
 - a. A premium fare is charged that is greater than the usual or customary fixed route fare; or
 - b. The service is paid for in whole or in part by a third party.

The exemption of demand response service from the definition of charter service is intended to exclude service provided to individuals, as opposed to a group, who request service. Transit agencies that provide demand response services should avoid actions that appear to circumvent the intent of the regulations, such as characterizing a group trip as “a collection of individuals” so that it does not meet the definition of charter. If a transit agency is providing service to a group of individuals through a single point of contact for a negotiated rate, the service needs to meet an exemption or exception.

What if a group of individuals request demand response service? Demand response trips provide service from multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. These types of trips are considered demand response transit service, not charter service, because even though a human service agency pays for the transportation of its clients, trips are scheduled and routed for the individuals in the group. Service to individuals can be identified by vehicle routing that includes multiple origins, multiple destinations, or both, based on the needs of individual members of the group, rather than the group as a whole (i.e., demand response service that takes all of the members of a group home on an annual excursion to a baseball game). Some sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted

living centers, or sheltered workshops may even be provided on an exclusive basis where clients of a particular agency cannot be mixed with members of the general public or clients of other agencies for safety or other reasons specific to the needs of the human service clients.

EXCEPTIONS (§604.6 – §604.11)

An exception is when the service is regulated charter but can still be provided if specific requirements are met and procedures are followed.

Below is the list of limited exceptions under which a transit agency may provide community-based charter services. When charter service is provided under one of these exceptions, it is still regulated charter and it must comply with the federal regulations, in particular, record keeping and reporting. MDOT pre-approval is required for all charter provided under an exception.

Government officials on official government business (§604.6)

(a) A recipient may provide charter service to government officials (Federal, State, and local) for official government business, which can include non-transit related purposes, if the recipient:

1. Provides the service in its geographic service area.
2. Does not generate revenue from the charter service, except as required by law; and
3. After providing such service, records the following:
 - i. The government organization's name, address, phone number, and e-mail address.
 - ii. The date and time of service.
 - iii. The number of passengers (specifically noting the number of government officials on the trip).
 - iv. The origin, destination, and trip length (miles and hours).
 - v. The fee collected, if any; and
 - vi. The vehicle number for the vehicle used to provide the service.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for official government business.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

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.

(d) FTA shall post the request for additional charter service hours under this exception in the Government Officials Exception docket, docket number FTA-2007-0020 at <http://www.regulations.gov>. Interested parties may review the contents of this docket and bring questions or concerns to the attention of the Ombudsman for Charter Services. The written decision of the Administrator regarding the request for additional charter service hours shall be posted in the Government Officials Exception docket and sent to the recipient.

Qualified human service organizations (§604.7)

(a) A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of serving persons:

1. With mobility limitations related to advanced age.
2. With disabilities; or
3. With low income.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from the programs listed in Appendix A of this part, the QHSO shall not be required to register on the FTA charter registration Web site.

(c) If a QHSO serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in Appendix A of this part, the QHSO shall register on the FTA charter registration Web site in accordance with § 604.15.

(d) A recipient providing charter service under this exception, whether or not the QHSO receives funding from Appendix A programs, and after providing such charter service, shall record:

1. The QHSO's name, address, phone number, and e-mail address.
2. The date and time of service.
3. The number of passengers.
4. The origin, destination, and trip length (miles and hours).
5. The fee collected, if any; and
6. The vehicle number for the vehicle used to provide the service.

Leasing FTA funded equipment and drivers (§604.8)

(a) A recipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following 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 either of the number of vehicles operated by the registered charter provider or the 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.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this provision shall record:

1. The registered charter provider's name, address, telephone number, and e-mail address.
2. The number of vehicles leased, types of vehicles leased, and vehicle identification numbers; and
3. The documentation presented by the registered charter provider in support of paragraphs (a)(1) through (4) of this section.

(c) In accordance with §604.26, if a registered charter provider seeking to lease vehicles has filed a complaint requesting that another registered charter provider be removed from the FTA charter registration Web site, then the registered charter provider seeking to lease vehicles is not required to exhaust the vehicles from that registered charter provider while the complaint is pending before leasing vehicles from a recipient.

When no registered charter provider responds to notice from a recipient (§604.9)

(a) A recipient may provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued in §604.14:

1. Within 72 hours for charter service requested to be provided in less than 30 days:
or
2. Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates an interest in providing the charter service set out in the notice issued pursuant to §604.14 and the registered charter provider has informed the recipient of its interest in providing the service.

(c) After providing the service, a recipient shall record:

1. The group's name, address, phone number, and e-mail address.
2. The date and time of service.
3. The number of passengers.
4. The origin, destination, and trip length (miles and hours).
5. The fee collected, if any; and
6. The vehicle number for the vehicle used to provide the service.

Agreement with registered charter providers (§604.10)

(a) A recipient 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.

(b) If a new charter provider registers in the geographic service area subsequent to the initial agreement, the recipient 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.

(c) Any of the parties to an agreement may cancel the agreement at any time after providing the recipient a 90-day notice.

Petitions to the Administrator (§604.11)

(a) A recipient may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:

1. Events of regional or national significance.
2. Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or
3. Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.

(b) The petition to the Administrator shall include the following information:

1. The date and description of the event.
2. The type of service requested and the type of equipment.
3. The anticipated number of charter service hours needed for the event.
4. The anticipated number of vehicles and duration of the event; and
 - i. For an event of regional or national significance, the petition shall 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 submit the petition at least 90 days before the first day of the event described in paragraph (b)(1) of this section.
 - ii. For a hardship request, a petition is only available if the registered charter provider has deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service; or
 - iii. For unique and time sensitive events, the petition shall describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

(c) Upon receipt of a petition that meets the requirements set forth in paragraph (b) of this section, the Administrator shall review the materials and issue a written decision denying or granting the request in whole or in part. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary. The Administrator's decision shall be filed in the Petitions to the Administrator docket, number FTA-2007-0022 at <http://www.regulations.gov> and sent to the recipient.

(d) Any exception granted by the Administrator under this section shall be effective only for the event identified in paragraph (b)(1) of this section.

(e) A recipient shall send its petition to the Administrator by e-mail to ombudsman.charterservice@dot.gov.

(f) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration Web site.

RECORD KEEPING AND REPORTING REQUIREMENTS (§604.12)

(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.

RESPONDING TO A REQUEST FOR CHARTER SERVICE (§604.14)

Recipient's notification to registered charter providers (§604.14)

(a) Upon receiving a request for charter service, a recipient may:

1. Decline to provide the service, with or without referring the requestor to FTA's charter registration Web site (http://www.fta.dot.gov/laws/leg_reg_179.html).
2. Provide the service under an exception provided in subpart B of this part; or
3. Provide notice to registered charter providers as provided in this section and provide the service pursuant to § 604.9.

(b) If a recipient is interested in providing charter service under the exception contained in § 604.9, then upon receipt of a request for charter service, the recipient shall provide e-mail notice to registered charter providers in the recipient's geographic service area in the following manner:

1. E-mail notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day.
2. E-mail notice sent to the list of registered charter providers shall include:
 - i. Customer name, address, phone number, and e-mail address (if available).
 - ii. Requested date of service.
 - iii. Approximate number of passengers.
 - iv. Whether the type of equipment requested is (are) bus(es) or van(s); and
 - v. Trip itinerary and approximate duration; and
3. If the recipient intends to provide service that meets the definition of charter service under § 604.3(c)(2), the e-mail notice must include the fare the recipient intends to charge for the service.

(c) A recipient shall retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent.

(d) If a recipient receives an “undeliverable” notice in response to its e-mail notice, the recipient shall send the notice via facsimile. The recipient shall maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

Additional Information about Registered Charter Providers

A charter operator is any private, for-profit entity (i.e., individual, group or company) that provides chartered transportation on a regular basis with its own equipment (e.g., bus and/or van). A registered charter provider is a private operator who wishes to receive notification of pending charter service requests directed to public transit agencies and has registered on FTA's charter registration Web site. When registering, charter providers are required to provide specific information, including areas served. They are not required to provide proof of such service. Additionally, the entire registration process is a self-certification process; FTA does not confirm the representations or information that the registered charter provider provides. A registered charter provider does not have to demonstrate a history of providing service in the areas it claims to serve. There is no geographical limitation on which areas a private charter operator may register. This means a private charter operator may register for several states or across the United States. If a registered charter provider, however, indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and a public transit agency was willing to provide the service, then the public transit agency can file a complaint against the registered charter provider. Complaint procedures are spelled out in the regulations.

ANNUAL CERTIFICATIONS AND ASSURANCES (§604.4)

A “charter service agreement” is contained in the Certifications and Assurances published annually by FTA for federal grant applicants. An agency seeking FTA assistance from FTA (or through MDOT) to acquire or operate equipment or facilities shall enter into the Agreement. The terms of the Charter Service Agreement are as follows: “The applicant agrees that it, and each of its subrecipients, and third-party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR Part 604, the terms and conditions of which are incorporated herein by reference.” Once a transit agency receives federal funds, the Certifications and Assurances become part of its grant agreement or cooperative agreement for federal financial assistance.

FURTHER GUIDANCE

The FAQ's in [Appendix C of 49 CFR 604](#) are an excellent resource and will answer many of the common questions asked by transit agencies.