

**NEW FEDERAL CHARTER RULE
INITIAL GUIDANCE
FOR MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT)
SECTION 5310, 5311, 5316 AND 5317 SUBRECIPIENTS**

TO MDOT SUBRECIPIENTS - Please review this document in detail and use the document, as well as discussion with your MDOT project manager, to evaluate your existing and planned services to ensure they are in compliance with the federal charter regulations. If you have questions on how the regulations pertain to your agency or situation, please submit them in writing (via email) to your project manager. Having the questions in writing will help us "group" similar questions if we need to get guidance from the Federal Transit Administration (FTA). You are of course welcome to discuss your question with your project manager as well.

As MDOT's experience with these new regulations increases, we will amend and expand this document.

For additional information, refer to the FTA website http://www.fta.dot.gov/laws/leg_reg_179.html.

INTRODUCTION

On January 14, 2008, FTA released its final rule on Charter Services. The new rules took effect April 30, 2008. 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 which replaces the old "willing and able" process, 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 introductory information for transit agencies that receive federal funding from the Michigan Department of Transportation (MDOT) under Sections 5310, 5311, 5316 or 5317. For the purpose of this MDOT guidance, throughout this document the term "transit agency" means any agency that receives Section 5310, 5311, 5316 or 5317 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, refer specifically to the regulations which can be found on the FTA website.

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 under the Federal Transit Laws.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

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. This is true 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.

Additional information about applicability (Appendix C, Question 8)

- 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.

Initial MDOT Guidance to its Subrecipients: Under State of Michigan Law (Act 51 of 1951) equipment funded with state funds or that is maintained in state assisted facilities or maintained with state funds are subject to the federal charter regulations. MDOT is currently evaluating the implications of Act 51 in light of the new federal regulations.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

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:

- a) 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.**
- b) Private charter operators that receive, directly or indirectly, federal financial assistance under FTA programs or other specified programs.
- c) 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.**
- d) A transit agency 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.

From Appendix C, Question 15: Recipients under Section 5311, 5310, 5316, and 5317 are not subject to the charter rule when providing public transportation, coordinated human service transportation or serving groups of individuals with disabilities, the elderly, or low income individuals. The charter rule does apply, however, if the FTA recipient wants to provide other charter service.

Initial MDOT Guidance to its Subrecipients: The regulations do not provide a blanket exemption for any and all services provided by an agency that receives Section 5311, 5310, 5316, or 5317 funding. If the service does not meet the definition of program purposes, the charter regulations may apply. Program purposes is: "transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations." If a transit agency is providing contract service to a group of individuals, that your agency believes is exempt from the charter regulations because the service meets "program purpose," MDOT recommends you discuss your rationale with your MDOT project manager to see if MDOT agrees with your conclusion.

- e) 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.
- f) 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.**

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

CHARTER DEFINITION (604.3)

Charter service means:

- Transportation provided by a transit agency at the request of a third party for the exclusive use of a bus or van for a negotiated price.

Under this portion of the definition, any of the following features suggest that the service being provided is regulated charter:

- 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.*
- Transportation provided by a transit agency to the public for events or functions that occur on an irregular basis or for a limited duration and that has **both** of the following features:
 - 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.

Charter service does not include demand response service to individuals.

Initial MDOT Guidance to its Subrecipients: FTA guidance materials (Appendix C, Question 16) indicate that "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..." MDOT cautions transit agencies that provide demand response services to 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 "group" rate, the service needs to meet an exemption or exception as approved by MDOT.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

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 followed.

Below is the list of limited exceptions under which a transit agency may provide community-based charter services.

Initial MDOT Guidance to its Subrecipients: 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.

1. Government officials on official government business (604.6).

- A transit agency may provide no more than 80 charter service hours a year for charter service to government officials (Federal, State, and Local) for official government business, which can include non-transit related purposes, if the recipient:
 - Provides the service in its geographic service area; and
 - Does not generate revenue from the charter service, except as required by law;
- After providing such service, the agency must create a detailed written record of the services provided as defined in the regulations.
- An agency may petition the Administrator for additional charter service hours (over the 80 hours) in limited circumstances.

2. Qualified human service organizations (604.7).

- A transit agency 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.
- A qualified human service agency only includes:
 - An organization serving persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age AND that receives funding, directly or indirectly, from the programs listed in Appendix A of the regulations OR
 - An organization serving persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age that does not receive funding from any of the programs listed in Appendix A of the regulations, BUT is registered on the FTA charter registration web site in accordance with the regulations
- After providing such service, the agency must create a detailed written record of the services provided as defined in the regulations.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE**EXCEPTIONS - Continued****3. When no registered charter provider responds to notice from a recipient (604.9)**

- A transit agency 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 (further described below)
- If a registered charter provider indicates an interest in providing the charter service set out in a notice (further described below) a transit agency may – UNDER NO CIRCUMSTANCES – provide the service.
- After providing such service, the agency must create a detailed written record of the services provided as defined in the regulations.

4. Agreement with registered charter providers (604.10).

- A transit agency may provide charter service directly to a customer if they have an agreement with all registered charter providers in the agency's geographic service area.
- If a new charter provider registers in the geographic service area subsequent to the initial agreement, the agency 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 an agreement may cancel the agreement at any time after providing 90-day notice.

5. Petitions to the Administrator (604.11)

- A transit agency may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
 - Events of regional or national significance;
 - Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or
 - Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.
- Details of the petition process are included in the regulations.
- Any exception granted by the Administrator is effective only for the event identified in the petition.

Initial MDOT Guidance to its Subrecipients: MDOT will assist its subrecipients with petitions.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

EXCEPTIONS - Continued

6. Leasing FTA funded equipment and drivers (604.8)

- A transit agency may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:
 - The private charter operator is registered on the FTA charter registration Web site;
 - The registered charter provider owns and operates buses or vans in a charter service business;
 - 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
 - The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.
- Record keeping requirements and additional conditions that pertain to this exception are included in the regulations.

Initial MDOT Guidance to its Subrecipients***An example of service a rural demand response agency might be asked to provide that is likely to be prohibited under these regulations***

A rural demand response agency is asked to take a group of individuals (such as a social club or a wedding party) to a common destination. The trip has characteristics that are inconsistent with the agency's "regularly scheduled service," such as the service is on a day or during hours of operation the agency does not provide demand response service to individuals. The agency quotes a group contract rate that the customer accepts. The customer does not meet the definition of a qualified human service organization.

This is regulated charter and can only be provided if it meets an exception, which in this example could only be one of the following: no registered charter provider responds to notice from a recipient; an approved petition to the FTA Administrator, or the trip was agreed to by all registered charter providers.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

RECORD KEEPING AND REPORTING REQUIREMENTS (604.12)

- A transit agency that provides charter service in accordance with one or more of the exceptions must 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. They may maintain the required records in other formats in addition to the electronic format.
- The records must also include a clear statement identifying which exception the recipient relied upon when it provided the charter service.
- 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.
 - Specific origin and destination information can be excluded 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 instead of providing specific origin and destination information.

Initial MDOT Guidance to its Subrecipients: MDOT believes we will need to make postings for its subrecipients through FTA's TEAM. We will be requesting quarterly reports from each subrecipient that provides charter service under an exception.

HOW TO RESPOND TO A REQUEST FOR CHARTER SERVICE (604.14)

Upon receiving a request for charter service (service that does not fall under an exemption), a transit agency may:

- a) Decline to provide the service;
 - In declining the service, an agency may refer the customer to FTA's charter registration Web site to find a private charter provider, but they are not required to do so.
- b) Provide the service under an exception (*As approved by MDOT*).
- c) Provide notice of the request to registered charter providers and provide the service because no registered providers responded as further described below.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

PROVIDING NOTICE TO REGISTERED CHARTER PROVIDERS (604.14)

Unless the service is exempted (*as approved by MDOT*) from the charter regulations, or unless the service is being provided under an exception (*as approved by MDOT*) a transit agency interested in providing charter service must **first** provide e-mail notice to registered charter providers in the recipient's geographic service area in the following manner:

- a) If the transit agency receives the request before 2 pm, the e-mail notice must be sent by the close of business on the same day.
- b) If the transit agency receives the request after 2 p.m., the e-mail notice must be sent by the close of business the next business day.
- c) If an agency receives an "undeliverable" notice in response to its e-mail notice, the agency must send the notice via facsimile within the same time frames.

From Appendix C, Question 44: A public transit agency needs to provide notice only for charter trips that it is interested in providing. If an exemption or one of the exceptions applies, then the public transit would, after providing the service, record the service as required by section 604.12.

REQUIRED E-MAIL CONTENTS:

The e-mail notice must include the following information:

- a) Customer name, address, phone number, and e-mail address (if available);
- b) Requested date of service;
- c) Approximate number of passengers;
- d) Whether the type of equipment requested is (are) bus(es) or van(s); and
- e) Trip itinerary and approximate duration.
- f) If the agency intends to provide service that meets the definition of charter service below (shaded text), the e-mail notice must also include the fare the agency intends to charge for the service.

Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and that has both of the follow features:

- *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.*

RECORD RETENTION:

- a) A transit agency must 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.
- b) An agency must maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE

Additional Information about Registered Charter Providers (From Appendix C, Questions 2, 3 and 4):

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.

WHEN NO REGISTERED CHARTER PROVIDER RESPONDS TO A NOTICE (604.9)

A transit agency 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 within the following timeframes:

- a) Within 72 hours of a proper notice sent out, if the charter service requested is to be provided in less than 30 days of the notice.
- b) Within 14 calendar days of a proper notice sent out, if the charter service requested is to be provided in 30 days or more from the date of the notice.

Initial MDOT Guidance to its Subrecipients: MDOT must review and approve the email notification process and the results before a transit agency provides charter service because they have received no responses to their email notification.

After providing the service, the agency must record:

- a) The group's name, address, phone number, and e-mail address;
- b) The date and time of service;
- c) The number of passengers;
- d) The origin, destination, and trip length (miles and hours);
- e) The fee collected, if any; and
- f) The vehicle number for the vehicle used to provide the service.

NEW FEDERAL CHARTER RULE - INITIAL GUIDANCE**WHEN A REGISTERED CHARTER PROVIDER INDICATES AN INTEREST IN PROVIDING THE SERVICE (604.9)**

An agency is prohibited from providing a charter service when:

- A registered charter provider indicates an interest in providing, AND
- The registered charter provider has informed the transit agency of its interest in providing the service.

CHARTER SERVICE AGREEMENT - 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 recipient 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 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.

Initial MDOT Guidance to its Subrecipients: MDOT will provide for this agreement in its annual application process and grant contracts between MDOT and subrecipients.

STATE LAW - Act 432 and 271

State law requires local transit agencies that travel outside their service area to be licensed under Act 432 of the Public Acts of 1982, as amended or under Act 271 of the Public Acts of 1990. One alternative is to have interlocal agreements with the other areas in which you travel. These state law requirements are separate from the federal charter regulations. For example, you may be providing service that is exempted from the federal charter regulations, but is still regulated under Act 432. Or you may provide service that is not regulated under Act 432 (because it is entirely within your service area), but is still considered regulated charter.

NEW FEDERAL CHARTER RULE - ATTACHMENTS

ATTACHMENT A: SELECTED DEFINITIONS (604.3)

- **Charter service hours:** Total hours operated by buses or vans while in charter service including:
 - Hours operated while carrying passengers for hire, plus
 - Associated deadhead hours.
- **Days:** Calendar days. The last day of a time period is included in the computation of time unless the last day is a Saturday, Sunday, or legal holiday, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- **Demand response:** Any non-fixed route system of transporting individuals that requires advanced scheduling by the customer, including services provided by public entities, nonprofits, and private providers.
- **Exclusive:** Service that a reasonable person would conclude is intended to exclude members of the public.
- **Geographic service area:** The entire area in which a transit agency is authorized to provide public transportation service under appropriate local, state, and federal law.
- **Government official:** an individual elected or appointed at the local, state, or federal level.
- **Interested party:** an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of recipient providing charter service under the federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.
- **Pattern of violations:** More than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months.
- **Program purposes:** transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations.
- **Public transportation:** As set forth in 49 U.S.C. 5302(a) (10) [transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity)]
- **Qualified human service organization:** An organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age. This term is used consistent with the President's Executive Order on Human Service Transportation Coordination (February 24, 2004).
- **Recipient:** An agency or entity that receives Federal financial assistance, either directly or indirectly, including subrecipients, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.
- **Registered charter provider:** A private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA's charter registration Web site.
- **Registration list:** The current list of registered charter providers and qualified human service organizations maintained on FTA's charter registration Web site.
- **Special transportation:** Demand response or paratransit service that is regular and continuous and is a type of "public transportation."
- **Violation:** A finding by FTA of a failure to comply with one of the requirements of this Part.

NEW FEDERAL CHARTER RULE - ATTACHMENTS

ATTACHMENT B: SELECTED QUESTIONS AND ANSWERS ABOUT SERVICES TO LOCAL SPORTING EVENTS, FESTIVALS, ETC. (FROM THE FEDERAL REGISTER, APPENDIX C)

(18) If a transit agency provides service that is irregular or on a limited basis for an exclusive group of individuals, but provides the service free of charge, is the service **exempt** from the charter regulation?

ANSWER: Yes this is exempt from the regulations, so long as the transit agency does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.

Initial MDOT Guidance to its Subrecipients: When the service is exempt from the regulations, no other provisions apply, such as the record keeping provisions. However, MDOT recommends that a transit agency providing this type of exempt service maintain documentation that the service was provided free of charge.

(20) Is it charter service when the local transit authority provides event or fair service, that is open to the public, with or without charge, where the transit authority determines the routes and times and it is scheduled for the same time every year, but the Fair Association subsidizes all or part of the costs?

ANSWER: Yes, this is charter and can only be provided if it meets an exception. The fact that the Fair Association pays for the service in whole or in part means the service is charter under section 604.3(c)(2).

(24) Is shuttle service for a one-time event considered charter service, if the service is open to the public, widely advertised, and the itinerary is determined by the transit operator? What if the service has been provided for decades?

ANSWER: No this is not charter and is not covered by these regulations, so long as the transit authority charges its customary fixed route fare for the shuttle service, and there is no third party involvement, then the service is not charter. Widely advertising the service or providing the service for decades has no bearing on whether the service is charter.

(26) Is it charter service when a university pays a public transit agency a fixed charge to allow all faculty, staff, and students to ride the transit system for free?

ANSWER: No, this is not charter. So long as the public transit agency provides the service on a regular basis, along a fixed route, and the service is open to the public, the fact that the university may be subsidizing student and faculty rides, does not convert the service to charter.

NEW FEDERAL CHARTER RULE - ATTACHMENTS

(27) Can a transit agency provide service when the customer wants a particular type of equipment such as a (rubber tire) trolley bus, vintage bus, or CNG bus that the private operators do not have?

ANSWER: No. Public transit agencies cannot provide charter service solely based on a customer's vehicle preferences. FTA only recognizes two categories of vehicles: buses and vans.

(43) May a transit agency indicate in the notice that goes out to registered charter providers that the customer requested specific equipment?

ANSWER: No. In terms of type of vehicles, the notice can include whether the customer needs a bus or a van. The registered charter provider, when it contacts the customer will learn of the specific customer needs. At that time, the registered charter provider can determine whether to seek out the specialized equipment from other private charter operators or a public transit agency.

(33) Are sightseeing trips still not charter?

ANSWER: They are not charter, however "Sightseeing" is excluded from the definition of "public transportation" under 49 U.S.C. Section 5302(a) (10). Therefore, it is not permissible for public transit agencies to provide sightseeing service with FTA-funded assets.

(34) If a transit agency provides vehicles to a special event, but the event is open to the public, the route is controlled by the transit agency, the route is advertised similarly to the transit agency's regular routes, the buses are not identified as "special service" or any other different markings, and the vehicles go to and from fixed stops in an express bus manner, is this charter?

ANSWER: No, this is not charter. So long as the transit authority does not charge a premium fare for the service and a third party does not pay for the service in whole or in part. Advertising or different markings on the bus are [note the word "no" appears to be missing from the federal document] longer determinative of whether the service is charter.

(46) May a recipient provide service that allows customers to park at a distant location, like a museum, and then have a transit vehicle take them to a sporting event for a fare that is higher than the normal fixed route fare? May a recipient prevent a private charter operator from providing a similar service from the same starting point to the same destination?

ANSWER: No. In this case, since the recipient charges a premium fare for the service, it meets the definition of charter. In order to provide the service, the recipient must give notice to registered charter providers in accordance with section 604.14. A recipient may not prevent a private charter operator from providing a similar service. This is true whether or not the private charter operator is registered on the FTA Charter Registration Web site.

NEW FEDERAL CHARTER RULE - ATTACHMENTS**ATTACHMENT C: ADVISORY OPINIONS, CEASE AND DESIST ORDERS, COMPLAINTS, INVESTIGATIONS, REMEDIES**

The information in this attachment is very limited. If faced with a situation that includes one of these issues, read the federal regulations in full.

ADVISORY OPINIONS (604.17-20)

- An interested party may request an advisory opinion from the FTA Chief Counsel on a matter regarding specific factual events only.
- The regulations spell out the process for requesting and processing an advisory opinion.
- An advisory opinion represents the formal position of FTA on a matter and obligates the agency to follow it until it is amended or revoked.
- A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing in accordance with the regulations. A statement or advice given by an FTA employee orally, or given in writing, but not as an advisory opinion, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

CEASE AND DESIST ORDERS (604.22-24).

- An interested party may also request a cease and desist order as part of its request for an advisory opinion.
- The regulations spell out the process for requesting and processing an advisory opinion.
- Issuance of a cease and desist order against a recipient shall be considered as an aggravating factor in determining the remedy to impose against the recipient in future findings of noncompliance with this part, if the recipient provides the service described in the cease and desist order issued by the Chief Counsel.

COMPLAINTS AND INVESTIGATIONS (604.25-35)

- Complaints can be filed that:
 - Challenge the registration of a private charter operator in the FTA web site
 - Challenge the registration of a qualified human service organization on the FTA Web site or
 - Regarding the provision of charter service by a recipient.
- To save time and expense for all concerned, FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process.

NEW FEDERAL CHARTER RULE - ATTACHMENTS

Complaints Challenging a Registration

- A recipient, a registered charter provider, or its duly authorized representative, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration Web site by filing a complaint.
- These complaints are filed electronically by submitting it to the Charter Service Removal Complaint docket number FTA-2007-0024.
- The regulations detail out the process for filing a complaint and for FTA review of the complaint.
- FTA shall determine whether to remove the registered charter provider or qualified human service organization from the FTA charter registration Web site based on a preponderance of the evidence of one or more of the following:
 - Bad faith;
 - Fraud;
 - Lapse of insurance;
 - Lapse of other documentation; or
 - The filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(Appendix B of the rules provides definitions of the terms above.)

Complaints Against a Transit Agency

- A registered charter provider, or its duly authorized representative ("complainant"), affected by an alleged noncompliance may file a complaint with the Office of the Chief Counsel.
- The complaint must provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complainant must show by a preponderance of the evidence that the recipient provided charter service and that such service did not fall within one of the exemptions or exceptions.
- The complaint must be filed within 90 days after the alleged event giving rise to the complaint occurred.
- The regulations detail out the process for filing a complaint and for FTA review of the complaint, including opportunities for the responding to a complaint.

From Appendix C, Question 52. A state is no longer involved in the complaint process. In order for a complaint to be filed, it must be filed directly with the Office of the Chief Counsel.

MDOT Guidance to its Subrecipients: MDOT needs to clarify if it can assist a subrecipient when a complaint is filed against it. Also, MDOT has a state legislative mandated complaint process that is to be separate from the federal process. MDOT is currently evaluating the impact of the new federal rules on this state legislative requirement.

NEW FEDERAL CHARTER RULE - ATTACHMENTS

FTA Investigations

- If based on a complaint, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.
- The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request.
- Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.
- FTA may also initiate its own investigation of any matter within the applicability of the regulations without having received a complaint.

REMEDIES (604.47)

- If the FTA Chief Counsel determines that a violation of this part occurred, he or she may take one or more of the following actions:
 - Bar the recipient from receiving future Federal financial assistance from FTA
 - Order the withholding of a reasonable percentage of available Federal financial assistance; or
 - Pursue suspension and debarment of the recipient, its employees, or its contractors.
- In determining the type and amount of remedy, the Chief Counsel shall consider the following factors:
 - The nature and circumstances of the violation;
 - The extent and gravity of the violation ("`extent of deviation from regulatory requirements");
 - The revenue earned ("`economic benefit") by providing the charter service;
 - The operating budget of the recipient;
 - Such other matters as justice may require; and
 - Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.
- The Chief Counsel office may mitigate the remedy when the recipient can document corrective action of alleged violation.
- In the event the Chief Counsel finds a pattern of violations, the remedy ordered shall bar a recipient from receiving Federal transit assistance in an amount that the Chief Counsel considers appropriate.
- The Chief Counsel may make a decision to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

MDOT Guidance to its Subrecipients: MDOT needs to clarify how the remedies will be implemented for federal funds awarded to MDOT when there is not a specific allocation to the specific agency. For example, if a single Section 5311 agency were to have a portion of its funding withheld, how is that portion determined, since MDOT, not FTA allocated the funding.