

Charter Service Final Rule



Goals

- **Flexibility**
- **Clarity**
- **Transparency**

What does the new rule do?

- Provides clear exemptions up front
- Revises definition of charter service
- Provides exceptions under which public transit agency may provide charter service
- Allows for Advisory Opinions and Cease and Desist Orders
- Provides a clear complaint and hearing process
- Provides a mechanism for determining remedies in the event of a violation

How do I determine whether the new rule applies?

- Look at the “Applicability” section (49 CFR 604.2) it contains a list of exemptions
- Look at the definition of charter service (49 CFR 604.3(c))
- If the proposed service fits within the definition of charter service, then look to see whether one of the exceptions applies (49 CFR 604.6—604.11)

The new rule is not applicable to:

- Recipients moving transit employees for transit purposes
- Private charter operators that receive Federal assistance
 - Does not include private charter operators that “stand in the shoes” of public transit agencies
- Recipients performing emergency preparedness planning and operations
- Recipients responding to immediate emergencies
- Recipients in non-urbanized areas transporting its employees for training purposes
- Recipients of funds from 5310, 5311, 5316, and 5317
 - Can only provide charter service that supports “program purposes”

What's the new definition of charter service?

- “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:
 - (i) A third party pays the transit provider a negotiated price for the group;
 - (ii) Any fares charged to individual members of the group are collected by a third party;
 - (iii) The service is not part of the transit provider’s regularly scheduled service, or is offered for a limited period of time; or
 - (iv) 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:
 - (i) A premium fare is charged that is greater than the usual or customary fixed route fare; or
 - (ii) The service is paid for in whole or in part by a third party.

Exceptions

- **A public transit agency may provide charter service under the following exceptions:**
 - **Government Officials (new!!!)**
 - **Qualified Human Service Organizations (elderly, persons with disabilities, and low income individuals)**
 - **When no registered charter provider responds to a notice sent by a recipient**
 - **Leasing (must exhaust all available vehicles first)**
 - **By agreement with all registered charter providers**
 - **Petitions to the Administrator:**
 - **Events of Regional or National Significance**
 - **Hardship**
 - **Discretion**

Reporting Requirements

Public transit agencies must report all charter service provided under the following exceptions:

- Government Officials (49 CFR 604.6)
- Qualified Human Service Organizations (49 CFR 604.7)
- Leasing Equipment (49 CFR 604.8)
- When no Registered Charter Provider Responds to a Notice from the Recipient (49 CFR 604.9)

First quarterly report is due July 30, 2008!

Procedures for registration and notification

- In order to take advantage of the new rule's provisions, private charter operators must be registered on FTA's Charter Registration Website:
<http://www.fta.dot.gov/CharterRegistration>
- Qualified Human Service Organizations that do not receive funds from one of the 65 Federal programs included in Appendix A, must also register on the website

Procedures cont.

- **Private charter operators must provide the following information:**
 - **(1) Company name, address, phone number, email address, and facsimile number;**
 - **(2) Federal and, if available, state motor carrier identifying number;**
 - **(3) The geographic service areas of public transit agencies, as identified by the transit agency's zip code, in which the private charter operator intends to provide charter service;**
 - **(4) The number of buses or vans the private charter operator owns;**
 - **(5) A certification that the private charter operator has valid insurance; and**
 - **(6) Whether willing to provide free or reduced rate charter services to registered qualified human service organizations.**

Procedures cont.

- **Qualified Human Service organizations not receiving Federal funds must provide the following information:**
 - Name of organization, address, phone number, email address, and facsimile number;
 - The geographic service area of the recipient in which the qualified human service organization resides;
 - Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, and whether it is a unit of Federal, State or local government;
 - Whether the qualified human service organization receives funds directly or indirectly from a State or local program, and if so, which program(s); and
 - A narrative statement describing the types of charter service trips the qualified human service organization may request from a recipient and how that service is consistent with the mission of the qualified human service organization.
- **A public transit agency may only provide service if the QHSO is registered at least 60 days before the date of the first request for charter service.**

Notification requirements

- A public transit agency must provide the following information via email:
 - (1) Email 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) Email notice sent to the list of registered charter providers shall include:
 - (i) Customer name, address, phone number, and email 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 email notice must include the fare the recipient intends to charge for the service.

Advisory Opinions and Cease and Desist Orders

- An interested party may request an advisory opinion from the Office of the Chief Counsel
- A registered charter provider may include in its request for an advisory opinion a request for a cease and desist order
- Chief Counsel will make every effort to make decisions 10 days after completed request

Complaints

- A registered charter provider or a recipient may petition to have a registered charter provider or QHSO removed from the charter registration website
- Reasons for removal:
 - (1) Bad faith;
 - (2) Fraud;
 - (3) Lapse of insurance;
 - (4) Lapse of other documentation; or
 - (5) 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

Complaints cont.

- **A registered charter provider may file a complaint alleging a violation of the new rule. A complaint must include:**
 - (1) Be titled “Notice of Charter Service Complaint”;
 - (2) State the name and address of each recipient that is the subject of the complaint and, with respect to each recipient, the specific provisions of this part that the complainant believes were violated;
 - (3) Be served in accordance with §604.31, *along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint*, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;
 - (4) Provide a concise but complete statement of the facts relied upon to substantiate each allegation (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 set out in this part);
 - (5) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients;
 - (6) Identify each registered charter provider associated with the complaint; and
 - (7) Be filed within 90 days after the alleged event giving rise to the complaint occurred.

Complaints cont.

- A complaint may be dismissed by the Chief Counsel because it is incomplete (without prejudice) or because FTA does not have jurisdiction (with prejudice)
- FTA has 90 days to investigate the basis of the complaint
- If complaint has merit, Chief Counsel may decide the complaint based on pleadings or assign the matter to a presiding official for a hearing
- Chief Counsel's decision may be appealed to the Administrator or the Administrator may review the matter on his or her own initiative

Remedies

- If the Chief Counsel finds a violation of the charter service regulation, he or she may determine a remedy=withhold funds, bar receipt of future funds, or suspend/debar
- A pattern of violations can only be established for unauthorized charter service—not for reporting or paperwork
- Matrix of dollar amounts per violation included in Appendix D-gross proceeds consist with previous decisions (FR table is incorrect!)

Toolbox

- Appendix C contains an extensive list of Q&As
- Appendix B contains guidance on reasons for removal from registration website
- Help and other resources are located at: http://www.fta.dot.gov/laws/leg_reg_179.html
- Ombudsman for Charter Services
- Government Officials, Petitions to the Administrator, Advisory Opinions/Cease and Desist Orders, Complaints for Removal, and Complaints all have dockets open in www.regulations.gov

Effective Date of Final Rule

April 30, 2008
(73 FR 2326)

Tentative outreach plan:

Chicago, Jan. 29-1st

Virginia Beach, Jan. 28th

Los Angeles, Feb. 7-11

San Antonio, Feb. 10-12

Fort Worth, Feb. 17-19

Portland, March 14-15

Washington D.C., April 1

Austin, May 3-5

Atlanta, May 28th

Washington D.C., April 28th

New Orleans, June 2008

San Diego, June 2008

Questions?

Ombudsman for Charter Services is
Crystal Frederick

ombudsman.charterservice@dot.gov