

## 21. Charter Bus

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~~Pursuant to 49 U.S.C. Section 5323(d) and 49 CFR Part 604, program funds may not be used to provide charter service if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR Subpart B. Caltrans publishes a notice annually to determine whether there are any private charter operators willing and able to provide the service. Subrecipients certify by signing the Standard Agreement that they understand the requirements of 49 CFR Part 604 apply to any charter service involving these programs' equipment and that any violation of these requirements may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.~~

A subrecipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a "Charter Service Agreement." The terms of the Charter Service Agreement are as follows: "The subrecipient agrees that it, and each of its 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." The Charter Service Agreement is contained in the Certifications and Assurances published annually by Caltrans for applicants for Federal financial assistance. Once a subrecipient receives Federal funds, the Certifications and Assurances become part of its Standard Agreement for Federal financial assistance.

As part of its oversight responsibilities, Caltrans must ensure that any subrecipient providing charter service operates the service in accordance with the regulation. The charter service regulations apply to all subrecipients that receive Section 5307, 5309, 5311, 5316 and 5317 funds. 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) A third party pays 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 regularly scheduled service, or is offered for a limited period of time
  - d) 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) 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.

Example of services that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Services requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the subrecipient does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the subrecipient, the subrecipient charges its customary fixed route fare and there is no third party involvement.
- When a university pays the subrecipient a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the subrecipient provides the service on a regular basis along a fixed route and the service is open to the public.
- When the subrecipient sees a need and wants to provide service for a limited duration at the customary fixed route fare.

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. Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements.

## **21.1 Exemptions**

The charter service regulation exempts the following services:

1. Transportation of Employees, Contractors, and Government Officials: Subrecipients 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 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: Subrecipients are allowed to transport their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests for emergency preparedness planning and operations.
4. Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to subrecipient 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 do not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.

5. Emergency Responses: Subrecipient 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: Subrecipients in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and its geographic service area.

## 21.2 Exceptions

The charter regulation excepts the following community based charter services. The subrecipient 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 "deadheaded" 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).

1. Government Officials: A subrecipient is allowed to provide charter service (up to 80 charter service hours annually) to government official (Federal, state, and local) for official government business, which can include non-transit related purposes, if the subrecipient:
  - a) Provides the service in its geographic service area
  - b) Does not generate revenue from the charter service, except as required by law

The subrecipient may petition FTA for additional charter service hours.

2. Qualified Human Service Organization (QHSO): A subrecipient is allowed to provide charter service to a QHSO for the purpose of serving persons:
  - a) With mobility limitations related to advanced age
  - b) With disabilities
  - c) With low income

If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration website. Otherwise, the QHSO is required to register. The subrecipient may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service.

3. Leasing of Equipment and Driver: A subrecipient is allowed to lease its FTA funded equipment and drivers to registered charter providers for charter service only if all of the following conditions exist:
  - a) The private charter operator is registered on the FTA charter registration website
  - b) The registered charter provider owns and operates buses or vans in a charter service business
  - c) The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider

- d) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the subrecipient's geographic service area
4. No Response by Registered Charter Provider: A subrecipient is allowed to provide charter service, on its own initiative or at the request of a third party, if no charter provider registered on the FTA's website responds to the notice issues:
- a) Within 72 hours for charter service requested to be provided in less than 30 days, or
  - b) Within 14 calendar days for charter service requested to be provided in 30 days or more.

The subrecipient is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the subrecipient of its interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

If the subrecipient is interested in providing charter service under this exception, the subrecipient shall provide email notice to registered charter providers in the subrecipient's geographic service area by the close of business on the day the subrecipient received the request unless the request was received after 2PM, in which case the notice shall be sent by the close of business the next business day.

5. Agreement with All Registered Charter Providers: The subrecipient is allowed to provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the subrecipient's service area. The subrecipient is allowed to provide charter service up to 90 days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing a 90 day notice to the subrecipient.
6. The Petition to the Administrator: The subrecipient may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
- a) Events of regional or national significance  
The petition shall describe how registered charter providers were consulted and will be utilized and include a certification that the subrecipient has exhausted all the registered charter providers in its service area. The petition must be submitted at least 90 days before the first day of the event.
  - b) Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population).  
The exception is only available if the registered charter providers have 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.

- c) Unique and time sensitive events (e.g. funerals of local, regional, or national significance) that are in the public's interest.

The petition shall describe why the event is unique and time sensitive and would be in the public's interest.

### **21.3 Reporting Requirement**

Beginning July 30, 2008, subrecipients providing charter service under four of the exceptions shall post the required records on the FTA charter website using TEAM-Web within 30 days of the end of each calendar quarters 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 reporting requirement applies to the following four exceptions:

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

Caltrans reports on behalf of its subrecipients. **When charter service is provided under one or more of the exceptions under this regulation, the subrecipient is required to complete the Charter Service Reporting Form (Appendix #48) and email the form to Caltrans HQ staff. The subrecipient must also maintain notices and records in an electronic format for at least three years from the date of service or lease.** The subrecipient 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 subrecipient 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 subrecipient 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.