



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA-2024-0017]

RIN 2132-AB38

Charter Service

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing to amend regulations that govern the provision of charter service by recipients of Federal financial assistance. The proposed changes will remove the Federal Financial Assistance Programs listed in an appendix and the guidance in additional appendices and make non-substantive technical edits throughout to remove outdated citations and provide clarity.

DATES: Comments should be filed by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2024–0017, by any of the following methods:

- Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.

- Fax: (202) 493–2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• Hand Delivery/Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, Danielle Nelson, Office of Program Management, (202) 366-2160 or danielle.nelson@dot.gov. For legal matters, contact Mark Montgomery, Office of Chief Counsel, (202) 366-1017 or mark.montgomery@dot.gov. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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I. Executive Summary

- A. Purpose and Summary of Regulatory Action

FTA is proposing to amend regulations which govern the provision of charter service by recipients of Federal financial assistance. The charter service regulation protects private charter operators from unauthorized competition from FTA grant recipients. Under the charter rules, with limited exceptions, local transit agencies are restricted from operating chartered service. One of those exceptions applies to charter service provided to a qualified human service organization (QHSO) for the purpose of serving persons with mobility limitations related to advanced age, disability, or low income. Under the current rule, QHSOs receiving funding from one of the Federal programs under appendix A are exempt from the charter registration requirements of the regulation. This appendix, created in 2008, is outdated. Through this rulemaking, FTA proposes to remove appendix A and keep the list of qualifying Federal programs for the QHSO exception current on its website, which will reduce the administrative burden of charter registration for many QHSOs.

B. Statutory Authority

FTA has a statutory mandate to prohibit charter service under 49 U.S.C. 5323(d). The proposed revisions do not make substantive changes to the existing regulations implementing this statutory provision.

C. Summary of Key Provisions

FTA proposes to remove the outdated list of Federal programs in appendix A. Under the current regulation, QHSOs receiving funding from one of the Federal programs under appendix A are exempt from the charter registration requirements of § 604.15. Appendix A is based on a list of programs from the Coordinating Council on Access and Mobility (CCAM), which is a Federal interagency council that works to coordinate funding and provide expertise on human services transportation for people with disabilities, older adults, and individuals with low income. CCAM established the CCAM Program Inventory, which identifies 130 Federal programs that provide funding

for human services transportation for these targeted populations. In 2018 and 2019, CCAM agency representatives determined which programs to include in the CCAM Program Inventory through internal agency program validation efforts and the CCAM Program Analysis Working Sessions. CCAM continually updates this inventory to include new Federal funding sources.

D. Benefits and Costs

The proposed rule would relocate supplemental information in the appendices of the Charter Service regulation to the FTA website. The rule would change no requirements for regulated entities and therefore has no expected economic effect. FTA has also determined that the proposed rule would not have a significant effect on a substantial number of small entities.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 604.1 Purpose

FTA does not propose changes to this section.

Section 604.2 Applicability

FTA proposes to update the applicability section of the regulation to remove programs repealed by statute. Specifically, FTA proposes to remove references to the Over the Road Bus Accessibility Program, the Job Access and Reverse Commute Program, and the New Freedom Grant Program, which were repealed under the Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. 112-141, on October 1, 2012.

604.3 Definitions

FTA proposes to remove a reference to a provision repealed by statute and amend a statutory citation. Throughout the regulation, FTA proposes to utilize the term “website” rather than the outdated “Web site.” Further, FTA proposes to revise the existing definitions of “program purposes” for clarity. FTA also proposes to revise the

existing definition of “qualified human service organization” to more closely align with the definition of “transportation-disadvantaged” under Executive Order 13330, Human Service Transportation Coordination (February 24, 2004), which is the Executive order that created CCAM. These amendments do not impact existing requirements.

604.4 Charter service agreement

FTA does not propose changes to this section.

Subpart B—Exceptions

Section 604.5 Purpose

FTA proposes to remove the undefined term “community-based” from this section for clarity. The term “charter service” is defined under § 604.3 and does not need that qualifier. This change would not impact existing requirements.

Section 604.6 Government officials on official government business

FTA does not propose changes to this section.

Section 604.7 Qualified human service organizations

FTA proposes to remove the outdated list of Federal programs in appendix A and clarify in this section that QHSOs receiving funding under one or more of the programs in the CCAM Program Inventory are not required to register on the FTA charter service website to receive charter service from a recipient.

Section 604.8 Leasing FTA funded equipment and drivers

FTA does not propose changes to this section.

Section 604.9 When no registered charter provider responds to notice from a recipient

FTA does not propose changes to this section.

Section 604.10 Agreement with registered charter providers

FTA does not propose changes to this section.

Section 604.11 Petitions to the Administrator

FTA adds clarifying language to this section that does not impact existing

requirements.

Section 604.12 Reporting requirements for all exceptions

FTA removes an outdated reference that does not impact existing requirements.

Subpart C—Procedures for Registration and Notification

Section 604.13 Registration of private charter operators

FTA proposes to add clarifying language and remove an outdated web address.

These amendments do not impact existing requirements.

Section 604.14 Recipient's notification to registered charter providers

FTA proposes to remove an outdated web address. The amendment does not impact existing requirements.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients with Respect to Charter Registration Website

Section 604.15 Registration of qualified human service organizations

FTA proposes to add language that clarifies that only QHSOs that do not receive funding from one of the programs in the CCAM Program Inventory are required to register on the FTA charter service website. This amendment maintains the existing eligibility for QHSOs to receive charter service from an FTA recipient.

Section 604.16 Duties for recipients with respect to charter registration website

FTA does not propose changes to this section.

Subpart E—Advisory Opinions and Cease and Desist Orders

Section 604.17 Purpose

FTA does not propose changes to this section.

Section 604.18 Request for an advisory opinion

FTA does not propose changes to this section.

Section 604.19 Processing of advisory opinions

FTA proposes a grammatical change that does not impact existing requirements.

Section 604.20 Effect of an advisory opinion

FTA does not propose changes to this section.

Section 604.21 Special considerations for advisory opinions

FTA does not propose changes to this section.

Section 604.22 Request for a cease and desist order

FTA proposes to amend a typographical error that does not impact existing requirements.

Section 604.23 Decisions by the Chief Counsel regarding cease and desist orders

FTA proposes to reorder existing §§ 604.23 and 604.24 for clarity.

Section 604.24 Effect of a cease and desist order

FTA proposes to remove paragraph (b) of existing § 604.23 as duplicative with paragraph (b) of existing § 604.24.

Subpart F—Complaints

Section 604.25 Purpose

FTA does not propose changes to this section.

Section 604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list

FTA does not propose changes to this section.

Section 604.27 Complaints, answers, replies, and other documents

FTA proposes to combine paragraphs (f) and (h) of this section for clarity. The amendment does not impact existing requirements.

Section 604.28 Dismissals

FTA does not propose changes to this section.

Section 604.29 Incomplete complaints

FTA does not propose changes to this section.

Section 604.30 Filing complaints

FTA does not propose changes to this section.

Section 604.31 Service

FTA does not propose changes to this section.

Subpart G—Investigations

FTA does not propose changes to this subpart.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

Section 604.34 Chief Counsel decisions and appointment of a PO

FTA proposes to make a clarifying edit that does not impact existing requirements.

Section 604.35 Separation of functions

FTA does not propose changes to this section.

Subpart I—Hearings

FTA does not propose changes to this subpart.

Subpart J—Appeal to Administrator and Final Agency Orders

Section 604.48 Appeal from Chief Counsel decision

FTA does not propose changes to this section.

Section 604.49 Administrator's discretionary review of the Chief Counsel's decision

FTA proposes non-substantive edits to this section. The amendments do not impact existing requirements.

Subpart K—Judicial Review

FTA does not propose changes to this subpart.

Appendix A—Listing of Human Service Financial Assistance Programs

FTA proposes to remove this appendix.

Appendix B—Reasons for Removal

FTA proposes to remove this appendix.

Appendix C—Frequently Asked Questions

FTA proposes to remove this appendix.

Appendix D—Table of Potential Remedies

FTA proposes to remove this appendix.

III. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”) and Executive Order 14094 (“Modernizing Regulatory Review”), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of \$200 million or more. OMB has determined the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed the rule under that order.

The proposed rule would make non-substantive conforming edits and remove supplemental information in the appendices to the Charter Service regulation listing Federal financial assistance programs and frequently asked questions. The proposed rule would change no requirements for regulated entities and therefore has no expected economic effect.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities.

The proposed rule would make non-substantive conforming edits to the regulation

and remove supplemental information from the appendices but would not change requirements for regulated entities. FTA has therefore determined that the proposed rule would not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this proposed rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995). This proposed rule does not include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in 1995 dollars (adjusted for inflation) in any one year. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this rulemaking.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and OMB implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a currently approved information collection, OMB control number 2132-0543, that is associated with the existing regulation. FTA believes there will be no change in burden hours per submission resulting from this rulemaking.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the proposed rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this proposed rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this proposed rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt tribal laws. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012)¹ require DOT agencies to achieve environmental justice (EJ) as

¹ Department of Transportation Updated Environmental Justice Order 5610.2(a): Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). <https://www.transportation.gov/transportation-policy/environmental-justice/departments-transportation-order-56102a>

part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.²

FTA has evaluated this action under the Executive order, the DOT Order, and the FTA Circular and has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this proposed rule with the Unified Agenda.

List of Subjects in 49 CFR Part 604

Administrative practice and procedure, Buses, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements.

Veronica Vanterpool,

Acting Administrator.

In consideration of the foregoing, and under the authority of 49 U.S.C. 5323(d), and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration

² Federal Transit Administration (February 2020). "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit>

proposes to revise and republish 49 CFR part 604 to read as follows:

PART 604—CHARTER SERVICE

Subpart A—General Provisions

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- 604.1 Purpose.
- 604.2 Applicability.
- 604.3 Definitions.
- 604.4 Charter service agreement.

Subpart B—Exceptions

Sec.

- 604.5 Purpose.
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- 604.7 Qualified human service organizations.
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- 604.9 When no registered charter provider responds to notice from a recipient.
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Subpart C—Procedures for Registration and Notification

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- 604.13 Registration of private charter operators.
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Subpart D—Registration of Qualified Human Service Organizations and Duties for

Recipients With Respect to Charter Registration Website

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- 604.15 Registration of qualified human service organizations.
- 604.16 Duties for recipients with respect to charter registration website.

Subpart E—Advisory Opinions and Cease and Desist Orders

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- 604.17 Purpose.
- 604.18 Request for an advisory opinion.
- 604.19 Processing of advisory opinions.
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Subpart F—Complaints

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604.25 Purpose.

604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.

604.27 Complaints, answers, replies, and other documents.

604.28 Dismissals.

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Subpart G—Investigations

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604.32 Investigation of complaint.

604.33 Agency initiation of investigation.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

Sec.

604.34 Chief Counsel decisions and appointment of a PO.

604.35 Separation of functions.

Subpart I—Hearings

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604.36 Powers of a PO.

604.37 Appearances, parties, and rights of parties.

604.38 Discovery.

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604.40 Public disclosure of evidence.

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Subpart J—Appeal to Administrator and Final Agency Orders

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604.48 Appeal from Chief Counsel decision.

604.49 Administrator's discretionary review of the Chief Counsel's decision.

Subpart K—Judicial Review

Sec.

604.50 Judicial review of a final decision and order.

Authority: 49 U.S.C. 5323(d); 49 CFR 1.51.

Subpart A—General Provisions

§ 604.1 Purpose.

(a) The purpose of this part is to implement 49 U.S.C. 5323(d), which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws.

(b) This subpart specifies which entities shall comply with the regulations in this part; defines terms used in this part; explains procedures for an exemption from this part; and sets out the contents of a charter service agreement.

§ 604.2 Applicability.

(a) The requirements of this part shall apply to recipients of Federal financial assistance under the Federal Transit Laws, except as otherwise provided in paragraphs (b) through (g) of this section.

(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 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, or 49 U.S.C. 5311.

(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 or 49 U.S.C. 5311.

(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 part 601, subpart D, of this chapter.

(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.

§ 604.3 Definitions.

All terms defined in 49 U.S.C. 5301 *et seq.* are used in their statutory meaning in this part. Other terms used in this part are defined as follows:

Administrator means the Administrator of the Federal Transit Administration or his or her designee.

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.

Charter service hours means total hours operated by buses or vans while in charter service including:

(1) Hours operated while carrying passengers for hire; plus

(2) Associated deadhead hours.

Chief Counsel means the Chief Counsel of FTA and his or her designated employees.

Days means 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 means 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 means service that a reasonable person would conclude is intended to exclude members of the public.

Federal Transit Laws means 49 U.S.C. 5301 *et seq.* and includes 23 U.S.C. 142(a) and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.

FTA means the Federal Transit Administration.

Geographic service area means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, State, and Federal law.

Government official means an individual elected or appointed at the local, State, or Federal level.

Interested party means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes States, counties, cities, and their subdivisions, and Tribal Nations.

Pattern of violations means 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.

Presiding Official means an official or agency representative who conducts a hearing at the request of the Chief Counsel and who has had no previous contact with the parties concerning the issue in the proceeding.

Program purposes means transportation that serves the needs of either qualified human service organizations 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 identified in this definition.

Public transportation has the meaning set forth in 49 U.S.C. 5302(15).

Qualified human service organization means an organization that serves persons who qualify for federally conducted or federally assisted transportation-related programs or services due to disability, income, or advanced age. This term is consistent with the President's Executive order (E.O.) on Human Service Transportation Coordination (E.O. 13330).

Recipient means 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 means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA's charter registration website.

Registration list means the current list of registered charter providers and qualified human service organizations maintained on FTA's charter registration website.

Special transportation means demand response or paratransit service that is regular and continuous and is a type of "public transportation."

Violation means a finding by FTA of a failure to comply with one of the requirements of this part.

§ 604.4 Charter service agreement.

(a) A recipient 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" as set out in paragraph (b) of this section.

(b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. 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 part 604, the terms and conditions of which are adopted herein by reference.”

(c) The Charter Service Agreement is contained in the Certifications and Assurances published annually by FTA for applicants for Federal financial assistance. Once a recipient receives Federal funds, the Certifications and Assurances become part of its Grant Agreement or Cooperative Agreement for Federal financial assistance.

Subpart B—Exceptions

§ 604.5 Purpose.

The purpose of this subpart is to identify the limited exceptions under which recipients may provide charter services.

§ 604.6 Government officials on official government business.

(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 email 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 section in the Government Officials Exception docket, docket number FTA–2007–0020 at <https://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.

§ 604.7 Qualified human service organizations.

(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 any of the human services Federal financial assistance programs listed in the Program Inventory of the Coordinated Council on Access and Mobility (CCAM) located on FTA's charter service website, the QHSO shall not be required to register on the FTA charter registration website.

(c) If a QHSO serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in the CCAM Program Inventory, the QHSO shall register on the FTA charter registration website in accordance with § 604.15.

(d) A recipient providing charter service under this section, whether or not the QHSO receives funding from any of the programs listed in the CCAM Program Inventory, 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.

§ 604.8 Leasing FTA funded equipment and drivers.

(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 website;
- (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 section 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 website, 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.

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

(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.

§ 604.10 Agreement with registered charter providers.

(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.

§ 604.11 Petitions to the Administrator.

(a) A recipient may petition the Administrator for an exception to the regulations in this part 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)(i) The date and description of the event;

(ii) The type of service requested and the type of equipment;

(iii) The anticipated number of charter service hours needed for the event; and

(iv) The anticipated number of vehicles and duration of the event; and

(2) 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)(i) of this section;

(3) For a hardship request, a petition is only available if the registered charter provider that has indicated an interest in providing the charter service set out in the notice issued pursuant to § 604.14 has a deadhead time that exceeds total trip time from initial pickup 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

(4) 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 <https://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)(i) 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 website.

§ 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) A recipient providing charter service under the exceptions in this subpart shall post the records required under this subpart on the FTA charter registration website 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.

Subpart C—Procedures for Registration and Notification

§ 604.13 Registration of private charter operators.

(a) To be considered a registered charter provider, private charter operators shall register on FTA’s charter registration website by providing the following information:

(1) Company name, address, phone number, e-mail 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 the private charter operator is willing to provide free or reduced rate charter services to registered qualified human service organizations.

(b) A private charter operator that provides valid information in this subpart is a “registered charter provider” for purposes of this part and shall have standing to file a complaint consistent with subpart F of this part.

(c) A recipient, a registered charter provider, or their duly authorized representative may challenge a registered charter provider’s registration and request removal of the private charter operator from FTA’s charter registration website by filing a complaint consistent with subpart F of this part.

(d) FTA may refuse to post a private charter operator’s information if the private charter operator fails to provide all of the required information required by paragraph (a) of this section.

(e) A registered charter provider shall provide current and accurate information on FTA's charter registration website and shall update that information no less frequently than every two years.

§ 604.14 Recipient's notification to registered charter providers.

(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 website;

(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 paragraph (2) of the definition of charter service under § 604.3, 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.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Website

§ 604.15 Registration of qualified human service organizations.

(a) Qualified human service organizations (QHSO) that seek free or reduced rate services from recipients, and do not receive funds from human services Federal financial assistance programs listed in the CCAM Program Inventory located on FTA’s charter service website, but serve individuals described in § 604.7 (*i.e.*, individuals with low income, advanced age, or with disabilities), shall register on FTA’s charter registration website by submitting the following information:

(1) Name of organization, address, phone number, e-mail address, and facsimile number;

(2) The geographic service area of the recipient in which the qualified human service organization resides;

(3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from

taxation under section 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, and whether it is a unit of Federal, State, or local government;

(4) Whether the qualified human service organization receives funds directly or indirectly from a State or local program, and if so, which program(s); and

(5) 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.

(b) A qualified human service organization is eligible to receive charter services from a recipient if it:

(1) Receives funds from at least one of the human services Federal financial assistance programs listed in the CCAM Program Inventory; or

(2) Registers on the FTA website in accordance with paragraph (a) of this section at least 60 days before the date of the requested charter service and verifies FTA's receipt of its registration by viewing its information on the FTA charter registration website.

(c) A registered charter provider may challenge a QHSO's eligibility under paragraph (b)(2) of this section to receive charter services from a recipient by requesting removal of the QHSO from FTA's charter registration website by filing a complaint consistent with subpart F of this part.

(d) A QHSO eligible under paragraph (b)(2) of this section to receive charter services from a recipient shall provide current and accurate information on FTA's charter registration website and shall update that information no less frequently than every two years.

§ 604.16 Duties for recipients with respect to charter registration website.

Each recipient shall ensure that its affected employees and contractors have the necessary competency to effectively use the FTA charter registration website.

Subpart E—Advisory Opinions and Cease and Desist Orders

§ 604.17 Purpose.

The purpose of this subpart is to set out the requirements for requesting an advisory opinion from the Chief Counsel’s Office. An advisory opinion may also request that the Chief Counsel issue a cease and desist order, which would be an order to refrain from doing an act which, if done, would be a violation of this part.

§ 604.18 Request for an advisory opinion.

(a) An interested party may request an advisory opinion from the Chief Counsel on a matter regarding specific factual events only.

(b) A request for an advisory opinion shall be submitted in the following form:

[Date]

Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E55– 302, Washington, DC 20590

Re: Request for Advisory Opinion

The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to [the general nature of the matter involved].

A. A full statement of all facts and legal points relevant to the request

B. An affirmation that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

C. The following certification: “I hereby certify that I have this day served the foregoing [name of document] on the following interested party(ies) at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]”

Dated this xx day of xx, 20xx. [Signature]

[Printed name]

[Title of person making request] [Mailing address]

[Telephone number] [e-mail address]

(c) The Chief Counsel may request additional information, as necessary, from the party submitting the request for an advisory opinion.

(d) A request for an advisory opinion may be denied if:

(1) The request contains incomplete information on which to base an informed advisory opinion;

(2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior advisory opinion or a regulation;
and

(4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

§ 604.19 Processing of advisory opinions.

(a) A request for an advisory opinion shall be sent to the Chief Counsel at ombudsman.charterservice@dot.gov and filed electronically in the Charter Service Advisory Opinion/Cease and Desist Order docket number FTA–2007–0023 at <https://www.regulations.gov> or sent to the dockets office located at 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, for submission to that docket.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with § 604.18(b). The Chief Counsel shall send his or her decision to the interested party, the docket, and the recipient, if appropriate.

§ 604.20 Effect of an advisory opinion.

(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in § 604.25, obligates the agency to follow it until it is amended or revoked.

(b) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement and is limited to the factual circumstances described in the request for an advisory opinion. The Chief Counsel’s advisory opinion shall not be binding upon a Presiding Official conducting a proceeding under subpart I of this part.

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice

given by an FTA employee orally, or given in writing, but not under this section, 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.

§ 604.21 Special considerations for advisory opinions.

Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator.

§ 604.22 Request for a cease and desist order.

(a) An interested party may also request a cease and desist order as part of its request for an advisory opinion. A request for a cease and desist order shall contain the following information in addition to the information required for an advisory opinion:

(1) A description of the need for the cease and desist order, a detailed description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question, and how the public interest will be served by avoiding or ameliorating the lost business opportunity. A registered charter provider must distinguish its loss from that of other registered charter providers in the geographic service area.

(2) A detailed description of the efforts made to notify the recipient of the potential violation of the regulations in this part. Include names, titles, phone numbers or e-mail addresses of persons contacted, date and times contact was made, and the response received, if any.

(b) A request for a cease and desist order may be denied if:

(1) The request contains incomplete information on which to base an informed decision on a cease and desist order;

(2) The Chief Counsel concludes that a cease and desist order cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior a cease and desist order; or

(4) The Chief Counsel otherwise concludes that a cease and desist order would not be in the public interest.

(c) A recipient who is the subject of a request for a cease and desist order shall have three business days to respond to the request. The response shall include a point-by-point rebuttal to the information included in the request for a cease and desist order.

(d) The time period for a response by the recipient begins once a registered charter provider files a request in the Advisory Opinions/Cease and Desist Orders docket (FTA–2007–0023 at <https://www.regulations.gov>) or with the FTA Chief Counsel’s Office, whichever date is sooner.

§ 604.23 Decisions by the Chief Counsel regarding cease and desist orders.

(a) The Chief Counsel may grant a request for a cease and desist order if the interested party demonstrates, by a preponderance of the evidence, that the planned provision of charter service by a recipient would violate this part.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes, regulations, agreements, and any other information that is relevant to the request.

§ 604.24 Effect of a cease and desist order.

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.

Subpart F—Complaints

§ 604.25 Purpose.

This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or qualified human service organization on the FTA charter registration website and filing a complaint regarding the provision of charter service by a recipient. Note: To save time and expense for all concerned, FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process.

§ 604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.

(a) 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 website by filing a complaint that meets the following:

- (1) States the name and address of each entity who is the subject of the complaint;
- (2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration website;
- (3) Files electronically by submitting it to the Charter Service Removal Complaints docket number FTA–2007–0024 at <https://www.regulations.gov>;
- (4) Serves by e-mail or facsimile if no e-mail address is available, or by overnight mail service with receipt confirmation, and attaches documents offered in support of the complaint, upon all entities named in the complaint;

(5) Files within 90 days of discovering facts that merit removal of the registered charter provider or qualified human service organization from the FTA Charter Registration website; and

(6) Contains the following certification:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:
[list persons, addresses, and e-mail or facsimile numbers]
Dated this xx day of xxxx, 20xx. [signature], for [party].

(b) The registered charter provider or qualified human service organization shall have 15 days to answer the complaint and shall file such answer, and all supporting documentation, in the Charter Service Removal Complaint docket number FTA-2007-0024 at <https://www.regulations.gov> and e-mail such answer to ombudsman.charterservice@dot.gov.

(c) A recipient, qualified human service organization, or a registered charter provider, or its duly authorized representative, shall not file a reply to the answer.

(d) FTA shall determine whether to remove the registered charter provider or qualified human service organization from the FTA charter registration website based on a preponderance of the evidence of one or more of the following:

(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.

(e) FTA's determination whether or not to remove a registered charter provider or qualified human service organization from the registration list shall be sent to the parties

within 30 days of the date of the response required in paragraph (b) of this section and shall state:

(1) Reasons for allowing the continued listing or removal of the registered charter provider or qualified human service organization from the registration list;

(2) If removal is ordered, the length of time (not to exceed three years) the private charter operator or qualified human service organization shall be barred from the registration list; and

(3) The date by which the private charter operator or qualified human service organization may re-apply for registration on the FTA charter registration website.

§ 604.27 Complaints, answers, replies, and other documents.

(a) A registered charter provider, or its duly authorized representative (“complainant”), affected by an alleged noncompliance of this part may file a complaint with the Office of the Chief Counsel.

(b) Complaints filed under this subpart shall:

(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.

(c) Unless the complaint is dismissed pursuant to § 604.28 or § 604.29, FTA shall notify the complainant, respondent, and State recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed. Respondent shall have 30 days from the date of service of the FTA notification to file an answer.

(d) The complainant may file a reply within 20 days of the date of service of the respondent's answer.

(e) The respondent may file a rebuttal within 10 days of the date of service of the reply.

(f) The answer, reply, and rebuttal shall, like the complaint, contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made and be accompanied by the supporting documentation upon which the submitter relies.

(g) The answer shall deny or admit the allegations made in the complaint or state that the entity filing the document is without sufficient knowledge or information to admit or deny an allegation and shall assert any affirmative defense.

(h) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.

(i) The complainant may withdraw a complaint at any time after filing by serving a "Notification of Withdrawal" on the Chief Counsel and the respondent.

§ 604.28 Dismissals.

Within 20 days after the receipt of a complaint described in § 604.27, the Office of the Chief Counsel shall provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice, under this section if:

(a) It appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;

(b) On its face it does not state a claim that warrants an investigation or further action by FTA; or

(c) The complainant lacks standing to file a complaint under subpart B, C, or D of this part.

§ 604.29 Incomplete complaints.

If a complaint is not dismissed under § 604.28, but is deficient as to one or more of the requirements set forth in § 604.27, the Office of the Chief Counsel may dismiss the complaint within 20 days after receiving it. Dismissal shall be without prejudice and the complainant may re-file after amendment to correct the deficiency. The Chief Counsel's dismissal shall include the reasons for the dismissal without prejudice.

§ 604.30 Filing complaints.

(a) *Filing address.* Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 1200 New Jersey Ave., SE., Room E55-302, Washington, DC 20590 and file it electronically in the Charter Service Complaint docket number FTA-2007-0025 at <https://www.regulations.gov> or mail it to the docket by sending the complaint to 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery, U.S. mail, or overnight delivery with receipt confirmation. Unless the date is shown to be inaccurate, documents to be filed with FTA shall be deemed filed on the earliest of:

- (1) The date of personal delivery;
- (2) The mailing date shown on the certificate of service;
- (3) The date shown on the postmark if there is no certificate of service; or
- (4) The mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Electronic service.* A document sent by e-mail shall not constitute service as described in § 604.31.

(d) *Number of copies.* Unless otherwise specified, an executed original shall be filed with FTA.

(e) *Form.* Documents filed with FTA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include a title and the docket number, as established by the Chief Counsel or Presiding Official, of the proceeding on the front page.

(f) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. Subject to the enforcement provisions contained in this subpart, the signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry, to the best of the signer's knowledge, information, and belief, the document is:

- (1) Consistent with this part;
- (2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and
- (3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

§ 604.31 Service.

(a) *Designation of person to receive service.* The initial document filed by the complainant shall state on the first page of the document for all parties to be served:

- (1) The title of the document;
- (2) The name, post office address, telephone number; and
- (3) The facsimile number, if any, and e-mail address(es), if any.

(4) If any of the items in paragraphs (a)(1) through (3) of this section change during the proceeding, the person shall promptly file notice of the change with FTA and the Presiding Official, if appropriate, and shall serve the notice on all other parties to the proceeding.

(b) *Docket numbers.* Each submission identified as a complaint under this part by the submitting party shall be filed in the Charter Service Complaint docket FTA–2007–0025.

(c) *Who must be served.* Copies of all documents filed with FTA shall be served by the entity filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on FTA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:
[list persons, addresses, and e-mail or facsimile numbers]
Dated this xx day of xxxx, 20xx. [signature], for [party]

(d) *Method of service.* Except as otherwise provided in § 604.26, or agreed by the parties and the Presiding Official, as appropriate, the method of service is personal delivery or U.S. mail.

(e) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under this section; or

(2) When a properly addressed envelope, sent to the last known address has been returned as undeliverable, un-claimed, or refused.

Subpart G—Investigations

§ 604.32 Investigation of complaint.

(a) If, based on the pleadings, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.

(b) 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.

(c) The Chief Counsel shall send a notice to complainant(s) and respondent(s) once an investigation is complete, but not later than 90 days after receipt of the last pleading specified in § 604.27 was due to FTA.

§ 604.33 Agency initiation of investigation.

(a) Notwithstanding any other provision under this part, FTA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 604.32.

(b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.

(c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a Presiding Official.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

§ 604.34 Chief Counsel decisions and appointment of a PO.

(a) After receiving a complaint consistent with § 604.27, and conducting an investigation, the Chief Counsel may:

- (1) Issue a decision based on the pleadings filed to date;
- (2) Appoint a PO to review the matter; or
- (3) Dismiss the complaint pursuant to § 604.28.

(b) If the Chief Counsel appoints a PO to review the matter, the Chief Counsel shall send out a hearing order that sets forth the following:

- (1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing conducted in accordance with subpart I of this part;
- (2) The relevant statutory, judicial, regulatory, and other authorities;
- (3) The issues to be decided;
- (4) Such rules of procedure as may be necessary to supplement the provisions of this part;
- (5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this part; and
- (6) The date by which the PO is directed to issue a recommended decision.

§ 604.35 Separation of functions.

(a) Proceedings under this part shall be handled by an FTA attorney, except that the Chief Counsel may appoint a PO, who may not be an FTA attorney.

(b) After issuance of an initial decision by the Chief Counsel, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this part shall not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or his or her designee on written

appeal, and shall not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal.

Subpart I—Hearings

§ 604.36 Powers of a PO.

A PO may:

(a) Give notice of, and hold, pre-hearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law and issue a recommended decision.

§ 604.37 Appearances, parties, and rights of parties.

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a

party shall file according to the filing and service procedures contained in §§ 604.30 and 604.31.

(b) The parties to the hearing are the respondent(s) named in the hearing order, the complainant(s), and FTA, as represented by the PO.

(c) The parties to the hearing may agree to extend for a reasonable period of time the time for filing a document under this part. If the parties agree, the PO shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the PO to be signed by the PO and filed with the hearing docket. The PO may grant additional oral requests for an extension of time where the parties agree to the extension.

(d) An extension of time granted by the PO for any reason extends the due date for the PO's recommended decision and for the final agency decision by the length of time in the PO's extension.

§ 604.38 Discovery.

(a) Permissible forms of discovery shall be within the discretion of the PO.

(b) The PO shall limit the frequency and extent of discovery permitted by this section if a party shows that:

(1) The information requested is cumulative or repetitious;

(2) The information requested may be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

§ 604.39 Depositions.

(a) For good cause shown, the PO may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness;
or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) Any party to the hearing desiring to take the deposition of a witness according to the terms set out in this subpart, shall file a motion with the PO, with a copy of the motion served on each party. The motion shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) If good cause is shown in the motion, the PO in his or her discretion may issue an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition, and the general scope and subject matter of the testimony to be taken.

(d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the

witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

§ 604.40 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The PO may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the PO. The person shall state specific grounds for nondisclosure in the motion.

(c) The PO shall grant the motion to withhold information from public disclosure if the PO determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 604.41 Standard of proof.

The PO shall issue a recommended decision or shall rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence.

§ 604.42 Burden of proof.

(a) The burden of proof of noncompliance with this part, determination, or agreement issued under the authority of the Federal Transit Laws is on the registered charter provider.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§ 604.43 Offer of proof.

A party whose evidence has been excluded by a ruling of the PO, during a hearing in which the respondent had an opportunity to respond to the offer of proof, may offer the evidence on the record when filing an appeal.

§ 604.44 Record.

(a) The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) Any interested person may examine the record by entering the docket number at <https://www.regulations.gov> or after payment of reasonable costs for search and reproduction of the record.

§ 604.45 Waiver of procedures.

(a) The PO shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the PO to enter a recommended decision on the record.

§ 604.46 Recommended decision by a PO.

(a) The PO shall issue a recommended decision based on the record developed during the proceeding and shall send the recommended decision to the Chief Counsel for ratification or modification not later than 110 days after the referral from the Chief Counsel.

(b) The Chief Counsel shall ratify or modify the PO's recommended decision within 30 days of receiving the recommended decision. The Chief Counsel shall serve his or her decision, which is capable of being appealed to the Administrator, on all parties to the proceeding.

§ 604.47 Remedies.

(a) If the Chief Counsel determines that a violation of this part occurred, he or she may take one or more of the following actions:

(1) Bar the recipient from receiving future Federal financial assistance from FTA;

(2) Order the withholding of a reasonable percentage of available Federal financial assistance; or

(3) Pursue suspension and debarment of the recipient, its employees, or its contractors.

(b) In determining the type and amount of remedy, the Chief Counsel shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation (“extent of deviation from regulatory requirements”);

(3) The revenue earned (“economic benefit”) by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

(c) The Chief Counsel office may mitigate the remedy when the recipient can document corrective action of alleged violation. The Chief Counsel’s decision to mitigate a remedy shall be determined on the basis of how much corrective action was taken by the recipient and when it was taken. Systemic action to prevent future violations will be given greater consideration than action simply to remedy violations identified during FTA’s inspection or identified in a complaint.

(d) 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.

(e) 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.

Subpart J—Appeal to Administrator and Final Agency Orders

§ 604.48 Appeal from Chief Counsel decision.

(a) Each party adversely affected by the Chief Counsel's office decision may file an appeal with the Administrator within 21 days of the date of the Chief Counsel's issued his or her decision. Each party may file a reply to an appeal within 21 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery consistent with §§ 604.30 and 604.31.

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision based on the record that either accepts, rejects, or modifies the Chief Counsel's decision within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(c) If no appeal is filed, and the Administrator does not take review of the decision by the office on the Administrator's own motion, the Chief Counsel's decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the Chief Counsel's decision was issued.

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of the Chief Counsel's decision that becomes a final agency decision by operation of paragraph (c) of this section.

§ 604.49 Administrator's discretionary review of the Chief Counsel's decision.

(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date of the Chief Counsel's decision that contains the specific findings of fact and conclusions of law in the decision subject to review by the Administrator.

(b) Parties may file one brief on review to the Administrator or rely on their post-hearing briefs to the Chief Counsel's office. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery consistent with §§ 604.30 and 604.31.

(c) The Administrator shall issue a final agency decision and order within 30 days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(d) If the Administrator takes review on the Administrator's own motion, the decision of the Chief Counsel is stayed pending a final decision by the Administrator.

Subpart K—Judicial Review

§ 604.50 Judicial review of a final decision and order.

(a) A person may seek judicial review in an appropriate United States District Court of a final decision and order of the Administrator as provided in 5 U.S.C. 701–706. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order is effective.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) FTA's decision to dismiss a complaint as set forth in § 604.29;

(2) A recommended decision issued by a PO at the conclusion of a hearing; or

(3) A Chief Counsel decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.