

FTA's Charter Regulations

49 CFR Part 604

A Compliance Guide for Texas Public Transit Systems



**The Texas Department of Transportation
Public Transportation Division**

October 2009 Revision

Table of Contents

SUBPART A-GENERAL PROVISIONS	1
History	1
Summary of Key Changes	1
Who Should Read This Manual	2
Organization of this Guide.....	2
Roles and Responsibilities.....	3
Applicability-§604.2.....	3
Definitions-§604.3	3
Charter Service Agreement-§604.4	6
Exemptions	7
<i>Transport of Employees</i>	7
<i>Transport of Employees for Emergency Preparedness Planning</i>	7
<i>Nonurbanized Area Employee Training</i>	7
<i>Program Exemption</i>	7
<i>Private Charter Operators That Receive FTA Assistance</i>	7
<i>National, State, or Local Emergencies</i>	8
Program Purpose.....	8
FTA Ombudsman.....	9
Questions and FTA Responses	10
SUBPART B-EXCEPTIONS	14
Exceptions-§604.5	14
Government Officials/Governmental Business-§604.6	14
Qualified Human Service Organizations (QHSEO)-§604.7	15
Leasing FTA Funded Equipment and Drivers-§604.8.....	16
No Response by a Registered Charter Operator to a Notice-§604.9.....	16
Agreements with Registered Charter Operators-§604.10.....	17
Petitions to the FTA Administrator-§604.11	17
Reporting Requirements-§604.12.....	19
Questions and FTA Responses	21
SUBPART C-THE REGISTRATION PROCESS	24
The Registration Process.....	24
Private Charter Operator Registration-§604.13	24
Agency's Notification to Registered Charter Providers-§604.14	26
SUBPART D—REGISTRATION OF QUALIFIED HUMAN SERVICE ORGANIZATIONS AND DUTIES FOR RECIPIENTS WITH RESPECT TO CHARTER REGISTRATION WEB SITE	28
Qualified Human Service Organization (QHSEO) Registration-§604.15.....	28
How Do Public Transit Agencies Use This Registration Data?.....	30
Duties for Recipients with Respect to FTA's Charter Registration Website-§604.16.....	30
Questions and FTA Responses	30
SUBPART E-ADVISORY OPINIONS & CEASE AND DESIST ORDERS	33
Introduction & Purpose-§604.17	33
Advisory Opinions-§604.18.....	33
How to Request an Advisory Opinion-§604.19	33
Other FTA Advice in Regards to an Advisory Opinion (Effect)-§604.20	34
Special Considerations-§604.21	34
Cease and Desist Orders-§604.22.....	34

SUBPART F-COMPLAINTS	36
Purpose-§604.25	36
Complaints Requesting the Removal of an Organization from the Registration List-§604.26 ..	36
Complaints Alleging Transit System Violations of the Rule-§604.27	37
Dismissal of Complaints-§604.28.....	39
Incomplete Complaints-§604.29	39
How To File Complaints-§604.30.....	39
Service-§604.31	40
SUBPART G-INVESTIGATIONS	42
Investigation of Complaint-§604.32.....	42
Agency Initiation of Investigation-§604.33	42
SUBPART H-DECISIONS BY FTA AND APPOINTMENT OF A PRESIDING OFFICIAL	43
Appointment of a Presiding Official (PO)-§604.34	43
Separation of Function-§604.35.....	43
SUBPART I-HEARINGS	44
Powers of a Presiding Official-§604.36	44
Rights of Parties in a Hearing-§604.37	44
Discovery- §604.38	45
Depositions- §604.39	45
Public Disclosure of Evidence- §604.40.....	45
Standard of Proof-§604.41	45
Burden of proof-§604.42	45
Offer of proof-§604.43.....	45
Record-§604.44	45
Waiver of Procedures-§604.45	45
Decisions of a Presiding Official- §604.46	45
Remedies- §604.47.....	46
SUBPART J-APPEALS TO THE ADMINISTRATOR	47
Appeal from Chief Counsel Decision-§604.48	47
Administrator's Discretionary Review of the Chief Counsel's Decision-§604.49.....	47
SUBPART K-JUDICIAL REVIEW	48
Judicial Review of a Final Decision and Order-§604.50	48
Questions and FTA Responses	49
APPENDIX A-FEDERAL REGISTER, 49 CFR PART 604	51
APPENDIX B-CHARTER REPORT	52

SUBPART A-GENERAL PROVISIONS

Introduction and Purpose

Introduction & Purpose-§604.1

Transit agencies that want to provide charter services should follow the guidelines outlined in this guide, to the extent the guide is consistent with applicable law. The federal statute and the regulations published in 49 CFR Part 604 always take precedent.

This guide has been prepared to provide guidance to Texas's transit systems on the Federal Transit Administration's (FTA) new charter regulations ([49 CFR Part 604](#)). The new regulation substantially modifies the previous regulation, imposes new administrative requirements on transit systems and private charter operators, creates a new registration process, and specifies remedies for violations of the rules.

This manual provides guidance to both public transit systems and private charter operators on FTA requirements.

History

Since the initial passage of the Urban Mass Transportation Act of 1964 (Pub. L. No. 88-365), there have been limitations in place that restrict a recipient of FTA funds from engaging in charter activities. FTA has issued various regulations regarding charter activities, and until the most recent change, the most recent regulatory action dates back to December 30, 1988.

With the passage of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) on August 10, 2005, Congress directed FTA to revise its charter regulation pertaining to remedies for charter violations, specifically authorizing the Secretary of Transportation to withhold FTA financial support in the event a grantee

engaged in a "pattern of violations of the agreement."

The new rules were published in the [Federal Register](#) on January 14, 2008. The effective date of the regulation was April 30, 2008.

Summary of Key Changes

FTA's rulemaking is significant, introducing a number of changes to longstanding charter rules. All recipients of FTA funding should be aware of these changes.

Significant changes include:

- a new definition of [charter service](#);
- a new category of consumer referred to as a "[Qualified Human Service Organization \(QHSEO\)](#)";
- a new exemption from the rules for Section 5311 recipients when the service is for "[program purposes](#)" only;
- new exemptions for:
 - emergency response and [preparedness](#) services; and
 - transportation of employees for [training](#) by nonurbanized systems;
- new exceptions for transport of [government officials](#) conducting government business;
- new [reporting and recordkeeping](#) requirements imposed on public transit operators who provide charter services;
- "willing and able" solicitation process replaced with new, web-based [registration process](#);

- new advisory procedure established and complaint/investigation/penalties procedures formalized;
- requirement to fully allocate costs eliminated; and
- a new charter ombudsman position created at FTA.

Who Should Read This Manual

This manual should be read by:

- public transit agencies, regardless of whether or not they intend to provide charter services;
- coordination projects that intend to expand their scope of service to include public transportation services;
- specialized transportation providers using Section 5310 funded equipment that transport other than their own clients on field trips;
- private charter operators; and
- human service agencies that contract for transit services with a public transit agency and have periodic need for charter services on behalf of their clients.

Organization of this Guide

The guide is formatted similarly to the Final Charter Rule found in the [Federal Register / Vol. 73, No. 9 / Monday, January 14, 2008](#), beginning on **Page 2345**.

Subpart A—General Provisions

This subpart specifies which entities shall comply with the charter service regulations; defines terms; explains procedures for an exemption; and sets out the contents of a charter service agreement.

Subpart B—Exceptions

This subpart identifies the limited exceptions under which recipients may provide community-based charter services.

Subpart C—The Registration Process

This subpart describes the process that agencies/companies must follow to be considered a registered charter provider.

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

This subpart describes the registration process for “Qualified Human Service Organizations” (QHSO) that seek free or reduced rate services from recipients, and do not receive funds from Federal programs listed in Appendix A of the circular, but serve individuals with low income, advanced age, or with disabilities.

Subpart E—Advisory Opinions & Cease and Desist Orders

The purpose of this subpart is to set out the requirements for requesting an advisory opinion or a cease and desist order from FTA.

Subpart F—Complaints

This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or a QHSO on the FTA charter registration Web site and filing a complaint regarding the provision of charter service by a recipient.

Subpart G—Investigations

This subpart describes the requirements for an investigation of a complaint conducted by FTA.

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

This subpart describes the process for decisions of FTA regarding the complaint process.

[Subpart I-Hearings](#)

This subpart describes the powers of a Presiding Official and the rights of parties regarding the complaint process.

[Subpart J-Appeals To The Administrator](#)

This subpart describes the process for filing an appeal with FTA regarding the complaint process.

[Subpart K-Judicial Review](#)

This subpart describes the process for seeking a judicial review in an appropriate United States District Court of a final decision and order of the Administrator.

[Questions and Answers](#)

As appropriate, there are a series of Questions and Answers that have been prepared by FTA that follow a subpart. These questions have been organized to follow the topics covered in this manual.

Roles and Responsibilities

Transit Districts and recipients of funds identified in [§604.2 Applicability](#) (page 3 of this guide), except recipients of §5307, are required to submit a charter report to the Texas Department of Transportation (TxDOT) on a quarterly basis. Public Transit Coordinators (PTCs) should ensure that all recipients submit the report timely to TxDOT and to the Public Transportation Division (PTN). Due dates are outlined in [Reporting Requirements-§604.12](#), on page 19 of this guide.

PTCs are responsible for annually monitoring subrecipients of public transportation funds. Charter services are monitored using the [PTN-129, Compliance Review](#).

As the recipient of federal funds listed below, (see PTN on page 5) PTN compiles charter reports from all subrecipients of federal funds and submits a quarterly report on [TEAM-Web](#).

PTN will monitor any reports of non-compliance, as discussed in [Complaints Alleging Transit System Violations of the Rule-§604.27](#) on page 37 of this guide.

PTN has no role or responsibilities in the complaint process.

Applicability-§604.2

Charter regulations only apply to **recipients**. FTA defines this to also include subrecipients and third party operators who utilize FTA funded equipment in the delivery of service. FTA has long held, however, that mere utilization of non-FTA funded equipment does not allow a recipient to perform charters as such equipment may be maintained at FTA constructed facilities, maintained by FTA funded mechanics, etc.

Additionally, when a third party private charter operator provides service under contract, only that portion of the provider's service is covered by the regulations.

Definitions-§604.3

Agency means an agency or entity that receives federal financial assistance, either directly or indirectly, including agencies that subcontract with transit agencies, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

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

(1) transportation provided by a transit agency at the request of a third party for the exclusive use of a bus or van for a negotiated price. 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 transit agency 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:

- (i) hours operated while carrying passengers for hire; plus
- (ii) associated deadhead hours.

(See: "[What Does this Definition of Charter Service Mean](#)" below)

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.

FTA means the Federal Transit Administration.

General transportation means a service that is designed to benefit and serve the needs of the general public, under the control of the transit agency in respect to equipment, schedules, routes, fares, etc. and is open to the public.

Geographic service area means the entire area in which a transit agency 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 transit agency providing charter service under the Federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.

Mass transportation means transportation that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation. FTA recognizes three (3) key components of eligible mass transit. The service must be: under the control of the transit agency; designed to benefit the public at large; and open to the public.

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.

Private charter operators (PCO) means an operator that provides charter service for profit.

Presiding Official (PO) 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 human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations identified herein.

Public transportation means transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water conveyance by a governmental entity or by a private entity if the private entity receives financial assistance for that conveyance from any governmental entity. This definition includes fixed guideway transportation and underground transportation, but excludes services provided by aircraft, ambulances, and emergency vehicles.

PTN means the [Public Transportation Division](#), a division of the [Texas Department of Transportation](#). PTN is the direct recipient of §5309, §5310, §5311, §5316 and §5317 federal transit funds and pass these funds through to eligible agencies.

Qualified Human Services Organization (QHSO) means an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age. This term is used consistent with the

President's Executive Order on Human Service Transportation Coordination.

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 (provider) that wants to receive notice of charter service requests directed to transit agencies and has registered on [FTA's Charter Registration Website](#).

Rural Transit District means a political subdivision of the state that provides and coordinates rural public transportation within its boundaries in accordance with the provisions of [Texas Transportation Code, Chapter 458](#).

School bus transportation means exclusive transportation to and from school for students and school personnel. (see Tripper Service, below)

Sightseeing service means regularly scheduled round trip service to "see the sights", often accompanied by a narrative guide, open to the public for a set price, and typically occurs on weekends, holidays, tourist season or special occasions. (Sightseeing service may not be provided by transit agencies unless FTA has provided written concurrence that the service is incidental.

Special transportation means exclusive service limited to two groups of persons: elderly or persons with disabilities in a particular geographic area (not restricted to a particular group of elderly or persons with disabilities, and persons who live in an inner city but who are employed in suburban work sites.

Transit agency means an agency or entity that receives federal financial assistance, either directly or indirectly, including agencies

that subcontract with transit agencies, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

Trippler service means regular service which has been modified to accommodate the transportation of student and school personnel.

Urban transit district means a local governmental body or a political subdivision of the state that operates a public transportation system in an urbanized area with a population between 50,000 and 200,000, according to the most recent federal census. This definition includes small urban transportation providers under [Texas Transportation Code, Chapter 456](#), that received state money through the department on September 1, 1994.

What Does This Definition of Charter Service Mean?

The definition specifies several characteristics of what does and does not constitute charter service. Components of charter service include:

1. a third party arranges and **negotiates** a price for the service. The arrangement does not have to be in writing,
2. the group has acquired the **exclusive** use of the vehicle.
3. transportation is by **bus or van**. It should be noted that these two categories are inclusive of all public transit vehicles, including replica trolley vehicles. FTA only recognizes two categories of rolling stock: buses and vans.
4. the service is not part of the transit provider's **regularly scheduled service**.
5. service is offered for a single trip or for a limited amount of time.

6. the **group has specified the origin, destination**, and any intermediate stops in the travel itinerary.
7. service is provided to the public for events or functions that occur on an **irregular basis** or for a **limited duration** and
 - a. a **premium fare** (e.g., higher than the regular fare) is charged; or
 - b. a **third party pays**, in whole or in part, for the service.

Does Charter Service Have to Meet All of These Elements?

No. The definition of charter service includes service by a public transit that is irregular or on a limited basis for a premium fare that is greater than the usual or customary fixed route fare or service for which a third party pays all or part of the costs for the service. If any or all of these elements exist, the service may be deemed charter service and is subject to the regulations.

FTA further states that service provided in demand response mode to individuals is categorically defined as **not** being charter service.

Charter Service Agreement-§604.4

As a condition of receiving federal funds, all transit agencies are required to enter into a charter service agreement. The agreement is part of the annual FTA [Certifications and Assurances](#) (a part of the *Grant Application, Part II*, issued by PTN) which all transit agencies must complete prior to receiving any federal grant funds through the department.

The terms of the Charter Service Agreement are as follows: *The Applicant understands and agrees that:*

- (1) *the requirements of 49 CFR Part 604 will apply to any charter service it or its subrecipients, lessees, or third party contractors provide,*

(2) the definitions of 49 CFR Part 604 will apply to this Charter Service Agreement, and

(3) a violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

Exemptions

An **exemption** from the regulations means that the provisions of 49 CFR Part 604 do not apply. In cases where 49 CFR Part 604 does apply, there still may be unique circumstances where the recipient of FTA assistance may provide charter services; these cases are [Exceptions](#) to the regulations and described later in this manual.

This section identifies the exemptions to the regulations. There are five exemptions:

1. transport of employees exemption;
2. transport of employees for emergency preparedness planning exemption;
3. nonurbanized transit system employee training exemption;
4. program related exemptions;
5. private contractor exemptions; and
6. national, state, or local emergency exemptions.

Transport of Employees

If a transit system that is an FTA recipient is only transporting its employees, or the employees of other transit systems, such transport is no longer considered a charter service (it may have been under the old rules). This exemption also applies if the system is transporting the following individuals to/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:

- Transit management officials;
- Transit contractors and/or bidders; and
- Government officials and their official guests.

Transport of Employees for Emergency Preparedness Planning

When a transit system transports the same group of listed employees and related parties for purposes of emergency preparedness planning and operations, the charter regulations do not apply.

Nonurbanized Area Employee Training

Transit systems in nonurbanized areas may transport their own employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area without the service being deemed charter service by FTA.

Program Exemption

Charter rules do not apply to recipients under the following FTA programs:

- [Section 5310](#), Elderly Individuals and Individuals with Disabilities Program;
- [Section 5311](#), Nonurbanized Area Formula Program;
- [Section 5316](#), Job Access and Reverse Commute (JARC) Program; and
- [Section 5317](#), New Freedom Program.

This categorical exemption applies only when the transit system is providing charter for [program purposes](#) only.

Private Charter Operators That Receive FTA Assistance

There may be instances where a private charter company receives, either directly or indirectly, financial assistance under an FTA program. In such cases, FTA's charter rules do not apply to the provider's non-FTA funded activities.

National, State, or Local Emergencies

Transit systems that provide service in direct response to an emergency declared by the President, a governor, a mayor, or in an emergency requiring immediate action prior to a formal declaration are exempt from the regulations. If the emergency lasts more than 45 days, the transit system must request permission to continue the service from the FTA Administrator.

Program Purpose

Definition

FTA excludes from charter regulation coverage recipients of four funding programs (Section 5310, Section 5311, Section 5316, and Section 5317) if the service is considered for “program purposes.”

FTA defines this term as:

...transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals).

Thus, systems funded under these four programs are exempt **provided** the charter service is provided on behalf of a human service agency or [Qualified Human Service Organization \(QHSO\)](#) or is provided to one of the three targeted population groups. If a charter service does not meet the definition listed above, then the program exemption **does not apply**.

These distinctions are particularly important, as the new regulation could potentially apply to recipients of Section 5310 funding (previously categorically exempt) if they engage in other than program purpose transportation.

Examples

Scenario: A local senior center contracts with a county based public transportation system to provide daily transport of elderly persons to a congregate meal site. The transit

system is a recipient of Section 5311 funding. The senior center uses Title III-B funding to pay for the contract service. This funding is listed in Appendix A of the regulation.

As part of the center’s goals to enrich the lives of older adults, the center arranges group trips to cultural events. Only clients of the organization are transported on the trip. The center requests that the public transportation system provide the trip.

Determination: The transit system may perform the trip. As a recipient of Section 5311 funding, charter regulations do not apply if the service meets the definition of program services. In this case, the proposed trip to the cultural event serves the needs of one of the target populations (elderly) and the service is being provided on behalf of a human service agency.

Scenario: A local youth program provides an afternoon recreation program for low-income youths. The program is funded through local donations. The program requests the local public transit system to transport the youths to a regional youth sporting event. The youth program has registered as a Qualified Human Service Organization (QHSO) on the FTA website.

Determination: The transit system may perform the trip. This scenario involves a trip that meets the definition of a program purpose for one of the target populations (low income).

Note: Even though this organization does not use funding from the list provided in Appendix A to the regulations, this is not a factor in determining allowability. The service otherwise meets the definition of a program purpose.

Scenario: An urban transit system provides a shuttle service each year from a park and ride lot to the county fairgrounds for the annual county fair. The system charges a fare. The system’s regular customer fare is \$1.50 per trip. For the fair shuttle, a \$2.50

fare is charged. The service is advertised and any member of the public may ride.

Determination: This is not an allowable service. As this service does not serve one of the three target populations, and a premium fare is charged, this service is charter and can only be provided if the system satisfactorily uses the Notice process outlined in the next section.

Note: Had the transit system not charged a premium fare, this service would be permissible.

FTA Ombudsman

FTA has established an Ombudsman for Charter Services position. The ombudsman can assist transit agencies with questions or comments about the regulation. Contact information for the ombudsman is:

Ombudsman for Charter Services
Federal Transit Administration,
1200 New Jersey Ave., SE. Room E54-410
Washington, DC 20590

(202) 366-4063

<mailto:ombudsman.charterservice@dot.gov>

[Return to Table of Contents](#)

Questions and FTA Responses

1. How do I know if these charter regulations apply to my transit agency?

If your transit agency accepts FTA financial assistance, the charter regulations probably apply. Your next step is to look at the exemptions contained in Section 604.2 (“Applicability”). If none of these exemptions apply, look at the definition of charter service contained in Section 604.3 (“Definitions”). Determine if the activity your agency is about to engage in fits within that definition. If not, then the charter regulations do not apply. If the activity does fit within the definition of charter service, then you need to determine whether the activity fits within one of the exceptions contained in subpart B (“Exceptions”). Remember that you may not provide the service if a registered charter provider indicates an interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

2. Who is considered a “private charter operator?” What are the criteria to establish that classification?

A “private charter operator” is any private, for-profit entity (*i.e.*, individual, group or company) that provides chartered transportation on a regular basis with its own equipment (e.g., bus and/or van).

3. What is the status of sub-grantees and entities with equipment and operations not assisted with federal funds?

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

4. Must a private charter provider that provides public transportation services under contract or agreement with a public transit agency abide by the limitations in the proposed rule?

Private charter providers that provide public transportation service under contract with a public transit agency are covered by the new regulation when they are operating FTA funded equipment or services. These private charter operators are standing in the shoes of the public transit agency, and therefore cannot use federally funded equipment to provide charter services. This does not mean, however, that a private charter operator that contracts with a public transit agency and uses one of the private charter operator’s own vehicles is subject to the charter service regulations (see Section 604.2(c)).

5. Does the analysis change under different contractual scenarios (e.g., turnkey operations, operation and maintenance of vehicles provided by the public transit agency, or operation of contractor owned buses maintained in a federally funded facility owned by a public transit agency)?

Yes. The regulations, however, only apply when the contract is funded with FTA funds or the buses are funded with FTA funds or the equipment is maintained in an FTA funded facility.

6. May a private charter operator that qualifies as a subrecipient of a state, under an FTA-administered program, use vehicles purchased with federal assistance to provide private charter services?”

It depends. A private charter operator that receives FTA assistance can use FTA funded equipment to provide service for program purposes (see Section 604.2(e)), but not for other charter service. Under the provisions of Section 604.2(c), however, the regulations do not apply to non-FTA funded activities of private charter operators that receive directly or indirectly FTA financial assistance under programs such as sections 5307, 5309, 5310, 5311, 5316, and 5317. Further, an intercity bus operator that receives assistance under section 5311(f) to provide rural intercity bus service may provide charter service using a FTA-funded vehicle only if one of the exceptions applies. A vehicle equipped with a lift using FTA assistance under section 3038 of TEA–21 may be used for charter service.

7. Is there a definition of “geographic service area?”

Yes. Geographic service area is defined under 49 CFR Section 604.3(j) as, “the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state and Federal law.”

8. Do charter service hours include time spent waiting for passengers where the vehicle is not available for other services?

Yes. Charter service hours include both time spent transporting passengers and time spent waiting for passengers. Charter service hours also include “deadhead” hours which is the time spent getting from the garage to the origin of the trip and then the time spent from the trip’s ending destination back to the garage, since the vehicle is unavailable during that time period as well.

9. Are rural transit operators (section 5311) exempt from the rule? What about recipients of 5310 vehicles or JARC or New Freedom grants?

Recipients under section 5311, 5310, 5316, and 5317 are not subject to the charter rule when using FTA-funded vehicles to provide public transportation or coordinated human service transportation or to serve groups of individuals with disabilities, the elderly, or low income individuals. The charter rule does apply, however, if the FTA recipient wants to provide other charter service using FTA-funded or maintained vehicles. A rural transit operator may provide other charter service only under the exemptions/exceptions contained in the rule.

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

So long as the transit agency does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.

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

Yes. The fact that the Fair Association pays for the service in whole or in part means the service is charter under Section 604.3(c)(2).

12. What qualifies as indirect financial assistance?

The inclusion of “indirect” financial assistance as part of the definition of “recipient” covers “subrecipients.” We modified the definition of recipient in the final rule to make this point clear.

13. When a transit authority contracts out its smaller accessible vehicles for use during football games to offer service free of charge for persons with disabilities and their escorts, is it charter service?

Yes. Under the facts presented, this type of service falls under the definition of charter service in Section 604.3(c)(1), since “contracting out” involves a third party, exclusive use, and a negotiated price. Thus, the transit authority would need to determine whether one of the exceptions under subpart B applies.

14. Is it considered charter service when the transit authority funds shuttles to and from football games? Regularly scheduled service is suspended on these days, but this service partially follows the existing route and is open to the public at the regular fare.

No. If the service provided by the public transit agency costs the same as the customary fixed route fare and it is open to the public then it is not charter.

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

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

16. Is demand response service included in the definition of charter service?

No. Demand response service is excluded from the definition of charter service under Section 604.3(c).

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

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

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

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

19. If a transit agency has restored or preserved historic electric buses for limited, special use, are the buses subjected to charter bus restrictions?

Yes, if the public transit agency purchased the historic electric buses with Federal funds or maintains those vehicles in federally funded facilities.

20. If a grantee operates assets that are locally funded are such assets subject to the charter regulations?

It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the

recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

21. Are sightseeing trips still considered charter services?

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

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

No. As long as the transit authority does not charge a premium fare for the service and a third party does not pay for the service, in whole or in part, the service is not considered charter. Advertising or different markings on the bus are no longer determinative of whether the service is charter.

23. Does FTA consider wait time as a factor, in and of itself, when determining whether service is charter service?

No. Wait time is not, in and of itself, considered a characteristic of charter service.

24. What if there is no "contract" under the "single contract" factor and the transit agency merely sees a need and provides the charter-type service on its own initiative, is that charter?

No. If a transit agency sees a need and wants to provide service for a limited duration at the customary fixed route fare, then that service is not charter service. The existence of a contract is no longer determinative of whether service is charter service.

25. Are body-on-van-chassis vehicles classified as buses or vans under this provision?

Body-on-van-chassis vehicles are treated as vans under the regulation.

[Return to Table of Contents](#)

SUBPART B-EXCEPTIONS

Exceptions-§604.5

In the former rule, FTA delineated seven (7) exceptions to the regulations where a transit system may have been able to provide charter services. In two instances, these exceptions were uniquely applied to recipients of FTA assistance in nonurbanized areas. In the new regulations, most of these exceptions have been retained.

Government Officials/Governmental Business-§604.6

General Provisions

Addressing a longstanding concern expressed by transit agencies, systems 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:

- provides the service in its geographic service area;
- does not generate revenue from the charter service, except as required by law; and
- after providing such service, records the following:
 - the government organization's name, address, phone number, and email address;
 - the date and time of service;
 - the number of passengers (specifically noting the number of government officials on the trip);
 - the origin, destination, and trip length (miles and hours);
 - the fee collected, if any; and

- the vehicle number for the vehicle used to provide the service.

This provision will permit a transit system to use system vehicles to take members of the elected governing board on field trips and other outings. Examples of this exception include:

- transporting the Board of Commissioners to an industrial site or other governmental facility; and
- transporting business officials to an industrial development site provided the officials were accompanied by local government staff.

The key element to qualify for this exception is that the trip must include governmental officials, the trip must be for governmental purposes, and the trip does not generate revenue.

Recordkeeping requirements are addressed later in this manual.

Limitations

FTA notes emphatically in the regulation that such trips are charter services. As such, FTA sought to limit the amount of this type of service a transit system can provide. The regulation limits such charters to 80 hours per calendar year.

Requests for Additional Hours

A transit system may petition the FTA Administrator for additional allowances beyond the 80 annual hours noted above. Petitions must contain the following information:

- date and description of the official government event and the number of charter service hours requested;
- 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
- evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.

Requests for additional hours will be posted on the *Government Officials Exception* docket, docket number FTA–2007–0020 at <http://www.regulations.gov>. This posting will permit interested parties to 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 will be mailed to the requesting agency and will be similarly posted to this docket.

Qualified Human Service Organizations (QHSO)-§604.7

Under the old rule, FTA permitted transit agencies to provide service on behalf of public or private human service agencies, provided certain conditions were met.

Under the new rule, many of these elements have been retained, but have been re-organized. FTA has established a new category of exceptions entitled “Qualified Human Service Organizations,” or QHSO.

FTA defines a QHSO as “...an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age”.

FTA typically considers service provided under contract to a human service agency as public transportation, not charter service, if the service is under the control of the subrecipient, is open door, and the subrecipient can put any rider on the vehicle in addition to the agency’s clients.

General Provisions

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

- with mobility limitations related to advanced age;
- with disabilities; or
- with low income.

QHSO Registration

FTA has initiated a new element in its charter regulations that may require a QHSO to register with the Federal Transit Administration in order to qualify as a QHSO. This is a web-based registration process.

The necessity to register will depend upon whether the QHSO receives funding from one of the 64 different federal programs identified by the GAO as funding passenger transportation. The list of these programs is included in the **Charter Service, Final Rule** (Page 2355-2356) that is included in this guide in Appendix A. If the organization does receive such funding, there is no need to register. If the organization does not receive such funding, then registration is required before a transit system can provide charter service to that organization.

Details regarding the registration process are discussed later in this guide.

Transit System Recordkeeping Requirements

When a transit system provides charter service to a QHSO, it is the system’s

responsibility to maintain specific records documenting the service, including:

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

Leasing FTA Funded Equipment and Drivers-§604.8

Similar to the provision in the old regulation, a transit system may lease its FTA funded equipment and provide drivers to a registered charter provider for charter service under the following four (4) conditions:

- (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.

Transit System Recordkeeping Requirements

The transit system has the responsibility to maintain specific records documenting the service, including:

- (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 (1) through (4) above.

No Response by a Registered Charter Operator to a Notice-§604.9

A transit system may provide charter service if, after posting notice, no registered charter provider responds indicating they can provide the requested charter service.

FTA has established specific timeframes for responses to a transit system's notice.

- If the requested charter service is to be performed within 30 days or less, the transit system must allow 72 hours for private charter operator response; or
- if the requested charter service is to be performed 30 days or more from the date of request, the transit system must allow 14 days for private charter operator response.

A transit system may not provide charter service if a registered charter provider indicates an interest in providing the charter service set out in the notice.

Transit System Recordkeeping Requirements

Like other exceptions, the transit system has the responsibility to maintain specific records documenting the service, including:

- (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

Agreements with Registered Charter Operators-§604.10

General Provisions

Continuing an exception from the old rule, FTA will permit a transit system to provide charter services as long as the service is consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.

New Charter Providers or New Registrants Provisions

A transit system that negotiates an agreement with registered charter operators within their geographic service area may face a situation where a new company or an existing company that had not previously been on the list now registers with FTA.

In this situation, the transit system may provide charters pursuant to the agreement for an additional 90 days. Thereafter, the newly registered provider must be part of the negotiated agreements.

Cancellation of an Agreement

Any party to a previously negotiated agreement with a transit system may cancel the agreement at any time after providing the system with a 90-day notice.

Petitions to the FTA Administrator-§604.11

General Provisions

If none of the previous exceptions apply, a transit system may petition the FTA Administrator for an exception to the charter service regulations to provide charter service. The circumstances under which such a petition will be granted are limited, however, and are generally restricted to:

- (1) events of regional or national significance; or
- (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 public's interest.

What Constitutes a Hardship?

The hardship exception is a holdover from the old rule. This condition was designed to recognize the fact that in nonurbanized areas, the costs of utilizing a private charter operator based in a distant location may result in the provider's assessment of minimum trip duration charges or other tariffs that would make the cost of the trip prohibitively expensive.

In the new rule, the hardship provision has been extended to small urbanized areas under 200,000 as well. However, rather than include hardships as a general exception that would be determined by the transit system, FTA now requires a system to petition the Administrator to utilize this exception. This was done based on private sector contentions that public transit systems could misuse this provision.

It should be noted that such hardships are not frequently granted.

Contents of a Petition to the Administrator for Events of Regional or National Significance

To submit an exception petition to provide charter service at an event of regional or national significance, the transit system must include the following in the submission:

- (1) the date and description of the event;
- (2) the type of service requested and the type of equipment;
- (3) the anticipated number of charter service hours needed for the event;
- (4) the anticipated number of vehicles and duration of the event; and
- (5) a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, and a certification that the recipient has exhausted all of the registered charter providers in its geographic service area.

Transit systems must submit the petition at least 90 days before the first day of the event in which charter services are to be provided.

For unique and time sensitive events, the petition must describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

Since the new rule did not take effect until April 30, 2008, there was no history of how FTA will respond to such requests. However, the history of FTA approving similar petition requests under the old rule indicates that only about 55 percent of all requests were approved during the period 2001 - 2004.

Past examples of events of regional or national significance have included:

- Super Bowl;
- Democratic National Convention; and

- Presidential addresses.

Contents of a Petition to the Administrator for Hardship

To submit a hardship exception petition, the transit system must include the following in the submission:

- (1) the date and description of the event;
- (2) the type of service requested and the type of equipment;
- (3) the anticipated number of charter service hours needed for the event;
- (4) the anticipated number of vehicles and duration of the event; and
- (5) a description of the economic "hardship." This means a registered charter provider has deadhead time that exceeds total trip time from initial pickup to final drop-off, including wait time. The system must describe how the registered charter provider's minimum duration (e.g., minimum charge) would create a hardship on the group requesting the charter service.

Hardship exceptions granted during the period 2001 – 2004 were minimal. FTA granted only one such exception.

How Does FTA Review Petitions?

Upon receipt of a petition that meets the requirements set forth above, the FTA Administrator will review the materials and issue a written decision denying or granting the request, in whole or in part.

FTA's decision will be filed in the Petitions to the Administrator docket, number FTA-2007-0022 at: <http://www.regulations.gov> and sent to the recipient.

If granted, the exception is only effective for the event identified in the petition.

Where Should a Transit System Send a Petition?

Petitions can be sent to the Administrator by facsimile to (202) 366–3809 or by e-mail to <mailto:ombudsman.charterservice@dot.gov>.

Record Retention

If a transit system secures a granted petition from FTA, it must retain a copy of the Administrator’s approval for a period of at least three years and must include it in the recipient’s quarterly report posted on the charter registration website (discussed later in this section).

Reporting Requirements-§604.12

In addition to the reporting requirements stipulated under each type of exception (where applicable), FTA has established an electronic reporting process under its charter rules using TEAM.

Records must be maintained in electronic format for a period of three (3) years from the date of service or lease of vehicles/driver. FTA does not specify the format of these electronic records, thus Texas transit systems can use Word, WordPerfect, Excel, Quattro Pro, or other OLE compliant software to maintain data.

While FTA does not specify the format for electronic data, transit systems providing charter service under these exceptions must post their charter records on the [FTA charter registration website](#) 30 days after the end of each calendar quarter. Deadlines for posting are:

<u>Quarter</u>	<u>Report Deadline</u>
January 1 - March 31	April 30
April 1 – June 30	July 30
July 1 – September 30	October 30
October 1 – December 31	January 30

A public transit agency receiving any funds through the department, must submit the *Charter Service* report to PTN by the required due dates outlined below:

FTA Quarters	Report Due to PTN
Oct 1st - Dec 31st	January 20th
Jan 1st - Mar 31st	April 20th
Apr 1st - Jun 30th	July 20th
Jul 1st - Sep 30th	October 20th

These reports must be submitted regardless of the whether or not the transit agency provided charter service under these exceptions. A single document or charter log may include all charter service trips provided during the quarter. A copy of the report to be submitted is contained in [Appendix B](#) of this guidebook.

FTA also has a sample (single form on its website). These documents must be converted to pdf format for use in TEAM reporting.

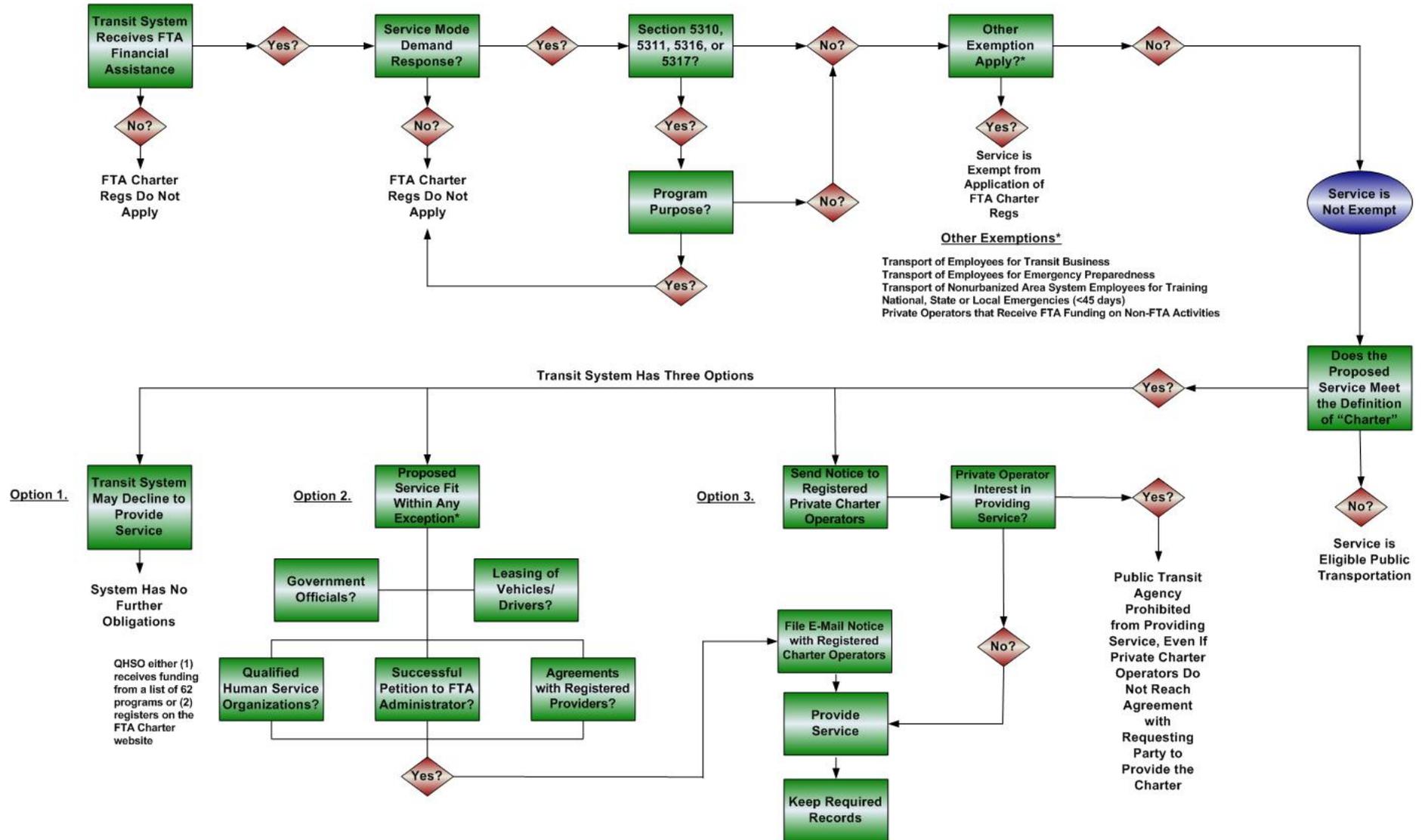
In certain situations, it may be permissible for a transit system to exclude information about a charter trip’s origin or destination for safety and security reasons. If a transit system elects to exclude such data, the record of the service must describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

In all records, the transit system must include a clear statement identifying which exception the system relied upon when it provided the charter service.

[Figure 1](#) provides a decision tree that reflects how and when a transit system may or may not provide charter service.

[Return to Table of Contents](#)

Figure 1.
Charter Service Decision Tree



Questions and FTA Responses

- 1. Qualified Human Service Organizations (QHSOs) that do not receive funds from federal programs listed in Appendix A of the regulations are required to certify that their federal funds include funding for transportation. However, most Federal funds are passed through one or more levels of state and local government, so how can we be certain what the original purposes of the Federal funds were?**

The regulation, 49 CFR 604.15(b), has been modified. That provision no longer requires QHSOs to certify that their funding included funding for transportation.

- 2. Is there an emergency charter exception for ‘actual, imminent or anticipated possibility of injury, loss of life, or loss of property?’ For instance, there could be a poison gas plume or threat of one from an industrial accident or railcar derailment. A transit agency could be called to do a rapid evacuation of an apartment, hospital, school, elder care facility or some other facility requiring group or individual evacuation. Must the public transit agencies wait for the Administrator to declare this incident an event of ‘regional or national significance’ so that transit buses can be used?**

Yes, there is an exception for emergencies. Section 604.2(f) contains an exemption that allows for public transit agencies to respond to emergencies that last fewer than 45 days. If an emergency lasts longer than 45 days, the public transit agency must follow the procedures set out in subpart D of 49 CFR Part 601. The Administrator does not declare an emergency, rather, the President, Governor, or Mayor declares the emergency.

- 3. If an emergency is exactly 45 days long, is the emergency services exception still applicable?**

Yes. If the emergency lasts exactly 45 days the emergency services exception is still applicable. The regulation refers to calendar days, not business days. Therefore, if the emergency lasts more than 45 calendar days, the public transit agency must follow the procedures set out in subpart D of 49 CFR Part 601.

- 4. Do emergency situations include matters of security, e.g., when the Secret Service requests vehicles with no under vehicle luggage compartments?**

No. Situations involving the Secret Service would fall under the government officials section of the regulation (49 CFR Section 604.7), which allows up to 80 hours annually of charter service to government officials on official government business, which can include non-transit purposes.

- 5. Is there an expedited process to obtain the Administrator’s decision and signature for time sensitive events so that there could be sufficient time to plan and implement service?**

Petitions to the Administrator for events of regional or national significance will be processed as quickly as practicable.

- 6. What is a “qualified human service organization?”**

A qualified human service organization is an organization that provides service to individuals that qualify for federally conducted or assisted transportation related programs due to disability, income or advanced age.

7. Does “qualified human service agency” include any non-profit entity that provides services to the disabled, or economically disadvantaged without reference to age?

Yes, so long as the QHSO either receives funding from one of the programs listed in Appendix A of the regulations or registers as a QHSO on the FTA charter website. Under Section 604.7, a recipient may provide charter service to entities that meet the definition of “qualified human service organization.” This includes organizations that serve persons who qualify for human service or transportation-related programs or services due to a disability, income or advanced age. All three are not required, however, so an organization may qualify as a QHSO but serve only persons with low income.

8. If the federal government calls on a public transit agency for transit service and it will exceed the proposed 80 hour limitation, are public operators to refuse this service or seek a waiver directly from the federal government?

A public transit agency can petition for more service hours if it exceeds the 80 hour annual allowance. Instructions on how to file a petition are more fully described under 49 CFR Section 604.6(c) of the new regulation. Public transit agencies should be mindful that the Administrator will grant such requests under extraordinary circumstances only.

9. What kind of events qualify for the “Events of Regional and National Significance” exception?

First, this exception is now located in Section 604.11 and is called “Petitions to the Administrator.” Second, the exception is designed to allow public transit agencies to participate in providing service to large events that will attract a lot of visitors. Some examples are: the Kentucky Derby, the Indianapolis 500, a bridge opening, or a new transit facility opening. If a transit authority is unsure whether a particular event fits within the exception, the transit authority may request an Advisory Opinion from FTA according to Section 604.17.

10. What should a transit agency do when it is in the process now of planning for an event of regional significance? Will the new rules terminate these plans?

The new rule will impact a transit authority’s planning process for an event of regional significance. Any service provided by the transit authority after the effective date of the rule—April 30, 2008—is subject to the provisions of the new rule.

11. What can a public transit agency do if there is a time sensitive event in which the agency does not have time to consult with all the private charter operators in their area? For example, the presidential inauguration.

Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators.

12. How should a public transit agency handle the situation of a regional or nationally significant event when there is a requirement to plan significant events (e.g., the Super Bowl) many years in advance long before the list of registered charter service providers is compiled?

If the transit agency plans to provide service to an event of regional or national significance after the effective date of the rule – April 30, 2008 – then that service is subject to the requirements of the new rule.

13. Does the hardship exception apply to small urban operators?

Yes. Under Section 604.11, the hardship exception applies to non-urbanized areas under 50,000 in population or a small urbanized area under 200,000 in population.

14. When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

15. If a customer hosts a large community event and the public transit agency cannot provide service because of the charter regulations and private operators will not provide service because the payment is not sufficient, is there any alternative means or does the service not get provided at all?

A public transit agency may provide the service if, after providing the notice required in Section 604.14, no registered charter providers in the transit agency's geographic service area are interested in providing the service.

16. What if the public transit provider does not have sufficient time to evaluate a request and make sure that all the information is complete before notifying the registered private charter companies?

A recipient should wait to provide notice that is consistent with 49 CFR Section 604.14.

17. What will result if a registered charter operator cannot actually provide the service, but responds to a recipient's notice anyway?

If a registered charter provider responds to a notice, then it is expected to negotiate in good faith with the customer to provide the service. If a registered charter provider vindictively responds to a notice in order to prevent a public transit agency from providing the service, then that registered charter provider may be subject to a complaint for removal from the charter registration website.

18. Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers in its geographic service area, registered charter providers have enough vehicles to provide all of the service to the event?

No. If after consultation with registered charter providers and there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

[Return to Table of Contents](#)

Subpart C-The Registration Process

The Registration Process

The transit system's responsibility to solicit the interest of willing and able private charter operators was a key provision of the old regulation. This process has been replaced with a web-based registration process. In the new rule, when a transit system that is subject to the regulation wishes to perform a charter, the system will use the list of registered providers to send a notice of intention to provide the service.

FTA has published [quick reference guide](#) to assist with use of the website.

Private Charter Operator Registration- §604.13

Private charter operators who wish to perform charters that consumers have requested of public transit systems are now required to register on a new FTA website. This registration process replaces the previous provisions that required a transit system to annually solicit the interest of willing and able operators.

FTA's Charter Registration Website is at [http://ftawebprod.fta.dot.gov/CharterRegistration/\(S\(ge2fkb55gyavwhizqwj0zuuz\)\)/Default.aspx](http://ftawebprod.fta.dot.gov/CharterRegistration/(S(ge2fkb55gyavwhizqwj0zuuz))/Default.aspx).

The registration home page is shown in [Figure 2](#). From this page, private charter operators can submit a new registration, amend a registration, or search the registration database. Qualified Human Service Organizations (QHSO) use this same page to register, amend, or search the registration database.

Private Charter Company Registration

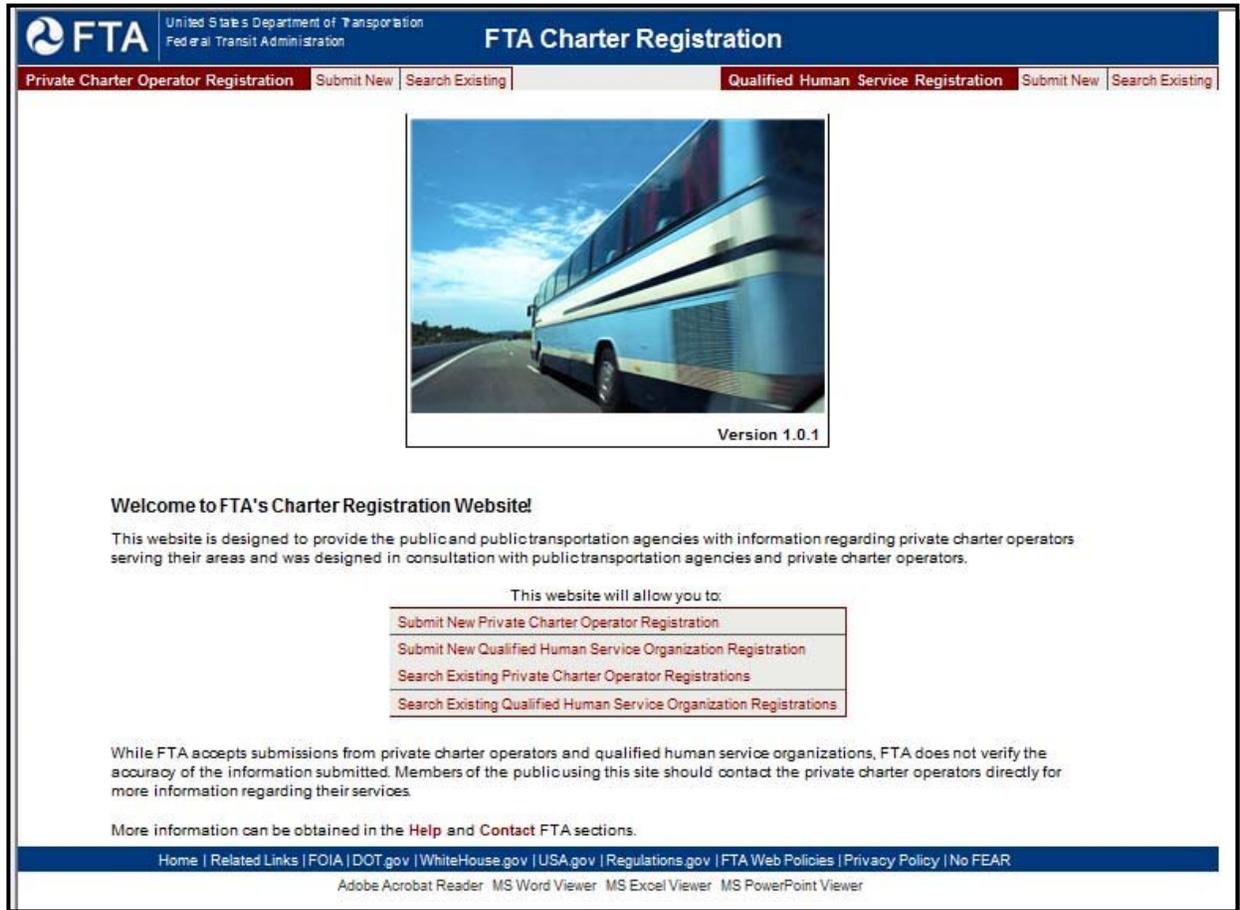
As shown in [Figure 3](#), private charter companies must provide the following information with their registration:

- (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 operator is willing to provide free or reduced rate charter services to registered qualified human service organizations.

To select the geographic areas, pull-down menus are available to select the entire U.S., individual states, and communities within those states.

Once a private operator submits the registration data and the submission is determined by FTA to be valid, the carrier will be deemed a "registered charter provider."

**Figure 2.
FTA Charter Registration Home Page**



**Figure 3.
New Private Charter Operator Registration**

The screenshot shows the 'New Private Charter Operator Registration' form. The form is titled 'New Private Charter Operator Registration' and includes a legend '* = Required'. The form fields are organized into a 'Business Information' section and include fields for Company Name, Address (Street, City, State, Zip Code), Phone, Email Address, Federal Motor Carrier Identifying Number, and Number of Vehicles Owned (Buses). There are also two checkboxes at the bottom for insurance coverage and providing free or reduced rates to Qualified Human Service Organizations.

FTA may refuse to post a private charter operator's information if the private charter operator fails to provide all of the required information as indicated on the website.

Registration Challenges

A transit system, 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 requirements outlined in [Subpart F-Complaints](#)

Registration Updates

Once registered, a private charter operator must provide current and timely updates to the site, with updates entered no less frequently than every two years.

Agency's Notification to Registered Charter Providers-§604.14

This section requires public transit agencies to provide notice to registered charter providers when the public transit agency is interested in providing the requested charter service.

Only requests for charter service that do not fit within one of the exceptions require notification to registered charter providers. In other words, the notification procedures apply in the event one of the exceptions does not.

Upon receipt of a request for charter service that does not fit within one of the exceptions in [Subpart B-Exceptions](#), a recipient/subrecipient or public transit agency interested in providing the charter service must provide notice to registered charter providers registered in its geographic service area.

When an e-mail is returned as "undeliverable" a public transit agency must also send notification of the requested

charter service by facsimile. In that instance, the public transit agencies must maintain a record of the "undeliverable" e-mail notification and confirmation that a facsimile was sent to the number provided by the registered charter provider.

Upon receiving a request for charter service, a public transit agency 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 and provide the service.

If a public transit agency is interested in providing charter service under the exception contained in §604.9, then upon receipt of a request for charter service, the agency must provide e-mail notice to all registered charter providers in the agency's geographic service area by:

- (1) sending an e-mail notice of the request by the close of business on the day the request is received, unless the request was received after 2 p.m., in which case the notice must be sent by the close of business the next business day.
- (2) The notice must include:
 - (i) customer name, address, phone number, and e-mail address (if available);
 - (ii) requested date of service;
 - (iii) approximate number of passengers;
 - (iv) the type of vehicle requested (buses or vans); and

(v) trip itinerary and approximate duration; and

If the agency intends to provide charter service the e-mail notice must include the fare the agency intends to charge for the service.

The agency must retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent.

If a public transit agency receives an “undeliverable” notice in response to its e-mail notice, the agency must send the notice via facsimile. The agency must maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

[Return to Table of Contents](#)

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

Qualified Human Service Organization (QHSO) Registration-§604.15

Not every human service agency is required to register as a QHSO on the FTA website. Only those organizations that believe they will require the local transit system to provide charter services and the organization does not receive funds from Federal programs listed in Appendix A of the regulations must register. These organizations must serve:

- individuals with low income;
- individuals who are elderly; or
- individuals with disabilities.

Required Information

[Figure 4](#) details the registration screen for a Qualified Human Service Organization. The QHSO must provide the following information with its registration:

- (1) name of organization, address, phone number, e-mail address, and facsimile number; the geographic service area of the recipient in which the qualified human service organization resides;
- (2) a copy of the most recent organizational financial statement (described by FTA as basic financial information regarding the qualified human service organization);
- (3) whether the qualified human service organization is exempt from taxation under sections 501(c) (1),(3), (4), or (19) of the [Internal Revenue Code](#);
- (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.

Figure 4
New Qualified Human Service Organization Registration

The QHSO must also identify its service area. Service area identification is done by first indicating the state of the QHSO. Once the state is selected, the website page will refresh (this will take about five seconds) and a second dialogue window with all existing FTA grantees in Texas will be displayed. The QHSO should select the transit system that will provide the charter service.

Once selected and the “Add” button pressed, the name of the transit agency will appear on the right side of the screen. If necessary, multiple selections can be made.

The QHSO must register at least 60 days prior do the date of a requested charter service.

When Can a Qualified QHSO Receive Charter Service from a Transit System?

A qualified human service organization is eligible to obtain charter services from a transit system if it has:

- registered on the FTA website 60 days in advance of the requested charter trip; and
- verified the organization’s posting.

Registration Challenges

Similar to the process established for challenges to private charter operator registrations, a challenge process exists for Qualified Human Service Organizations.

A registered private charter operator may challenge a QHSO’s status to receive charter services from a transit system by requesting removal of the QHSO from FTA’s charter registration website by filing a complaint consistent with the process outlined in Section 4 of this Guide.

Registration Updates

Once registered, a QHSO must provide current and timely updates to the site, with updates entered no less frequently than every two years.

How Do Public Transit Agencies Use This Registration Data?

If a public transit agency receives a request to perform a charter service (and the requested service does not fall under one of the exemptions), the agency is obligated to search the registration database to determine if there are any private operators who have registered to provide service within the origin/destination service area of the requested charter trip. If there are charter operators on the registered list, then the transit system cannot provide the charter unless it meets one of the exceptions to the regulations.

Preliminary examination of the database prior to the effective date of this regulation suggests that all public transit systems in Texas will find registered providers in their geographic service area. For example, a search of providers to provide a charter in Fort Davis, TX yielded a list of 132 registered providers.

Under these circumstances, the transit system's options are:

- decline to provide the service requested by the public. There is no requirement for the transit agency to refer the requesting party to the charter website, but may do so as a customer service option.
- Determine if the requesting party and charter trip meets the exception requirements detailed in [Subpart B-Exceptions](#) of this guide and, if so, give notice to the registered providers and then provide the service.

Duties for Recipients with Respect to FTA's Charter Registration Website- §604.16

It is the obligation of each transit system under the regulation to ensure that its employees and/or contractors have the necessary competency to effectively use the FTA charter registration website.

[Return to Table of Contents](#)

Questions and FTA Responses

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

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

2. Must a public transit agency provide notice of all potential charter trips to registered charter providers?

No. A public transit agency needs to provide notice only for charter trips that it is interested in providing. If an exemption or one of the exceptions applies, then the public transit would, after providing the service, record the service as required by Section 604.12.

3. What does “notifying private operators” entail? What actions are to be taken when a notification e-mail is undeliverable? Is it sufficient to provide phone numbers of private operators when people call in for charter service?

Only “registered charter providers” need to be contacted. In order to qualify as a “registered charter provider” the information provided, including contact information, must be valid. If the e-mail is undeliverable, then the notice should be faxed to the registered charter provider. If the public transit agency declines to provide the service to the customer, then they should refer the customer to the FTA charter registration website. It is not necessary to provide the customer with the registered charter provider’s phone number if the public transit agency refers the customer to the charter registration website.

4. What recourse does a transit operator have when a registered charter provider indicates interest in providing the charter service set out in the notice and then does not do so?

A transit operator can and should file a complaint for removal against the registered charter provider. This notifies FTA of the registered charter provider’s alleged actions. FTA will then investigate the allegations and potentially remove the registered charter provider from the registration list.

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

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

6. What can a transit agency do if it believes that a private provider is not bargaining in good faith with a group and responds to a notice with a price or terms that are not acceptable to that group?

If a transit agency believes that a registered charter provider is not bargaining in good faith, the transit agency may file a complaint for removal from FTA’s Charter Registration website.

7. Are there any measures to regulate who is considered a registered charter provider? Are there any penalties for those that register and actually are not in a position to perform the needed services – for example an individual who owns a taxicab?

Yes. Through the self-registration process, a registered charter provider certifies that the information it provides on the charter registration website is true and accurate. The penalty for providing inaccurate or untrue information is removal from the registration website and possibly criminal penalties under [18 U.S.C. 1001](#).

8. Are there adequate provisions to ensure that the registry site will be maintained in such a way that carriers provide evidence of insurance?

Registered charter providers are required to certify that they have insurance but are not required to provide evidence of insurance. If there is information that indicates the

provider has provided a false certification, then it can be subject to criminal penalties under [18 U.S.C. 1001](#) and removed from the FTA Charter Registration website.

9. Will the registration website be fully functional and grantees receive training on how to use the website before the rule's effective date?

Yes. The website will be fully functional before the rule's effective date. A training manual will also be distributed before the effective date. FTA intends to also do a roll-out of the regulation prior to the effective date of the final rule.

10. When a new operator registers, may recipients continue under existing contractual agreements for charter service?

Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

[Return to Table of Contents](#)

Subpart E-Advisory Opinions & Cease and Desist Orders

Introduction & Purpose-§604.17

In issuing new charter rules, FTA has significantly increased its enforcement process and now defines penalties (clarified in SAFETEA-LU) for violations of the rules. In this section, an overview of FTA's various enforcement mechanisms is discussed.

If a private charter operator believes that a violation of the rules has occurred, the first step would be to seek an advisory opinion from FTA. In seeking such an opinion, the complaining party could also ask for a cease and desist order. The two terms are defined below:

Advisory Opinions – a written statement issued by the FTA Chief Counsel regarding whether a service is being provided in compliance or not in compliance with FTA charter rules.

Cease and Desist Orders – a written order issued by FTA mandating that the service in question provided by the transit system be stopped immediately.

Advisory Opinions-§604.18

An advisory opinion represents the formal position of FTA on a matter, and with few exceptions, obligates the transit system to follow the opinion until it is amended or revoked.

Generally, the process of seeking an advisory opinion will be used by private charter operators who believe a transit system's service is operating in violation of FTA's charter rule. Advisory opinions are typically limited to the factual circumstances described in the request for an advisory opinion.

Once a private charter operator obtains an advisory opinion, such opinions may be used

in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards. FTA notes that advisory opinions do not represent legal requirements.

How to Request an Advisory Opinion-§604.19

Entities seeking an advisory opinion must follow a format prescribed by FTA. These requests are submitted to the Chief Counsel's Office at FTA Headquarters.

The request must contain:

- a full statement of all facts and legal points relevant to the request;
- 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 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 of persons, addresses, and e-mail or facsimile numbers

Date

Signature

Printed Name

Title of person making request

Mailing address

Telephone number

E-mail address

FTA Chief Counsel's office may request additional information, as necessary, from the party submitting the request for an advisory opinion.

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

A request for an advisory opinion should 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: <http://www.regulations.gov>. Alternatively, a paper copy of the request can be sent to the dockets office located at:

1200 New Jersey Ave., SE.,
West Building Ground Floor, Room W12-140,
Washington, DC 20590

FTA has established a goal of having the Chief Counsel respond to a request for an advisory opinion within ten days of receipt of a request that is considered complete. When responding, the Chief Counsel will send his or her decision to the interested party, the docket, and the recipient, if appropriate.

A sample request form, along with other suggested formats for use in various filings noted in this chapter, have been developed by FTA and can be found at: http://www.fta.dot.gov/documents/Advisory_Opinion_Form.pdf

Other FTA Advice in Regards to an Advisory Opinion (Effect)-§604.20

A statement made or advice given by an FTA employee constitutes an advisory opinion only if it is issued pursuant to the 49 CFR Part 604, [Subpart E](#).

A statement or advice given orally or in writing by an FTA employee, but not under the authority of FTA's charter regulations, should be considered an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion and does not necessarily represent the formal position of FTA. Such advice does not bind or otherwise obligate or commit FTA to the views expressed.

Special Considerations-§604.21

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 will be taken only with the approval of the FTA Administrator.

Cease and Desist Orders-§604.22

Cease and desist orders are typically sought by a private charter operator in an attempt to stop a transit agency from providing a service that the charter operator believes to be in violation of 49 CFR Part 604 and that may provide economic injury to the private operator if the service were to continue to be provided.

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 must 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;
- (2) a detailed description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question;
- (3) a description of 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; and
- (4) a detailed description of the efforts made to notify the recipient of the potential violation of the charter service regulations. The requesting party must include names, titles, phone numbers or e-mail addresses of persons contacted, date and times contact was made, and the response received, if any.

FTA may deny a request for a cease and desist order if:

- (1) the request contains incomplete information on which to base an informed 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 cease and desist order; or
- (4) the Chief Counsel otherwise concludes that a cease and desist order would not be in the public interest.

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

What is the Responsibility of the Transit System When a Cease and Desist Order Request is Received?

A transit system that is the subject of a cease and desist request filed by a private operator will have three business days to respond to the request.

The response should include a point-by-point rebuttal to the information included in the request for a cease and desist order.

The time period for a response by the transit system begins once a registered charter provider files a request in the Advisory Opinion/Cease and Desist Order docket or with the FTA Chief Counsel's Office, whichever date is sooner.

Impact of a Cease and Desist Order

If a transit system is issued a cease and desist order from FTA, the system must immediately cease provision of the service that formed the basis of the requesting party. Additionally, once a transit system has an order, this will be considered as an "aggravating factor" in determining the remedy to impose against the recipient in future findings of noncompliance.

Adherence to any cease and desist orders issued by FTA will be a compliance item for any TXDOT financial assistance grant.

[Return to Table of Contents](#)

Subpart F-Complaints

Purpose-§604.25

This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or QHSO on the [FTA's Charter Registration Website](#) and filing a complaint regarding the provision of charter service by a agency.

Challenge complaints may be filed with FTA to:

- (1) challenge the registration status of a private charter operator on the FTA registration website; and
- (2) challenge the registration of a qualified human service organization on the FTA registration website.

FTA notes that disputes that could potentially lead to the filing of a complaint should be attempted to be resolved locally prior to the filing of a formal complaint.

Complaints Requesting the Removal of an Organization from the Registration List-§604.26

A transit system or another registered charter provider, or their duly authorized representatives, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration website.

To file a challenge complaint, the complaining party must:

- (1) state the name and address of each entity who is the subject of the complaint; and
- (2) provide 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.

The challenge can be filed electronically by submitting the above referenced documentation to the Charter Service Removal Complaint docket number FTA-2007- 0024 at: <http://www.regulations.gov>.

Alternatively, the challenge can be filed via e-mail or facsimile (if no e-mail address is available). Additionally, the complainant may use overnight mail service with receipt confirmation, with all documents offered in support of the complaint attached to the complaint. The challenge must be sent to all entities named in the complaint.

Challenges must be filed within 90 days of the complaining party discovering facts that merit removal of the registered charter provider or qualified human service organization from the FTA Charter Registration website.

All challenge complaints must also be certified by the submitting entity, using the following language:

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 ____ day of ____

Signature for [name of challenge entity]

Response to a Registration Challenge

The registered charter provider or qualified human service organization must respond within 15 days to answer the complaint.

The response, and any supporting documentation, must be filed at the Charter Service Removal Complaint docket number FTA – 2007 – 00024 at: <http://www.regulations.gov>.

The response can also be e-mailed to <mailto:ombudsman.charterservice@dot.gov>. The original complaining party does not reply to the response.

Factors FTA Will Use in Ruling on a Challenge Complaint

FTA will 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.

FTA's determination whether or not to remove a registered charter provider or qualified human service organization from the registration list will be sent to the parties within 30 days of the date when the challenged party filed their response.

In its response, FTA will 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.

NOTE: On August 1, 2008, FTA released a Federal Register document entitled: [Charter Service: Response to Petitions for Reconsideration and Amendments](#). This document disposed of the petitions for reconsideration filed in response to the FTA) final rule on charter service, and corrected the final rule by adding an authority citation, revised Appendix B and Appendix C, and corrected Appendix D, which should have appeared in the final rule as a matrix.

Complaints Alleging Transit System Violations of the Rule-§604.27

General Provisions

A registered charter provider, or its duly authorized representative ("complainant"), that believes it is adversely impacted by an incidence of noncompliance may file a complaint against a transit system with the Office of the Chief Counsel.

Complaints alleging a violation of FTA's charter rules must be formatted strictly in accordance with FTA guidelines, as follows:

- (1) be titled "Notice of Charter Service Complaint;"
- (2) state the name and address of the transit system that is the subject of the complaint and the specific provisions of the rules that the complainant believes were violated;
- (3) be served in accordance with the procedures outlined below (See ["How to File a Complaint"](#)), along with all documents offered in support of the complaint, upon the transit system named in the complaint as responsible for the

alleged violation which the complaint is based;

- (4) provide a concise but complete statement of the facts relied upon to substantiate each alleged violation (complainant must show by a preponderance of the evidence that the transit system provided charter service and that such service did not fall within one of the exemptions or exceptions set out in the rule);
- (5) describe how the complainant was directly and substantially affected by the actions of the transit system;
- (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.

FTA shall notify the complainant, respondent, and TXDOT (if applicable), within 30 days after the date FTA receives the complaint that the complaint has been placed on the docket. The transit system has 30 days from the date of service of the FTA notification to file an answer.

Unlike a challenge complaint, once the transit system files an answer, the complainant may file a reply to the system's response. Such replies must be submitted within 20 days of the date of service of the respondent's answer. Similarly, the transit system may file a rebuttal to the private charter operator's reply within 10 days of the date of service of the reply.

In all instances, the transit system's response, the charter operator's reply, and the transit system's rebuttal must be accompanied by supporting documentation.

The answer must contain a clear statement either denying or admitting the allegations made in the private charter operator's complaint. Alternatively, the transit system

may declare that it has insufficient knowledge or information to admit or deny an allegation, and shall assert any affirmative defense.

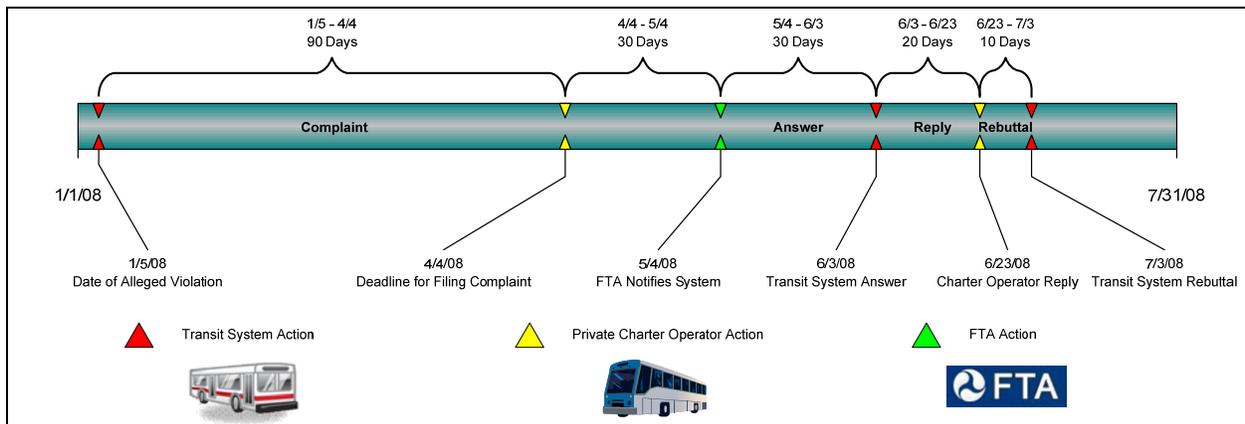
The answer, reply, and rebuttal must contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

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

The complaining private charter operator may withdraw a complaint at any time after filing by serving a "Notification of Withdrawal" on the Chief Counsel and the respondent.

[Figure 6](#) contains a graphical presentation of the FTA specified timelines in the complaint process.

**Figure 6.
FTA Timelines in the Rule Violation Complaint Process**



Dismissal of Complaints-§604.28

FTA may dismiss a complaint without any further burden imposed on the transit system. FTA will determine, within 20 days after the receipt of a violation complaint, whether the complaint will be dismissed or adjudicated. The Office of the Chief Counsel will provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice, if:

- it appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;
- on its face it does not state a claim that warrants an investigation or further action by FTA; or

- The complainant lacks standing to file a complaint under the rule.

Incomplete Complaints-§604.29

If FTA determines that a complaint should proceed, but is deficient as to one or more of the requirements set forth in the rules, 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 correcting the deficiency. The Chief Counsel’s dismissal shall include the reasons for the dismissal without prejudice.

What Does “Dismiss Without Prejudice” Mean?

This term means that a case is dismissed but the plaintiff (or in this case, the private charter operator complainant) is allowed to file a new complaint on the same claim.

When a complaint is “dismissed with prejudice” it means the case was dismissed for good reason, and the plaintiff is barred from bringing an action on the same claim.

How To File Complaints-§604.30

Private operators should file violation complaints with:

Office of the Chief Counsel
1200 New Jersey Ave., SE.
Room E55-302
Washington, DC 20590

Complaints should also be filed electronically in the Charter Service Complaint docket number FTA-2007-0025 at: <http://www.regulations.gov>. In lieu of filing the complaint electronically, a private charter operator may mail the complaint to the docket by sending the complaint to:

1200 New Jersey Ave., SE.,
West Building
Ground Floor, Room W12-140
Washington, DC 20590

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.

Unless otherwise requested by FTA, the private operator need only submit a single original signed copy of the complaint and supporting documentation.

Complaint documents filed with FTA must 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.

The original of every document filed must be signed by the person filing it or the person's duly authorized representative. A signature serves 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 the FTA charter rule;
- (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.

Service-§604.31

The initial document filed by the complainant must 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 and e-mail address.

If any of the above items change during the complaint process, the private charter operator must 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.

Copies of all documents filed with FTA must be served on the transit system by the private charter operator filing the complaint. A certificate of service shall accompany all documents when they are tendered for filing and will 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 ___ day of ___, 20__.

[signature], for [party]

Private charter operators may use either personal delivery or U.S. mail for purposes of providing service on the transit system. When using U.S.P.S., it is recommended that a "Return Receipt" option be used.

There will be a presumption of lawful service:

- 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
- when a properly addressed envelope, sent to the last known address has been returned as undeliverable, unclaimed, or refused.

A document sent by facsimile or e-mail does not constitute service.

[Return to Table of Contents](#)

Subpart G-Investigations

Investigation of Complaint-§604.32

If there appears to be a reasonable basis for investigation, FTA will investigate the subject matter of the complaint.

The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request. Each party must file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.

The Chief Counsel will 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(the transit system's rebuttal) to FTA.

If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a PO.

Agency Initiation of Investigation- §604.33

FTA may initiate its own investigation of any matter within the applicability of the charter rules even without the filing of a complaint by a private charter operator.

FTA will send a notice to that transit system if the agency initiates an 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.

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

[Return to Table of Contents](#)

Subpart H-Decisions by FTA and Appointment of a Presiding Official

Appointment of a Presiding Official (PO)- §604.34

FTA may render a decision on a complaint based on the documentation submitted by the parties to the complaint. Alternatively, the complaint may be dismissed.

A third option is also available to FTA. The Chief Counsel's Office may elect to appoint a Presiding Official (PO) to review the complaint.

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;
- (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 investigation;
- (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 in the charter rule; and
- (6) the date by which the PO is directed to issue a recommended decision.

An FTA attorney will be responsible for conducting investigations of charter complaints. Alternatively, the Chief Counsel may appoint a PO (who may not be an FTA attorney).

Separation of Function-§604.35

After issuance of an initial decision by the Chief Counsel, the FTA employee or PO engaged in the performance, of investigative or prosecutorial functions in a charter complaint may not further participate in evaluation of appeals submitted to the FTA Administrator.

[Return to Table of Contents](#)

Subpart I-Hearings

Powers of a Presiding Official- §604.36

A PO may opt to hold an administrative hearing on a complaint. If a hearing is held, the PO will have the power to:

- (1) give notice of, and hold, pre-hearing conferences and hearings;
- (2) administer oaths and affirmations;
- (3) issue notices of deposition requested by the parties;
- (4) limit the frequency and extent of discovery;
- (5) rule on offers of proof;
- (6) receive relevant and material evidence;
- (7) 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;
- (8) hold conferences to settle or to simplify the issues by consent of the parties;
- (9) dispose of procedural motions and requests;
- (10) examine witnesses; and
- (11) make findings of fact and conclusions of law and issue a recommended decision.

If a hearing is held in regards to the complaint, the parties will be accorded

opportunities to be represented by counsel and other rights.

Rights of Parties in a Hearing-§604.37

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 a licensed attorney or by another duly authorized representative.

An attorney, or other duly authorized representative, who represents a party shall file according to the service procedures outlined in the rule (49 CFR §604.30 and §604.31).

At a hearing, the parties consist of the respondent (transit system) named in the hearing order, the complainant (private charter operator), and FTA, as represented by the PO.

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 may grant one extension of time to each party. The party seeking the extension of time must 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.

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.

Discovery- §604.38

The PO shall have the discretion to determine the permissible forms of discovery used for the hearing.

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

Depositions- §604.39

Similarly, the PO has the discretion for testimony of a witness to be taken by deposition rather than through direct testimony at a hearing. FTA has established rules of deposition testimony in the regulations.

Public Disclosure of Evidence- §604.40

Information contained in the record of a hearing is public information and is subject to disclosure. There are circumstances where the PO may elect to withhold information based on a motion filed by either party to the complaint.

Standard of Proof-§604.41

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.

Burden of proof-§604.42

The burden of proof in any hearing rests with the complainant or private charter operator.

Offer of proof-§604.43

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 with the FTA Administrator.

Record-§604.44

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 constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

Any interested person may examine the record by entering the docket number at: <http://www.regulations.gov>. Alternatively, after payment of reasonable costs for search and reproduction of the record, any interested person may also obtain a paper copy of the record.

Waiver of Procedures-§604.45

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

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

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

Decisions of a Presiding Official- §604.46

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 no later than 110 days after the referral from the Chief Counsel.

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

Remedies- §604.47

If a transit system is found in violation of the charter rule, the FTA Chief Counsel 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.

In determining the type and amount of remedy, the Chief Counsel will consider the following factors:

- (1) the nature and circumstances of the violation;
- (2) the extent and gravity of the violation;
- (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.

As evidence by these provisions, FTA intends to substantially increase its oversight and use SAFETEA-LU mandated enforcement actions to ensure that public transit systems abide by the regulations.

The Chief Counsel's office may mitigate the remedy if the transit system can document corrective action of the alleged violation(s). The Chief Counsel's decision to mitigate a remedy will be determined on the basis of how much corrective action was taken by the recipient and when it was taken. If the transit system is an TXDOT grantee, immediate and full corrective action will be required for continued participation in the Rural Transit Program.

Additionally, FTA will evaluate the transit system's systemic action to prevent future violations, and this fact will be given greater consideration than action simply to remedy violations identified during FTA's inspection or identified in a complaint.

In the event the Chief Counsel finds a pattern of violations, the remedy ordered will bar a recipient from receiving Federal transit assistance in an amount that the Chief Counsel considers appropriate. The Chief Counsel may make a decision to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

In summary, there are significant adverse consequences to the transit system for violating charter rules.

[Return to Table of Contents](#)

SUBPART J-Appeals to the Administrator

Appeal from Chief Counsel Decision- §604.48

[Return to Table of Contents](#)

Any party adversely affected by the Chief Counsel's decision on a charter violation may file an appeal with the Administrator within 21 days of the date of the Chief Counsel issued the decision.

If an appeal is filed, the Administrator will review the entire record and issue a final agency decision based on the record that either accepts, rejects, or modifies the Chief Counsel's decision. The Administrator's decision will be issued within 30 days after receipt of the appeals service.

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.

Administrator's Discretionary Review of the Chief Counsel's Decision- §604.49

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.

If no appeal is filed, and the Administrator does not take review of the decision, the Chief Counsel's decision shall be considered the final agency decision and order. The decision and order will take affect on the twenty-first day after the actual date the Chief Counsel's decision was issued.

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.

SUBPART K-Judicial Review

Judicial Review of a Final Decision and Order-§604.50

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 no later than 60 days after a final decision and order is effective.

The following FTA actions do not constitute final decisions and orders subject to judicial review:

- (1) FTA's decision to dismiss a complaint as incomplete;
- (2) a recommended decision issued by a PO at the conclusion of a hearing; or
- (3) the Chief Counsel's decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.

[Return to Table of Contents](#)

Questions and FTA Responses

1. QUESTION Does “pattern of violations” apply from the effective date of the final rule?

Yes. The new definition of pattern of violations applies from the effective date of the final rule. In other words, in order to establish a pattern of violations, the violation had to occur after the effective date of the final rule.

2. What is a violation? Does it require an official charter decision or could it also include an oversight finding or other means of identifying shortcomings?

The new rule defines “violation” as a finding by FTA of a failure to comply with one of the requirements of this part. A finding may be an official charter decision by the Chief Counsel or the Administrator. An oversight finding would also qualify as an FTA finding.

3. May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint under the new rule?

Yes. A registered charter operator or its duly authorized representative, who can include a trade association, may file a complaint under Section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA’s charter registration website may not file a complaint.

4. Is there a time limit for making complaints?

Yes. Complaints must be filed within 90 days of the alleged unauthorized charter service.

5. Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

Yes. Appendix D contains a matrix of likely remedies that FTA may impose for a violation of the charter service regulations.

6. When a complaint is filed, who is responsible for arbitration or litigation costs?

FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

7. What affirmative defenses might be available in the complaint process?

An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6 which states that the service that was provided was within the allowable 80 hours of government official service.

8. May a state waive participation in the complaint proceedings and forward the complaint directly to FTA after initial receipt and review?

A state is no longer involved in the complaint process, and, therefore, no waiver is necessary. In order for a complaint to be filed, it must be filed directly with the Office of the Chief Counsel.

9. What actions can a private charter operator take when it becomes aware of a transit agency’s plan to engage in charter service just before the date of the charter?

As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

10. Who qualifies as a presiding official, what are the duties, and what other limitations are imposed?

A presiding official will have training and/or experience in conducting hearings. More important, the person may not have any conflicts of interest or previous contact with the parties concerning the issue in the proceeding. A presiding official's duties include, but are not limited to, convening a hearing, issuing orders, ruling on motions, and drafting recommended decisions.

11. What method will the decision maker employ in determining the penalty for violating the charter regulations?

Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See Section 604.47 and Appendix D for more details.

12. Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

Yes. A pattern of violations is defined as 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. While a single complaint may contain several violations, the complaint must contain more than a single event that included unauthorized charter service in order to establish a pattern of violations.

13. Do FTA's attorneys have the necessary training to serve as administrative law judges and make rulings on motions, a task that heretofore has not been a part of the day-to-day activities of regional counsel?

Yes. FTA attorneys who have the delegated responsibility to serve as a Presiding Official may rule on motions and will possess the necessary qualifications to carry out their delegated tasks and responsibilities.

[Return to Table of Contents](#)

Appendix A-Federal Register, 49 CFR Part 604

URL is <http://edocket.access.gpo.gov/2008/pdf/08-86.pdf>

Appendix B-Charter Report

Excerpt: (The complete report can be found on the TxDOT-PTN website at:
http://www.txdot.gov/txdot_library/forms/public_transportation.htm

Agency Charter Service Report

SECTION 1 - General Information

Name of Agency: _____ **Completed By** _____
Street Address: _____
City: _____
Zip: _____
Telephone: _____
Email: _____

FTA Quarters	Report Due	Report Submission Date
1st Qtr - Oct 1st - Dec 31st	January 30th	
2nd Qtr - Jan 1st - Mar 31st	April 30th	
3rd Qtr - Apr 1st - Jun 30th	July 30th	
4th Qtr - Jul 1st - Sep 30th	October 30th	

Did the agency provide charter service as defined in 49 CFR Part 604.3 Definitions during the reporting period?

(Check one)

<input type="checkbox"/>
<input type="checkbox"/>

NO Stop here and Submit the report to TxDOT
YES Proceed to Section 2

SECTION 2 - Charter Service

Applicability:

This applies to 5310, 5311, 5316 and/or 5317 providers that receive Federal financial assistance from FTA thru TxDOT (5307 providers will report directly to FTA on TEAM).

There is no minimum amount of Federal funding required to trigger application of this rule. A transit agency always has the option to segregate locally funded and maintained vehicles and use those vehicles to provide charter service. To be clear, however, it is not just purchasing a vehicle with Federal dollars that triggers the application of these requirements.

Housing the vehicle in FTA-funded facilities or using FTA-funded equipment to maintain the vehicle also triggers application of this rule. A complete segregation is necessary to avoid the application of the requirements of this rule.

(Check one)

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Agency is a 5307 provider and will report directly to FTA on TEAM. Stop here. The report is complete.
Yes, with a valid exception. Complete Section 3 - Exceptions Table and Section 4 - Exceptions.
Yes, without a valid exception. Complete Section 5 - Comments.
Yes, with and without a valid exception. Complete Section 3, 4 and 5.