

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified | Communities affected |
|--------------------|----------------------------------|--|----------------------|
|--------------------|----------------------------------|--|----------------------|

ADDRESSES

City of Ritzville

Maps are available for inspection at 216 E. Main Avenue, Ritzville, WA 99169.

Unincorporated Areas of Adams County

Maps are available for inspection at 210 W. Alder, Ritzville, WA 99169.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 23, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8-17681 Filed 7-31-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Part 604**

[Docket No. FTA-2005-22657]

RIN 2132-AA85

Charter Service

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; response to petitions for reconsideration and amendments.

SUMMARY: This document disposes of the petitions for reconsideration filed in response to the Federal Transit Administration's (FTA) final rule on charter service published on January 14, 2008. This notice also corrects the final rule by adding an authority citation, revises Appendix B and Appendix C, and corrects Appendix D, which should have appeared in the final rule as a matrix.

DATES: *Effective Date:* August 1, 2008.

ADDRESSES: A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2005-22657 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>. Enter docket number 22657 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

FOR FURTHER INFORMATION CONTACT:

Crystal Frederick, Ombudsman for Charter Services, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54-410, Washington, DC 20590, (202) 366-4063 or ombudsman.charterservice@dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Transit Administration (FTA), on January 14, 2008, issued a final rule amending 49 CFR part 604 (73 FR 2326), which governs the provision of charter service by recipients of Federal funds from FTA. FTA utilized negotiated rulemaking procedures to issue the new rule based on direction contained in the Joint Explanatory Statement of the Committee of Conference for section 3023(d), "Condition on Charter Bus Transportation Service" of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU). The final rule became effective on April 30, 2008, and clarified existing requirements; set out a new definition of "charter service"; allowed for electronic registration of private charter providers, which replaced the old "willing and able" process; included a new provision

allowing private charter operators to request a cease and desist order; and established more detailed complaint, hearing, and appeal procedures. On February 14, 2008, FTA received four petitions for reconsideration for certain provisions contained in the final rule.

Issues Presented in the Petitions for Reconsideration

Each of the following organizations filed a petition with FTA for reconsideration of the final rule: Coach USA, Inc., American Bus Association, Inc. (ABA), Private Sector Participants of Charter Bus Negotiated Rulemaking Advisory Committee ("the Coalition") (which includes the ABA, California Bus Association, Coach America, Coach USA, National School Transportation Association, Northwest Motorcoach Association, Taxicab, Limousine and Paratransit Association, Trailways, and United Motorcoach Association), and Adirondack Trailways (including Pine Hill Trailways and New York Trailways).

Each petition for reconsideration focused primarily on the final rule's exemption for private charter operators. The final rule states:

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

49 CFR 604.2(c)

Coach USA asserts that "while purporting to 'clarify' the rule, FTA introduced into its final rule at section 604.2(c) the undefined limitation that the rules would not apply to 'non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance' under a variety of specified Federal programs. By virtue of the addition of

these new regulatory terms, a private charter operator must now determine what is, and what is not, an 'FTA funded activity.' Under the proposed rule, by contrast, no such determination was required." Coach USA encourages FTA to return to the notice of proposed rulemaking (NPRM) language for this exemption. The ABA expressed similar concerns in its petition and noted that the answers provided in Appendix C "are themselves unclear, in conflict, and do not cover every possible funding scenario." Further, ABA also urged FTA to return to the NPRM language except "where a private operator has acquired a vehicle with 80% or more Federal funding * * * that federally-funded vehicle may not be used to provide charter bus service unless one of the exceptions applies." ABA also states that FTA did not properly support the change in the exemption from the NPRM to the final rule.

Adirondack Trailways expressed strong support for ABA's position on this issue and noted that "the charter regulations can be interpreted in a way that would prevent a private operator who performs commuter work Monday through Friday from operating a charter on Saturday or Sunday." The Coalition did not address this particular issue, but raised several other issues.

The Coalition raised concerns about the final rule's provisions regarding the expansion of the emergency exemption from three days to forty-five days; the expansion of the hardship exception to small urbanized areas; comments on Petitions to the Administrator; exclusion of university shuttle bus service; and the remedy matrix in Appendix D.

1. Emergency Exemption

The final rule allows a public transit agency to provide charter service in emergency situations for forty-five days after which the transit agency is required to comply with 49 CFR Part 601 Subpart D—FTA's Emergency Relief docket. The Coalition believes this change in the final rule (the NPRM proposed to allow transit agencies to provide emergency service for three days) is unnecessary because "it is extremely rare that emergency conditions requiring transit bus charter service will last for one and one-half months."

2. Expansion of Hardship Exception

Regarding the expansion of the hardship exception to small urban areas, the final rule allows small urban areas under 200,000 in population to petition the Administrator for an exception if a private carrier's deadhead time exceeds

total trip time. The Coalition opposes this expansion because "there is still no evidence in the record other than anecdotes that this exception is necessary * * * and this exception should be withdrawn from the rule or at least limited to rural areas only."

3. Petitions to the Administrator

The Coalition also expressed concern regarding the final rule's requirements for Petitions to the Administrator. The final rule allows a transit agency to petition the Administrator for an exception to the charter regulation for events of regional or national significance, hardship, or discretion. The Coalition noted that "there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certification made by the recipient in the petition." The Coalition requests that such petitions be published in the docket and interested parties be given the opportunity to comment on the requested exceptions before the Administrator issues a decision.

4. University Shuttle Service

Regarding university shuttle service, the final rule contains an appendix with a number of questions and answers. Question 26 in the appendix asks whether university shuttle service is charter service. The answer to question 26 states that regularly scheduled university service does not meet the definition of charter service even though it is service provided at the request of a third party, for an exclusive group, and for a negotiated price. The Coalition expressed concerns about the answer to question 26 because "transit agencies may view this guidance as a license to enter service contracts with universities to provide campus service paid for by the university as long as the transit agency publishes the schedule, calls it a fixed route and allows the occasional member of the public to ride—even though it is really the university directing the terms of the service." Thus, the Coalition asks for question 26 to be stricken from the appendices, or, in the alternative, for FTA to provide a counter-example of when university shuttle service would be considered charter service.

Coach USA also commented on question 26 and asserted that "the line between legitimate transit service and charter service is crossed when the transit agency enters a contract with the university or college that provides for a subsidy and, as is typical, also specifies key terms of the service (e.g., fares, bus stop locations, schedules based on

academic calendar, times of the day served, special or no fares for members of the university community, etc.) and specifies routes that are tailored to meet unique university requirements, such as on-campus shuttle routes or shuttles between a campus and nearby stores or other off-campus facilities frequented by students.

5. Remedy Matrix in Appendix D

Finally, the Coalition also raised concerns about the inclusion of Appendix D, which was a matrix of potential remedies that may be imposed for a violation of the new charter service regulation. According to the Coalition, the figures contained in Appendix D are "undecipherable" and it requests that the appendix be stricken from the final rule.

Response to Petitions for Reconsideration

1. Private Charter Exemption

The Coalition raised concerns about FTA adding language to the private charter operator exemption and asserted that FTA's changes are not supported by the record. In the docket for this rulemaking are several comments asking for clarification of the private charter exemption. Some comments confused the many private not-for-profit agencies that provide public transit service in rural areas with the private charter operators. Other comments complained that FTA was treating recipients of Federal funds differently. In the final rule preamble, FTA responded by stating: "FTA's Over-the-Road Bus Program is specifically designed to provide Federal assistance to private charter operators so that they can retrofit their vehicles to make them accessible and comply with the Americans with Disabilities Act. This is a federally sanctioned activity, and, thus, to apply the charter regulations would run counter to this Federal program. The same argument also holds true for those private charter operators that receive Federal funds under 49 U.S.C. section 5311(f), which provides a limited amount of Federal support for running routes in rural areas." Still other comments raised concerns about transit agencies' ability to contract with private providers to provide public transportation. In response to these concerns, FTA noted in the final rule that "public transit agencies may enter into a contract with private charter operators to purchase transportation services using the private charter operator's vehicles. The fact that a private charter operator contracts with a public transit agency should not have

the unintended consequence of preventing the operator from using those vehicles, or other vehicles in its fleet, to provide charter service.” FTA also noted in response to comments that “if a private charter operator provides fixed route public transportation using federally funded buses or vans under contract to a transit agency or other public entity such as a State Department of Transportation, the private charter operator stands in the shoes of the transit agency and is subject to the charter service regulations.” But, FTA made sure to note that the “private charter operator, however, would not be prevented from using other vehicles in its private fleet to provide charter service.”

Thus, while FTA understands the Coalition’s concerns regarding the amended language in the final rule, FTA’s changes in the final rule are well-supported by the record. Even so, since the ABA and Coach USA focus on questions nine and ten in Appendix C, FTA will revise those questions to better reflect FTA’s intent with respect to the private charter exemption contained in 49 CFR 604.2. To be clear, the charter rules do not apply to private charter operators when providing charter services using private charter vehicles not under contract with a public transit agency. The charter regulations apply to private charter providers when providing public transportation services under contract with a transit agency receiving Federal funds whether using privately owned vehicles or federally funded vehicles. This means a private charter operator, when providing public transportation in accordance with the terms of its contract with a public transit agency, must abide by the charter regulations for those vehicles engaged in public transportation services. For example, XYZ Charter Company contracts with ABC transit agency to provide fixed route service from 7 a.m. to 6:30 p.m. Monday through Friday. At 6:31 p.m. each night, XYZ Charter Company’s privately owned vehicles are available for charter and such service is not subject to the charter regulations.

Moreover, if the Garden Club asks XYZ Charter Company to perform a charter on Thursday from 10 a.m. until 12 p.m., XYZ Charter Company would have to abide by the charter service regulations if it were to use the vehicles in its fleet assigned to the provision of transit service because the event occurs during the period the private charter operator has contracted with the transit agency to provide public transportation whether the service is provided by privately owned vehicles or federally funded vehicles. XYZ Charter Company

could, however, provide charter service to the Garden Club using other privately owned vehicles in its fleet that were not required to be used under the transit contract.

Another example involves service provided under a turn-key contract, where the private operator provides and operates a dedicated transit fleet. For the transit part of its business, the private operator is in effect the transit operator, and is subject to the charter rule for the vehicles in that transit fleet. The charter rule would not apply, however, to other aspects of that private provider’s business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use, and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practices. Stated differently, the charter rule is only applicable to the actual transit service provided by the private operator. As stated in 49 CFR 605.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

Related to the above issue is the issue of receipt of Federal funds used to offset the costs of preventive maintenance. The use of Federal funds to offset preventive maintenance costs does not trigger application of the charter rule. Recipients of non-urbanized area formula program (49 U.S.C. 5311(f)) funds are constrained by the charter rule only when providing public transportation. Non-FTA funded vehicles that are maintained in FTA funded facilities also do not become subject to the charter regulations. Similarly, incidental use of FTA funded facilities such as stops or terminals or joint information systems, during charter, tour, or intercity operations, does not mean the charter regulations apply to the equipment in the private operator’s fleet.

Finally, when a private operator receives FTA funds through the capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of the capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in

the contracted transit service). When a private operator uses that same privately owned vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

Accordingly, the Coalition’s request to revert to the language of the NPRM is denied, but FTA will provide further clarification to the questions and answers on this topic in Appendix C.

2. Expansion of the Emergency Exemption From 3 to 45 Days

The expansion of the emergency exemption from three to 45 days is described by the Coalition as “unnecessarily generous” and “could allow agencies to avoid reporting requirements.” The Coalition requests that FTA return to the three day time period proposed in the NPRM. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, to support its claim, the Coalition asserts that “there is nothing in the record supporting a 45-day exemption from the normal reporting requirement.”

The record for these proceedings includes not only the final rule and its preamble, but also all of the comments. In the final rule FTA specifically noted that “considering the concerns raised, we have decided to amend this section to allow for transit agencies to respond to emergencies * * * but it is necessary to provide a time limitation, and so, we are changing the three day limit to 45 days.” The time change directly responds to the comments FTA received indicating concern that three days was not sufficient time to allow for transit agencies to respond to emergencies. Specifically, several comments noted that the response to Hurricanes Katrina and Rita took much longer than three days. Thus, FTA chose a 45-day limit because it would allow transit agencies to focus on providing the needed support during emergencies without having to report back to FTA in a short time frame. Accordingly, the coalition’s request to return to the three day period proposed in the NPRM is denied.

3. Expansion of Hardship Exception to Small Urbanized Areas

With respect to FTA’s expansion of the hardship exception to small urbanized areas, the Coalition asserts there is “still no evidence in the record other than anecdotes that this [hardship] exception is necessary” and asks that “the exception be withdrawn from the

final rule or at least limited to rural areas only.” This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, while the Coalition does not see a need for this exception, FTA was convinced by the comments received that rural providers have limited options and there may be instances when a transit agency will need to step in to fulfill community needs. Based on the comments received, FTA also determined that the exception could be safely expanded to areas fewer than 200,000 in population because those areas also tend to have fewer private charter choices.

Further, the Coalition incorrectly states the exception. In the final rule, FTA removed the minimum trip duration requirement. Now, the only way to qualify for a hardship exception is for the deadhead time to exceed total trip time. This change was made as an acknowledgement that many companies impose minimum trip durations as a sound business practice and allowing transit agencies to provide requested charter service simply because a private provider imposes minimum trip durations could work a disservice upon small, rural private providers. Accordingly, the Coalition’s request to remove the hardship exception is denied.

4. Comments on Petitions to the Administrator

The Coalition states in its petition that “there is no provision for the petition itself to be noticed in the docket, and no opportunity for private operators to comment on the representations and certifications made by the recipient in the petition * * *.” The Coalition requests that FTA formally establish a comment period for Petitions to the Administrator. This request for reconsideration fails to comply with the provisions of 49 CFR Section 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, the preamble to the final rule specifically states “in response to the private charter operators’ comments, we note the establishment of a ‘Petitions to the Administrator’ docket. Private charter operators are able to view requests through this web site. * * *” Further, FTA routinely posts these petitions in the docket (FTA–2007–0022) at <http://www.regulations.gov>, which allows registered charter providers to comment on the petition.

FTA also noted in the preamble to the final rule that if a registered charter operator believes that a petition egregiously misstates facts, he or she may bring that to the attention of the ombudsman for charter service. While the final rule does not formally set a comment period for Petitions to the Administrator, there is a mechanism in place for registered charter providers to review petitions submitted to FTA and bring concerns to the agency’s attention. Accordingly, the Coalition’s request for a formal comment period for Petitions to the Administrator is denied.

5. Exclusion of Regular University Shuttle Bus Service

The questions and answers provided in Appendix C to the final rule state that regular shuttle service subsidized by a university is not charter. The Coalition argues that “much shuttle service provided by a transit agency to a university, where the university determines the routes, the schedule is adjusted according to the university’s calendar, and the university pays the fares for all of the students, faculty and staff riding the service (and charges the students a transportation or activity fee) could be considered charter service.” The Coalition requests that the question and answer pertaining to university service be removed or revised. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, when drafting the final rule FTA was very cognizant of the Coalitions’ concerns regarding shuttle service to universities. FTA determined that regular shuttle service, even service that is designed to meet the needs of students during the week, is not charter because the service is provided on a regular and continuing basis as part of the transit system.

That being said, FTA recognizes that the question and answer regarding university shuttle service could be read to mean that all shuttle service to universities is not charter, which is not true. Shuttle service to events or functions of a limited duration or that occur on an irregular basis and that is subsidized by the university is charter. Further, on-campus shuttle routes provided for the exclusive use of students and faculty and not connected to a transit system’s routes could also be charter. Thus, FTA will revise the question and answer regarding university shuttle service to make clear that certain service to a university could be charter.

6. Remedy Matrix in Appendix D

The Coalition noted in its petition that the “figures in Appendix D matrix are not explained and are undecipherable.” The Coalition urges FTA to remove Appendix D altogether. This request for reconsideration fails to comply with the provisions of 49 CFR 601.34 because it fails to state “why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.” Even so, in printing the final rule, the **Federal Register** changed the original “matrix” to a table. By this notice, FTA corrects Appendix D to reflect a matrix of potential remedies for a violation of the charter service regulations.

7. Revision to Appendix B

This notice also provides additional guidance to affected parties regarding what FTA may consider when determining whether a party has acted in “bad faith.” Currently, Appendix B defines bad faith as “actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation.” In addition, to this definition, FTA will also consider the time it takes for a registered charter provider to contact a customer or provide a customer with a reasonable quote. It is not reasonable for a registered charter provider to wait to contact the customer until the event is only a few weeks away. It is also not reasonable for a registered charter provider to delay providing a customer with a reasonable price quote for the requested charter service. Thus, it is FTA’s intention to review situations in which the registered charter provider delays either contacting the customer or providing a reasonable price quote to the customer.

Additionally, since the rule’s effective date, some registered charter providers have provided quotes that include several hours of deadhead time for a two or three hour around-the-town charter trip. Such a quote is not reasonable given the fact that the customer should not have to pay for inordinate hours of deadhead time in order to receive service. Further, such actions seem unreasonable if the transit agency is able to provide the trip because there are no local private charter operators interested in providing the trip.

8. Revision to Appendix C

In response to the many questions FTA received regarding its final rule, we have revised Appendix C to provide additional guidance regarding issues that seem most important to affected

parties. Thus, FTA added several new questions and answers and revised some of the old questions and answers to add more clarity to certain issues. The new Appendix C incorporates, as appropriate, and replaces the old Appendix C.

9. Authority Citation Correction

In the final rule published January 14, 2008, the authority citation for part 604 was inadvertently omitted from the text of the regulation. This notice corrects that omission.

List of Subjects in 49 CFR Part 604

Charter service.

■ Accordingly, 49 CFR part 604 is amended as follows:

■ 1. Add the following authority citation for part 604 to read as follows:

Authority: 49 U.S.C. 5323(d); 3023(d), Pub. L. 109–59; 49 CFR 1.51.

■ 2. Revise Appendix B to part 604 to read as follows:

Appendix B to Part 604—Reasons for Removal

The following is guidance on the terms contained in section 604.26(d) concerning reasons for which FTA may remove a registered charter provider or a qualified human service organization from the FTA charter registration Web site.

What is bad faith?

Bad faith is the actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation. It is not an honest mistake. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would also be bad faith if the registered charter provider fails to contact the customer or provide a quote for charter service within a reasonable time. Typically, if a registered charter provider fails to contact a customer or fails to provide a price quote to the customer at least 14 business days before an event, then FTA may remove the registered charter provider from the registration Web site, which would allow a transit agency to step back in to provide the service because the registered charter provider's response to the email would no longer be effective because it is not registered.

Further, it would be bad faith for a registered charter provider to submit a quote for charter services knowing that the price is three to four times higher because of the distance the registered charter provider must travel (deadhead time). In those situations, FTA may interpret such quotes as bad faith because they appear to be designed to

prevent the local transit agency from providing the service.

On the other hand, FTA would not interpret an honest mistake of fact as bad faith. For example, if a registered charter provider fails to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided. It would not be bad faith if the registered charter provider responded affirmatively to the email notification sent by the public transit agency, but then later learned it could not perform the service and provided the transit agency reasonable notice of its changed circumstances.

What is fraud?

Fraud is the suggestion or assertion of a fact that is not true, by one who has no reasonable ground for believing it to be true; the suppression of a fact by one who is bound to disclose it; one who gives information of other facts which are likely to mislead; or a promise made without any intention of performing it. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

Examples of fraud include but are not limited to: (1) A registered charter provider indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; or (3) a qualified human service organization represents that it serves the needs of the elderly, persons with disabilities, or lower-income individuals, but, in fact, only serves those populations tangentially.

What is a lapse of insurance?

A lapse of insurance occurs when there is no policy of insurance in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a lapse of other documentation?

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, email address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal or state motor carrier identifying number. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a complaint that does not state a claim that warrants an investigation or further action by FTA?

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without

considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

Examples of complaints that would not warrant an investigation or further action by FTA include but are not limited to: (1) A complaint against a public transit agency that does not receive FTA funding; (2) a complaint brought against a public transit agency by a private charter operator that is neither a registered charter provider nor its duly authorized representative; (3) a complaint that gives no information as to when or where the alleged prohibited charter service took place; or (4) a complaint filed solely for the purpose of harassing the public transit agency.

■ 3. Revise Appendix C to part 604 to read as follows:

Appendix C to Part 604—Frequently Asked Questions

(a) Applicability (49 CFR Section 604.2)

(1) Q: If the requirements of the charter rule are not applicable to me for a particular service I provide, do I have to report that service in my quarterly report?

A: No. If the service you propose to provide meets one of the exemptions contained in this section, you do not have to report the service in your quarterly report.

(2) Q: If I receive funds under 49 U.S.C. Sections 5310, 5311, 5316, or 5317, may I provide charter service for any purpose?

A: No. You may only provide charter service for "program purposes," which is defined in this regulation as "transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals) * * *" 49 CFR Section 604.2(e). Thus, your service only qualifies for the exemption contained in this section if the service is designed to serve the needs of targeted populations. Charter service provided to a group, however, that includes individuals who are only incidentally members of those targeted populations, is not "for program purposes" and must meet the requirements of the rule (for example, an individual chartering a vehicle to take his relatives including elderly aunts and a cousin who is a disabled veteran to a family reunion).

(3) Q: If I am providing service for program purposes under one of the FTA programs listed in 604.2(e), do the human service organizations have to register on the FTA Charter Registration Web site?

A: No. Because the service is exempt from the charter regulations, the organization does not have to register on the FTA Charter Registration Web site.

(4) Q: What if there is an emergency such as an apartment fire or tanker truck spill that requires an immediate evacuation, but the President, Governor, or Mayor never declares it as an emergency? Can a transit agency still assist in the evacuation efforts?

A: Yes. One part of the emergency exemption is designed to allow transit

agencies to participate in emergency situations without worrying about complying with the charter regulations. Since transit agencies are often uniquely positioned to respond to such emergencies, the charter regulations do not apply. This is true whether or not the emergency is officially declared.

(5) Q: Do emergency situations involve requests from the Secret Service or the police department to transport its employees?

A: Generally no. Transporting the Secret Service or police officers for non-emergency preparedness or planning exercises does not qualify for the exemption under this section. In addition, if the Secret Service or the police department requests that a transit agency provide service when there is no immediate emergency, then the transit agency must comply with the charter service regulations.

(6) Q: Can a transit agency provide transportation to transit employees for an event such as the funeral of a transit employee or the transit agency's annual picnic?

A: Yes. These events do not fall within the definition of charter, because while the service is exclusive, it is not provided at the request of a third party and it is not at a negotiated price. Furthermore, a transit agency transporting its own employees to events sponsored by the transit agency for employee morale purposes or to events directly related to internal employee relations such as a funeral of an employee, or to the transit agency's picnic, is paying for these services as part of the transit agency's own administrative overhead.

(7) Q: Is sightseeing service considered to be charter?

A: "Sightseeing" is a different type of service than charter service. "Sightseeing" service is regularly scheduled round trip service to see the sights, which is often accompanied by a narrative guide and is open to the public for a set price. Public transit agencies may not provide sightseeing service with federally funded assets or assistance because it falls outside the definition of "public transportation" under 49 U.S.C. Section 5302(a) (10), unless FTA provides written concurrence for that service as an approved incidental use. While, in general, "sightseeing" service does not constitute charter service, "sightseeing" service that also meets the definition of charter service would be prohibited, even as an incidental use.

(8) Q: If a private provider receives Federal funds from one of the listed programs in this section, does that mean the private provider cannot use its privately owned equipment to provide charter service?

A: No. A private provider may still provide charter services even though it receives Federal funds under one of the programs listed in this section. The charter regulations only apply to a private provider during the time period when it is providing public transportation services under contract with a public transit agency.

(9) Q: What does FTA mean by the phrase "non-FTA funded activities"?

A: Non-FTA funded activities are those activities that are not provided under contract or other arrangement with a public transit agency using FTA funds.

(10) Q: How does a private provider know whether an activity is FTA-funded or not?

A: The private provider should refer to the contract with the public transit agency to understand the services that are funded with Federal dollars.

(11) Q: What if the service is being provided under a capital cost of contracting scenario?

A: When a private operator receives FTA funds through capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in the contracted transit service). When a private operator uses that same privately owned vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

(12) Q: What if the service is provided under a turn-key scenario?

A: To the extent the private charter provider is standing in the shoes of the public transit agency, the charter rules apply. Under a turn-key contract, where the private operator provides and operates a dedicated transit fleet, then the private provider must abide by the charter regulations for the transit part of its business. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practice.

(13) Q: Does FTA's rule prohibit a private provider from providing charter service when its privately owned vehicles are not engaged in providing public transportation?

A: No. The charter rule is only applicable to the actual public transit service provided by the private operator. As stated in 49 CFR 604.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

(14) Q: May a private provider use vehicles whose acquisition was federally funded to provide private charter services?

A: It depends. A private provider, who is a sub-recipient or sub-grantee, when not engaged in providing public transit using federally funded vehicles, may provide charter services using federally funded vehicles only in conformance with the charter regulations. Vehicles, whose only federal funding was for accessibility equipment, are not considered to be federally funded vehicles in this context. In other words, vehicles, whose lifts are only funded under FTA programs, may be used in charter service.

(15) Q: May a public transit agency provide "seasonal service" (e.g., service May through September for the summer beach season)?

A: "Seasonal service" that is regular and continuing, available to the public, and controlled by the public transit agency meets the definition of public transportation and is not charter service. The service should have a regular schedule and be planned in the same manner as all the other routes, except that it is run only during the periods when there is sufficient demand to justify public transit service; for example, the winter ski season or summer beach season. "Seasonal service" is distinguishable from charter service provided for a special event or function that occurs on an irregular basis or for a limited duration, because the seasonal transit service is regular and continuing and the demand for service is not triggered by an event or function. In addition, "seasonal service" is generally more than a month or two, and the schedule is consistent from year to year, based on calendar or climate, rather than being scheduled around a specific event.

(b) Definitions (49 CFR Section 604.3)

(16) Q: The definition of charter service does not include demand response services, but what happens if a group of individuals request demand response service?

A: Demand response trips provide service from multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. These types of trips are considered demand response transit service, not charter service, because even though a human service agency pays for the transportation of its clients, trips are scheduled and routed for the individuals in the group. Service to individuals can be identified by vehicle routing that includes multiple origins, multiple destinations, or both, based on the needs of individual members of the group, rather than the group as a whole. For example, demand response service that takes all of the members of a group home on an annual excursion to a baseball game. Some sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops may even be provided on an exclusive basis where clients of a particular agency cannot be mixed with members of the general public or clients of other agencies for safety or other reasons specific to the needs of the human service clients.

(17) Q: Is it charter if a demand response transit service carries a group of individuals with disabilities from a single origin to a single destination on a regular basis?

A: No. Daily subscription trips between a group living facility for persons with developmental disabilities to a sheltered workshop where the individuals work, or weekly trips from the group home to a recreation center is "special transportation" and not considered charter service. These trips are regular and continuous and do not meet the definition of charter.

(18) Q: If a third party requests charter service for the exclusive use of a bus or van, but the transit agency provides the service free of charge, is it charter?

A: No. The definition of charter service under 49 CFR Section 604.3(c) (1), requires a negotiated price, which implies an exchange of money. Thus, free service does not meet the negotiated price requirement. Transit agencies should note, however, that a negotiated price could be the regular fixed route fare or when a third party indirectly pays for the regular fare.

(19) Q: If a transit agency accepts a subsidy for providing shuttle service for an entire baseball season, is that charter?

A: Yes. Even though there are many baseball games over several months, the service is still to an event or function on an irregular basis or for a limited duration for which a third party pays in whole or in part. In order to provide the service, a transit agency must first provide notice to registered charter providers.

(20) Q: If a transit agency contracts with a third party to provide free shuttle service during football games for persons with disabilities, is that charter?

A: Yes. Even though the service is for persons with disabilities, the transit agency receives payment from a third party for an event or function that occurs on an irregular basis or for a limited duration. In order for a transit agency to provide the service, it must provide notice to the list of registered charter providers first.

(21) Q: What if a business park pays the transit agency to add an additional stop on its fixed route to include the business park, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(22) Q: What if a university pays the transit agency to expand its regular fixed route to include stops on the campus, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(23) Q: What if a university pays the transit agency to provide shuttle service that does not connect to the transit agency's regular routes, is that charter?

A: Yes. The service is provided at the request of a third party, the university, for the exclusive use of a bus or van by the university students and faculty for a negotiated price.

(24) Q: What if the university pays the transit agency to provide shuttle service to football games and graduation, is that charter?

A: Yes. The service is to an event or function that occurs on an irregular basis or for a limited duration. As such, in order to provide the service, a transit agency must provide notice to the list of registered charter providers.

(25) Q: What happens if a transit agency does not have fixed route service to determine whether the fare charged is a premium fare?

A: A transit agency should compare the proposed fare to what it might charge for a similar trip under a demand response scenario.

(26) Q: How can a transit agency tell if the fare is "premium"?

A: The transit agency should analyze its regular fares to determine whether the fare

charged is higher than its regular fare for comparable services. For example, if the transit agency proposes to provide an express shuttle service to football games, it should look at the regular fares charged for express shuttles of similar distance elsewhere in the transit system. In addition, the service may be charter if the transit agency charges a lower fare or no fare because of a third party subsidy.

(27) Q: What if a transit agency charges a customer an up front special event fare that includes the outbound and inbound trips, is that a premium fare?

A: It depends. If the transit agency charges the outbound and inbound fares up front, but many customers don't travel both directions, then the fare may be premium. This would not be true generally for park and ride lots, where the customer parks his or her car, and, would most likely use transit to return to the same lot. Under that scenario, the transit agency may collect the regular outbound and inbound fare up front.

(28) Q: What if a transit agency wishes to create a special pass for an event or function on an irregular basis or for a limited duration that allows a customer to ride the transit system several times for the duration of the event, is that charter?

A: It depends. If the special pass costs more than the fare for a reasonable number of expected individual trips during the event, then the special pass represents a premium fare. FTA will also consider whether a third party provides a subsidy for the service.

(29) Q: Is it a third party subsidy if a third party collects the regular fixed route fare for the transit agency?

A: Generally no. If the service provided is not at the request of a third party for the exclusive use of a bus or van, then a third party collecting the fare would not qualify the service as charter. But, a transit agency has to consider carefully whether the service is at the request of an event planner. For example, a group offers to make "passes" for its organization and then later work out the payment to the transit agency. The transit agency can only collect the regular fare for each passenger.

(30) Q: If the transit agency is part of the local government and an agency within the local government pays for service to an event or function of limited duration or that occurs on an irregular basis, is that charter?

A: Yes. Since the agency pays for the charter service, whether by direct payment or transfer of funds through internal local government accounts, it represents a third party payment for charter service. Thus, the service would meet the definition of charter service under 49 CFR Section 604.3(c) (1).

(31) Q: What if an organization requests and pays for service through an in-kind payment such as paying for a new bus shelter or providing advertising, is that charter?

A: Yes. The service is provided at the request of a third party for a negotiated price, which would be the cost of a new bus shelter or advertising. The key here is the direct payment for service to an event or function. For instance, advertising that appears on buses for regular service does not make it charter.

(32) Q: Under the definition of "Government Officials," does the

government official have to currently hold an office in government?

A: Yes. In order to take advantage of the Government Official exception, the individual must hold currently a government position that is elected or appointed through a political process.

(33) Q: Does a university qualify as a QHSO?

A: No. Most universities do not have a mission of serving the needs of the elderly, persons with disabilities, or low income individuals.

(34) Q: Do the Boy Scouts of America qualify as a QHSO?

A: No. The Boy Scouts of America's mission is not to serve the needs of the elderly, persons with disabilities, or low income individuals.

(35) Q: What qualifies as indirect financial assistance?

A: The inclusion of "indirect" financial assistance as part of the definition of "recipient" covers "subrecipients." In other words, "subrecipients" are subject to the charter regulation. FTA modified the definition of recipient in the final rule to clarify this point.

(c) Exceptions (49 CFR Subpart B)

(36) Q: In order to take advantage of the Government Officials exception, does a transit agency have to transport only elected or appointed government officials?

A: No, but there has to be at least one elected or appointed government official on the trip.

(37) Q: If a transit agency provides notice regarding a season's worth of service and some of the service will occur in less than 30 days, does a registered charter provider have to respond within 72 hours or 14 days?

A: A transit agency should provide as much notice as possible for service that occurs over several months. Thus, a transit agency should provide notice to registered charter providers more than 30 days in advance of the service, which would give registered charter provider 14 days to respond to the notice. Under pressure to begin the service sooner, the transit agency could provide a separate notice for only that portion of the service occurring in less than 30 days.

(38) Q: Does a transit agency have to contact registered charter providers in order to petition the Administrator for an event of regional or national significance?

A: Yes. A petition for an event of regional or national significance must demonstrate that not only has the public transit agency contacted registered charter providers, but also demonstrate how the transit agency will include registered charter providers in providing the service to the event of regional or national significance.

(39) Q: Where does a transit agency have to file its petition?

A: A transit agency must file the petition with the ombudsman at ombudsman.charterservice@dot.gov. FTA will file all petitions in the Petitions to the Administrator docket (FTA-2007-0022) at <http://www.regulations.gov>.

(40) Q: What qualifies as a unique and time sensitive event?

A: In order to petition the Administrator for a discretionary exception, a public transit agency must demonstrate that the event is unique or that circumstances are such that there is not enough time to check with registered charter providers. Events that occur on an annual basis are generally not considered unique or time sensitive.

(41) Q: Is there any particular format for quarterly reports for exceptions?

A: No. The report must contain the information required by the regulations and clearly identify the exception under which the transit agency performed the service.

(42) Q: May a transit agency lease its vehicles to one registered charter provider if there is another registered charter provider that can perform all of the requested service with private charter vehicles?

A: No. A transit agency may not lease its vehicles to one registered charter provider when there is another registered charter provider that can perform all of the requested service. In that case, the transit vehicles would enable the first registered charter provider to charge less for the service than the second registered charter provider that uses all private charter vehicles.

(43) Q: Where do I submit my reports?

A: FTA has adapted its electronic grants making system, TEAM, to include charter rule reporting. Grantees should file the required reports through TEAM. These reports will be available to the public through FTA's charter bus service Web page at: <http://fteamweb.fta.dot.gov/Teamweb/CharterRegistration/QueryCharterReport.aspx>. State Departments of Transportation are responsible for filing charter reports on behalf of its subrecipients that do not have access to TEAM.

(d) Registration and Notification (49 CFR Subpart C)

(44) Q: May a private provider register to receive notice of charter service requests from all 50 States?

A: Yes. A private provider may register to receive notice from all 50 States; however, a private provider should only register for those states for which it can realistically originate service.

(45) Q: May a registered charter provider select which portions of the service it would like to provide?

A: No. A registered charter provider may not "cherry pick" the service described in the notice. In other words, if the e-mail notification describes service for an entire football season, then a registered charter provider that responds to the notice indicating it can provide only a couple of weekends of service would be non-responsive to the e-mail notice. Public transit agencies may, however, include several individual charter events in the e-mail notification. Under those circumstances, a registered charter provider may select from those individual events to provide service.

(46) Q: May a transit agency include information on "special requests" from the customer in the notice to registered charter providers?

A: No. A transit agency must strictly follow the requirements of 49 CFR Section 604.14, otherwise the notice is void. A transit agency

may, however, provide a generalized statement such as "Please do not respond to this notice if you are not interested or cannot perform the service in its entirety."

(47) Q: What happens if a transit agency sends out a notice regarding charter service, but later decides to perform the service free of charge and without a third party subsidy?

A: If a transit agency believes it may receive the authority to provide the service free of charge, with no third party subsidy, then it should send out a new e-mail notice stating that it intends to provide the service free of charge.

(48) Q: What happens if a registered charter provider initially indicates interest in providing the service described in a notice, but then later is unable to perform the service?

A: If the registered charter provider acts in good faith by providing reasonable notice to the transit agency of its changed circumstances, and that registered charter provider was the only one to respond to the notice, then the transit agency may step back in and provide the service.

(49) Q: What happens if a registered charter provider indicates interest in providing the service, but then does not contact the customer?

A: A transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice.

(50) Q: What happens if a registered charter provider indicates interest in providing the service, contacts the customer, and then fails to provide a price quote to the customer?

A: If the requested service is 14 days or less away, a transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice upon filing a complaint with FTA to remove the registered charter provider from the FTA Charter Registration Web site. If the complaint of "bad faith" negotiations is not sustained by FTA, the transit agency may face a penalty, as determined by FTA. If the requested service is more than 14 days away, and the transit agency desires to step back in, then upon filing a complaint alleging "bad faith" negotiations that is sustained by FTA, the transit agency may step back in.

(51) Q: What happens if a transit agency entered into a contract to perform charter service before the effective date of the final rule?

A: If the service described in the contract occurs after the effective date of the final rule, the service must be in conformance with the new charter regulation.

(52) Q: What if the service described in the notice requires the use of park and ride lots owned by the transit agency?

A: If the transit agency received Federal funds for those park and ride lots, then the transit agency should allow a registered charter provider to use those lots upon a showing of an acceptable incidental use (the transit agency retains satisfactory continuing control over the park and ride lot and the use does not interfere with the provision of public transportation) and if the registered charter provider signs an appropriate use and indemnification agreement.

(53) Q: What if the registered charter provider does not provide quality charter service to the customer?

A: If a registered charter provider does not provide service to the satisfaction of the customer, the customer may pursue a civil action against the registered charter provider in a court of law. If the registered charter provider also demonstrated bad faith or fraud, it can be removed from the FTA Charter Registration Web site.

(e) Complaint & Investigation Process

(54) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint against the transit agency?

A: Yes. A registered charter operator or its duly authorized representative, which 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 Web site may not file a complaint.

(55) Q: Is there a time limit for making complaints?

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

(56) Q: Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

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

(57) Q: When a complaint is filed, who is responsible for arbitration or litigation costs?

A: 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.

(58) Q: What affirmative defenses might be available in the complaint process?

A: 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.

(59) Q: What can a transit agency do if it believes that a registered charter provider is not bargaining in good faith with a customer?

A: If a transit agency believes that a registered charter provider is not bargaining in good faith with the customer, the transit agency may file a complaint to remove the registered charter provider from FTA's Charter Registration Web site.

(60) Q: Does a registered charter provider have to charge the same fare or rate as a public transit agency?

A: No. A registered charter provider is not under an obligation to charge the same fare or rate as public transit agency. A registered charter provider, however, must charge commercially reasonable rates.

(61) Q: 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?

A: 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.

(62) Q: 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?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate unless there is reason to suspect that the registered charter provider is committing fraud. 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.

(63) Q: How will FTA determine the remedy for a violation of the charter regulations?

A: 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.

(64) Q: Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

A: 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 allegations, the complaint must allege more than a single event that included unauthorized charter service in order to establish a pattern of violations.

(f) Miscellaneous

(65) Q: If a grantee operates assets that are locally funded as such assets subject to the charter regulations?

A: 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.

(66) Q: What can a public transit agency do if there is a time sensitive event, such as a presidential inauguration, for which the transit agency does not have time to consult with all the private charter operators in its area?

A: 49 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. If the inauguration also includes ancillary events, the public transit agency should refer the customer to the registration list.

(67) Q: Are body-on-van-chassis vehicles classified as buses or vans under the charter regulation?

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

(68) Q: When a new operator registers, may recipients continue under existing contractual agreements for charter service?

A: 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.

(69) Q: 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, registered charter providers have enough vehicles to provide all of the service to the event?

A: No. If after consultation with registered charter providers, 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.

(70) Q: What happens if a customer specifically requests a trolley from a transit agency and there are no registered charter providers that have a trolley?

A: FTA views trolleys as buses. Thus, all the privately owned buses must be engaged in service and unavailable before a transit agency may lease its trolley. Alternatively, the transit agency could enter into an agreement with all registered charter providers in its geographic service area to allow it to provide trolley charter services.

(71) Q: How does a transit agency enter into an agreement with all registered charter providers in its geographic service area?

A: A public transit agency should send an email notice to all registered charter providers of its intent to provide charter service. A registered charter provider must respond to the email notice either affirmatively or negatively. The transit agency should also indicate in the email notification that failure to respond to the email notice results in concurrence with the notification.

(72) Q: Can a registered charter provider rescind its affirmative response to an email notification?

A: Yes. If after further consideration or a change in circumstances for the registered charter provider, a registered charter provider may notify the customer and the transit agency that it is no longer interested in providing the requested charter service. At that point, the transit agency may make the decision to step back in to provide the service.

(73) Q: What happens after a registered charter provider submits a quote for charter services to a customer? Does the transit agency have to review the quote?

A: Once a registered charter provider responds affirmatively to an email notification and provides the customer a commercially reasonable quote, then the transit agency may not step back in to perform the service. A transit agency is not responsible for reviewing the quote submitted by a registered charter provider. FTA recommends that a registered charter provider include in the quote an expiration date for the offer.

■ 4. Revise Appendix D to part 604 to read as follows:

Appendix D to Part 604—Table of Potential Remedies

Remedy Assessment Matrix

EXTENT OF DEVIATION FROM REGULATORY REQUIREMENTS

| | Major | Moderate | Minor |
|-------------------|------------------------------------|------------------------------------|-------------------------------|
| Economic Benefit: | | | |
| Major | \$25,000/violation to 20,000 | \$19,999/violation to 15,000 | \$14,999/violation to 11,000. |
| Moderate | \$10,999/violation to 8,000 | \$7,999/violation to 5,000 | \$4,999/violation to 3,000. |
| Minor | \$2,999/violation to 1,500 | 1,499/violation to 500 | \$499/violation to 100. |

FTA's Remedy Policy

- This remedy policy applies to decisions by the Chief Counsel, Presiding Officials, and final determinations by the Administrator.
- Remedy calculation is based on the following elements:

- (1) The nature and circumstances of the violation;
- (2) The extent and gravity of the violation ("extent of deviation from regulatory requirements");
- (3) The revenue earned ("economic benefit") by providing the charter service;

- (4) The operating budget of the recipient;
- (5) Such other matters as justice may require; and

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

Issued this 24th day of July, 2008.

James S. Simpson,
Administrator.

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