



## **FACILITATOR'S FINAL REPORT**

**on the**

**Negotiated Rulemaking Process to Develop  
Proposed Revisions to the Charter Bus Regulations  
49 CFR Chapter VI Part 604 Charter Service**

**Federal Transit Administration  
U.S. Department of Transportation**

**Submitted by  
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49 CFR Chapter VI Part 604 Charter Service**

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## **INTRODUCTION**

The Federal Transit Administration of the U.S. Department of Transportation (FTA) initiated a negotiated rulemaking to develop proposed revisions to the existing charter bus regulations pursuant to the 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 (SAFETEA-LU).

FTA formally chartered the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) under the Federal Advisory Committee Act (FACA)<sup>1</sup> for the purpose of negotiating consensus recommendations for improving the charter bus regulations regarding the prohibition of FTA grant recipients from providing charter bus service. (See Appendix A for the FACA Charter for CBNRAC.)

In December 2006, after seven months of negotiations, CBNRAC reached final consensus on the text for most, but not all of the proposed revision of Part 604 Charter Service regulations. In accordance with the Negotiated Rulemaking Act of 1996, §563(a)(7), FTA, "to the maximum extent possible consistent with the legal obligations of the Agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the Agency for notice and comment." Sub-issues for which no consensus recommendations were offered by CBNRAC, were decided by FTA in its Notice of Proposed Rulemaking (NPRM), which was published in the Federal Register on February 15, 2007.

FTA retained Susan Podziba & Associates to provide facilitation services for the negotiated rulemaking process.

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<sup>1</sup> As required under FACA, the Charter Bus Negotiated Rulemaking Advisory Committee was composed of a balanced group of stakeholder representatives, all meetings were noticed and open to the public, all meeting materials were available for public review, and time was set aside at each meeting for public comment.

## BACKGROUND

The Charter Service Report (October 15, 2004), prepared by FTA for the House and Senate Committees on Appropriations of the United States Congress, provided the following summary history of the charter service regulations.

The Federal Transit Act (FT Act, codified in 1994 at 49 U.S.C. chapter 53) provides funding for recipients to provide “mass transportation.” Charter service is specifically excluded from the definition of “mass transportation.” In 1966, however, the Comptroller General of the United States issued an opinion allowing recipients to perform “incidental” charter service without violating the FT Act. Furthermore, section 3(f) of the FT Act, enacted in 1974, required recipients, as a condition of the grant, to enter into an agreement with the Secretary of Transportation to provide for “fair and equitable arrangements” to ensure that federal financial assistance did not foreclose private operators from the intercity bus industry where such private operators were willing and able to provide the service.

The Federal Transit Administration (FTA) implemented these provisions in its charter service regulation at 49 CFR Part 604, first issued in 1976. It allowed recipients to provide service within the urban area (intracity service) where it provided regularly scheduled mass transportation. In 1987, FTA fundamentally revised its approach to charter service by issuing the current charter service regulation. That regulation did not distinguish between intracity service and intercity service. Instead, it prohibited recipients from providing any charter service unless the service was subject to one of five specific exceptions. In 1988, FTA amended its regulation to add three more exceptions.

.....In 1987, FTA published “Questions and Answers” in the Federal Register. In 2001, FTA published and widely distributed an informational brochure written in a plain English format. Also in 2001, FTA [created] a website containing its charter service regulation and interpretive material.  
(Executive Summary, pages vi - vii.)

In the two years prior to SAFETEA-LU, the American Public Transportation Association (APTA) and the American Bus Association (ABA) engaged in extensive negotiations concerning issues related to the charter bus regulations, but failed to reach a sustainable agreement.

In 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 (SAFETEA-LU), Congress stated:

The Committee is aware that both public transportation providers and private charter operators have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The Committee directs FTA to initiate a rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

To begin the negotiated rulemaking process, FTA hired RESOLVE, Inc. to conduct a convening assessment to determine the feasibility of a consensus process, with participation by FTA and representatives of key stakeholder groups, to revise the charter bus regulations. In its final convening report, RESOLVE, Inc. recommended proceeding to the negotiation phase of the rulemaking. (The convening report is available at the <http://dms.dot.gov>, Docket, No. 22657.)

The negotiations resulted in final consensus on most, but not all of the recommended revisions to the Charter Service regulations. FTA used the consensus text as the basis for its NPRM and decided the outstanding sub-issues.

## **PROJECT DURATION AND MILESTONES**

The CBNRAC Negotiated Rulemaking began in December 2005 and was completed in December 2006. The convening assessment was initiated in December 2005, and the Convening Report with Recommendations was finalized in March 2006. On January 31, 2006, FTA published a Federal Register Notice announcing its intent to form a negotiated rulemaking advisory committee (Appendix B). On April 10, 2006, FTA

published a Federal Register Notice establishing CBNRAC (Appendix C). The first meeting of CBNRAC was held on May 8-9, 2006.

The negotiations were conducted during the seven-month period between May and December 2006 and included six two-day meetings. The Committee reached final consensus on all but twelve sub-issues under discussion on December 7, 2006. On January 5, 2007, the Committee approved its December 6-7 meeting summary, which documented the Committee's final consensus and outstanding sub-issues.

FTA published its Notice of Proposed Rulemaking for charter services (49 CFR Part 604) on February 15, 2007. It includes a 60-day comment period, which ends on April 16, 2007 (Appendix L).

## **NEGOTIATED RULEMAKING COMMITTEE PARTICIPANTS**

CBNRAC membership included FTA and twenty-one organizations, which represented the following categories of stakeholder interests: federal government, state government, municipal government, large private charter operators, small private charter operators, trade associations, large, medium, small, and rural public transit operators, and labor unions. FTA carefully monitored the composition of the committee to ensure balanced representation from affected and interested stakeholder groups. As a result of a consensus CBNRAC recommendation agreed to at the first meeting, FTA added four members to the original eighteen CBNRAC members. All members designated alternates to negotiate on their behalf in their absence. (See Appendix D for Membership List of the Charter Bus Negotiated Rulemaking Advisory Committee.)

In addition, a team of FTA attorneys and staff, from Headquarters and Region V, supported the FTA negotiator.

## **PRODUCTS AND OUTCOMES**

The final product and outcome of the negotiated rulemaking is the final CBNRAC regulatory text document, which includes consensus regulatory text for proposed revisions to Section 604 as well as sub-issues for which no consensus was reached (Appendix K).

Additional products developed as part of the negotiated rulemaking process include the meeting summaries and agendas for each of the six CBNRAC meetings and the committee's ground rules. These documents are included in the appendices of this final report and are available, as are all other documents related to the negotiated

rulemaking at <http://dms.dot.gov>. The docket name is Charter Service, and the docket number is 22657.

## **SUMMARY OF CHARTER BUS NEGOTIATED RULEMAKING ADVISORY COMMITTEE NEGOTIATIONS**

CBNRAC negotiations occurred between May 8 and December 7, 2006, and included six two-day meetings, FTA presentations, work groups, caucuses, facilitator communications with CBNRAC members, and occasional comments from non-committee members of the public.

### *Meetings*

All CBNRAC meetings were in the Greater Washington, D.C. area. (See Appendix E for Schedule of Meetings.) Each meeting followed a formal agenda that was prepared and distributed prior to the meeting. (See Appendix H for Meeting Agendas.)

The facilitator drafted meeting summaries after each meeting, which were reviewed and approved by CBNRAC. In addition to summarizing the discussions of each meeting, the summaries served as records of agreements, identified key discussion points for tentative agreements and outstanding issues, and recorded public comments. (See Appendix I for Meeting Summaries.)

### *Negotiations*

The negotiations provided a forum for an exhaustive and transparent review of the current charter bus regulations, opportunities to generate options for clarifying the charter bus regulations, and intensive efforts to identify solutions that were mutually agreeable to both public transportation providers and private charter operators.

At the initial CBNRAC meeting, FTA provided a presentation on the legislative history of the charter bus regulations, and the facilitator provided an overview of the negotiated rulemaking process. In addition, CBNRAC negotiated and adopted ground rules (Appendix F) that would govern its negotiations, and agreed on the list of issues that would form the scope of their negotiations (Appendix G). Finally, CBNRAC members discussed the key elements of each issue.

The agreed-upon list of eight issues included the four questions outlined in the Congressional Conference Report and additional issues identified in the convening report and via public comment in response to the Federal Register Notice on forming a negotiated rulemaking advisory committee. Mid-way through the negotiations, the issue of university transportation was incorporated into the first Congressional question concerning limited conditions for exceptions.



Over the course of its six meetings, CBNRAC members participated in an iterative and comprehensive discussion of each issue. FTA drafted regulatory language to reflect agreements in concept when such agreements were reached. When issues were thoroughly discussed but no agreements reached, FTA drafted text to reflect some of the options under discussion to help focus CBNRAC discussions. The draft regulatory language was then thoroughly reviewed to refine the draft text in an effort to reach tentative agreements on each sub-section and when necessary, to clarify the actual issues in dispute.

The issue that generated the most controversy throughout the negotiations was the definition of "charter." A work group met to develop proposals on the definition, each caucus developed a set of indicia to describe "charter" (See the September 12-13 meeting summary for these indicia), a flowchart was prepared, and numerous proposals were offered and wordsmithed.

Ultimately, it became clear that the central dispute over the definition of charter revolved around whether or not charter service includes occasional or infrequent events such as flower shows, golf tournaments, home shows, festivals, and sporting events. Despite intensive efforts, CBNRAC was unable to resolve this issue. Both the public transit and private charter caucuses believed they had strong cases concerning provision of these services, and each stated that past FTA decisions and/or actions justified its position.

Though there was no agreement on this issue, the negotiated rulemaking discussions clarified for FTA the actual issues in dispute and options concerning where to "draw a bright line" to create a charter bus rule that is clear and uniformly enforceable across the nation.

### *Work Groups*

Throughout the process, work groups were formed to develop proposals between meetings. Workgroups were composed of those CBNRAC members and/or their alternates, who were most interested and most expert in the subject under discussion. Some work group meetings were conducted in Washington, D.C. and others were conducted through conference calls. Work groups were created to discuss: a transit facilities exception, alternative process to "willing and able," definition of charter, and use of internet/website (electronic communications). All proposals developed by work groups were presented to the full committee for consideration. In addition, after the fourth meeting, a drafting work group was established to review and revise draft regulatory text developed by FTA prior to distribution to CBNRAC.

### *Presentations*

At various points during the negotiations, presentations were provided to CBNRAC in response to informational requests. The subjects of presentations included the legislative history of the charter bus regulations, current charter bus laws and regulations, complaint review and enforcement process as evidenced in two specific cases, preparing a formal complaint under the current charter bus regulations, charter service information derived from the triennial review, FTA's 5310, 5316, and 5317 programs, and human service transportation.

### *Caucus Meetings*

CBNRAC members essentially split into a public transit caucus and a private charter caucus. Each caucus maintained frequent contact among its members throughout the period of negotiations. In addition, during negotiation sessions, time was often requested and used for caucus consultations to develop proposals and counter-proposals.

### *Facilitator Communications with CBNRAC Members*

The facilitator maintained on-going communications with CBNRAC members between meetings in an effort to explore possibilities for consensus on controversial issues and to surface dynamics that seemed to undermine negotiations.

### *Public Comments*

As required under FACA, all CBNRAC meetings were open to the public, and each meeting included time set aside for public comment. Over the course of the six meetings, a total of six public comments were made.

### *Conclusion of the Negotiations*

CBNRAC concluded its negotiations on December 7, 2006 at 2:45 pm with final consensus on all but twelve sub-issues. (See the December 6-7 meeting summary for a consensus/non-consensus table by sub-issue.) At its December 6-7 meeting, CBNRAC reviewed the draft regulatory text in its entirety. Based on that review, and with feedback from CBNRAC, the facilitator compiled a list of outstanding sub-issues. The list was distributed to CBNRAC and became the basis for proposals offered by each caucus in an effort to reach agreements on all the outstanding sub-issues. (See Appendix J for list of outstanding sub-issues distributed at the CBNRAC meeting on December 7, 2007.)

After initial caucus meetings, the private charter operators caucus offered a proposal for resolving all twelve sub-issues. The public transit caucus requested and received additional time to prepare its response. After the public transit caucus offered its own proposal for resolving the outstanding twelve sub-issues, both sides requested additional time to meet by caucus. After both sides had exchanged and responded to multiple proposals, CBNRAC members agreed that another set of caucus meetings to develop responses to the last proposals were unlikely to close the gaps between them. CBNRAC then agreed that it achieved final consensus on all the draft regulatory text except the twelve outstanding sub-issues.

During final meeting negotiations, the regulatory text for Section B: Exceptions was significantly revised as a result of agreement to combine three previously discussed exceptions for qualified social service organizations, elderly and individuals with disabilities, and Transit-dependant/Transportation-disadvantaged into one exception for human service transportation in accordance with the February 24, 2004 Executive Order on Human Service Transportation Coordination.<sup>2</sup>

Due to the significant textual re-write of Section B, CBNRAC agreed that FTA would re-draft that section for review, first by the draft work group, and then by all CBNRAC members to ensure its accuracy. Members would then have an opportunity to provide questions and comments on the textual changes that were made.

As a result of the comments provided, one change was made to the text. This change, concerning parties with standing to file complaints, was agreed to by both the public transit and private charter caucuses. In addition, the public transit caucus sent a letter to FTA raising a number of issues unrelated to the textual changes. The private charter operators caucus responded to that letter. FTA responded to both letters. All are attached at Appendix M.

## CONCLUSION

As a result of the negotiated rulemaking process initiated by FTA, the revised Charter Service Regulations will account for the interests, concerns, and nuances that were raised by all CBNRAC members. Though the negotiations remained difficult, and at times, antagonistic throughout the seven months of meetings, CBNRAC members remained committed and worked hard to identify consensus solutions for each issue.

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<sup>2</sup> The Executive Order pertains to the provision of service for transportation-disadvantaged persons, who are described as “persons who qualify for Federally conducted or Federally assisted transportation-related programs or services due to disability, income, or advanced age.”

As a result of the intensive discussions and multiple proposals and counter-proposals offered to resolve the twelve outstanding sub-issues, FTA has a clear understanding of the interests and concerns of both the public transit and private charter stakeholders as well as the range of options available for deciding those issues.

Finally, given the intensive and informed discussions of CBNRAC, FTA expects that virtually all issues related to the charter bus regulations have already been raised and addressed. Thus, it is expected that few comments on the NPRM will raise new issues that will need to be incorporated into the final rule.

**For additional information: Contact Susan Podziba, Susan Podziba & Associates, (617) 738-5320, [susan@podziba.com](mailto:susan@podziba.com) or Linda Lasley, Federal Transit Administration, U.S. Department of Transportation, (202) 366-4011, [Linda.Lasley@dot.gov](mailto:Linda.Lasley@dot.gov).**

Appendix A: CBNRAC Federal Advisory Committee Act Charter

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FTA - 2005-22657-65

DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

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U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION

**SUBJECT: CHARTER BUS NEGOTIATED RULEMAKING ADVISORY COMMITTEE**

**1. Committee's Official Designation (Title):**

Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC).

**2. AUTHORITY**

This document establishes the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) and constitutes its charter, as stipulated in the Federal Advisory Committee Act (P.L. 92-463, Title 5 U.S.C. Appendix II). CBNRAC is in the public interest and supports the Federal Transit Administration (FTA) in performing its duties and responsibilities under 49 U.S.C. 5323(d).

**3. BACKGROUND**

Pursuant to the 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 (SAFETEA-LU), FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding the prohibition of FTA grant recipients from providing charter bus service. FTA believes that establishing an advisory committee to address charter bus regulatory issues will provide the best opportunity for creating a truly consensual regulatory program in order to inform the Administrator (or if the office of the Administrator is vacant, the Deputy Administrator (hereafter, the "Administrator")) in the conduct of FTA's statutory responsibilities.

**4. OBJECTIVE AND SCOPE OF ACTIVITIES**

The CBNRAC will provide information, advice, and recommendations on charter bus regulatory issues. The CBNRAC will be composed of diverse interests in order to cooperatively address charter bus issues by identifying the best solutions based on agreed-upon facts, and identifying regulatory provisions to implement those solutions.

**5. ORGANIZATION**

- a. The CBNRAC will be composed of not more than 25 individual representatives, representing various charter bus and public transportation industry perspectives.

- b. The CBNRAC is authorized to constitute an Executive Committee and such subcommittees or workgroups as the Committee finds necessary to discharge its responsibilities. All subcommittee and workgroup meetings will be open to the public, will be adequately staffed, and minutes will be kept according to the procedures set out in section 6(d) of this charter.
- c. The duties of the CBNRAC are solely advisory in nature and the Committee will submit advice, recommendations, and reports to the FTA Administrator, through the Office of the Chief Counsel.

## **6. ADMINISTRATION**

- a. The FTA Administrator is the sponsor of the CBNRAC, and shall have the power to appoint members of the CBNRAC. (The appointment by the Administrator of FTA of members of the CBNRAC prior to the date of this document are hereby ratified, adopted, and approved in all respects.) The Administrator's representative shall serve as Chairperson for the CBNRAC and shall ensure that administrative support is provided for the Committee. The Administrator's representative is the Chief Counsel.
- b. The Chairperson of this CBNRAC shall be responsible for:
  - (1) Determining when a meeting is required and where it is to be held.
  - (2) Formulating and approving an agenda for each meeting, to be published in the *Federal Register* in accordance with the provisions in section (e) below.
  - (3) Notifying all members of the time, place, and agenda for any meeting.
  - (4) Ensuring that a full-time FTA officer or employee is present at all meetings and is authorized to adjourn the meeting whenever doing so would be in the public interest.
  - (5) Maintaining all CBNRAC files and records.
- c. The CBNRAC will meet approximately four times. The CBNRAC, and its facilitator, will determine whether additional meetings are necessary.
- d. Minutes must be kept of each CBNRAC meeting. The minutes must include:
  - (1) The time, date, and place of the meeting.
  - (2) A list of all attendees at the meeting.
  - (3) A summary of matters discussed and conclusions reached.

- (4) Copies of all reports received, issued, or approved by the CBNRAC.
  - (5) A description of the extent to which the meeting was closed to the public, if authorized under 41 CFR 101-6.1023.
  - (6) A description of public participation, including a list of the members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the meeting.
- e. Timely notice of CBNRAC and subcommittee/workgroup meetings will be published in the Federal Register at least 15 days before the meeting, except in exceptional circumstances, provided the reasons for giving less than 15 days notice are included in the meeting announcement published in the Federal Register.

## **7. ESTIMATED COST**

It is estimated that the CBNRAC's operating costs for this negotiated rulemaking will be \$200,000 plus approximately 2 employee-years. The Office of Chief Counsel shall provide staff support for the CBNRAC.

## **8. COMPENSATION**

- a. Members of the CBNRAC who are not full-time employees of the U.S. Government serve without compensation.
- b. Members of the CBNRAC who are full-time employees of the U.S. Government serve without additional compensation but may be allowed transportation and per diem in lieu of subsistence and other expenses in accordance with the Department of Transportation Civilian Travel Regulations.

## **9. PUBLIC PARTICIPATION**

Each meeting of the CBNRAC shall be open to the public. Subject to the discretion of the Chairperson, notice of meeting dates, time, and location will be published in the *Federal Register* in accordance with the provisions set out in section 6 of this charter. Persons wishing to appear before the CBNRAC must notify the Chairperson at the beginning of the meeting. Written materials may be submitted to the CBNRAC at any time by notifying the Chairperson. Each meeting will be held at a reasonable time, in a place reasonably accessible to the public, and in a room large enough to accommodate the CBNRAC members, staff, and interested members of the public. Meetings may be closed to the public only as authorized by Section 10(d) of the Federal Advisory Committee Act (Title 5 U.S.C. Appendix II), as implemented by 41 C.F.R. Part 101-6.





Appendix B: Federal Register Notice of intent to form a negotiated rulemaking advisory committee, January 31, 2006

also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule pertaining to the emission standards for consumer products in the Northern Virginia VOC emissions control area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 23, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E6-1210 Filed 1-30-06; 8:45 am]

**BILLING CODE 6560-50-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 (FTA), DOT.

**ACTION:** Notice of intent to form a negotiated rulemaking advisory committee.

**SUMMARY:** Pursuant to the 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 (SAFETEA-LU) of 2005, FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding prohibition of FTA grant recipients from providing charter bus service. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., charter bus companies, public transportation operators, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

**DATES:** You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department of Transportation's Docket Management System (DMS) receives them not later than March 2, 2006. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You should mention the docket number of FTA-2005-22657 in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>.

You may call the Docket at 202-366-9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. You may read the comments received by DMS at <http://dms.dot.gov>.

Interested persons may view docketed materials on the internet at any time. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "simple search."
3. On the next page (<http://dms.dot.gov/search/>), type in the FTA-2005-22657, which is shown on the first page of this document.
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and the comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth S. Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202-366-1936 ([elizabeth.martineau@fta.dot.gov](mailto:elizabeth.martineau@fta.dot.gov)). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Applicants for FTA assistance must formally agree that they will not provide charter service using equipment or facilities funded by FTA, unless there are no private charter operators willing and able to provide the charter service or another exception applies. This requirement is in law under 49 U.S.C. 5323(d) and regulations implementing the requirement are found in 49 CFR 604. The purpose is to ensure that

Federally subsidized assets, such as buses owned by public transportation agencies, do not adversely compete with services provided by private purveyors, such as charter transportation services.

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The bill reauthorizes the Department of Transportation's federal transit programs through fiscal year 2009. SAFETEA-LU amends 49 U.S.C. 5323(d) Condition on Charter Bus Transportation Service. Before SAFETEA-LU, the law stated that if a pattern of violations of the charter agreement was found, the Secretary of Transportation could bar the recipient from receiving further federal assistance. As House committee report language explains, this overly broad authority to bar all future assistance was never used, whereas "a more flexible authority to penalize charter violators will encourage a more realistic and responsive approach to charter enforcement by FTA." The new law adds this flexibility by allowing the Secretary to "bar a recipient from receiving federal transit assistance in an amount the Secretary considers appropriate."

## II. Statutory Mandate

Section 3023 of SAFETEA-LU amends 49 U.S.C. 5323(d) to state that "the Secretary shall bar a recipient or an operator from receiving federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the [charter bus] agreement." Congressional conference report language on Section 3023 requests that FTA to "initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d) and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

## III. Negotiated Rulemaking

As requested by conference report language on Section 3023 of SAFETEA-LU, FTA will conduct the negotiated rulemaking. The Negotiated Rulemaking Act of 1990, *Pub. L. 101-648 (5 U.S.C. 561, et seq.)* (NRA) establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the rulemaking process. FTA will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

### A. The Concept of Negotiated Rulemaking

Usually FTA develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues in the proposed rule. All comments from affected parties are directed to the Department's docket (<http://dms.dot.gov>) for the rulemaking. In general, there is limited communication among parties representing different interests. As Congress noted in the NRA, such regulatory development procedures may "discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions \* \* \*" (Sec. 2(2) of *Pub. L. 101-648*). Congress also stated "adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties." (Sec. 2(3) of *Pub. L. 101-648*).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process by which a proposed rule is developed by a committee composed of representatives of those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the

interests represented.<sup>1</sup> An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) (FACA). Representation on the committee may be "direct," that is, each member represents a specific interest, or may be "indirect," that is, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal Government's own set of interests. A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. FTA anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

### B. The Federal Transit Administration's Commitment

In initiating this regulatory negotiation process, FTA plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of FTA who need to be involved in the rulemaking, from the

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time of initiation until such time as a final rule is issued or the process is expressly terminated. FTA will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has adequate resources to complete its work in a timely fashion in each case as reasonably determined by FTA. These may include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a facilitator; and additional research and other technical assistance. FTA hired RESOLVE, a private company specializing in dispute resolution, to prepare a Convening Report & Recommendations. That report is available in the docket for this Notice. Please see the **ADDRESSES** section of this Notice for information on how to access the docket.

To the extent possible, consistent with its legal obligations, FAT currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the notice of proposed rulemaking to be published for public notice and comment.

#### *C. Negotiating Consensus*

As discussed above, the negotiated rulemaking process is fundamentally different from the usual process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves the mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it exclusively to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus, as defined by the committee. Thus, no one interest or group of interests shall control the process. Under the NRA as noted above, "consensus" usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to

identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

#### *D. Key Issues for Negotiation; Invitation To Comment on Issues To Be Addressed*

The Conference Committee report on SAFETEA-LU requested that FTA and the negotiated rulemaking committee to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of Internet technology?
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In addition, FTA proposes the following issues for consideration:

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies.
2. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.
3. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.
4. Clarify the definitions of regulatory terms.

FTA invites comment on the issues the negotiating committee should address in developing its recommendations or report.

#### **IV. Procedures and Guidelines for This Regulatory Negotiation**

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined by FTA to be necessary or appropriate during the negotiating process.

##### *A. Notice of Intent To Establish Advisory Committee and Request for Comment*

In accordance with the requirements of FACA, an agency of the Federal

Government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate FTA's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

##### *B. Facilitator*

Pursuant to the NRA, a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

##### *C. Membership*

The NRA provides that the agency establishing the regulatory negotiation advisory committee "shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership." The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. FTA intends to observe that limit.

##### *D. Interests Likely To Be Affected; Representation of Those Interests*

The committee will include a representative from FTA and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The FTA representative is the Designated Federal Official (DFO) and will participate in the deliberations and activities of the committee will the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent FTA in the discussions and negotiations of the committee.

FTA has tentatively identified the following interests to participate in negotiated rulemaking:

- (1) Federal Government
- (2) State government
- (3) Municipal and city government associations
- (4) Large private charter operators
- (5) Small private charter operators
- (6) Trade associations
- (7) Large public transit operators
- (8) Medium public transit operators
- (9) Small public transit operators
- (10) Rural public transit operators
- (11) Consumers with disabilities
- (12) Elderly consumers
- (13) Non-profit consumers
- (14) For profit consumers
- (15) Convention bureaus
- (16) Representatives of large sporting events

FTA seeks comment on whether there are additional interests that should be represented on the committee. FTA also seeks comment on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

FTA, through its convener and Convening Report and Recommendations, has identified specific individuals and entities that it proposes be included in the Federal advisory committee, as follows: Shelly Brown, Consultant; John D. Corr, Chestnut Ridge Transportation, Inc.; Sandra Draggoo, Capital Area Transportation Authority; Daniel Duff, American Public Transportation Association; Gladys Gillis, Northwest Motorcoach Association; Mark Huffer, Kansas City Area Transit Authority; Pat Jordan, Coalition for Community Based Transit; Carol Ketcherside, Southwest Transit Authority; Alfred LaGasse, Taxicab, Limousine & Paratransit Association; Susan Lent, Akin Gump Strauss Hauer & Feld LLP; Norm Little, United Motorcoach Association; Dale Marsico, Community Transportation Association of America; Richard Ruddell, Fort Worth Transportation Authority; Richard P. Schweitzer, Counsel for American Bus Association; Carl Sedoryk, Monterey Salinas Transit; Steve Tobis, September Winds Motor Coach, Inc.; Michael Waters, Gray Line; Becky Weber, BKSH & Associates, and a representative from both FTA and the Small Business Association.

The list of individuals and interests above is not presented as a complete or exclusive list from which committee members will be selected. Nor does inclusion on the list mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. In fact, the above list of

individuals does not include all of the interests that we have identified as being affected by this process. Rather, the above lists merely indicates individuals and interests that FTA has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. We strongly encourage individuals and interests to apply for membership as provided below in paragraph III.E. Those listed above are required to submit an application for membership on the committee.

FTA is aware that the number of potential participants may exceed the number of permissible representatives on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group participate directly in the negotiations. What is important is that each affected interest be adequately represented. Given the limits on the number of representatives who may serve on the advisory committee, it is advisable for interested parties to identify and form coalitions to represent their interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member of the committee whom they will choose to represent their "interest." Those selected to represent a coalition of interests represent the interest of that coalition.

It is very important to recognize that interested parties who are not selected for membership on the committee can make valuable contributions to this negotiated rulemaking effort in several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in "staffing" various technical matters (e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues

associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

#### *E. Applications for Membership*

Each application for membership or nomination to the committee should include:

- (1) The name of the applicant or nominee and the interest(s) such person would represent;
- (2) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and
- (3) A written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balanced.

#### *F. Good Faith Negotiation*

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken

in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

#### G. Notice of Establishment

After evaluating comments received as a result of this Notice, FTA will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

#### H. Administrative Support and Meetings

Staff support will be provided by FTA. Meetings are currently expected to take place in Washington, DC.

#### I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. FTA will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that FTA's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decisions to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, FTA will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

#### J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if

time permits or file statements with the committee.

#### K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

#### L. Tentative Schedule

FTA is seeking to convene the first of the committee's meetings starting in April, 2006. The exact date and location of that meeting will be announced in our notice of establishment of the advisory committee. Meetings are expected to last approximately two days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately one month.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 24th day of January, 2006, at Washington, DC.

**Sandra K. Bushue**,

*Deputy Administrator, Federal Transit Administration.*

[FR Doc. 06-868 Filed 1-30-06; 8:45 am]

**BILLING CODE 4910-57-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 14

**RIN 1018-AT69**

#### Regulations To Implement the Captive Wildlife Safety Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to implement the Captive Wildlife Safety Act (CWSA). The CWSA amends the Lacey Act by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met.

**DATES:** Submit comments on this proposed rule or on the proposed information collection in this proposed rule by March 2, 2006.

**ADDRESSES:** Comments and materials concerning this proposed rule should be sent to: Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement (OLE), 4401 North Fairfax Drive, MS: LE-3000, Arlington, Virginia 22203, or via fax to: (703) 358-2271. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, OLE, 4501 North Fairfax Drive, Suite 3000, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday. You may also submit comments, identified by RIN 1018-AT69, to the Federal eRulemaking portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Send any comments on the information collection contained in this proposed rule to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or [OIRA\\_DOCKET@OMB.eop.gov](mailto:OIRA_DOCKET@OMB.eop.gov) (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (e-mail).

**FOR FURTHER INFORMATION CONTACT:** Kevin Garlick, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, OLE, at (703) 358-1949.

#### SUPPLEMENTARY INFORMATION:

##### Background

The CWSA was signed into law on December 19, 2003 (Pub. L. 108-191). The purpose of the CWSA is to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species and to protect the public from dangerous animals.

In the early 1900s, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey, R-Iowa. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, purchase, receive, or acquire fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Native American tribal law, treaty, or

Appendix C: Federal Register Notice of Establishment of Charter Bus  
Negotiated Rulemaking Advisory Committee, April 10,  
2006



in the **Federal Register** of March 10, 2006 (71 FR 12311). For information about the applicability of the statutory and executive order reviews to the proposed rule, please refer to the discussion in Unit XII. of that document (71 FR 12311).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 4, 2006.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 06-3400 Filed 4-5-06; 1:17 pm]

BILLING CODE 6560-50-S

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 604

[Docket No. FTA-2005-22657]

RIN 2132-AA85

#### Charter Service

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final notice forming a negotiated rulemaking advisory committee.

**SUMMARY:** Pursuant to the 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 (SAFETEA-LU) of 2005, FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding the prohibition of FTA grant recipients from providing charter bus service. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., charter bus companies, public transportation operators, and other interested parties. This document lists the committee members, issues to be addressed by the committee, and proposed meeting dates, time, and location.

**DATES:** *Effective Date:* April 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding accessibility, directions, or administrative procedures, please contact Elizabeth Martineau at (202) 366-1966 or Linda Lasley at (202) 366-4063.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

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#### *C. Committee Members*

As discussed above, the negotiated rulemaking process is fundamentally different from the usual process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation

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In addition to those issues posed in the Conference Committee Report, FTA identified the following issues for consideration by the committee:

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies.
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3. A new exception for transportation of government employees, elected

officials, and members of the transit industry to examine local transit operations, facilities, and public works.

4. Clarify the definitions of regulatory terms.

FTA invited comment on all of these issues.

### **III. Comments Received**

We received 20 comments on the proposed issues for consideration by the advisory committee; see document published 71 FR 5037, Jan. 31, 2006. We heard from large and small public transportation providers, rural transportation providers, large, medium, and small bus companies, transit associations, charter associations, and several state Departments of Transportation (state DOT). While we have summarized the comments received, we do not feel it is appropriate at this time to respond to the comments received. As a member of the advisory committee, FTA is eager to engage in discussions and deliberations with the other members of the committee regarding the issues identified in the Conference Committee Report and the issues we identified. Responding to comments now could give the impression that we have settled on a particular approach or resolution.

#### *Conference Committee Report Issues*

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

Private charter operators took exception to the inclusion of the term "cost-effective" in this issue because there has been no demonstrated "unmet need" by public transportation providers. One commenter noted that cost-effectiveness cannot be equated with price. Providing incidental charter service will cost private carriers and public transit systems roughly the same. Public transit systems, however, often price their service at or below their costs for providing the service. According to this commenter that argument "goes to very heart of 'unfair government competition.'" Another private charter operator noted that while they do not believe there is an unmet charter service need, if public transportation providers could demonstrate "that a valid need exists to create further exceptions to the charter rule, we would only consider supporting such exceptions if they were clearly defined and significantly limited; if there were more accountability, reporting and

publication requirements built into the process; and if we could be assured of more consistent and aggressive enforcement of the charter rules.”

Several comments from public transportation providers asked FTA to revise the charter rules to make them more flexible for FTA funded providers in rural areas. One commenter summarized this issues as: “Charter bus operators seldom base equipment in rural areas and thus face high mobilization costs if they are to move vehicle to small communities to provide services for limited periods of time. Since private charter companies are often unable to provide the service at a price the group can afford, the service need goes unmet.” Another commenter noted that public officials who already have limited budgets feel they should be able to use the vehicles for community-based events such as transporting juries to crime locations or transporting potential new business owners who may be interested in locating in the area.

A few comments from public transportation providers supported an exception from charter regulations for those transit systems that contract out their day-to-day operations to a private for-profit transit provider. Those commenters assert that these contracts already support private charter operations, and, thus, the regulations should not apply to their systems. One of these commenters requested that the regulations require the public transit agency, instead of the customer, contact the private charter company. This commenter believes that such a requirement would lessen the frustration of those seeking charter services.

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

All comments received agreed that FTA could more effectively use the internet to inform the public and transportation providers regarding requests for charter service. One commenter suggested that all transit agencies provide their chartering policies on their websites. Another commenter states that “those companies willing and able to provide charter service should have to submit information on service area and ability to provider charters to [FTA] and to the [state DOTs] so that the information will be readily available to public transit providers in their service areas.” This commenter also states that following this method would provide a record of notification and responses, or non-responses. One commenter encouraged

the use of the Internet but warned that many rural operators still do not have access to the Internet.

A state DOT would like to see FTA develop a brochure—paper and on the Internet—that would inform state and local officials as to when a transit agency cannot provide service even though providing such service would appear to be consistent with the transit agency’s mission. This commenter also believes that FTA should adopt methods for removing private charter companies from the list of willing and able companies when that private charter company, in fact, never provides the services.

A private operator also suggested a Web-based clearinghouse and recommended that the Web site be arranged to send alerts to private operators that there is a request for charter service. In addition, this commenter noted that FTA could more regularly and effectively communicate the rules to public transit grantees through “Dear Colleague” letters, publications, audits, congressional testimony, trade association presentations and other means. This commenter also encouraged FTA publish complaints and enforcement actions on the Internet.

3. How can the enforcement of violations of the charter bus regulations be improved?

One commenter suggested that the committee consider definitions (or a requirement for formal FTA written guidance) to make it clear under what conditions the FTA, or a state DOT for rural operators, may require a transit agency to cancel pending prohibited charter service, when doing so would require the transit agency to nullify a contract commitment. Additionally, this commenter suggested the committee might consider requiring FTA to develop standard methods that can be used by FTA and state DOTs to evaluate a complaint and, in particular, confirm that a transit agency did not provide prohibited charter service.

A state DOT suggested letting non-charter systems know up-front the ramifications of performing charter service. Another state DOT commented that state-level bus associations and the national associations should receive copies of all complaints, and FTA’s regional offices should have appropriate levels of dedicated personnel in order to participate in any complaint and enforcement activities.

A public transportation provider stated that FTA can improve its enforcement of violations of charter prohibitions by issuing a written

warning to the transit agency for the first offense. The warning serves to inform the agency that their action is deemed inappropriate. If there are subsequent offenses, then the transit agency should lose its Federal funding in the amount of the Federal share of the cost of the vehicle(s) it used to provide the charter service in question.

A private charter operator commented that the Secretary should clearly and repeatedly inform all transit assistance recipients of the regulations governing use of equipment purchased with Federal funds and FTA should offer tools to transit agencies to aid in this compliance including: Greater consistency in enforcement decisions; publication of enforcement decisions; clear guidance on permissible and impermissible actions and appropriate training for agency employees assigned the responsibility for enforcing the charter rules. This comment also suggested the Secretary could promote greater compliance among public agencies by requiring them to notify FTA of charter service provided and audits of the charter service provided should be conducted to ensure compliance.

Another private operator suggested two enforcement options: (1) A financial penalty (developed on a predetermined, progressive scale) or (2) a total prohibition to provide charter service for an extended period of time.

4. How can the charter complaint and administrative appeals process be improved?

One state DOT suggested the committee consider allowing FTA to make a determination that a complaint is substantially incomplete, such that the complainant can be requested to provide additional information or documentation before FTA will accept or act on the complaint.

A private charter operator stated if FTA offered a more open, flexible and timely process, the appeals process could indeed become truly fair for all parties. FTA should consider the average length of time an appeal takes from the initiation to resolution; the ability of a Regional decision to be overturned; and the fairness of this process to both the complainer and the complainant. Another private operator suggested each grantee or sub-grantee should provide FTA with an annual report of the actual dates and total compensation of charter services it provided. This type of report could be generated and reported with only a minimal amount of effort by the grantees. The data would serve as a basis for evaluating the extent of these

services, and should FTA receive a charter complaint, there would be a record of such activity. The information would expedite the FTA's administrative compliance review of these provisions, and in turn, the timeliness on any determination of any complaint and appeal process will certainly be reduced. This commenter also suggested that FTA should also impose a penalty for grantees' failure to report charter service dates and their associated revenue.

#### *FTA Issues*

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies

Several public transportation providers supported an exception from charter service regulations for emergency services. One comment summarized their support for such an exception "because in times of crisis, brownouts, natural catastrophic events, or by order of the Governor or his designated emergency response agency, public systems should be able to provide non-scheduled service on an immediate basis, e.g., evacuations, particularly for local government and non-profit personnel but also more broadly." In addition, this commenter noted "we believe that providing charter transportation to assist government officials with training is consistent with the broader exception for serving government officials raised in the first question posed by Congress and therefore supports a new exception for training as raised in this question."

Private operators expressed concern about this potential exception. One commented that it is premature to create such an exception at this time and discussion by the committee on these additional issues, such as an emergency services exception, should occur only after consensus is reached on the core issues. Another private operator stated that issues one and three on FTA's list of issues are totally new issues beyond the scope of the conference committee report and this commenter recommended that the regulatory negotiation advisory committee only consider these items if there are limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators. Another private operator stated that a potential emergency service exemption does not

fit within topic one on the Conference Committee Report list, and this topic should not be lumped into a rulemaking that relates to government competition with the private sector. Discussions relating to national security and emergency services training, by necessity, will require a different group of interested parties than those identified for this rulemaking.

2. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours

All comments received agreed with utilizing an electronic notification and response system. A private charter operator commented that FTA should modernize the charter rules through a Web-based approach with electronic notification. Once a notice is issued, all users would have the same amount of time in which to respond. All users would receive the information the same way, and, thus, be in the same position to respond. A state DOT also agreed with the notion of utilizing an electronic or internet notification system in lieu of the current system because it would be cost effective, timely way of doing business. Another state DOT stated an electronic system would potentially let publicly funded transit systems know that charter service is not available to a group of passengers and would allow the publicly funded system to perform that service.

3. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works

Private charter operators object to this potential exception because "any exemption applied to providing service to government employees will have a severe negative effect on many private operators most of which are small businesses." In addition, any exemption that would allow transit agencies to undercut the private sector and provide similar fixed-contract services to any government agency, is not within the scope of Conference Committee Report's issues and was not the intent of Congress. An association stated that school districts should be excluded from any new exception for local government entities.

Public transportation providers generally supported this exception. One noted that it supports an exemption for the transportation of government officials or other similar individuals "who are participating in a tour of transit facilities or are en route to a

transit agency-sponsored event." Another public transportation provider commented that "if the funding sources see a duplication of spending and that dollars could be saved, then this will be a good idea." This commenter also noted that it is very difficult for an operator of a public transit system to tell elected officials that they can not provide a service even though that governmental entity owns and operates the vehicle. One also commented that "the committee should be clear on what constitutes 'public work.'"

4. Clarify the definitions of regulatory terms

Comments received generally agree that there should be a clarification of the terms used in the charter bus regulations. One noted that the committee should be sure all definitions in the rule, and FTA guidance materials that result from the rule, are applicable to demand response services. Another commented that consensus on the definitions of regulatory terms is absolutely essential to the success of any changes to the charter rule. An association provided a list terms that should be clarified: "Charter," "regular and continuing service," "closed door service," and "pattern of violations."

Finally, we received three comments suggesting new issues for consideration by the advisory committee. Two commenters suggested that the negotiated rulemaking advisory committee consider consolidating all charter service requirements into one regulation. These commenters note that while there are slightly different approaches in each of the program areas (charter, school, and complementary paratransit service), in the interest of simplicity and consistency, FTA should create one set of regulations to ensure that "private purveyors" are not adversely affected by the existence of Federally subsidized assets. The third comment suggested the committee address FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events. The advisory committee will determine whether to consider these two additional issues.

#### **IV. Interests Likely To Be Affected; Representation of Those Interests**

The advisory committee will include a representative from FTA and from the interests and organizations listed below. The FTA representative is the Designated Federal Official (DFO) and will participate in the deliberations and

activities of the committee. The DFO will be authorized to fully represent FTA in the discussions and negotiations of the committee.

The DFO for the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) will be David B. Horner, Chief Counsel of FTA. As the DFO, Mr. Horner will serve as the Chairperson for the CBNRAC and is primarily responsible for ensuring the proper administration of the CBNRAC. The Chairperson's responsibilities are set out in the Charter for the CBNRAC, which is included in the docket for this rulemaking.

The CBNRAC will include the following individuals:

1. Community Transportation Association of America (CTAA; represented by Dale Marsico).
2. Northwest Motorcoach Association/Starline Luxury Coaches (represented by Gladys Gillis).
3. American Association of State Highway and Transportation Officials (AASHTO; represented by David Spacek from IL DOT).
4. National School Transportation Association (NSTA; represented by John Corr from Transgroup).
5. Trailways (represented by Jack Burkett).
6. Lancaster Trailways of the Carolinas (represented by Mary Presley).
7. American Public Transportation Association (APTA; represented by Dan Duff).
8. Kansas City Area Transportation Authority (KCATA; represented by Mark Huffer).
9. New York Metropolitan Transportation Authority (NYMTA; represented by Christopher Boylan).
10. Los Angeles County Municipal Operators Association (LACMOA; represented by Stephanie Negriff of Santa Monica's Big Blue Bus).
11. Amalgamated Transit Union (ATU; represented by Karen Head).
12. Oklahoma State University, The Bus Community Transit System (represented by Hugh Kierig).
13. Monterey-Salinas (MST; represented by Carl Sedoryk).
14. Taxicab, Limousine & Paratransit Association (TLPA; represented by Harold Morgan).
15. South Dakota Department of Transportation (represented by Ron Baumgart).
16. American Bus Association (ABA; represented by Clyde Hart).
17. United Motorcoach Association (UMA; represented by Victor Parra).
18. FTA.

We asked for comment on our proposed list of committee members and received comments primarily

requesting representation of certain individuals on the CBNRAC. Others requested representation of specific interests. We believe our list of committee members for the CBNRAC is responsive to the concerns expressed by commenters. What follows is a summary of the comments received regarding our list of proposed interests. We do not include, however, a summary of specific individuals who applied for membership or were nominated for membership on the committee. Those names can be obtained by reviewing the docket for this matter.

One comment asked that we include an employee representative on the negotiated rulemaking advisory committee. This would ensure that the revised regulations on charter service protect the interests of the workers in both the private bus industry and the public transit agencies.

FTA agrees with this comment, and, therefore, we have included employee representation by selecting the Amalgamated Transit Union to participate on the CBNRAC.

A state DOT emphasized the importance of having small rural transit providers represented as well as non-profit agencies, senior centers and other human service agencies who are users of public transportation services. This commenter also noted that the list of individuals proposed to be named to the committee does not appear to include an officer of a state DOT. This is a significant omission and the committee should not be convened until one or more state DOT officials are made part of the committee.

FTA agrees with this comment, and, in response, we have included the South Dakota Department of Transportation and a member from the American Association of State Highway and Transportation Officials.

A private charter association advised that the inclusion of [elderly, disabled, and other consumers groups] will only serve to detract from the fundamental discussion of whether there are limited conditions whereby public transit operators might provide community-based charter services directly to local governments and private non-profit agencies. The commenter went on to note these additional interests, while representative of parts of the community, are not representative of the key elements to this discussion. Another private charter operator stated the number of the interest groups FTA identified—consumer with disabilities, elderly consumers, for-profit consumers, convention bureaus and representatives of large sporting events—would have the effect of skewing the discussions

and shift the balance of the negotiation advisory committee membership in favor of the pro charter views espoused by transit agencies. Adding representatives from these groups to the negotiation advisory committee goes beyond the scope of the negotiated rulemaking as set by the conference committee report. An association for private charter operators echoed this comment by stating: "These parties may believe they have legitimate interests in the negotiations; however, they are in no way referenced under the issues identified as subjects for the rulemaking in the SAFETEA-LU Conference Report."

FTA disagrees that with these comments to the extent that they suggest FTA cannot include interests that were not identified in SAFETEA-LU. Convening a negotiated rulemaking advisory committee is not mandated by SAFETEA-LU and SAFETEA-LU did not identify nor limit interests that might participate in the negotiations. Therefore, FTA has exercised its discretion to select a balanced panel of groups and interests to deliberate the revisions to the charter bus regulations.

One comment asked for private sector school bus contractor representation on the committee because those individuals are an important player in the charter community and to the success of the overall negotiated rulemaking process on this issue. This type of service represents a significant amount of business for school bus contractors and is the area where we find that violations of the charter bus rules often occur.

FTA agrees with this comment and has included the National School Transportation Association on the CBNRAC.

#### *A. Meeting Location and Dates*

All meetings of the CBNRAC will be held in Washington, DC at 400 Seventh Street, SW., in room 6248. The first meetings will be held on May 8th and 9th from 9 a.m. until 4:30 p.m. Subsequent meetings dates will be discussed during the first meeting and a **Federal Register** notice will be issued announcing those meeting dates and time. Each of the individuals selected will receive a letter confirming their participation on the CBNRAC.

#### *B. Persons Not Selected for Committee Membership*

We believe that each potentially affected group does not need to participate directly in the negotiations. What is important is that each affected interest be adequately represented. It is very important to recognize that

interested parties who are not selected for membership on the committee can make valuable contributions to this negotiated rulemaking effort in several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations;
- The person or organization could assist in the work of a workgroup that might be established by the committee; or
- The person or organization may participate by telephone. FTA will establish a call-in number for that purpose. Members of the public who wish to participate by phone may request the call-in number by writing to the Chairperson, David B. Horner, Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. At the Chairperson's discretion, the number of individuals participating may be limited.

Informal workgroups are usually established by an advisory committee to assist it in "staffing" various technical matters (e.g., researching or preparing summaries of the technical literature or

comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

#### *C. Notice of Proposed Rulemaking*

The CBNRAC's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the CBNRAC cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the CBNRAC has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. FTA will use the information and recommendations from the CBNRAC report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. CBNRAC recommendations and other documents produced by it will be placed in the rulemaking docket.

In the event that FTA's NPRM differs from the CBNRAC's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the CBNRAC's recommendations.

Following the issuance of NPRM and comment period, FTA will prepare and provide to the CBNRAC a comment summary. The CBNRAC will then be asked to determine whether it should reconvene to discuss changes to the NPRM based on the comments.

#### *D. Committee Procedures*

Under the general guidance of the facilitator, and subject to legal requirements, the CBNRAC will establish detailed procedures for the meetings. The meetings of the CBNRAC will be open to the public. Any person attending the meetings may address the CBNRAC if time permits or may file statements with the committee.

#### *E. Record of Meetings*

In accordance with FACA requirements, the facilitator will prepare summaries of all CBNRAC meetings. These summaries will be placed in the public docket for this rulemaking.

Issued this 3rd day of April 2006.

**Sandra K. Bushue,**

*Deputy Administrator, Federal Transit Administration.*

[FR Doc. 06-3411 Filed 4-7-06; 8:45 am]

**BILLING CODE 4910-57-M**

Appendix D: Charter Bus Negotiated Rulemaking Advisory  
Committee Members

#	<b><u>Committee Member</u></b>	<b><u>Alternate</u></b>	<b><u>Address</u></b>	<b><u>Organization Represented</u></b>	<b><u>Phone/E-mail</u></b>
1	<b>Karen Head,</b> Director of Political and Regulatory Affairs; Brittany Wildman, Assistant	<b>Robert Molofsky,</b> General Counsel	Amalgamated Transit Union 5205 Wisconsin Avenue, N.W. Washington, DC 20016	Amalgamated Transit Union	(202) 537-1645x226 (Head's #) (202) 537-1645x224 (Molofsky's #) (202) 537-1645x259 (Assistant's #) <a href="mailto:karenh@atu.org">karenh@atu.org</a> <a href="mailto:ram@atu.org">ram@atu.org</a> <a href="mailto:m_reza@atu.org">m_reza@atu.org</a>
2	<b>Clyde J. Hart,</b> Vice President for Government Affairs; Brittany Wildman, Assistant	<b>Richard Schweitzer</b> General Counsel	American Bus Association, Inc. 700 13 <sup>th</sup> Street, NW Suite 375 Washington, DC 2005	American Bus Association, Inc.	(202) 218 – 7228 (Hart's #) (202) 223 – 3040 (Schweitzer's #) (202) 218 – 7224 (Assistant's #) <a href="mailto:chart@buses.org">chart@buses.org</a> <a href="mailto:info@rpslegal.com">info@rpslegal.com</a> <a href="mailto:bwildman@buses.org">bwildman@buses.org</a>
3	<b>Daniel Duff,</b> Chief Counsel & VP Government Affairs	<b>Jim LaRusch,</b> Assistant Chief Counsel	American Public Transit Assoc. 1666 K Street, NW, Suite 1100 Washington, DC 2006	American Public Transit Association	(202) 496 – 4800 (Duff's #) (202) 496 – 4860 (LaRusch's #) <a href="mailto:DDuff@apta.com">DDuff@apta.com</a> <a href="mailto:jlarsusch@apta.com">jlarsusch@apta.com</a>
4	<b>Sandra Draggoo,</b> Executive Director	<b>Debbie Alexander,</b> Assistant Executive Director	Capital Area Transportation Authority 4615 Tranter Avenue Lansing, MI 48910	Capital Area Transportation Authority	(571) 394 – 1100 (Draggoo's #) (571) 394 – 1100 (Alexander's #) <a href="mailto:sdraggoo@cata.org">sdraggoo@cata.org</a> <a href="mailto:dalexander@cata.org">dalexander@cata.org</a>
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6	<b>Dale Moser,</b> President & Chief Operating Officer	<b>David Coburn,</b> Partner Steptoe & Johnson 1330 Connecticut Avenue, NW Washington , DC 20036	Coach USA 160 S. Route 17 North Paramus, NJ 07652	Coach USA	(201) 225 – 7575 (Moser's #) (202) 429 – 8063 (Coburn's #) <a href="mailto:Dale.moser@coachusa.com">Dale.moser@coachusa.com</a> <a href="mailto:DCoburn@steptoe.com">DCoburn@steptoe.com</a>
7	<b>Dale J. Marsico,</b> Executive Director	<b>Chris Zeilinger,</b> Assistant Director for Government Relations	Community Transportation Assoc. 1341 G Street, NW, 10 <sup>th</sup> Floor Washington, DC 20005	Community Transportation Association	(202) 247 – 1922 (Marsico's #) (202) 250 – 4108 (Zeilinger's #) <a href="mailto:Marsico@ctaa.org">Marsico@ctaa.org</a> <a href="mailto:zeilinger@ctaa.org">zeilinger@ctaa.org</a>
8	<b>David Spacek,</b> Chief Downstate Area Programs	<b>John Dockendorf,</b> Urban Division Chief Bureau of Public Transp. 400 North Street, 6 <sup>th</sup> Floor Harrisburg, PA 17105	Illinois Department of Transportation 300 West Adams, 2 <sup>nd</sup> Floor Chicago, IL 60606	American Association of State Highway and Transportation Officials	(312) 793 – 2154 (Spacek's #) (847) 910 – 7603 (Spacek's Cell) (312) 485 – 4961 (Spacek's Blackberry) (717) 787 – 7540 (Dockendorf's #) <a href="mailto:spacekdt@dot.il.gov">spacekdt@dot.il.gov</a> <a href="mailto:jdockendorf@state.pa.us">jdockendorf@state.pa.us</a>



<b>#</b>	<b><u>Committee Member</u></b>	<b><u>Alternate</u></b>	<b><u>Address</u></b>	<b><u>Organization Represented</u></b>	<b><u>Phone/E-mail</u></b>
9	<b>Mark E. Huffer</b> , General Manager; Cheryl Floyd, Executive Assistant	<b>Dick Jarrold</b> , Sr. Director of Engineering & System Development	Kansas City Area Transportation Authority 1200 E. 18 <sup>th</sup> Street Kansas City, MO 64108	Kansas City Area Transportation Authority	(816) 346 – 0850 (Huffer’s #) (816) 346 – 0356 (Jarrold’s #) (816) 346 – 0211 (Assistant’s #) <a href="mailto:mhuffer@kcata.org">mhuffer@kcata.org</a> <a href="mailto:djarrold@kcata.org">djarrold@kcata.org</a>
10	<b>Mary Presley</b> , Director of Sales & Marketing	<b>Ken Presley</b> , Vice President of Service Insurance	Lancaster Trailways of the Carolinas P.O. Box 521 Lancaster, SC 29720	Lancaster Trailways of the Carolinas	(704) 643 – 2225 (M. Presley’s #) (704) 968 – 6512 (K. Presley’s #) <a href="mailto:tourtrvl@carolina.rr.com">tourtrvl@carolina.rr.com</a> <a href="mailto:ken@serviceins.com">ken@serviceins.com</a> or <a href="mailto:kpresley@carolina.rr.com">kpresley@carolina.rr.com</a>
11	<b>Christopher P. Boylan</b> , Deputy Executive Director, Corporate & Community Affairs; Dorothy Dee, Assistant		Metropolitan Transportation Authority Corporate and Community Affairs 347 Madison Avenue, 17 <sup>th</sup> Floor New York, NY 10017-3739	Metropolitan Transportation Authority	(212) 878 – 7160 (Boylan’s #) (917) 273 – 7862 (Boylan’s Cell) (212) 878 – 7213 (Assistant’s #) <a href="mailto:cboylan@mtahq.org">cboylan@mtahq.org</a> <a href="mailto:ddee@mtahq.org">ddee@mtahq.org</a>
12	<b>Carl G. Sedoryk</b> , General Manager	<b>Hunter Harvath</b> , Director of Administration	Monterey-Salinas Transit One Ryan Ranch Road Monterey, CA 93940	Monterey-Salinas Transit	(831) 899 – 2558x123 (Sedoryk’s #) (831) 899 – 2558 (Harvath’s #) <a href="mailto:csedoryk@mst.org">csedoryk@mst.org</a> <a href="mailto:hharvath@mst.org">hharvath@mst.org</a>
13	<b>John Corr</b> , President Yvette Rosario, Assistant	<b>Dale Krapf</b> Past President	The Trans Group 56 West Church Street Spring Valley, NY 10977	National School Transportation Association	(845) 356 – 2200 (Corr’s #) <a href="mailto:johncorr@thetransgroup.com">johncorr@thetransgroup.com</a> <a href="mailto:yvetterosario@thetransgroup.com">yvetterosario@thetransgroup.com</a>
14	<b>Gladys T. Gillis</b> , CEO Melanie Rice, Assistant	<b>Larry Wickkiser</b> , Past President, NWMCA 1416 Whitehorn Street Ferndale, WA 98248	Northwest Motorcoach Association 150 South Kenyon Street, Suite C Seattle, WA 98108	Northwest Motorcoach Association	(206) 793 – 2713 (Gillis’s #) (306) 543 – 9368 (Wickkiser’s #) (425) 359 – 1200 (Assistant’s #) <a href="mailto:gladys@starlinetransportation.com">gladys@starlinetransportation.com</a>
15	<b>Hugh E. Kierig</b> , Director of Dept. of Parking& Transit Services; Jan Cook-Hernandez, Assistant Manager	<b>Gary Smith</b> , Director of Dept. of Transit and Parking University of Arkansas 155 Razorback Road Fayetteville, AR 72701	Oklahoma State University The Bus Community Transit System 104 USDA Building Stillwater, OK 74078	Oklahoma State University	(405) 744 – 4321 (Kierig’s #) (479) 575 – 3304 (Smith’s #) <a href="mailto:Hugh.Kierig@okstate.edu">Hugh.Kierig@okstate.edu</a> <a href="mailto:Garys@comp.uark.edu">Garys@comp.uark.edu</a>
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#	<u>Committee Member</u>	<u>Alternate</u>	<u>Address</u>	<u>Organization Represented</u>	<u>Phone/E-mail</u>
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20	<b>John (Jack) Burkert,</b> Transportation Safety Consultant; Corky Rivera, Assistant	<b>Smedley Lynn,</b> Owner/President Atlantic Coast Trailways	Trailways 3554 Chain Bridge Road, Suite 301 Fairfax, VA 22030  Jack Burkert P.O. Box 109 13995 Still Pond Road Still Pond, MD 21667	Trailways	(703) 691 – 3052 (Trailways #) (410) 810 – 2029 (Burkert's #) (410) 708 – 4686 (Burkert's Cell) (301) 797 – 8511 (Lynn's #) (703) 691 – 3052 (Assistant's #) <a href="mailto:burkert@dmv.com">burkert@dmv.com</a> <a href="mailto:smedley@AtlanticCoastTrailways.com">smedley@AtlanticCoastTrailways.com</a> <a href="mailto:corkytrails@trailways.com">corkytrails@trailways.com</a> <a href="mailto:bustrails@trailways.com">bustrails@trailways.com</a>
21	<b>Victor S. Parra,</b> President and CEO; Tara Sheehan, Assistant	<b>Steve Klika,</b> President International Motorcoach Group 8695 College Blvd., Suite 260 Overland Park, KS 66210	United Motorcoach Association 113 South West Street, 4 <sup>th</sup> Floor Alexandria, VA 22314-2824	United Motorcoach Association	(703) 838 – 2929x235 (Parra's #) (703) 501 – 6947 (Parra's Cell) (913) 906 – 0111 (Klika's #) (913) 906 – 5547 (Klika's Cell) (703) 838 – 2929x229 (Assistant's #) <a href="mailto:vparra@uma.org">vparra@uma.org</a> <a href="mailto:sklika@imgcoach.com">sklika@imgcoach.com</a> <a href="mailto:tsheehan@uma.org">tsheehan@uma.org</a>

<b>Facilitator</b>					
23	<b>Susan Podziba,</b> Public Policy Mediator		Susan Podziba & Associates 21 Orchard Road Brookline, MA 02445	Susan Podziba & Associates	(617) 738 – 5320 (Podziba's #) <a href="mailto:susan@podziba.com">susan@podziba.com</a>

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## Appendix E: Schedule of Meetings

**U. S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee  
(CBNRAC)**

**Schedule of Meetings -- 2006**

May 8, 9                      Meeting #1

June 19, 20                  Meeting #2

July 17, 18                  Meeting #3

September 12, 13           Meeting #4

October 25, 26              Meeting #5

December 6, 7               Meeting #6

Meetings will be held from 9:00 a.m. – 4:30 p.m. on the first day  
and 8:30 a.m. – 4:00 pm on the second day of each meeting.

## Appendix F: Ground Rules

**Federal Transit Administration  
U.S. Department of Transportation  
Charter Bus Negotiated Rulemaking Advisory Committee  
(CBNRAC)**

**Ground Rules**

**I. Mission Statement**

The Federal Transit Administration of the U.S. Department of Transportation (FTA) has established the Charter Bus Negotiated Rulemaking Advisory Committee to develop recommendations and proposed regulatory text with respect to 49 USC 5323, as amended by Section 3023(d), "Condition on Charter Bus Transportation Service" of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005 (Charter Bus regulations).

The CBNRAC will consider the issues listed below and any other issues CBNRAC agrees, by consensus, to discuss:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

Every effort will be made to complete proposed regulatory language by December 31, 2006.

**II. Participation**

- A. The Charter Bus Negotiated Rulemaking Advisory Committee consists of the following members:
  - Amalgamated Transit Union (ATU)
  - American Association of State Highway and Transportation Officials (AASHTO)

American Bus Association (ABA)  
American Public Transportation Association (APTA)  
Capital Area Transportation Authority (CATA)  
Coach America  
Coach USA  
Community Transportation Association of America (CTAA)  
Fort Worth Transportation Authority (FWTA)  
Kansas City Area Transportation Authority (KCATA)  
Lancaster Trailways of the Carolinas  
Los Angeles County Municipal Operators Association (LACMOA)  
Monterey-Salinas Transit (MST)  
National School Transportation Association (NSTA)  
Trailways  
New York Metropolitan Transportation Authority (NYMTA)  
Northwest Motorcoach Association/Starline Luxury Coaches  
Oklahoma State University, The Bus Community Transit System  
River Cities Transit  
Taxicab, Limousine & Paratransit Association (TLPA)  
United Motorcoach Association (UMA)  
U.S. Department of Transportation, Federal Transit Administration (FTA)

- B. Each CBNRAC member shall identify a principal negotiator and an alternate, if necessary. Negotiators will represent the member for purposes of determining consensus. Alternates will serve as negotiators in the absence of the principal negotiator. Alternates are expected to be fully knowledgeable of organizational interests related to issues under discussion. If an alternate can no longer serve, the member may replace that alternate with another.
- C. CBNRAC may, by consensus, recommend that the Secretary of Transportation add members if it determines that there are unrepresented interests relative to the issues to be addressed in the proposed rule. If so, the Secretary, or his designee, will consider the recommendation of the committee.
- D. The CBNRAC may, by consensus, invite experts to address the committee.

### **III. Decision Making**

- A. CBNRAC will operate by consensus, meaning that agreements will be considered reached when there is no dissent by any member. Thus, no member can be outvoted. Members should not block or withhold consensus



unless they have serious reservations about the approach or solution that is proposed for consensus. Absence or abstention will be equivalent to not dissenting.

- B. Work groups may be designated by CBNRAC to address specific issues or to develop proposals. Work groups are not authorized to make decisions for the full CBNRAC. Work groups may include and/or access experts, who are not members of the CBNRAC, as needed. Experts included on work groups will be made known to CBNRAC members.

#### IV. Agreement

- A. The goal of CBNRAC is to develop charter bus regulations, in accordance with Section I: Mission Statement, that reflect a final consensus of the CBNRAC.
- B. All consensus agreements reached during the negotiations will be assumed to be tentative agreements until members of the CBNRAC reach final agreement on regulatory language. Once **final consensus** is achieved, CBNRAC members may not thereafter withdraw from the consensus.
- C. If the CBNRAC reaches a **final** consensus agreement on all issues, FTA will use this consensus-based language as the basis for the rule text proposed by the agency for notice and comment and CBNRAC members will refrain from providing formal written negative comments on the consensus-based regulatory language published in the Federal Register, except as provided in paragraph IV E.
- D. If the CBNRAC reaches a **final** consensus agreement on some but not all issues, FTA will include the consensus-based language in its proposed standard, and the CBNRAC members agree to refrain from providing formal written negative comments on the consensus-based language published in the Federal Register, except as provided in paragraph IV E.
- E. FTA will not alter the CBNRAC's final consensus regulatory language in its proposed standard unless FTA: 1) reopens the negotiated rulemaking process or convenes a meeting with CBNRAC members to explain such changes and hear CBNRAC's members' comments on them, unless CBNRAC members, by consensus, agree there is no need for such a meeting, and 2) provides to CBNRAC members a detailed statement of the reasons for altering the consensus-based language. This written explanation will be provided to

CBNRAC members and the meeting will be held, sufficiently in advance of publication of the proposed standard so as to provide the CBNRAC members with an opportunity to express their concerns to FTA. If FTA alters consensus-based language, it will identify such changes in the preamble to the proposed standard, and the CBNRAC members may provide formal written negative or positive comments on those changes and on other parts of the proposed standard to which that issue was "linked."

## **V. Committee Meetings**

- A. The facilitator will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the negotiation process. After review and approval by the CBNRAC, meeting summaries will be certified by the designated federal official and made available to the public.
- B. To the extent practicable, FTA will distribute documents to the CBNRAC at least 2 weeks in advance of the meetings.
- C. CBNRAC members will communicate their interests and concerns to each other. They will present proposals and counter proposals in an effort to address those interests and concerns.
- D. A CBNRAC member may request a caucus (a private meeting of a subset of the Committee) for consultation at any time.
- E. The facilitator will be responsible for preparing the agenda for each meeting in consultation with the CBNRAC members.
- F. All CBNRAC meetings, but not caucuses, will be open to the public.

## **VI. Safeguards for Members**

- A. Any member may withdraw from the negotiations at any time by notifying FTA in writing.
- B. All members shall act in good faith in all aspects of these negotiations.

- C. Members will maintain contact with constituencies throughout the negotiations to obtain feedback on proposals and to provide information on proposals and tentative agreements reached.
- D. Contact with the media, including trade publications, should generally be limited to discussion of the overall objectives and progress of the negotiations. CBNRAC members should refrain from characterizing or commenting to the media on positions taken by other CBNRAC members and from commenting negatively on agreed upon regulatory text. If an article appears that categorically misquotes or inaccurately represents an individual's position, that individual should so inform CBNRAC members.

## **VII. Meeting Facilitation**

- A. Facilitation services will be provided by Susan Podziba & Associates. The facilitator will support the deliberative process of the CBNRAC and will be responsible for helping to manage the negotiated rulemaking process, developing meeting agendas, preparing and distributing meeting summaries, which will provide a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed.
- B. The facilitator will be available to facilitate all meetings of the full CBNRAC and will facilitate caucuses and work groups, as necessary.
- C. The facilitator is obligated to keep verbal communications confidential if requested by a CBNRAC member to do so.

Appendix G: List of Issues (Scope of the Negotiations)

**Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee**

**Issues for Negotiation**

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?
5. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.
6. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.
7. Review and clarify, as necessary, the definitions of regulatory terms.
8. FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

Appendix H: Meeting Agendas

1. Meeting 1 - May 8-9, 2006
2. Meeting 2 - June 19-20, 2006
3. Meeting 3 - July 17-18, 2006
4. Meeting 4 - September 12-13, 2006
5. Meeting 5 - October 25-26, 2006
6. Meeting 6 - December 6-7, 2006

**Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Preliminary Meeting  
U.S. Department of Transportation Headquarters  
400 7<sup>th</sup> Street, S.W.  
Room 6248  
Washington, D.C.**

**May 8 & 9, 2006  
9:00 AM – 4:30 PM**

**Agenda**

**DAY 1: Monday, May 8, 2006**

- 9:00 Welcome and Opening Remarks**  
Sandra K. Bushue, Deputy Administrator, Federal Transit Administration
- 9:15 Federal Transit Administration Team Introductions**  
David B. Horner, Chief Counsel for FTA
- 9:20 Charter Bus Negotiated Rulemaking Advisory Committee Introductions**  
Name, Affiliation, current and past work related to charter buses  
Goals and key concerns regarding Charter Bus regulations
- 9:45 Legislative History of the Charter Bus Regulations**  
Elizabeth Martineau, Office of Chief Counsel, FTA
- 10:15 Overview of the Negotiated Rulemaking Process**  
Susan Podziba, Public Policy Mediator, Susan Podziba & Associates
- 10:30 Break**
- 10:45 Ground Rules**  
Develop ground rules to govern activities of the CBNRAC
- 12:30 Lunch**
- 1:45 Public Comment**
- 2:15 Ground Rules (cont'd.)**
- 4:00 List of Issues**

Determine scope of the negotiations through review of list of issues to be addressed

**4:30 Conclude Day 1**

**DAY 2: Tuesday, May 9, 2006**

**9:00 Logistics**

Confirm schedule of future meetings  
Instructions for subscribing to the DOT Charter Bus Docket listserv  
E-mailing documents  
Identify additional information needs  
Requests for expert presentations  
As additional needs arise

**9:30 Outstanding Ground Rules Issues, if any  
List of Issues (cont'd.)**

**10:30 Break**

**10:45 List of Issues (cont'd.)  
Begin Discussion of Issues**

**12:45 Lunch**

**2:00 Public Comment**

**2:30 Discussion of Issues (cont'd.)**

**4:00 Next Steps**  
Draft meeting summary  
Revised Ground Rules  
Draft text, if applicable  
Other

**4:30 Conclude Meeting**



**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting #2  
U.S. Department of Transportation Headquarters  
400 7<sup>th</sup> Street, S.W.  
Room 6248  
Washington, D.C.  
June 19 & 20, 2006**

**Agenda**

**DAY 1: Monday, June 19, 2006**

**9:00 Review Agenda, Meeting Summary, and Ground Rules**

**9:45 Presentation on current Charter Bus Laws and Regulations**  
Elizabeth Martineau, Office of Chief Counsel, FTA

**10:30 Break**

**10:45 Discussion of Issues**

**Issue #5**

A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

**Issue #6**

A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

**Issue #7**

Review and clarify, as necessary, the definitions of regulatory terms.

**12:30 Lunch**

**1:45 Public Comment**

**2:15 Discussion of Issues (cont'd.)**

**4:30 Conclude Day 1**

**DAY 2: Tuesday, June 20, 2006**

**8:30 Discussion of Issues (cont'd.)**

**12:15 Lunch**

**1:30 Public Comment**

**2:00 Discussion of Issues (cont'd.)**

**3:30 Next Steps**

**4:00 Conclude Meeting**

U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)

Meeting #3  
Radisson Hotel  
2020 Jefferson Davis Highway  
Arlington, VA (Crystal City)  
July 17-18, 2006

Draft Agenda

DAY 1: Monday, July 17, 2006

9:00 Review Agenda and Meeting Summary

9:15 **FTA analysis and presentation of the complaint review and enforcement process based on two specific cases**  
Elizabeth Martineau, Office of Chief Counsel, FTA

10:30 Break

10:45 **ABA presentation on preparing a formal complaint under the charter bus regulations**  
Rick Schweitzer, PLLC, Outside General Counsel, American Bus Association

11:15 **FTA presentation on information on charter service derived from triennial reviews**  
Jayme Blakesley, Office of Chief Counsel, FTA  
Vince Valdez, Director of Oversight, Office of Program Management, FTA

12:00 Lunch

1:00 **Discussion of Issues (as many as time permits)**  
**Issue #3.**  
How can the enforcement of violations of the charter bus regulations be improved?

**Issue #4.**  
How can the charter complaint and administrative appeals process be improved?

**Issue #2**

How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

**Issue #8**

FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

**Issue #7 (Review enforcement-related terms)**

Review and clarify, as necessary, the definitions of regulatory terms.

**Issue #5 (Review draft regulatory text)**

A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

**Issue #6 (Review draft regulatory text)**

A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

**4:30 Conclude Day 1**

**DAY 2: Tuesday, July 18, 2006**

**8:30 Discussion of Issues (cont'd.)**

**12:15 Lunch**

**1:30 Public Comment**

**2:00 Discussion of Issues (cont'd.)**

**3:30 Next Steps**

**4:00 Conclude Meeting**

U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)

Meeting #4  
Radisson Hotel  
2020 Jefferson Davis Highway  
Arlington, VA (Crystal City)  
September 12-13, 2006

Draft Agenda\*

**DAY 1: Tuesday, September 12, 2006**

**9:00 Review Agenda and Meeting Summary**

**9:15 Discuss Issue #3**

How can the enforcement of violations of the charter bus regulations be improved?

**Discussion will include:**

- Review of Work Group proposal for the definition of charter;
- Definition of regular and continuous; and
- Report on use of ALJs.

**11:15 Discuss Issue #1**

Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

**12:30 Lunch**

**1:45 Discussion of Issue #1 (cont'd.)**

**2:45 Break**

**3:00 Work Group Presentation and Review Proposals for Issue #2**

How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

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\* The times listed for each issue are approximations and subject to change as necessary.

**4:30 Conclude Day 1**

**DAY 2: Wednesday, September 13, 2006**

**8:30 Review Draft Regulatory Text**

**Issue #4.**

How can the charter complaint and administrative appeals process be improved?

**Issue #5**

A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

**Issue #6**

A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

**Issue #7**

Review and clarify, as necessary, the definitions of regulatory terms.

**12:15 Lunch**

**1:30 Public Comment**

**2:00 Review Draft Regulatory Text (cont'd.)**

**3:30 Next Steps**

**4:00 Conclude Meeting**

U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)

Meeting #5  
U.S. Department of Transportation Headquarters  
400 Seventh Street, S.W.  
Rooms 6244, 6246, and 6248  
Washington, D.C.  
October 25-26, 2006

Agenda\*

**DAY 1: Wednesday, October 25, 2006**

- 9:00 Review Agenda and September Meeting Summary
- 9:15 Introduction and Review of Draft Regulatory Text
- 604.2 Applicability
  - 604.4(c) Definition of charter
  - 604.6 Charter service by recipients
  - 604.9 Qualified social services organizations
  - Subpart C – Advisory Opinions
  - Subpart F – Referrals to an Administrative Law Judge
  - Subpart G – Hearings
  - Subpart H – Appeal to Administrator and final agency orders
- 12:30 Lunch
- 1:30 Introduction and Review of Draft Regulatory Text (cont'd.)
- 4:30 Conclude Day 1

**DAY 2: Thursday, October 26, 2006**

- 8:30 Introduction and Review of Draft Regulatory Text (cont'd.) or  
Review Draft Regulatory Text
- Subpart A – General Provisions
  - Subpart B – Registration Required
  - Subpart D – Complaints
  - Subpart E – Investigations
  - Subpart I – Judicial review

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\* The times and issues listed are subject to change as necessary.

**12:15 Lunch**

**1:15 Public Comment**

**1:45 Review Draft Regulatory Text (cont'd.)**

**3:45 Next Steps**

**4:00 Conclude Meeting**



U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)

Final Meeting (#6)  
Residence Inn  
550 Army Navy Drive  
Arlington, Virginia  
December 6 & 7, 2006

Agenda\*

**DAY 1: Wednesday, December 6, 2006**

- 9:00 Review Agenda and October Meeting Summary
- 9:15 Review Draft Regulatory Text for Outstanding Issues
- Subpart D – Advisory Opinions
  - 604.4(c) Definition of Charter
  - Subpart F – Referrals to an Administrative Law Judge
  - Subpart G – Hearings (includes Section 604.48 Remedies)
  - Subpart A – General Provisions
  - Subpart B – Exceptions
- 12:30 Lunch
- 1:30 Presentation on FTA's 5310, 5316, and 5317 Programs  
Bryna Helfer, Director, United We Ride Program
- 2:30 Review of Draft Regulatory Text (cont'd.)
- 5:00 Conclude Day 1

**DAY 2: Thursday, December 7, 2006**

- 8:30 Review Draft Regulatory Text (cont'd.) or

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\* The times and issues listed are subject to change as necessary.

**Review Sections with Tentative Agreements**

**Subpart C - Procedures for Registration and Notification**  
*(NEW: Sec. 604.17(c) Trolleys)*

**Subpart D – Complaints**

**Subpart E – Investigations**

**Subpart H – Appeal to Administrator and final agency orders**

**Subpart I – Judicial review**

**12:15 Lunch**

**1:15 Public Comment**

**1:45 Review Draft Regulatory Text and Tentative Agreements (cont'd.)**

**3:45 Next Steps**

**4:00 Conclude Final CBNRAC Meeting**

Appendix I: Meeting Summaries

1. Meeting 1 - May 8-9, 2006
2. Meeting 2 - June 19-20, 2006
3. Meeting 3 - July 17-18, 2006
4. Meeting 4 - September 12-13, 2006
5. Meeting 5 - October 25-26, 2006
6. Meeting 6 - December 6-7, 2006

**Federal Transit Administration  
U.S. Department of Transportation**

**Charter Bus Negotiated Rulemaking Advisory Committee**

**Meeting Summary -- May 8 & 9, 2006**

**Welcome and Opening Remarks - Federal Transit Administration**

Sandra K. Bushue, Deputy Administrator, Federal Transit Administration, welcomed the members of the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) and thanked them for agreeing to assist in developing revisions to the charter bus standards.

**Federal Transit Administration Team Introductions**

David B. Horner, Chief Counsel for FTA, and FTA negotiator, introduced his policy and legal team.

**Charter Bus Negotiated Rulemaking Advisory Committee Introductions**

All members of the CBNRAC who were present introduced themselves and identified their key concerns and interests regarding the Charter Bus regulations.

**Legislative History of the Charter Bus Regulations**

Elizabeth Martineau, Office of Chief Counsel, FTA, provided a legislative history of the charter bus regulations according to the handout, Charter Service Timeline, which was included in the CBNRAC members' binders and is available at the DOT Charter Bus Docket (No. 22657).

**Overview of the Negotiated Rulemaking Process**

Susan Podziba, Public Policy Mediator, Susan Podziba & Associates, provided an overview of the negotiated rulemaking process. She explained that CBNRAC discussions will focus on seeking agreements in concept and, ultimately, consensus regulatory language for the charter bus standards. The handouts accompanying her presentation were included in the CBNRAC members' binders and are available on the DOT Charter Bus Docket.

**Ground Rules**

CBNRAC members reviewed, revised, and reached consensus on ground rules that will govern the activities of the committee throughout the negotiated rulemaking process. The ground rules are a set of voluntary agreements among the members of the CBNRAC. The ground rule issues discussed most intensively included the mission statement, decision rule, activities if consensus regulatory text is changed by FTA, and the timeframe for distribution of documents.

**Mission Statement:** CBNRAC discussed the focus of the negotiated rulemaking, specifically the issues to be addressed. After a number of proposals, members agreed to include in their ground rules, the exact language of the Congressional Conference Committee Report, which outlines four questions to be addressed through a negotiated rulemaking process. They also agreed that additional issues would be added by a consensus of the committee.

**Decision Rule:** CBRNAC agreed to operate by consensus, meaning that agreements will be considered reached when there is no dissent by any CBNRAC member. Some members raised concerns that a unanimous decision rule could lead to a one-person veto of a proposal supported by all other members. FTA stated that if there is no consensus among committee members, the decision will be made by FTA, with consideration of the level of dissent within the committee.

**Activities if Consensus Regulatory Text is Changed by FTA:** CBNRAC agreed that if FTA changes consensus regulatory text, FTA will either re-convene CBNRAC to negotiate those changes or will provide a written explanation of the changes and an opportunity to convene a meeting of CBNRAC, during which FTA would explain the changes and CBNRAC members would discuss the proposed changes with the agency. The written explanation and meeting would occur with sufficient time for an FTA-CBNRAC exchange of views prior to publication of the Notice of Proposed Rulemaking.

**Distribution of Documents in Advance of Meetings:** CBNRAC members requested that FTA provide documents, such as draft regulatory text, two weeks prior to the next CBNRAC meeting, to ensure enough time for consultations with constituents. To accommodate this timeframe, the committee decided to hold meetings every six weeks rather than every month.

### **Proposed Additional CBNRAC Members**

The American Bus Association representative recommended adding Coach USA and Coach America as CBNRAC members. The representative of the America Public Transit Association proposed adding the Fort Worth Transportation Authority and the Capital Area Transportation Authority as members. CBNRAC agreed to recommend to FTA that these four organizations be added to the committee. FTA will submit these recommendations and a revised list of alternates to the Acting Administrator for approval. New members will be added prior to the next CBNRAC meeting.

### **List of Issues**

CBNRAC considered ten issues for inclusion in the scope of the Charter Bus regulatory negotiations (reg neg). CBNRAC agreed to include the four issues that were outlined in the Congressional Conference Committee Report and four additional issues.

Of four issues identified during the convening process, CBNRAC agreed to include all but the one that contemplated a potential exception to the charter bus regulations for emergencies requiring evacuations. FTA is currently proceeding with a separate rulemaking for emergencies, which will be final prior to the conclusion of the Charter Bus reg neg. The issue concerning a process that would utilize electronic communications to determine the availability of willing and able private charter companies and a second concerning site visits by government and transit officials, had been discussed during past negotiations between ABA and APTA. These issues, as well as a review and clarification, as necessary, of definitions of regulatory terms, were added to the scope of the reg neg by a consensus of the committee.

The final two issues considered were raised as comments in response to the federal register notice of intent to establish a reg neg committee. The first issue recommended consolidation of charter service requirements for charter bus, school, and paratransit into one regulation. CBNRAC members agreed that this was not a viable issue given that the committee does not include appropriate representation for all those sectors and the regulations are not all under the jurisdiction of FTA, for example, paratransit regulations are implemented within the Office of the Secretary of Transportation (OST). The final issue considered concerns the boundary between charter services and mass transit for specific circumstances such as special events and university transportation. The committee agreed, by consensus, to add this issue to the scope of the reg neg.

### **Logistics**

**Confirm schedule of future meetings:** CBNRAC will meet on the following dates in 2006: June 19 - 20, July 17 - 18, September 12 - 13, October 25- 26, December 6 - 7. All meetings will be in Washington, D.C. and will be held from 9:00 a.m. - 4:30 p.m. on the first day and 8:30 a.m. - 4:00 pm on the second day.

**Instructions for subscribing to the DOT Charter Bus Docket list serve:** All CBNRAC members were asked to subscribe to the list serve. When FTA posts a document to the list serve, subscribers receive an email so indicating. Members of the public may also subscribe to the list serve. Draft documents will be distributed to CBNRAC members and alternates via email. Final documents will be posted to the list serve.

### **Discussion of Issues**

CBNRAC discussed each of the eight issues members agreed were within the scope of the negotiated rulemaking to get a sense of the key concerns and sub-issues within each issue.

**Issue # 1:** Potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit

agencies that would not otherwise be served in a cost-effective manner by private operators?

With regard to criteria for identifying potential limited conditions, the concepts discussed included short term, limited duration, limited trips, incidental basis, and within the service area. Differences between rural, mid-sized urban, and large urban service areas were identified.

The discussion surfaced the tensions between private charter companies' right to protection against unfair competition and public transit agencies' need and desire to serve their communities. These tensions are exacerbated by a lack of clear definitions for regulatory terms such as charter, willing and able, and community transit, as well as the lack of a common understanding of the requirements and limitations of the existing charter bus regulations.

**Issue #2:** How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of Internet technology?

CBNRAC members confirmed that virtually all private charter companies and public transit agencies, with the exception, perhaps, of some rural and tribal entities, are email accessible and have access to the internet. All agreed that the use of electronic communications can be used to improve communications regarding the charter bus regulations, including the development and maintenance of lists of willing and able companies, identification of willing and able companies for specific transport requests, informing the public about allowable activities for public transit under the charter bus regulations, and posting of FTA decisions on complaints.

Included in this discussion was the public transit agencies' responsibilities and liabilities with regard to informing a customer of willing and able private charter service operators.

**Issue #3:** How can the enforcement of violations of the charter bus regulations be improved?

CBNRAC discussed detection and deterrence with an emphasis on deterrence through costly penalties to remove the motivation to provide charter service in violation of the charter bus regulations, for example, the \$600,000 fine of the Akron case. Complaints, and therefore enforcement, can only be initiated after an alleged violation occurs. If FTA finds a complaint is a violation of the charter bus regulations, the private charter bus company that lodged the complaint cannot regain the lost work or potential profit as penalties assessed are paid to the government.

The current complaint system is onerous for all involved. The private company must assemble evidence as an alleged violation is occurring, FTA must assess sometimes incomplete evidence, and public transit must defend itself against complaints that may not be actual violations.

**Issue # 4:** How can the charter complaint and administrative appeals process be improved?

Currently, there is a lack of consistent implementation across regions and appeals to headquarters must include new facts ascertained after regional decisions. The existing 30-day conciliation period is rarely, if ever, used.

CBNRAC discussed mechanisms for promoting cooperation between private charter companies and public transit, including possible activities initiated by FTA regions. However, all agreed that by the time a charter company files a complaint against a transit agency, there is an antagonistic relationship. To enforce the charter bus regulations, FTA needs a clear and consistent complaint and appeals process.

**Issue #5** A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

In previous negotiations between APTA and ABA, this was the basis of a proposal. The past proposal will be distributed to the committee.

The CBNRAC discussion focused primarily on the question of “willing and able.” There were proposals regarding the development of lists of willing and able private charter companies within a region. Able may mean that a private company will coordinate with another to provide the service. It may also require deadheading, that is, bringing buses from one location to another to service a large and lengthy event. For example, it is worth moving buses significant distances for the events such as the Olympics, but not for a 2-hour job.

Another item discussed was the unique equipment that may be requested by a customer that could result in the absence of a willing and able private charter company. Members raised questions, for example, about buses that run on alternative fuels or are driven by union members. Others stated that there are examples of unique equipment requests made to circumvent the availability of a private charter company. FTA has ruled that double-door buses are not accepted as a unique equipment type.

**Issue #6:** A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.



The discussion focused on the extent of this exception. There was some agreement that this issue related to site visits of short durations by elected and transit officials within a transit agency's service area and was not meant to include, for example, national transit officials' conventions. Other related concerns included visits by foreign dignitaries and response time for trips requested on short timeframes.

This issue was close to being resolved during prior negotiations. A small group will meet before the next meeting to prepare a proposal for review by CBNRAC.

**Issue #7:** Review and clarify, as necessary, the definitions of regulatory terms.

CBNRAC brainstormed a list of terms to be reviewed and clarified, as necessary. Prior to the next meeting, FTA will pull together existing definitions with citations. For those terms that are not defined in law or regulation, FTA will develop draft definitions for consideration by the committee. The list below includes the terms CBNRAC asked FTA to define:

- willing and able
- community-based transit
- charter
- pattern of violations
- closed door/open door
- regular and continuing
- incidental
- minimum durations
- too far
- significant number
- undue financial hardship
- categories of revenue vehicle
- cost evaluation
- fully allocated cost
- recipient
- special events
- qualified social service agency
- groups of transit advantaged or transit dependent
- special route
- equipment uniqueness

**Issue #8:** FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

The discussion of this issue related to transit agencies' provision of service for university events like football games and other special events. Transit can provide this service when there is a published route with regular stops and service is open to the public. Some CBNRAC members stated that there have been circumstances where the schedules and availability to the general public were provided on paper but were not in practice on the street. Again, since complaints can be issued only after the fact, such opportunities are lost to the private companies.

### **Public Comment**

Bruce Lundegren, Assistant Chief Counsel, Small Business Administration, introduced himself and the availability of the SBA to assist small businesses on regulatory issues.

Michael Waters, Vice President and General Manager, USA Franciscan Lines, referred to finding mutually acceptable solutions to the root problems inherent in the charter bus regulations that will ultimately enable public transit to have a "good face in the community and at the same time give privates a bite of the apple."

Jim Seal, President, Jim Seal Consulting Services, told the committee of a situation in which a public transit agency and private companies worked together to develop an equitable solution for providing charter service only after a 20-year complaint was resolved.

### **Informational Requests**

CBNRAC requested the following in preparation for or at the June 19-20 meeting:

- FTA presentation on the current law and regulations.
- Proposal developed by ABA and APTA for Issue #5 during their negotiations.
- FTA's proposal for Issue #5.
- Small group proposal for Issue #6.
- Definitions for regulatory terms (Issue #7).

CBNRAC requested the following for the July 17-18 Meeting:

- FTA analysis and presentation of the complaint review and enforcement process based on two specific cases, one to be identified by ABA and the other by APTA.
- ABA presentation on preparing a formal complaint under the charter bus regulations.
- Information on charter service derived from triennial reviews.

### **Next Steps**

FTA will prepare the definitions materials, which will be distributed at least two weeks before the June meeting. The small group will meet to develop a proposal for Issues #6, site visits. The latest version of the proposal developed for Issue #5 will be distributed. The facilitator will provide the revised ground rules, a draft meeting summary, and an agenda prior to the next meeting.

### **Attendance**

Karen Head, Amalgamated Transit Union

David Spacek, American Association of State Highway and Transportation Officials

Clyde Hart, American Bus Association

Daniel Duff, American Public Transportation Association

Dale J. Marsico, Community Transportation Association of America

Mark E. Huffer, Kansas City Area Transportation Authority

Mary Presley, Lancaster Trailways of the Carolinas

Charter Bus Negotiated Rulemaking Advisory Committee

Federal Transit Administration

Summary of May 8-9, 2006 Meeting

Approved 6/19/2006

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Stephanie Negriff, Los Angeles County Municipal Operators Association  
Carl G. Sedoryk, Monterey-Salinas Transit  
John Corr, National School Transportation Association  
John (Jack) Burkert, Trailways  
Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
Ron Baumgarten, River Cities Transit  
Harold Morgan, Taxicab, Limousine & Paratransit Association  
Victor Parra, United Motorcoach Association  
David B. Horner, Federal Transit Administration (FTA)  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Linda Lasley, FTA  
Elizabeth Martineau, FTA  
Nancy-Ellen Zusman, FTA  
Christopher Van Wyk, FTA  
Jayme Blakesley, FTA

**Not Present**

Christopher P. Boylan, New York State Metropolitan Transportation Authority

**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting Summary -- June 19 - 20, 2006**

**Review Agenda, Meeting Summary, and Ground Rules**

The facilitator reviewed the agenda, meeting summary, and ground rules. Some members requested that the issue of alternates be added to the agenda. The meeting summary was approved with one revision, which was to indicate that some rural entities do not have email and internet access. There were no corrections to the previously adopted ground rules.

**Alternates**

The FTA Deputy Administrator did not approve alternates who were registered lobbyists or self-declared lobbyists, for example, via their websites or firm bios, who were not executive officers of the member's organization for whom they would serve as an alternate. This directly affected five members. There was a great deal of consternation surrounding this issue as well as confusion regarding whether this was FTA policy, generally, or specific to CBNRAC. FTA apologized for any disappointment or confusion this policy has caused, but indicated that FTA has discretion regarding who may serve on advisory committees it convenes. Some members stated that this policy limited CBNRAC's ability to have the best talent at the table. The ABA member provided a letter to the committee and requested that it be posted to the CBNRAC Docket (Docket Number 22657).

To continue with the existing meeting schedule, all agreed to the following: CBNRAC members who do not have an approved alternate, will forward to FTA, as soon as possible, the name of an alternate who meets the conditions for alternates set by FTA. FTA will move to approve newly proposed alternates as quickly as possible.

A CBNRAC member, without an approved alternate, who is unable to attend part or all of the June or July meetings, may be represented by his/her proposed alternate. The proposed alternate may participate fully in all discussions. Proposed alternates may not dissent on proposals, but may request that decisions be deferred until the following meeting.

For meetings after July, a CBNRAC member without an approved alternate will not be represented at those meetings they are unable to attend.

### **Presentation on Current Charter Bus Laws and Regulations**

Elizabeth Martineau, Office of Chief Counsel, FTA, provided a presentation for CBNRAC. The powerpoint slides used during the presentation are available on the DOT docket with materials for the June 19-20 meeting. CBNRAC members asked numerous questions about the existing regulations and current FTA interpretations.

### **Discussion of Issues**

CBNRAC discussed Issues 5, 6, and 7. Key discussions points for each issue are described below.

**Issue #5:** A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

CBNRAC began its discussion of Issue #5 by reviewing a proposal developed during past negotiations between ABA and APTA as well as a proposal developed by FTA described as the right of first refusal. During the discussions, it became clear that the “willing and able” concept has created a great deal of confusion for all involved, in part, because it has been used to describe both a general availability to provide charter service and an interest in providing service for a particular move.

The willing and able provisions are meant to protect private charter operators from unsuccessful negotiations with customers who might expect lower prices from public transit agencies, and apart from other exceptions, to allow public transit agencies to provide charter service when there is not an available private charter company to do so. Some CBNRAC members assume there are only rare instances when private charter operators cannot provide service requested. Others assume it exists with some frequency. There may be differences among regions as well as between rural and urban service areas.

CBNRAC’s discussion resulted in the creation of an alternative to the concept of “willing and able.” The working proposal of the alternative, which has not been formally agreed to by CBNRAC, includes the following:

1. Transit agencies seeking to provide charter service (not including other exceptions) would solicit annual notices from qualified private charter

operators. Solicitation requests would be sent to charter operators in the transit agencies' service areas and to the ABA, UMA, and NSTA. Qualified charter operators could be added to the list quarterly by sending a written request to the public transit agency.

2. A transit agency would create and maintain a list of qualified charter operators that do business in the transit agency's service area.
3. Charter operators would self-certify as qualified.
4. When a customer requests charter service from a transit agency that the transit agency is interested in providing, the transit agency will notify each of the qualified private charter operators on its list. This notification would include the customer's name, address, phone number, date of the move, number of passengers, equipment needs, and duration of the trip. Such notice would be sent electronically to the list of qualified charter providers by close of business on the day the request was received if the request was received before 2 pm and by close of business the next day if the request was received after 2 pm.
5. If a qualified charter operator indicates interest in providing the service, then the transit agency may not provide the service.
6. If no listed qualified charter operator responds within 72 hours, then the transit agency may provide the service requested.
7. If no listed qualified charter operator responded within the 72 hours and the public transit agency provided the service, no private charter service company may file a complaint against the public transit agency for providing the service that was specifically noticed to the list of qualified charter operators.
8. Public transit agencies would decide whether or not to provide charter service under this exception. Those that decided not to participate (and did not create a list of qualified charter providers) could not provide any charter service under this exception.

Many CBNRAC members seemed to support the proposals' elements concerning creating and maintaining a list of qualified charter operators, which makes the public transit agency responsible for annual creation of the list and the private companies responsible for requests to be added quarterly if, for whatever reason, they did not respond to the annual request.

Many members seemed to support the proposal that the charter request notification include enough detail to enable the private charter companies to determine if they were interested in providing the service.

There was a great deal of discussion concerning the charter requests the public transit agencies should be required to notice to its list of qualified charter operators. Initially, CBNRAC members suggested all charter requests be noticed, but ultimately, many seemed to support the notion that public transit agencies are not referral services for private charter companies. In many instances, public transit may simply say they do not provide charter service and refer the customer to the yellow pages or specific charter companies. Some members were concerned that if they did not notice all charter requests, public transit agencies would “cherry pick” jobs, but others stated that according to the proposal, if a qualified private charter operator indicated interest in the job, then the public transit agency would be prohibited from providing the service.

The timing of notifications by the public transit agency to the qualified charter operators and the timing required for indicating interest were not agreed to. For the former, some were concerned that internal public transit agency decisions could not be made so quickly. Some CBNRAC members expressed concerns about the ability of small companies to indicate interest within 72 hours of the notice. The 72-hour time frame was proposed to ensure that charter companies had the opportunity to indicate interest on the Monday after a job was noticed on a Friday. Overall, those who supported the timeframes did so to limit the customer’s waiting time for a response. In addition, CBNRAC raised, but has not yet addressed the question of charter service requests received less than 72 hours before the move.

The question of whether participation in this process to provide charter service beyond specific exceptions (as yet to be determined) was optional or mandatory for public transit was also discussed. Many members seemed to support the position that if a public transit agency was not interested in providing charter service under this exception, then they should be able to opt out of this construct entirely.

Three additional issues were raised. The first was a concern that private charter operators would always indicate interest, but not necessarily provide the service, either because they did not have the capacity (or could not contract for it) or because they could not negotiate a price with the customer. Some CBNRAC members were concerned about leaving people immobile. This is especially problematic in rural areas when the deadhead time necessary to provide the service may result in the service being unaffordable.

Secondly, a question was raised concerning a company's eligibility to provide charter service if they are not on the public transit agency's list of qualified operators. Not being on the list would mean that the company would not be notified of the job and may not file a complaint against the public transit agency for providing the service, but that company would always be eligible to bid on the work.

Finally, some members raised concerns about referring business to charter operators that self-certify without the requisite licenses, insurance, and safety certifications. Others responded that public transit does not want the responsibility of determining which companies are qualified. In addition, they would only be providing information about the customer to the charter operators not providing the customer with information about the private companies.

CBNRAC members stated that they would like to see this proposal in writing and will then get feedback from constituents, especially from small companies who may not have internet access.

**Issue #6:** A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

The discussion of Issue #6 began with a working proposal developed by a work group. Some of the elements of that proposal were not agreed to. In addition, FTA provided information on its historical interpretation of such site visits as charter service.

At the end of the discussion, the following proposal, except for prior disclosure at (2), seemed to have support of much of CBNRAC.

An FTA recipient may transport its employees, other transit system employees and management officials and contractors and bidders, as well as government officials and official guests, to/from transit facilities or projects for the purpose of inspection, evaluation, or review of such facilities or projects or other transit-related oversight functions without adherence to the Charter Rules at 49 CFR 604, provided that (1) such trips are conducted within the recipient's geographic service area or proposed geographic service area; (2) *information specific to each trip (departure dates, times, number of personnel transported and type of equipment utilized) shall be disclosed to the private charter operators in the recipient's service area at least 72 hours prior to the date of said trip;* and (3) the recipient shall not impose any



charges unless legally required to do so, or otherwise derive any compensation, for the transportation subject to this section.

Any violation of this provision shall be subject to the enforcement provisions of Part 604; and the reporting required by this exception shall be auditable by the FTA as part of its triennial review of the recipient.

There was discussion of the definition of project, which ultimately was accepted as a term that included the planning phase of projects. There was discussion of service area, which was acceptable because it is defined in the grant application and the triennial review. There was discussion of including "proposed service area," which was accepted since there is a formal process for expanding a service area.

The key unresolved item of this issue concerns public transit notification of such site visits to private charter companies in their geographic service area prior to such visits. Public transit stated that it is already regulated by local, state, and federal government entities and does not want to create an additional notification requirement to the private sector.

Charter companies contend that such notification will create transparency, which will reduce frivolous complaints. Some members suggested that with prior notification, charter operators would be less likely to complain when they see buses in unexpected locations. Other members suggested such notification could lead to greater confusions as there are many reasons why buses might be in unexpected locations such as road testing, testing new routes, or training employees. There was some discussion of marking the buses to indicate their function, but the proposal was dropped.

Some members suggested that prior notification was important since private charter companies can only file complaints with FTA after the trip occurs. If they do not know that such trips are occurring, they cannot determine if public transit agencies are meeting the conditions of the exception. An alternative to prior notification was that transit agencies maintain a log of site visits that would be available to the public upon request.

Another proposal was that FTA create a website that would function as the source for all information related to public transit provision of charter service under exceptions to the charter rule. Further, it was suggested that this website could also list charter opportunities as envisioned under Issue #5.

Another issue that arose during discussions of site visits concerned the question of management functions, including transport of public officials to public hearings. This led to a discussion of whether or not moving internal employees to job sites was considered charter service. Ultimately, it was determined that CBNRAC members had not contemplated movement of internal employees to job sites under the site visit exception. CBNRAC members seemed to support to inclusion of the following statement in the regulations:

An FTA recipient may transport its employees, other transit employees, and management officials directly engaged in public transportation activities.

FTA was asked to research its position on whether such transport constituted charter service or not. The result of that research may inform the committee's decision on whether this statement should be included as an exception or as part of the definition of charter service.

**Issue #7:** Review and clarify, as necessary, the definitions of regulatory terms.

The Committee began its review of definitions prepared by FTA. Revisions were made to definitions of the terms: community-based, charter, minimum durations, too far, significant number, and financial hardship.

CBNRAC discussed the new term, Qualified Charter Operator, which would include such elements as self certification of possession operating authority to provide charter service, minimum insurance, satisfactory safety record, and has responded to annual notification of FTA recipient to be listed or has been added to list during quarterly list updates after to a written request.

Terms related to enforcement such as pattern of violations, closed door, and open door were set aside pending discussions of enforcement issues at the next CBNRAC meeting.

CBNRAC requested definitions for the following additional terms:

- Elderly
- Not capable
- Local
- Fully allocated costs
- Particular geographic area
- Relatively infrequent
- Having capacity

### **Public Comment**

Jim Seal, President, Jim Seal Consulting Services, stated there is no unmet need for service for politicians, which is often provided by private charter operators, sometimes at no cost.

### **Next Steps**

The following items will be added to the docket at the request of CBNRAC members: ABA comments on alternates; School Transportation Pamphlet and Dear Colleague Letter provided by NSTA, and Charter Bus Complaint provided by Northwest Motorcoach Association.

FTA will draft regulatory text for the working proposals developed for Issues 5 and 6. FTA will also revise the definitions based on the discussions of the committee and prepare definitions for the additional terms for which definitions were requested.

CBNRAC has requested the following presentations for the July 17-18 Meeting:

- FTA analysis and presentation of the complaint review and enforcement process based on two specific cases, one identified by ABA and the other by APTA.
- ABA presentation on preparing a formal complaint under the charter bus regulations.
- Information on charter service derived from triennial reviews.

In addition, CBNRAC asked FTA to research other federal agencies' enforcement policies for establishing "patterns of violations."

A work group will be created to develop a proposal for an FTA website as contemplated by some members of the committee. This work group will meet after the July meeting to prepare proposals for the September meeting.

Prior to the July meeting, the facilitator will prepare and distribute a draft summary of the June meeting and an agenda for the July meeting.

### **Attendance**

#### **CBNRAC Members and Alternates**

Debbie Alexander (alternate), Capital Area Transportation Authority

Ron Baumgarten, River Cities Transit  
John (Jack) Burkert, Trailways  
John Corr, National School Transportation Association  
Kevin Disburg (alternate), River Cities Transit  
John Dockendorf (alternate), American Association of State Highway and  
Transportation Officials  
Sandra Draggoo, Capital Area Transportation Authority  
Daniel Duff, American Public Transportation Association  
Don Gilcrest (proposed alternate), Monterey-Salinas Transit  
Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
Clyde Hart, American Bus Association  
Scott Henry (alternate), Trailways  
David B. Horner, Federal Transit Administration (FTA)  
Mark E. Huffer, Kansas City Area Transportation Authority  
Pat Jordan (proposed alternate), Los Angeles County Municipal Operators  
Association  
Carol Ketcherside (alternate), Southwest Transit Association  
Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
Steve Klika (alternate), United Motorcoach Association  
Jim LaRusch (alternate), American Public Transportation Association  
Dale J. Marsico, Community Transportation Association of America  
Robert Molofsky (alternate), Amalgamated Transit Union  
Harold Morgan, Taxicab, Limousine & Paratransit Association  
Dale Moser, Coach USA  
Victor Parra, United Motorcoach Association  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Ken Presley (alternate), Lancaster Trailways of the Carolinas  
Mary Presley, Lancaster Trailways of the Carolinas  
Dick Ruddell, Southwest Transit Association  
Richard Schweitzer (proposed alternate), American Bus Association  
Jim Seal (proposed alternate), Coach America  
Gary Smith (alternate), Oklahoma State University, The Bus Community Transit  
System  
Michael R. Waters, Coach America  
Becky Weber (proposed alternate)  
Chris Zeilinger (alternate), Community Transportation Association of America

**Members Not Present**

Christopher P. Boylan, New York State Metropolitan Transportation Authority

**FTA Team**

Charter Bus Negotiated Rulemaking Advisory Committee  
Federal Transit Administration  
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Jayne Blakesley, FTA  
Linda Lasley, FTA  
Elizabeth Martineau, FTA  
Christopher Van Wyk, FTA  
Nancy-Ellen Zusman, FTA

**Public**

Scott Bugrew, CTAA  
S. D. Goldstein, Transit Access Report  
Michael Grebb, Bus & Motorcoach News  
Judy Kaleta U.S. DOT  
Bruce Lundegren, Small Business Administration, Office of Advocacy  
Susan Perry, APTA - Consultant  
Ronna Weber, BKSH

**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting Summary -- July 17-18, 2006**

**Review Agenda and Meeting Summary**

The facilitator reviewed the agenda and meeting summary. The agenda was adopted as proposed. The meeting summary was approved with revisions, which included changes to such phrases as, "many members agreed/supported," to "some members seemed to support/feel."

**ABA presentation on preparing a formal complaint under the charter bus regulations**

Rick Schweitzer, PLLC, Outside General Counsel, American Bus Association, presented on the complaint and appeals process as implemented under the current charter bus regulations. He also identified some potential areas of improvement. The purpose of the presentation was to provide CBNRAC members with a common baseline understanding of the status quo under the charter bus regulations to support their discussions concerning its improvement. The slides used during the presentation are available on the DOT docket as part of the July 17-18 meeting materials.

**FTA analysis and presentation of the complaint review and enforcement process based on two specific cases**

Elizabeth Martineau, Office of Chief Counsel, FTA, presented on the following two cases: Kemp Bus Service, Inc. v. Rochester-Genesee Regional Transportation Authority Charter Complaint (Kemps Case) and the California Bus Association, on behalf of Amador Bus Lines v. Sacramento Regional Transit District (Sacramento case). The cases identified the various factors that FTA used to determine whether transportation activities were charter service or public transportation. The documents that were distributed and referred to during the presentation are available on the DOT docket as part of the July 17-18 meeting materials.

**FTA presentation on charter service information derived from triennial reviews**

Jayne Blakesley, Office of Chief Counsel, FTA, and Vince Valdez, Director of Oversight, Office of Program Management, FTA, presented on the triennial review process and findings concerning potential violations of the charter regulations. The triennial review process is primarily for 5307 recipients (urban areas above 50,000 population), and therefore, is not the best tool for reviewing all FTA recipients who may engage in charter operations. The powerpoint presentation was distributed and is available on the DOT docket as part of the July 17-18 meeting materials.

## **Discussion of Issues**

CBNRAC discussed Issues 2, 3, 4, 5, and 8. Key discussions points for each issue are described below.

### **Issue #2**

How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

CBNRAC members identified a number of ways in which electronic communications and the internet may be used to better implement and communicate the charter bus regulations to the public. The items suggested included website postings of the following:

- FTA charter decisions
- Charter bus regulation information on trade association websites
- Examples of transportation services provided that meet the definitions of charter and public transportation
- FTA Circulars
- Updates on the charter regulations, including a mechanism for automatic emails when new updates are posted
- Best practices
- FTA Contact information
- Questions and answers that are prepared, reviewed, and revised with public input
- Precedents
- Notices of conferences, panels, and sessions where charter regulations will be discussed
- Reference manual

FTA noted that its current website provides much of the above information, and it will consider posting additional information on its existing website. FTA is skeptical about hosting a new website for the registration of charter bus operators and requests for charter service because the volume of information to be posted would be administratively burdensome and create the potential for error resulting in loss to charter providers.

A website work group has been created to develop proposals concerning the use of the internet to improve the administration and communication of the charter bus regulations. These proposals will be presented at the September CBNRAC meeting.

### **Issue #3.**

How can the enforcement of violations of the charter bus regulations be improved?

The members discussed a four-pronged approach to this issue, as follows:

1. Clarify what is being enforced, e.g., What is charter?
2. Clarify and revise the charter complaint and administrative appeals process (Discussed as Issue #4)
3. Penalties
4. Education/Training of private companies, public transit agencies, FTA regions

Clarify what is being enforced, e.g., What is charter?

Much of the CBNRAC discussion on how to improve the enforcement of violations centered on the lack of clarity of the factors used and weighed to differentiate public transportation and charter service. This lack of clarity has resulted in significant differences of interpretation of the charter regulations between private charter operators and public transit agencies, which in turn, has led to formal complaints to FTA. This situation is further exacerbated by inconsistent interpretation and enforcement of the charter regulations across FTA's regional offices.

For example, for some CBNRAC members, "relatively infrequent services" are sometimes "dressed up" to look like public transportation, but are actually charter. For others, this service meets the definition of public transportation and has been so confirmed in FTA decisions. Assistance from FTA to recipients to provide service that meets the definition of public transportation is technical assistance for compliance with the charter bus regulations for some, whereas for others, such assistance contributes to unfair competition.

CBNRAC members discussed some factors used to denote charter including:

**Control of service:** Control was discussed in terms of who determines: the route; schedule, including when service begins and ends; who may be transported; and what type of equipment will be used.

**Regular and continuous:** Attempts to define this term surfaced strong differences of opinion, especially with regard to "relatively infrequent" events. For example, is service that is open to the public, which is provided in accordance with a published schedule for one week, four times each year, for a route that moves people to a particular location, part of regular and continuous service?

**Existence of a Contract:** CBNRAC members discussed whether or not the existence of a contract, in and of itself, denotes charter service. Past FTA decisions suggest that the existence of a contract is not a factor for determining charter.



**Payment:** Members discussed whether or not payment by a third party denotes charter. Again, it appeared from past FTA decisions that a third party could subsidize the cost for transportation and so does not, in and of itself, denote charter.

The committee worked to construct a framework for determining what is charter service. The working proposal under discussion was as follows:

Factors for determining what is charter (all conditions must be met):

- Control of route, schedule, or itinerary by a party other than the public transportation operator;
- Group has origin or destination in common; and
- Fare or fee is pre-arranged and subsidized or paid, in whole or in part, by a single entity.

A proposal to add an additional condition, “Not open to the general public” raised concerns for some CBNRAC members because if any of the above conditions were not met, the service would not be considered charter.

At the close of the discussion of this issue, members of CBNRAC agreed to meet with others in their caucuses to attempt to develop a revised version of the above framework that would satisfy the concerns of all CBNRAC members. Each caucus will send its proposed framework to the facilitator by August 15. A work group composed of members of both caucuses will then work to blend the two proposals into one for review by CBNRAC at its September meeting.

#### Penalties

CBNRAC discussed penalties to create a disincentive to violating the charter regulations and an incentive to err on the side of caution. The question of penalties will be further discussed at a future meeting.

#### Education/Training of private companies, public transit agencies, FTA regions

CBNRAC members discussed the need to educate private charter operators, public transit agencies, and FTA regional staff on the new charter regulations once they are finalized. This education is expected to improve the consistency of implementation and enforcement, reduce the potential for violations, and reduce the number of complaints filed.

Some ideas for providing such education include trade association meetings, sessions at conferences, and quarterly regional FTA meetings with public transit agencies and private charter operators.

#### **Issue #4.**

How can the charter complaint and administrative appeals process be improved?

Committee members identified a number of areas for improvement in the current charter complaints and administrative appeals process. Each is discussed briefly below. FTA will provide draft regulatory text that reflects these discussions for CBNRAC review.

1. **Notice of complaint to public transit agency:** Currently, the complainant is required to notify the public transit agency of its complaint. In some instances, when the complainant failed to notify the public transit agency, the regional FTA did so. Committee members discussed requiring the complainant to notify the public transit agency and send proof of such notice to FTA. The complaint would not be considered duly filed until the complainant provided proof of this notice to FTA.
2. **Thirty-day conciliation period:** Members proposed dropping this from the complaint process as it is seldom, if ever, used to resolve complaints. Charter companies and public transit agencies are always free to discuss questionable charter service if they choose to do so.
3. **Rules of evidence in operation:** Committee members discussed a requirement for public transit agencies to provide relevant documents in response to a complaint, but not to create a formal discovery process. Requests for documents would be made after complaints were deemed to have some degree of legitimacy and would include all written communications reasonably related to the service referred to in the complaint. Committee members stated that generally, transit agencies have been forthcoming in providing such documents and that such documents are also available via FOIA requests.
4. **Timing of FTA decisions:** CBNRAC members discussed a proposal to modify current timing requirements and expectations of the complaint and appeals process. The proposal is as follows:

The Complainant sends the complaint to FTA and the public transit agency (Respondent). The Regional Administrator (RA) notifies the Respondent that they have 30 days to provide written evidence that no violation has occurred to FTA and the Complainant. Upon receipt of the Respondent's written response, the Complainant has 30 days to provide a rebuttal to FTA and the Respondent. If the RA requires an investigation, s/he may initiate an informal hearing. Within 60 days of the informal hearing or submission of the rebuttal, FTA will issue a final decision and opinion. After the final decision, parties will have 7 days to file a notice of appeal, and 21 days after the notice of appeal to file a brief. The other party would then have 10 days to file a response to the appeal.

5. **Definition of pattern of violations:** The Committee will discuss this issue based on FTA research of other federal agencies' interpretation of a pattern of violations in enforcement cases.

6. **Appeals are very limited:** The current regulations allow appeals of FTA RA decisions only when the complainant or respondent provides new facts or new points of law. Committee members discussed a proposal to also allow appeals for "material error," that is, if the RA misinterpreted the facts or law or the decision was inconsistent with past decisions and precedents.

**Open Issue:** Should appeals be permitted as an appeal of right or at the discretion of the Administrator? The decision on this issue will likely depend on the expected volume of appeals.

#### 7. **Access to FTA Charter Bus Decisions**

In the past, charter operators and public transit agencies could not easily gain access to FTA decisions (RA and Headquarters). Decisions are now posted on the FTA website. The Committee discussed a proposal to post FTA decisions as searchable files within 30 days.

#### 8. **Regional differences in application/interpretation**

The issue of regional differences in application and interpretation led to proposals to use Administrative Law Judges (ALJs) to hear charter bus complaints. Some CBNRAC members expressed concern about a perception of bias given that FTA is both a grant-making and enforcement agency. On the other hand, others stated that RAs have knowledge of and understand the local situations of their regions.

**Open Issue:** Use of ALJs. FTA and ABA will research this proposal.

#### 9. **FTA involvement prior to complaints**

CBNRAC members discussed a proposal for a pre-complaint process such that FTA would provide expedited decisions for service not yet provided. To initiate a pre-service process, a complainant would specify the relief sought, why FTA should provide such relief, what injury would be avoided, and the likely damages without relief.

CBNRAC members also discussed a proposal for FTA advisory opinions concerning service to be provided based on facts stipulated by one party. This raised the question about the impact of such advisory opinions on future complaints concerning service for which an advisory opinion was provided.

**Open Issue:** Should FTA provide informal advice such as advisory opinions? If FTA provides pre-event advice, should it be formal and rigorous?

**Issue #5 (Review draft regulatory text)**

A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

CBNRAC reviewed draft regulatory text for an exception to the charter bus regulations when no registered charter provider is interested. The draft regulatory text was included with the package of meeting documents. The key discussion points included:

**Registered Charter Provider (RCP):** The concept of the qualified charter operator was changed to the registered charter provider. "Registered" replaced "certified" because, according to the proposal, the charter provider self-certifies that "as a charter service provider, it has the necessary safety certifications; required minimum insurance; required licenses; any other legal prerequisites to provide charter service; and that it is in the business of providing charter service with its own vehicles." The public transit agency places the charter operator on its RCP list and is not required to investigate the validity of the self-certification.

**Indication of interest:** A registered charter provider interested in providing the service would be required to notify the transit agency, in writing, by electronic or other means, within 72 hours, not including holiday hours, of its intent to provide the requested charter service.

**Brokers:** CBNRAC members discussed whether or not brokers could be registered charter providers. Brokers may not have operating authority, but in the past have bought single buses to meet required conditions and then sold the bus shortly afterwards. In the past, brokers have been able to circumvent the protections provided by the charter bus regulations by leasing federally subsidized buses and making them available for charter service at below market rates. CBNRAC members seemed to support the proposal to prevent brokers from becoming registered charter providers.

**Open Issue:** CBNRAC has not yet developed the mechanism to prohibit brokers from participating as registered charter providers without preventing legitimate charter operators from leasing additional buses from public transit agencies. One proposal was to include in the definition of registered charter provider the phrase, "shall not lease buses from transit agencies except as permitted under these regulations," and then include in the regulations the conditions under which RCPs may lease public transit buses.

**Creating and maintaining the RCP list:** The draft proposal requires any public transit agency interested in participating in this exception to send an annual notice to charter operators in its service area as well as to the ABA, UMA, and NSTA. All charter operators that respond with written requests will then be placed on the transit agency's RCP list. If additional charter operators request, in writing, to be added to the RCP list, the public transit agency will do so on a quarterly basis. A proposal was offered for the ABA, UMA, and NSTA to maintain the lists of registered charter providers rather than the public transit agencies, but was met with concerns by some CBNRAC members.

**Market Failures and an Immobile Public:** The purpose of this exception is to protect private charter operators from unfair competition and to limit the unintended consequence of an immobile public. Some CBNRAC members raised concerns about indications of interest by RCPs, who do not intend to provide the service, but merely respond to the request in order to prevent the public transit agency from providing the service. This is different from the case in which a customer and charter operator cannot agree on a price. Rather, CBNRAC members proposed the concept of the "vindictive charter operator." The vindictive charter operator is an RCP that repeatedly indicates interest in response to job notifications without the intention of actually providing the service. In such circumstances, the public transit agency would inform FTA and request permission to remove that registered charter provider from its list.

**Outstanding items on issue #5 that were not yet fully discussed:**

- The registered charter provider indicating interest is so far from the customer that charges for deadhead time leave the customer immobile because the service is unaffordable. (May be addressed under hardship exception.)
- Availability of email access for small, rural, and/or tribal charter companies.

**Issue #8**

FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

CBNRAC discussed the services that universities provide for their students and the hybrid situation whereby the university serves as the community's public transit provider. If the university purchases and maintains its vehicles without Chapter 53 funds, then it is not under the jurisdiction of the charter regulations. If the university provides public transportation for the community and it is an FTA-recipient, then it must follow the charter bus regulations.

The situation needing clarification concerns bus service provided for university sanctioned events, for example, travel by school clubs and teams. CBNRAC members decided to consider this issue as part of the exceptions to be discussed under Issue #1.

### **Public Comment**

There were no public comments.

### **Next Steps**

#### **CAUCUS MEETINGS**

**Develop a definition of charter** that meets the needs and satisfies the interests of public transit agencies and private charter operators.

- Public Transit Agency representatives develop draft definition/framework
- Private Charter Operator representatives develop draft definition/framework
- Drafts are sent to the facilitator by August 15
- Work group meeting to merge the two drafts

**Proposals for Issue #1:** Public transit agency representatives will develop a proposal for limited conditions for exceptions to begin the discussion of this issue. Proposals should be sent to the facilitator by September 1.

#### **WORK GROUPS**

**Website/Internet Work Group** will develop proposals for use of the internet to support implementation of the new regulations (Issue #3). Work group members are: Linda, Hugh, Gladys, Steve Klika, Jim LaRusch, Scott Bogren, and Debbie Alexander.

**Charter Definition Work Group** will merge the two drafts into a proposal for CBNRAC review. Work group members are: Karen, Mark, David H., David C., Vic, Dale Marsico, Rick, Mike, Elizabeth, Dan, and Stephanie.

**Issue #6 Work Group (Site Visits)** will discuss ABA's recent proposal and provide CBNRAC with a refined proposal for review. Work group members are: Clyde, Dan, Dale Marsico, Vic, and Nancy-Ellen.

#### **DRAFT REGULATORY TEXT**

FTA will provide draft regulatory text for the issues discussed for distribution to CBNRAC by August 29.

#### **INFORMATIONAL REQUESTS**

FTA will research the following:

- Questions concerning the Office of the Inspector General (IG) related to Charter Bus regulations enforcement:
  - How does the IG get involved with charter issues?

- How many times has the IG been involved with charter issues?
- What role does the IG play in interpreting charter regulations or determining charter violations?
- Pattern of violations: How have FAA and/or other government agencies defined this term?
- Use of Administrative Law Judges (ALJs) for charter complaints (Rick Schweitzer will research also.)
- Triennial Review for Rochester prior to 2005

## **ALTERNATES**

Any CBNRAC member, who does not have an approved alternate, must forward the name of their alternate to FTA as soon as possible because unapproved alternates will not be able to participate in the September meeting.

### **Attendance**

#### **CBNRAC MEMBERS AND ALTERNATES**

Ron Baumgarten, River Cities Transit  
 John (Jack) Burkert, Trailways  
 David Coburn (alternate), Coach USA  
 John Corr, National School Transportation Association  
 Kevin Disburg (alternate), River Cities Transit  
 Sandra Draggoo, Capital Area Transportation Authority  
 Daniel Duff, American Public Transportation Association  
 David Feinberg (alternate), Los Angeles County Municipal Operators Association  
 Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
 Scott Henry (alternate), Trailways  
 David B. Horner, Federal Transit Administration (FTA)  
 Mark E. Huffer, Kansas City Area Transportation Authority  
 Pat Jordan (proposed alternate), Los Angeles County Municipal Operators Association  
 Carol Ketcherside (alternate), Southwest Transit Association  
 Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
 Jim LaRusch (alternate), American Public Transportation Association  
 Dale J. Marsico, Community Transportation Association of America  
 Karen Head, Amalgamated Transit Union  
 Harold Morgan, Taxicab, Limousine & Paratransit Association  
 Victor Parra, United Motorcoach Association  
 Susan Podziba, Facilitator, Susan Podziba & Associates  
 Ken Presley (alternate), Lancaster Trailways of the Carolinas  
 Dick Ruddell, Southwest Transit Association  
 Richard Schweitzer (alternate), American Bus Association  
 Jim Seal (alternate), Coach America

Carl Sedoryk, Monterey Salinas Transit  
Gary Smith (alternate), Oklahoma State University, The Bus Community Transit System  
David Spacek, American Association of State Highway and Transportation Officials  
Michael R. Waters, Coach America  
Becky Weber (proposed alternate)  
Chris Zeilinger (alternate), Community Transportation Association of America

**MEMBERS NOT PRESENT**

Christopher P. Boylan, New York State Metropolitan Transportation Authority

**FTA TEAM**

Jayne Blakesley  
Linda Lasley  
Elizabeth Martineau  
Crystal Peyton  
Christopher Van Wyk  
Nancy-Ellen Zusman

**PUBLIC**

Scott Bugrew, CTAA  
Sid Goldstein, Transit Access Report  
Melissa Lewis, Jordan & Associates  
Susan Perry, APTA - Consultant  
Bruce Sankey, Bus & Motorcoach News



**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting Summary - September 12-13, 2006**

**Review Agenda and July Meeting Summary**

The facilitator reviewed the agenda and meeting summary. The agenda was adopted as proposed. The meeting summary was approved with the removal of a paragraph concerning a limit on the transit agencies that may participate in a particular exception.

**Overview of Negotiated Rulemaking Revisited**

Susan Podziba, the facilitator, presented her original slides on negotiated rulemaking to describe the consensus process and the ramifications of reaching consensus agreements on all issues, some issues, and no issues. She stated that CBNRAC would try to reach tentative agreements on as many sections of the regulation as possible to enable them to use the last meetings to focus on the most difficult issues.

If consensus is reached on all issues, FTA will use the consensus text as the basis of its Notice of Proposed Rulemaking (NPRM) and CBNRAC members will refrain from providing formal negative comments on the NPRM. If CBNRAC reaches agreement on some, but not all, by consensus, CBNRAC may agree to consider those agreements as final consensus. In such a case, FTA would use the regulatory text of the final consensus agreements and decide all the outstanding issues. CBNRAC members would refrain from providing formal negative comments on those sections based on consensus regulatory text and would be free to provide negative comments on the sections decided by FTA. In the event that no consensus is reached on any issues, FTA will decide all issues of the charter regulation, and CBNRAC members may comment on all components of the NPRM.

Some members of the public transit agency caucus stated that they had concerns with some of the draft regulatory text. They felt that FTA had indicated its preferences in favor of private charter providers in some sections of the draft regulatory text. Some members of the private charter providers caucus stated that there were sections of the draft regulatory text that they perceived as benefiting public transit agencies over the private sector.

FTA stated that the draft regulatory text is completely open for revision by CBNRAC. FTA will use final consensus agreements reached by CBNRAC as the basis for the charter regulations and will decide any remaining issues to ensure that the final rule is completed in a timely fashion. FTA stated that the draft regulatory text should not be

viewed as FTA's position, but rather reflective of the discussions to date. Where text was provided for issues not previously discussed, the draft text should be considered as a mechanism for focusing CBNRAC discussions.

**Discussion of Issue #1:** Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

The public transit caucus proposed the following:

*A recipient may provide "community-based transportation" within its service area on an incidental basis. Community-based transportation means:*

*(1) Charter service to*

*(a) A supporting government entity; or*

*(b) Charter service to a private, non-profit organization exempt from taxation under subsection 501(c)(1), 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue, or a faith-based organization, that is registered as such on the FTA charter registration website in accordance with §604.8; or*

*(c) Charter service to a qualified social service agency under appendix A of 49 CFR part 604.*

The private sector response to this proposal was that both the concept of "supporting government entity" and the organizations referred to in item (b) were too broad and required constraints on what fit into each category. During the discussion, there was a suggestion to provide a cap, based on a percentage of hours, to cover charter service provided by the public transit agencies under all exceptions. In discussing this idea, CBNRAC decided they needed to define charter before they could further consider the concept of such a cap.

### **What is Charter?**

Jim LaRusch of APTA and Rick Schweitzer of the ABA each provided a document of indicia of charter bus service. (Both are attached as Appendix A.) In reviewing both documents, CBNRAC answered the question, "Is this element present in each instance of charter such that it is a necessary, but not sufficient condition for a finding of charter?" The following elements met this condition:

**Single Agreement.** Charter service is provided to a group of riders pursuant to a single contract or similar arrangement. The form of the agreement need not meet the legal definition of 'contract' to be an indicator of charter service.

**Fixed Charge:** Charter Service is provided, in whole or in part, for a fixed charge. (This may include subsidies.\*)

**Control of Service:** Route, schedule, itinerary decisions, or terms of service are controlled by anybody other than the service provider.

The outstanding element pertained to **exclusive use/open and closed door service/common origin or destination**. CBNRAC was not able to agree on how to define an identifiable group distinct from the general public. For example, all agreed that the boy scouts is a distinct group, but there was disagreement concerning whether or not people attending a sporting event constituted a distinct group.

**Exclusive use** was described as service that is designed to benefit an identifiable group versus service designed to benefit the public at large. Again, there was difficulty in describing an identifiable group. Questions raised during the discussion included: Are people who are attending a sports event an identifiable group? Are the people traveling to attend a July Fourth Fireworks an identifiable group?

**Open door/Closed door** was problematic because of concern that service that is open to the general public, but located far from any uses other than service for an event, could be classified as public transportation.

The element **single point of origin or destination** did not fit into the definition of charter because charter service may involve multiple pick up and drop off points such as in trips to Atlantic City casinos.

Ultimately, the central disagreement within CBNRAC concerns the provision of service for short term, occasional events such as golf tournaments and other sporting events, conventions, flower and home shows, and county fairs. Some believe that these are always charter, which would suggest that the private sector should always have the "first bite at the apple." Others believe that these events are often serviced as public transportation. Though all would like to set a "bright line" distinction between charter and public transportation, the number of factors and their various configurations make it difficult to do so.

CBNRAC considered a number of components that fall into the "gray area" of overlap between charter and public transportation for occasional events. These included:

Route:

- Addition of equipment to existing routes
- Extending hours of existing routes or adding a weekend day

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\* A subsidy, in a fixed amount by itself shall not establish that service in question as charter.

- Adding stops to existing routes
- Extension of existing routes
- Deviating from an existing route
- Creating a special route for a short term event
- Creating a route that is not connected to any existing routes

Duration of service:

- 5 days or less for an event
- 5-10 days in sequence for an event
- 10-12 days over a sport season, e.g. football
- 81 days over the baseball season
- One week, 4 times per year

Distance

- Deviating from an existing route for up to  $\frac{3}{4}$  mile
- Creating a new route that is 1, 2, 5, 10, 20 miles from a regular route

During this discussion, CBNRAC members were asked to explain their motivation for seeking to provide service for occasional events under the charter regulations.

Members of the public transit caucus included the following reasons:

- Provide for the Public Good, e.g. traffic mitigation
- Mandate is to move people, meet the public need for transportation, provide for broad range of community mobility needs
- Reduce impact of event on infrastructure
- Service the community: local taxes pay for operating expenses, and the public expects to be served for local events such as July Fourth fireworks
- Support local economic growth and development programs

Members of the private charter providers caucus included the following reasons:

- Increase market/profit
- Protect commercially viable business
- Right to “first bite of the apple” except for services that can only be provided at a loss

**Website Work Group Presentation and Review Proposals for Issue #2:** How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

The website work group presented proposed website pages for the registration of charter providers and registration of exception #1 non-profits groups. (The slides are available on the docket with the September meeting materials.) CBNRAC members thanked the work group for developing a useful and workable website prototype to assist with implementation of the charter bus regulations.

### Discussion of Issues

The discussion of issues continued through exchange of proposals between the private sector caucus and the public transit caucus. Multiple caucus meetings were held to develop proposals and responses to proposals. (The three proposals exchanged are attached at Appendix B.)

The private sector caucus proposal offered a cap for public transit provision of charter service for local government and qualified non-profit entities that was packaged with a charter definition that included a “golf-tournament-flower show” rule.

CBNRAC discussed the proposal including how the cap would relate to the “willing and able” provisions and site visits by local, state, and federal officials.

The public transit caucus countered with a proposal that packaged an exemption for internal transportation of transit employees; exemptions for site visits to transit projects; capped mileage for service under exceptions for local and state government and needy organizations including Appendix A organizations; existing exceptions for the elderly and disabled, when there are no willing and able private charter providers, special events, and by agreement; a system for capped service for irregular routes defined as service for less than 5 days; and separate rules, limitations, and/or exceptions for rural providers.

The private sector caucus countered with a proposal that packaged an exemption for internal transportation of transit employees; exemptions for site visits of transit projects with such service posted on the FTA website; capped hours for service under exceptions for local and state government and needy organizations; existing exceptions for the elderly and disabled, special events, and by agreement; and charter definition that included a “golf-tournament-flower show” rule.

The discussion of these proposals included an exception for the indigent elderly. Since it is difficult to determine income levels of elderly requesting service, CBNRAC discussed an exception that would allow public transit agencies to provide unlimited service for the elderly to particular destinations such as food banks, shelters, cooling and heating centers, churches, and other destinations, the purpose of which is to provide services to the needy.

CBNRAC members agreed to maintain the current exceptions for people with disabilities and for special events, e.g. Olympics, which require a public/private planning process.

The discussion of the cap led to questions about whether a public transit agency could provide service for local government or needy organizations under the willing and able exception after it reached its cap.

There was also discussion of a scenario in which there is no customer to purchase service. For example, as part of its economic development work, an event such as the circus is given a permit to perform. The event organizers do not plan for transportation of people to and from the circus. The local government then expects the public transit agency to arrange for buses to move people to and from the circus. In this case, there is no contract and people pay fares on a special route.

Ultimately, it became clear that without agreement on a definition of charter, the cap cannot serve as a mechanism for resolving the disputes centered on the provision of service for occasional events.

**Discussion of Issue #3 and Issue #4:** How can the enforcement of violations of the charter bus regulations be improved? How can the charter complaint and administrative appeals process be improved?

There was support within CBNRAC to take the complaint process out of the regions, provide for de novo appeals to the FTA Administrator, and maintain all charter rule decisions in a searchable database on the FTA website.

The draft regulatory text includes provisions for the use of administrative law judges (ALJs). Prior to the meeting, the public transit agency caucus distributed a proposal for all charter complaints and appeals to be handled by FTA Headquarters. They support this approach because of FTA expertise of the charter regulations; to provide for FTA oversight; and for consistency across decisions.

Those who supported the use of ALJs did so because judges are in the business of making legal decisions; ALJs specializing in charter complaints would contribute to consistency across decisions; and for the appearance of independence as opposed to perceptions of FTA bias.

Questions remained on which proposal would provide for timeliness of decisions, consistency, protection against frivolous complaints, and reduction of administrative burden on FTA.

### **Public Comment**

There were no public comments.

## Next Steps

**Drafting Work Group:** A drafting work group will meet to revise the draft regulatory text prepared by FTA. In addition, they will draft alternative language for those issues and elements of issues for which alternative proposals will be reviewed. The drafting work group members are: Jim LaRusch (APTA), Steve Klika (UMA), Dale Marsico (CTAA), Rick Schweitzer (ABA), and Linda Lasley (FTA).

**Draft Regulatory Text:** FTA will provide the revised draft regulatory text for distribution to CBNRAC by October 11.

**The next meeting** is scheduled for October 25 and 26 at a location to be determined.

## Attendance

### **CBNRAC MEMBERS AND ALTERNATES**

Debbie Alexander (alternate), Capital Area Transportation Authority  
Ron Baumgarten, River Cities Transit  
John (Jack) Burkert, Trailways  
David Coburn (alternate), Coach USA  
John Corr, National School Transportation Association  
Kevin Disburg (alternate), River Cities Transit  
Sandra Draggoo, Capital Area Transportation Authority  
Daniel Duff, American Public Transportation Association  
Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
Smedley Lynn (alternate), Trailways  
Clyde Hart, American Bus Association  
David B. Horner, Federal Transit Administration (FTA)  
Mark E. Huffer, Kansas City Area Transportation Authority  
Carol Ketcherside (alternate), Southwest Transit Association  
Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
Steve Klika (alternate), United Motorcoach Association  
Jim LaRusch (alternate), American Public Transportation Association  
Dale J. Marsico, Community Transportation Association of America  
Karen Head, Amalgamated Transit Union  
Harold Morgan, Taxicab, Limousine & Paratransit Association  
Victor Parra, United Motorcoach Association  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Ken Presley (alternate), Lancaster Trailways of the Carolinas  
Jeff Rosenberg, Amalgamated Transit Union  
Richard Schweitzer (alternate), American Bus Association  
Jim Seal (alternate), Coach America  
Carl Sedoryk, Monterey Salinas Transit  
Gary Smith (alternate), Oklahoma State University, The Bus Community Transit System

David Spacek, American Association of State Highway and Transportation Officials  
Michael R. Waters, Coach America  
Chris Zeilinger (alternate), Community Transportation Association of America

**MEMBERS NOT PRESENT**

Christopher P. Boylan, New York State Metropolitan Transportation Authority  
Stephanie Negriff, Los Angeles County Municipal Operators Association

**FTA TEAM**

Jayne Blakesley  
Linda Lasley  
Elizabeth Martineau  
Crystal Peyton  
Elena Kilberg  
Nancy-Ellen Zusman

**PUBLIC**

Scott Bugrew, CTAA  
Sid Goldstein, Transit Access Report  
Pat Jordan, Jordan & Associates  
Melissa Lewis, Jordan & Associates  
Susan Perry, APTA – Consultant  
Bruce Sankey, Bus & Motorcoach News  
Becky Weber  
Ronna Weber, BKSH & Associates



**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting Summary – October 25-26, 2006**

**Review Agenda and September Meeting Summary**

The facilitator reviewed the agenda and meeting summary. The agenda was adopted as proposed. The meeting summary was approved with one addition to clarify the relationship between charter and subsidies.

**Preliminary Statements**

A CBNRAC member requested that materials showing public transit agencies advertising charter service, which were downloaded from APTA member websites via links from the APTA website, be placed on the docket.

A CBNRAC member stated that the public transit caucus considers the scope of the negotiated rulemaking as solely the four issues outlined in the Congressional Conference Committee Report (Report) and that these questions do not include changes to the definitions of “public transportation” or “charter.”

A discussion ensued concerning the scope of the CBNRAC reg neg proceedings. This discussion referred to the initial agreement on the agenda of issues, which included “review and clarify the definitions” as well as the need to clarify the definition of charter to improve enforcement of charter regulation violations, one of the items in the Report. Public transportation is defined by statute and so cannot be changed in regulation. A handout was provided with the current statutory definition of public transportation and the current regulatory definition of charter. (The handout is attached to this meeting summary.)

The private charter operators distributed a proposed definition of charter at the start of the meeting. The public transit representatives requested time for a caucus, after which they distributed a proposed definition of charter. (Both proposals appear later in this meeting summary.)

**Review and Discuss Draft Regulatory Text**

Tentative agreements were reached on the following:

Subpart A—General Provisions

604.5 Charter Service Agreement

604.6 Charter service by recipients (a)(3) and (4)

Subpart B—Registration Required

Subpart D—Complaints

Subpart E—Investigations

Subpart H—Appeal to Administrator and final agency orders

Subpart I—Judicial review

Outstanding issues remain for the following:

Subpart A—General Provisions

604.1 Purpose

604.2 Applicability

604.3 Exemption

604.4 Definitions

604.6 Charter service by recipients except (a)(3) and (4)

Subpart C—Advisory Opinions

Subpart F—Referrals to an Administrative Law Judge

Subpart G—Hearings

**Discussion of Draft Regulatory Text on Enforcement Issues: Subparts D, E, F, G, H, I**

Tentative agreements were reached on Subparts D, E, H, and I. Outstanding issues remain for Subparts F and G.

**Complaint and Enforcement Process for Charter Regulation Violations:** CBNRAC reviewed a flowchart that illustrated the complaint and enforcement processes proposed in the draft regulatory language. (The flowchart is attached.)

A number of issues concerning timeframes were revised for the purposes of clarification and consistency. For example, the Committee agreed that 20 calendar days after a complaint is filed, FTA will notify the parties that it was either dismissed or docketed. The timeframe for an ALJ or FTA Chief Counsel decision after a notice that the FTA investigation is complete will be 110 calendar days.

The key outstanding issue on enforcement is whether an ALJ or the FTA Chief Counsel will adjudicate complaints. Subpart F describes the process for FTA referral of a complaint to an ALJ. Subpart G describes the hearing process before an ALJ. CBNRAC did not review this regulatory text because there is no agreement on the use of ALJs.

In addition, CBNRAC members raised questions about what the FTA investigation (Section 604.22) would entail and the availability of written reports resulting from investigations. It was stated that such reports would be available to the public immediately if the complaint was dismissed with prejudice and after the ALJ/FTA Chief Counsel decision, if the complaint was not dismissed.

**Removal from Registration Lists/FTA-Initiated Investigations:** CBNRAC reviewed a flowchart for complaints regarding removal of private charter operators and social service organizations from the registration lists and another flowchart for FTA-initiated investigations. (Both flowcharts are attached.) The only change to the proposal was to add a right to appeal a Regional Administrator decision concerning removal from a registration list to the FTA Chief Counsel.

CBNRAC also discussed a mandatory reconciliation attempt prior to filing a formal complaint. Some members stated that matters of confusion could be clarified more readily at the local level. Others stated that the committee agreed at an earlier meeting to eliminate the 30-day reconciliation effort required under the existing regulations because it has not been effective. Some CBNRAC members stated that parties can voluntarily resolve a complaint at any time during the complaint process and then request that the complaint be withdrawn.

### **Discussion of Draft Regulatory Subpart A: General Provisions**

Tentative agreements were reached on Sections 604.5 Charter Service Agreement and 604.6 Charter service by recipients, exceptions (a)(2), (5), and (6). Outstanding issues remain on Sections 604.1 Purpose, 604.2 Applicability, 604.3 Exemption, 604.4 Definitions, 604.6 Charter service by recipients (a)(2), (5) and (6). In addition, CBNRAC members agreed that a section describing the general purpose of the regulations should be added.

The key issues included in discussions of Subpart A were exemptions, exceptions, and the definitions of charter, interested party, and recipient. The drafting work group will revise the latter two.

**Exemptions:** CBNRAC members discussed mechanisms for addressing issues related to rural providers with demand responsive transit systems. A proposed exemption for recipients receiving funding under FTA's 5310, 5311, 5316 and 5317 was deemed too broad. CBNRAC members determined that other mechanisms are better suited to address rural provider issues.

An exemption will be made for provision of bus services during emergencies consistent with the new FTA rule on service during emergencies.

In addition, the exception listed as 604.6(a)(1) in the draft regulatory text, referred to in prior discussions as site visits to transit projects for oversight purposes, will be moved to applicability.

**Exceptions:** The key issues discussed under exceptions included prohibitions for large urban transit systems, transporting government officials for non-transit related purposes; timeframes for indicating interest; leasing public transit buses and special events; and additional exceptions.

Prohibitions for large urban transit systems: Transit systems with fleets of more than 1000 buses will be prohibited from providing services for government officials for non-transit related purposes and social service agencies.

Transporting government officials for non-transit related purposes: The exception for transporting government officials for non-transit related purposes will be capped at a certain number of service hours, which are calculated as the time the bus is in use,

including waiting and deadhead time. Proposals were made to cap those hours at 50, 100, 125, and 150.

Timeframes for indicating interest: For the exception concerning transit agency notice to registered charter operators, CBNRAC members agreed that if the request for service is received 30 days or less before the service is to be provided, then charter operators will be required to indicate interest within 72 hours. If the request for service is received more than 30 days before service is to be provided, charter operators will have 14 calendar days to respond.

Leasing public transit buses and special events: The exceptions concerning the leasing of public transit equipment by private charter providers and the exception for special events are agreed to in concept, but need to be re-drafted.

Additional exceptions: CBNRAC agreed to add to the new regulations the exceptions from the existing charter regulations for 604.9 (b)(5)(i) service with a significant number of disabled passengers; 604.9 (b)(5)(iii) organizations receiving State or local governmental body public welfare assistance funds; and 604.9(b)(6) recipient in a non-urbanized area for service in which more than 50% of the passengers will be elderly. Organizations requesting service under these exceptions will be required to register as qualified social service organizations.

**Definitions:** The definition of charter continues to be the most contentious issue facing CBNRAC. The controversy primarily centers on whether or not services provided for occasional events, such as golf tournaments, festivals, state fairs, July Fourth celebrations, flower shows, home shows, and sporting events, meet the definition of charter. FTA regional decisions have sometimes defined service provided for these events as public transportation when certain criteria were met and sometimes as charter.

The private charter provider caucus offered the following proposal for the definition of charter at the start of the meeting:

*Charter service means transportation provided by a recipient pursuant to a contract or similar arrangement at a negotiated charge to persons or groups who have effectively acquired the use of a vehicle or service to travel on an agreed itinerary or route. This definition includes:*

- 1) The incidental use of FTA-funded equipment for transportation of school students (including college, university, and trade school students), personnel or equipment;*
- 2) Shuttle service to events (such as festivals, sporting events, conventions, and similar functions) that occur on an irregular basis or which service does not continue throughout the year, regardless of whether individual fares are charged to passengers, and*
- 3) Shuttle services provided under agreements with institutions, such as universities, corporations or governments.*

The public transit caucus offered the following proposal for the definition of charter in response:

*The term "charter service" means providing exclusive service using buses or van to a group of riders pursuant to a single contract for a fixed charge paid by a public or private entities, according to an itinerary determined by someone other than the recipient.*

*Include as guidance APTA/ABA Indicia of Charter service.*

CBNRAC discussed inclusion of the term "exclusive" within the charter definition as well as the possibility of applying it to less than 100% of the bus passengers. Public transit members stated strongly that the term "exclusive" must be part of the definition. The private charter operators countered that use of the term exclusive suggests that one person could transform service from charter to public transportation. The group considered the phrase ".....that has been designed for the essentially exclusive benefit of the person or groups."

CBNRAC also discussed a number of examples of service that would likely not be considered charter including:

- Extension of a route through a subsidy by a company;
- Downtown circulars subsidized by local businesses;
- Demand responsive service when an additional day of weekend service is subsidized by the Chamber of Commerce.

Members also agreed that the following are not charter:

- Addition of equipment to existing routes;
- Extending hours of existing routes or adding a weekend day;
- Adding stops to existing routes;
- Deviating from an existing route due to construction or other traffic obstructions.

There was disagreement about whether bus service paid for by a single employer to serve its workers is charter. If the single facility stimulates growth and development such that eventually there are multiple businesses in the area, it was understood that a public transit agency could create a new route to serve this newly developed area. Such a new route would likely not require employer subsidy.

After a great deal of discussion, a proposed definition of charter was offered in the form of the attached flowchart: What is Charter? The major issue in dispute on this flowchart is the question of temporary routes. Public transit members believe such temporary routes are sometimes public transit, and the charter operators believe it is charter service. In addition, there is disagreement about the threshold question, that is, what is the first characteristic of service that should cause a public transit agency to consider whether service is charter or public transportation.

### **Discussion of Draft Regulatory Subpart B: Registration Required**

Tentative agreement was reached on this subpart, which provides for the registration of private charter operators, who might indicate interest for services noticed by public transit agencies and for qualified social service organizations, which may request reduced rate charter service from public transit agencies.

CBNRAC members agreed that registrations should be good for two years on a rolling basis, that is, from the date of registration.

During discussions of Appendix A, it was explained that only those social service organizations that receive funding from a federal or state program listed in Appendix A would be qualified to register. In addition, they agreed that FTA could revise Appendix A based on changes to programs listed and requests to add appropriate federal or state programs. Revisions to the Appendix would not need to be done through a regulatory process. CBNRAC also discussed allowing private organizations that do not receive Appendix A funding, but can show need, to petition FTA to be considered qualified to register.

### **Discussion of Draft Regulatory Subpart C: Advisory Opinions**

The issue of advisory opinions remains an outstanding issue. CBNRAC members discussed advisory opinions as a mechanism for expedited opinions prior to the performance of service and which would be based on the facts provided. Thus, a private charter operator or a public transit agency could request an FTA advisory opinion to determine if particular planned or requested service would be considered charter under the regulations. FTA would prepare its advisory opinion based on the facts provided in the request without an investigation. If the facts were incorrect, the advisory opinion would not stand as an authoritative determination for the situation for which the advisory opinion was requested.

During discussions, a proposal was made to include a provision in the regulation for injunctive relief, in the form of an FTA order to cease and desist prior to the provision of service.

### **Public Comment**

Tom Cochran, Executive Director of The United States Conference of Mayors, expressed support for changes to the charter regulations that would allow transit agencies to provide transportation service to local governments and social service agencies in the community, thereby creating a bright line distinction that removes the transit agency from the subjective confusion involved in the existing regulatory process; clarification of the charter service regulations to allow public transportation agencies to provide community-based service directly to local governments and social service agencies; and that consideration be given to the concerns of the largest public transit agencies regarding regulations to allow public transportation agencies regarding their capacity to provide such service.

### **Next Steps**

**Drafting Work Group:** The drafting work group will meet again to review the draft regulatory text prepared by FTA. The drafting work group members are: Jim LaRusch (APTA), Steve Klika (UMA), Chris Zellinger (CTAA), Rick Schweitzer (ABA), and Linda Lasley (FTA). ABA will provide revised draft reg text for the sections concerning private leasing of public transit buses.

**Draft Regulatory Text:** FTA will provide the revised draft regulatory text for distribution to CBNRAC by November 22.

**The next and final CBNRAC meeting** is scheduled for December 6-7 at the Residence Inn, 550 Army Navy Drive, Arlington, Virginia.

**Attachments:**

- Current definitions of public transportation and charter
- Flowchart of complaints, investigations, administrative law judges, appeals, and judicial review.
- Flowcharts of complaints regarding removal from registration list and Agency initiation of investigation
- Definition of Charter Flowchart

**Attendance**

**CBNRAC MEMBERS AND ALTERNATES**

Debbie Alexander (alternate), Capital Area Transportation Authority  
Ron Baumgart, River Cities Transit  
John (Jack) Burkert, Trailways  
David Coburn (alternate), Coach USA  
John Corr, National School Transportation Association  
Kevin Disburg (alternate), River Cities Transit  
Sandra Draggoo, Capital Area Transportation Authority  
Daniel Duff, American Public Transportation Association  
Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
Smedley Lynn (alternate), Trailways  
Clyde Hart, American Bus Association  
David B. Horner, Federal Transit Administration (FTA)  
Mark E. Huffer, Kansas City Area Transportation Authority  
Carol Ketcherside (alternate), Southwest Transit Association  
Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
Steve Klika (alternate), United Motorcoach Association  
Jim LaRusch (alternate), American Public Transportation Association  
Harold Morgan, Taxicab, Limousine & Paratransit Association  
Stephanie Negriff, Los Angeles County Municipal Operators Association  
Victor Parra, United Motorcoach Association  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Ken Presley (alternate), Lancaster Trailways of the Carolinas

Mary Presley, Lancaster Trailways of the Carolinas  
Jeff Rosenberg, Amalgamated Transit Union  
Richard Schweitzer (alternate), American Bus Association  
Jim Seal (alternate), Coach America  
Carl Sedoryk, Monterey Salinas Transit  
Gary Smith (alternate), Oklahoma State University, The Bus Community Transit System  
David Spacek, American Association of State Highway and Transportation Officials  
Michael R. Waters, Coach America  
Chris Zeilinger (alternate), Community Transportation Association of America

**MEMBERS NOT PRESENT**

Christopher P. Boylan, New York State Metropolitan Transportation Authority

**FTA TEAM**

Linda Lasley  
Elizabeth Martineau  
Crystal Peyton  
Elena Kilberg  
Nancy-Ellen Zusman

**PUBLIC**

Eugene J. Berardi  
Sid Goldstein, Transit Access Report  
Josephin Holmberg  
Pat Jordan, Jordan & Associates  
Melissa Lewis, Jordan & Associates  
Bruce Lundberg, SBA Office of Advocacy  
Susan Perry, APTA – Consultant  
Ruth Rosthaniel (sp?), USCM  
Frank Turco, Bus & Motorcoach News  
Becky Weber, BKSH & Associates  
Ronna Weber, BKSH & Associates



**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Definition of Public Transportation**

From 49 USC 5302(a)(10):

"The term 'public transportation' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity rail transportation provided by the entity described in chapter 243(or a success to such entity)."

The reference to chapter 243 is to Amtrak.

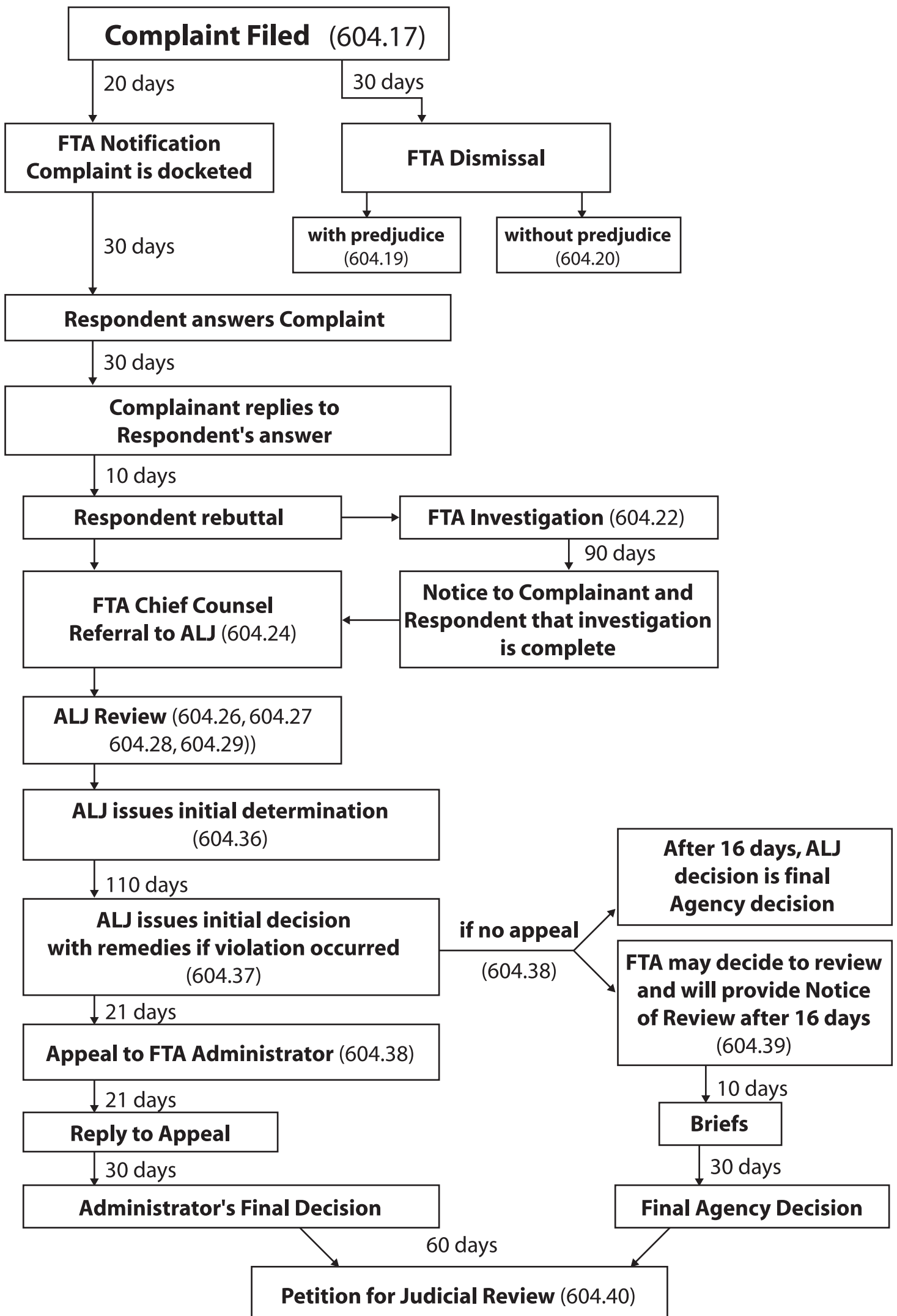
**Definition of Charter Service**

FTA regulatory definition of charter service at 49 CFR 604.5(e):

Transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin.

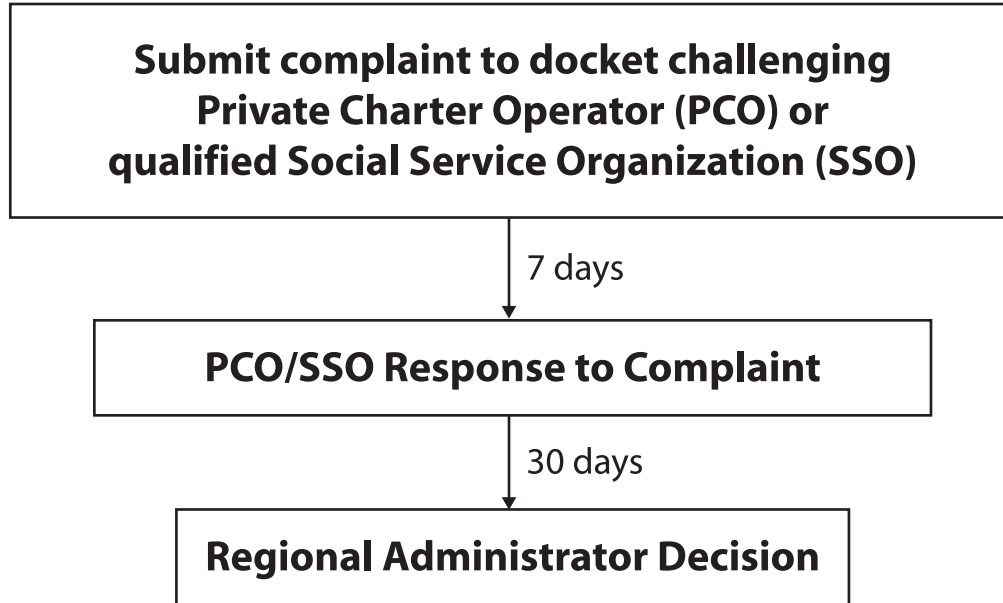
**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
CHARTER BUS NEGOTIATED RULEMAKING ADVISORY COMMITTEE**

**COMPLAINTS, INVESTIGATIONS, ALJS, APPEALS, JUDICIAL REVIEW**



**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
CHARTER BUS NEGOTIATED RULEMAKING ADVISORY COMMITTEE**

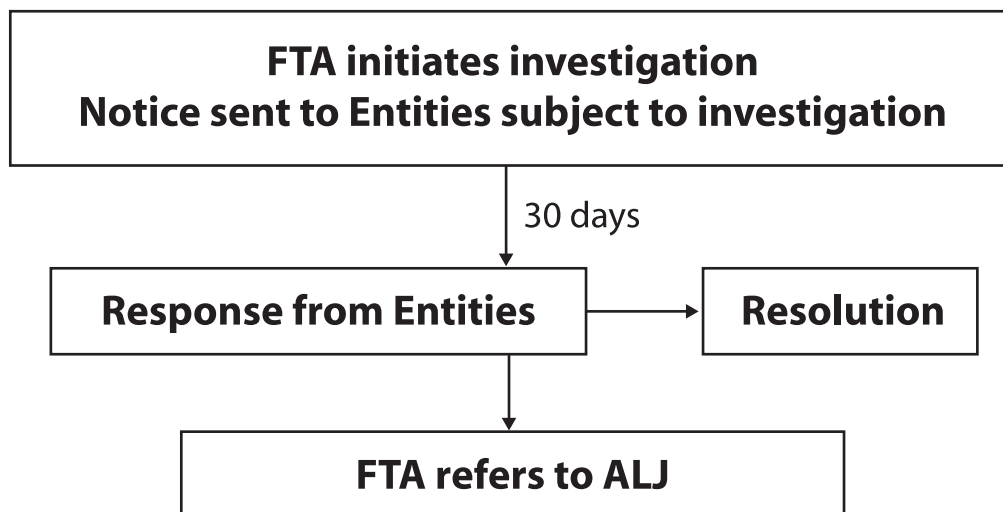
**COMPLAINTS REGARDING REMOVAL FROM REGISTRATION LIST (604.18)**



**No appeal to Administrator or Judicial Review**

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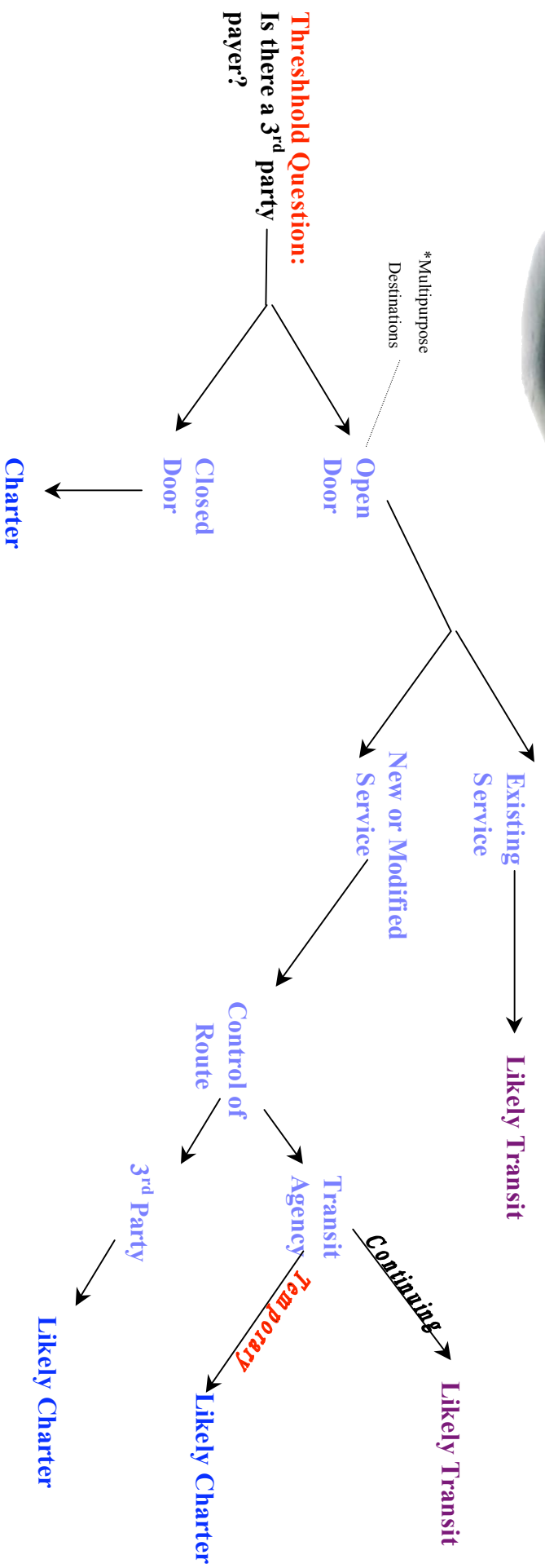
**AGENCY INITIATION OF INVESTIGATION (604.23)**



# What is Charter ?



?



- Regular route is not demand responsive.
- Irregular routes do not include route deviation.
- Irregular routes do not include traffic mitigation measures if the transit agency is in control and not receiving funds from others

**U.S. Department of Transportation  
Federal Transit Administration  
Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC)**

**Meeting Summary - December 6 - 7, 2006**

**Review Agenda and September Meeting Summary**

The facilitator reviewed the agenda and meeting summary. The agenda was adopted as proposed. The meeting summary was approved with no changes.

**Final Consensus: Summary of Agreements Reached and Outstanding Issues**

On December 7, 2006 at 2:45 pm, final consensus was reached on all issues except the outstanding issues listed below. In accordance with the CBNRAC Ground Rules, FTA will include the consensus-based language in its Notice of Proposed Rulemaking, and CBNRAC members will refrain from providing formal written negative comments on the consensus-based language. FTA will prepare text on the outstanding issues and CBNRAC members may provide negative comments on those issues.

<b>PART 604 – CHARTER SERVICE</b>	<b>Status of Provision</b>	<b>Outstanding Issue relative to final CBNRAC discussions</b>
<b>Subpart A – General Provisions</b>		
<b>604.1 Purpose</b>	<b>Final Consensus</b>	
<b>604.2 Applicability</b>	<b>Final Consensus except (c)</b>	
<b>(c) not applicable to charter providers receiving federal funds</b>	<b>No agreement</b>	<b>604 is or is not applicable to charter providers receiving federal funds</b>
<b>604.3 Exemption</b>	<b>No agreement</b>	<b>Delete or retain this provision</b>
<b>604.4 Definitions</b>	<b>Final Consensus except (c) and (k)</b>	
<b>(c) charter service</b>	<b>No agreement</b>	<b>Develop definition of charter</b>
<b>(k) pattern of violations</b>	<b>No agreement</b>	<b>Pattern of violations pertains to the same or different provisions of the charter regulations</b>
<b>604.5 Charter Service Agreement</b>	<b>Final Consensus</b>	
<b>Subpart B – Exceptions</b>		
<b>604.6 Purpose</b>	<b>Final Consensus</b>	
<b>604.7 Government Officials</b>	<b>No agreement</b>	<b>Cap on service hours (between 80 -120) allowed under this exception</b>

604.8 Qualified Human Service Organizations	Final Consensus	
604.9 Elderly and Individuals with Disabilities	Final Consensus	
604.10 Transit-dependent /Transportation-disadvantaged	Final Consensus	
Charter Service By Agreement	Final Consensus	
604.11 Hardship	No Agreement	Maintain current exception with current definition of "far away" or replace it with "deadhead time exceeding total trip time from initial pickup to final drop off."
604.12 Leasing Equipment	Final Consensus	
604.13 Events of Regional or National Significance	Final Consensus	
604.14 When No Registered Charter Provider Responds to Notice from a Recipient	Final Consensus	
604.15 Reporting Requirements for All Exceptions	No Agreement	Reporting on FTA website quarterly or by log that would be available by email upon request.
Fully Allocated Costs	No Agreement	All exceptions are subject to fully allocated costs or only 604.14 When No Charter Provider Responds to Notice from a Recipient
<b>Subpart C – Procedures for Registration and Notification</b>		
604.16 Registration of Private Charter Operators	Final Consensus except (a)(5)	
(a)(5) Private charter operator willingness to provide free or reduced rate service as part of registration information	No Agreement	Required or optional
604.17 Notification to Registered Charter Providers	Final Consensus	
604.18 Duties for Recipients Regarding Charter Registration Website	Final Consensus	
<b>Subpart XX – Procedures for Registration of Qualified Human Services Organizations and Duties</b>		

<b>for Recipients Regarding Charter Registration Website</b>		
<b>604.XX Registration of Qualified Human Services Organizations</b>	<b>Final Consensus except (b) and (c)</b>	
<b>(b) and (c) free or reduced charter service under exceptions</b>	<b>No Agreement</b>	<b>Public transit agencies provide service under exceptions either at fully allocated costs or for free and reduced rates.</b>
<b>604.XX Duties for Recipients Regarding Charter Registration Website</b>	<b>Final Consensus</b>	
<b>Subpart D – Advisory Opinions</b>		
<b>604.19 Purpose</b>	<b>Final Consensus</b>	
<b>604.20 Request for an advisory opinion</b>	<b>Final Consensus except (c)</b>	
<b>(c) Cease and Desist</b>	<b>No Agreement</b>	<b>Include provision for FTA issuance of cease and desist order or not</b>
<b>604.21 Processing of Advisory Opinions</b>	<b>Final Consensus</b>	
<b>604.22 Effect of advisory opinion</b>	<b>Final Consensus</b>	
<b>604.23 Special Considerations</b>	<b>Final Consensus</b>	<b>Make consistent with decision on 604.20(c)</b>
<b>Subpart E – Complaints</b>	<b>Final Consensus</b>	
<b>604.24 Purpose</b>		
<b>604.25 Complaints, answers, replies, and other documents</b>		
<b>604.26 Complaints for removal from registration list</b>		
<b>604.27 Dismissals</b>		
<b>604.28 Incomplete complaints</b>		
<b>604.29 Filing</b>		
<b>604.30 Service</b>		
<b>Subpart F – Investigations</b>	<b>Final Consensus</b>	
<b>604.31 Investigation of complaint</b>		
<b>604.32 Agency initiation of investigation</b>		
<b>Subpart G – Referrals to an Administrative Law Judge</b>	<b>No Agreement</b>	<b>Refer complaints to ALJ or FTA Chief Counsel retains complaints</b>

604.33 Chief Counsel's referral to an ALJ		
604.34 Separation of functions		
Subpart H – Hearings	No Agreement	Complaints heard by ALJ or FTA Chief Counsel
604.35 Powers of an Administrative Law Judge		
604.36 Appearances, parties, and rights of parties		
604.37 Discovery		
604.38 Depositions		
604.39 Public disclosure of evidence		
604.40 Standard of proof		
604.41 Burden of proof		
604.42 Offer of proof		
604.43 Record		
604.44 Waiver of procedures		
604.45 Initial decisions by ALJ		
604.46 Remedies		
Subpart I – Appeal to Administrator and final agency orders	Final Consensus	(Make consistent with decision for ALJ or FTA Chief Counsel)
604.47 Appeal from ALJ initial decision		
604.48 Administrator's discretionary review of ALJ initial decision		
Subpart J – Judicial review	Final Consensus	
604.49 Judicial review		

### **Review Draft Regulatory Text for Outstanding Issues**

CBNRAC reviewed the following outstanding issues:

- Subpart D – Advisory Opinions;
- Subpart G – Referrals to an Administrative Law Judge;
- Subpart H – Hearings (includes Section 604.48 Remedies);
- Subpart A – General Provisions (includes definition of charter); and
- Subpart B – Exceptions.

**Subpart D – Advisory Opinions:** CBNRAC discussed advisory opinions as formalizing the current “letters of determination” prepared in response to requests for



regulatory guidance prior to providing service. Advisory opinions may be requested by either public transit agencies or private charter operators to determine if a proposed “move” is allowable under the charter regulations based on facts provided. Advisory opinions will be posted to the FTA website to increase consistency in implementation of the charter regulations nation-wide.

CBNRAC did not reach agreement on FTA issuance of cease and desist orders to prevent planned service. CBNRAC members opposing this provision stated that FTA already has authority to issue cease and desist orders and so does not need to include it in the charter regulations. They were also concerned that given the short time frame for review, FTA might decide to issue such an order without knowledge of all the relevant facts. Those supporting the cease and desist provision in the charter regulation stated that without it their only recourse is to file complaints after the fact, which does not address lost revenue. They also expressed concern that charter service might be provided after issuance of an advisory opinion with minor adjustments to the service.

CBNRAC reached final consensus on all of Subpart D except 604.20(c) concerning cease and desist orders.

**Subpart G – Referrals to an Administrative Law Judge (ALJ):** CBNRAC reviewed the draft regulatory text of this section. There were no recommended changes to the text and no revisions were made to it. However, there is no agreement on the use of ALJs. All CBNRAC members supported moving the complaint review process out of FTA regional offices to promote greater consistency in interpretation of the charter regulations. The private charter operators support the use of ALJs. The public transit agencies support FTA Chief Counsel review of complaints, except at least one member was concerned that it would require travel to Washington, D.C. to defend against a complaint.

**Subpart H – Hearings (includes Section 604.48 Remedies):** CBNRAC reviewed the draft regulatory text of this section. There were no recommended changes to the text and no revisions were made to it. However, as with Subpart G above, there is disagreement concerning whether hearings would be conducted by ALJs or FTA Chief Counsel.

### **Subpart A – General Provisions**

**604.2 Applicability:** CBNRAC discussed and agreed that Section 604 should not apply to transport for the immediate evacuation of people due to an emergency; to entities providing human service transportation under the 5310, 5316, and 5317 programs; and to non-urban transit agency provision of service for their employees to attend job training activities.

There was no agreement on section 604.2(c) which would make section 604 not applicable to private charter operators who receive FTA funds, directly or indirectly, under the 5307, 5309, 5310, 5311, 5316, 5317 programs of SAFETEA-LU or 3038 under TEA-21. Some CBNRAC members stated that if charter operators receiving these funds are not exempted from the charter regulations, they would be unable to provide the service they are in business to provide. Others stated that private charter operators receiving federal dollars should be governed under the charter regulations in the same manner as public transit agency recipients.

**604.3 Exemption:** This provision provides an opportunity for recipients, who have no intention of providing charter service, to file an affidavit attesting to that fact. Some CBNRAC members wanted to delete this section and others thought it should remain. There was no agreement on this section.

**604.4 Definitions.** There was agreement on all definitions except for 604.4(c) Charter and 604.4(k) Pattern on Violations.

#### **604.4(c) Definition of Charter**

The private charter provider caucus distributed the following proposed definition:

*(e) Charter Service means transportation provided by a recipient pursuant to a contract or similar arrangement at a negotiated charge to persons or groups who have effectively acquired the use of a vehicle or service to travel on an agreed itinerary or route. This definition includes:*

- 1. The incidental use of FTA-funded equipment for transportation of school students (including college, university and trade school students), personnel or equipment;*
- 2. Shuttle service to events (such as festivals, sporting events, conventions, and similar functions) that occur on an irregular basis or which service does not continue throughout the year that does not include multiple public purposes and multiple public destinations; regardless of whether individual fares are charged to passengers and*
- 3. Shuttle services provided under agreements with institutions, such as universities, corporations or governments.*

FTA Staff circulated the following draft definition:

*The term "charter service" means providing transportation service using buses or vans to a group of riders pursuant to a single contract with a third party beneficiary, for a fixed charge, and according to an itinerary determined by someone other than the provider of the service. The term "charter service" shall not include the following:*

- 1) Adding equipment to an existing route;*
- 2) Extending service hours for an existing route;*
- 3) Adding service days to an existing route;*

- 4) *New or modified service operating on an open-door, continuing basis throughout the year; and*
- 5) *Service to an individual on a demand responsive basis.*

The public transit caucus proposed the following revised version of the FTA staff proposal:

*The term "charter service" means providing transportation service using **federally-funded** buses or vans to a group of riders pursuant to a single contract with a third party ~~beneficiary~~, for a fixed charge, and according to an itinerary determined by someone other than the provider of the service, **and not open to the general public**. The term "charter service" shall not include the following:*

- 1) *Adding equipment to an existing route;*
- 2) *Extending service hours for an existing route;*
- 3) *Adding service days to an existing route;*
- 4) *New or modified service operating on an open-door, ~~continuing~~ recurring basis throughout the year; and*
- 5) *Service to an individual **or individuals** on a demand responsive basis.*

There was no agreement on the definition of charter. The core issue in dispute concerns the status of service for occasional events such as flower shows, sporting events, and festivals. Private charter providers consider bus services for these events to be charter. Public transit agencies consider these services to be public transportation. This is a key issue of concern for all participants.

**604.4(k) Pattern of Violations:** The draft regulatory text read "more than one instance of non-compliance with this part." The final proposal offered by the private charter operators was, "more than one finding of an instance of non-compliance." They supported this definition based on the assumption that a violation of the regulation should be based on whether the party knew or reasonably should have known the law.

The final proposal of the public transit agencies was "more than one finding of non-compliance with the same or related provision." CBNRAC members stated that given that the regulations will be new, it will be difficult for public transit agencies to know FTA interpretations prior to findings of violations.

### **Subpart B - Exceptions**

**604.7 Government Officials:** There was no agreement on 604.7(b) regarding a cap on the number of service hours permitted under this exception for government officials for non-transit related purposes. The final proposals were for 80 service hours per year and 120 service hours per year.

**Sections 604.8 (Qualified Human Services Organizations), 604.9 (Elderly and Individuals with Disabilities), 604.10 (Transit-dependent/Transportation-disadvantaged):** As agreed by CBNRAC, these will be combined into one exception for human services transportation as defined in the February 24, 2004 Executive Order on Human Service Transportation Coordination, "persons who are transportation-disadvantaged are persons who qualify for Federally conducted or Federally assisted transportation-related programs or services due to disability, income, or advanced age." Organizations that receive funding under federal human service programs, which will be specified in an updated Appendix A, will not need to register as a human service organization on the FTA website. Any organization not receiving funds from an Appendix A program will need to meet the stated criteria and register on the website to be eligible to receive charter services under this exception.

**Exclusion:** Recipients with 1000 or more buses in peak hour service will be excluded from providing service under the 604.7 Government Officials and 604.8 Human Service Transportation exceptions. FTA requested a policy-justification for this exclusion.

**By Agreement:** CBNRAC agreed to add an exception concerning provision of charter service by agreement of the public transit agency and all the registered charter providers in the geographic area. This exception is in the current charter regulations.

**604.11 Hardship:** There is no agreement on a hardship exception. The final proposal by the private charter operators was to include the current hardship exception, which is based on the concept, "too far." The public transit proposal was replace "too far" with "where the roundtrip deadhead time exceeds the time between initial pickup and final drop off of the passengers."

**604.15 Reporting Requirements:** The draft regulation text of this section requires a recipient providing charter service under an exception to post information on the service provided to the FTA website on a quarterly basis. The public transit agencies oppose placing this information on a website for security reasons and proposed making it available upon request, by email. The private charter operators support quarterly posting to the FTA website to avoid the need for repeated information requests to local transit agencies.

**Fully Allocated Costs:** The private charter operators proposed that charter service under the exceptions be provided in accordance with fully allocated costs requirements. The public transit agencies stated that this service should be allowed at free or reduced rates except for 604.14 When No Registered Charter Provider Responds to a Notice from a Recipient.

Much of the language of Subpart B was revised during the meeting. FTA and the drafting work group will prepare the revised language for distribution to CBNRAC.

### **Presentation on FTA's 5310, 5316, and 5317 Programs**

Bryna Helfer, Director, United We Ride Program presented on human services transportation coordination and the impact of the charter rules on the 5310, 5316, and 5317 programs. She referred to and provided the following handouts: Executive Order on Human Service Transportation; Charter Bus and Human Service Transportation; Federal Interagency Coordinating Council on Access and Mobility, Vehicle Resource Sharing, Final Policy Statement; and Federal Interagency Coordinating Council on Access and Mobility, Coordinated Human Service Transportation Planning, Final Policy Statement. (All are attached.) Mary Martha Churchman, Director of Transit Programs, Office of Program Management, provided additional detail about each program.

### **Review Sections with Tentative Agreements**

CBNRAC reviewed the draft text for those sections it had previously reached tentative agreements on. These sections were:

- Subpart C – Procedures for Registration and Notification;
- Subpart E – Complaints;
- Subpart F – Investigations;
- Subpart I – Appeal to Administrator and final agency orders; and
- Subpart J – Judicial review.

**Subpart C – Procedures for Registration and Notification:** All of Subpart C is agreed except 604.16(a)(5). This provision requires registered charter providers to indicate whether or not they are willing to provide free or reduced-rate services to human service organizations. The private charter operators want this provision to be optional; public transit CBNRAC members want it to be a requirement.

**Registration of Qualified Human Service Organizations:** In the draft regulation, this section was deleted. By CBNRAC agreement, it will be retained for human service organizations that do not receive Appendix A funding.

**Subpart E – Complaints:** CBNRAC reached final consensus on this subpart with minor revisions to it.

**Subpart F – Investigations:** CBNRAC reached final consensus on this subpart with no revisions to it.

**Subpart I – Appeal to Administrator and final agency orders:** CBNRAC reached final consensus on this subpart with no revisions to it.

**Subpart J – Judicial review:** CBNRAC reached final consensus on this subpart with no revisions to it.

### **Public Comment**

Sid Goldstein, Editor and Publisher, *Transit Access Report*, thanked FTA for making meeting materials easily available and asked to receive materials developed after this last meeting. FTA informed him all materials will be posted to the docket and that as a subscriber to the listserve, he will automatically receive an email when materials are posted to the docket.

### **Next Steps**

**Drafting Work Group:** The drafting work group will meet to review the revised regulatory text of Subparts A and B prepared by FTA. The drafting work group members are: Jim LaRusch (APTA), Steve Klika (UMA), Chris Zellinger (CTAA), Rick Schweitzer (ABA), and Linda Lasley (FTA). This text will be sent to CBNRAC members for review.

**Documents:** The approved October 25-26 meeting summary will be distributed as final. The facilitator will draft and distribute the meeting summary for the December 6-7 meeting. Committee members will be asked to provide comments and approvals by email. If necessary, a revised version will be sent to Committee members for review and approval. If CBNRAC does not approve the summary as final, the FTA Designated Federal Official will certify it, as stipulated under the Federal Advisory Committee Act.

### **Attachments**

- Executive Order: Human Service Transportation
- Charter Bus and Human Service Transportation
- Federal Interagency Coordinating Council on Access and Mobility, Vehicle Resource Sharing, Final Policy Statement
- Federal Interagency Coordinating Council on Access and Mobility, Coordinated Human Service Transportation Planning, Final Policy Statement

### **Attendance**

#### **CBNRAC MEMBERS AND ALTERNATES**

Debbie Alexander (alternate), Capital Area Transportation Authority

Ron Baumgart, River Cities Transit

John (Jack) Burkert, Trailways

David Coburn (alternate), Coach USA

John Corr, National School Transportation Association

Kevin Disburg (alternate), River Cities Transit

Charter Bus Negotiated Rulemaking Advisory Committee

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Sandra Draggoo, Capital Area Transportation Authority  
Daniel Duff, American Public Transportation Association  
Gladys Gillis, Northwest Motorcoach Association/Starline Luxury Coaches  
Clyde Hart, American Bus Association  
David B. Horner, Federal Transit Administration (FTA)  
Mark E. Huffer , Kansas City Area Transportation Authority  
Carol Ketcherside (alternate), Southwest Transit Association  
Hugh E. Kierig, Oklahoma State University, The Bus Community Transit System  
Steve Klika (alternate), United Motorcoach Association  
Jim LaRusch (alternate), American Public Transportation Association  
Harold Morgan, Taxicab, Limousine & Paratransit Association  
Stephanie Negriff, Los Angeles County Municipal Operators Association  
Victor Parra, United Motorcoach Association  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Ken Presley (alternate), Lancaster Trailways of the Carolinas  
Mary Presley, Lancaster Trailways of the Carolinas  
Karen Head, Amalgamated Transit Union  
Richard Schweitzer (alternate), American Bus Association  
Jim Seal (alternate), Coach America  
Gary Smith (alternate), Oklahoma State University, The Bus Community Transit System  
David Spacek, American Association of State Highway and Transportation Officials  
Michael R. Waters, Coach America  
Chris Zeilinger (alternate), Community Transportation Association of America

#### **MEMBERS NOT PRESENT**

Christopher P. Boylan, New York State Metropolitan Transportation Authority  
Carl Sedoryk, Monterey Salinas Transit

#### **FTA TEAM**

Linda Lasley  
Elizabeth Martineau  
Crystal Peyton  
Nancy-Ellen Zusman

#### **PUBLIC**

Sid Goldstein, Transit Access Report  
Pat Jordan, Jordan & Associates  
Susan Perry, APTA - Consultant  
Frank Turco, Bus & Motorcoach News  
Becky Weber, BKSH & Associates  
Ronna Weber, BKSH & Associates



THE WHITE HOUSE  
PRESIDENT  
GEORGE W. BUSH

For Immediate Release  
Office of the Press Secretary  
February 24, 2004

## **Executive Order: Human Service Transportation Coordination**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to enhance access to transportation to improve mobility, employment opportunities, and access to community services for persons who are transportation-disadvantaged, it is hereby ordered as follows:

Section 1. This order is issued consistent with the following findings and principles:

- (a) A strong America depends on citizens who are productive and who actively participate in the life of their communities.
- (b) Transportation plays a critical role in providing access to employment, medical and health care, education, and other community services and amenities. The importance of this role is underscored by the variety of transportation programs that have been created in conjunction with health and human service programs, and by the significant Federal investment in accessible public transportation systems throughout the Nation.
- (c) These transportation resources, however, are often difficult for citizens to understand and access, and are more costly than necessary due to inconsistent and unnecessary Federal and State program rules and restrictions.
- (d) A broad range of Federal program funding allows for the purchase or provision of transportation services and resources for persons who are transportation-disadvantaged. Yet, in too many communities, these services and resources are fragmented, unused, or altogether unavailable.
- (e) Federally assisted community transportation services should be seamless, comprehensive, and accessible to those who rely on them for their lives and livelihoods. For persons with mobility limitations related to advanced age, persons with disabilities, and persons struggling for self-sufficiency, transportation within and between our communities should be as available and affordable as possible.
- (f) The development, implementation, and maintenance of responsive, comprehensive, coordinated community transportation systems is essential for persons with disabilities, persons with low incomes, and older adults who rely on such transportation to fully participate in their communities.

Sec. 2. Definitions.

- (a) As used in this order, the term "agency" means an executive department or agency of the Federal Government.



(b) For the purposes of this order, persons who are transportation-disadvantaged are persons who qualify for Federally conducted or Federally assisted transportation-related programs or services due to disability, income, or advanced age.

Sec. 3. Establishment of the Interagency Transportation Coordinating Council on Access and Mobility.

(a) There is hereby established, within the Department of Transportation for administrative purposes, the "Interagency Transportation Coordinating Council on Access and Mobility" ("Interagency Transportation Coordinating Council" or "Council"). The membership of the Interagency Transportation Coordinating Council shall consist of:

(i) the Secretaries of Transportation, Health and Human Services, Education, Labor, Veterans Affairs, Agriculture, Housing and Urban Development, and the Interior, the Attorney General, and the Commissioner of Social Security; and

(ii) such other Federal officials as the Chairperson of the Council may designate.

(b) The Secretary of Transportation, or the Secretary's designee, shall serve as the Chairperson of the Council. The Chairperson shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist exclusively of the Council's members.

(c) A member of the Council may designate any person who is part of the member's agency and who is an officer appointed by the President or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS-15 of the General Schedule to perform functions of the Council or its subgroups on the member's behalf.

Sec 4. Functions of the Interagency Transportation Coordinating Council. The Interagency Transportation Coordinating Council shall:

(a) promote interagency cooperation and the establishment of appropriate mechanisms to minimize duplication and overlap of Federal programs and services so that transportation-disadvantaged persons have access to more transportation services;

(b) facilitate access to the most appropriate, cost-effective transportation services within existing resources;

(c) encourage enhanced customer access to the variety of transportation and resources available;

(d) formulate and implement administrative, policy, and procedural mechanisms that enhance transportation services at all levels; and

(e) develop and implement a method for monitoring progress on achieving the goals of this order.

Sec. 5. Report. In performing its functions, the Interagency Transportation Coordinating Council shall present to me a report not later than 1 calendar year from the date of this order. The report shall:

- (a) Identify those Federal, State, Tribal and local laws, regulations, procedures, and actions that have proven to be most useful and appropriate in coordinating transportation services for the targeted populations;
- (b) Identify substantive and procedural requirements of transportation-related Federal laws and regulations that are duplicative or restrict the laws' and regulations' most efficient operation;
- (c) Describe the results achieved, on an agency and program basis, in:
  - (i) simplifying access to transportation services for persons with disabilities, persons with low income, and older adults;
  - (ii) providing the most appropriate, cost-effective transportation services within existing resources; and
  - (iii) reducing duplication to make funds available for more services to more such persons;
- (d) Provide recommendations to simplify and coordinate applicable substantive, procedural, and administrative requirements; and
- (e) Provide any other recommendations that would, in the judgment of the Council, advance the principles set forth in section 1 of this order.

Sec. 6. General.

- (a) Agencies shall assist the Interagency Transportation Coordinating Council and provide information to the Council consistent with applicable law as may be necessary to carry out its functions. To the extent permitted by law, and as permitted by available agency resources, the Department of Transportation shall provide funding and administrative support for the Council.
- (b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, sub-stantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH THE WHITE HOUSE, February 24, 2004.

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## CHARTER BUS and HUMAN SERVICE TRANSPORTATION

### *Definitions and Terms*

Human Service Transportation: Human service transportation includes a broad range of transportation service options designed to meet the needs of transportation disadvantaged populations including older adults, people with disabilities and/or individuals with lower income.

### *The Federal Executive Order 13330 on Human Service Transportation Coordination*

- Directs Federal agencies funding human services transportation services to undertake efforts to reduce transportation service duplication, increase efficient transportation service delivery, and simplify transportation access for seniors, persons with disabilities, children, low-income persons.
- Established the Federal Interagency Coordinating Council on Access and Mobility (CCAM), chaired by the Secretary of the U.S. Department of Transportation, it includes 10 other Federal departments.

### *Policies Supporting Coordination of Human Service Transportation*

#### SAFETEA-LU

- Requires the establishment of a locally developed, coordinated public transit-human services transportation plan for all FTA human service transportation programs: Section 5310 Elderly Individuals and Individuals with Disabilities Program, Section 5316 Job Access and Reverse Commute Program and Section 5317 New Freedom Program.
- Requires the plan to be developed by a process that includes representatives of public, private and nonprofit transportation and human services providers and participation by the public.

#### CCAM Policy Statements:

- Member agencies of the Federal Coordinating Council on Access and Mobility resolve that Federally-assisted grantees that have significant involvement in providing resources and engage in transportation should coordinate their resources in order to maximize accessibility and availability of transportation services.
- Member agencies of the Federal Coordinating Council on Access and Mobility resolve that federally-assisted grantees that have significant involvement in providing resources and engage in transportation delivery should participate in a local coordinated human services transportation planning process and develop

plans to achieve the objectives to reduce duplication, increase service efficiency and expand access for the transportation-disadvantaged populations as stated in Executive Order 13330.

### ***Charter Bus Considerations***

Ensuring that the Charter Bus Rule complements the coordination of human service transportation will be an important aspect of enhancing mobility for individuals with disabilities, older adults, and people with lower incomes.

#### Memorandum of Understanding or Agreements

- Coordinated transportation supports the sharing of vehicles, rides, and other resources (maintenance, drivers, etc) between public, private, and non-profit types of organizations and agencies to meet the transportation needs of people with disabilities, older adults, and individuals with lower incomes.
- This can include contracts, cost sharing agreements, or memoranda of understanding between public transportation agencies and organizations providing services under FTA and/or other Federal programs

#### Registration

- The purposes of the FTA sections 5310, 5316, and 5317 programs are inherently similar to those of the human service agencies that will be required register in order to contract with transit agencies for service under the proposed rule.
- Inclusion of the Section 5311 program in coverage under the rule will result in a large volume of human service agencies being required to register in order to continue participation in coordinated systems, unless an exception is made for demand responsive service.

#### ADA Complementary Paratransit Services

- Public transit agencies supported through both Section 5307 (in urbanized areas) and Section 5311 (in non-urbanized areas) must provide ADA complementary paratransit if they provide fixed route service, and can coordinate with human service transportation providers in the area to meet the requirement.



## **Federal Interagency Coordinating Council on Access and Mobility**

### **Vehicle Resource Sharing**

#### **FINAL POLICY STATEMENT**

**October 1, 2006**

#### **Policy:**

Federal Executive Order 13330 on Human Service Transportation Coordination directs Federal agencies funding human services transportation services to undertake efforts to reduce transportation service duplication, increase efficient transportation service delivery, and expand transportation access for seniors, persons with disabilities, children, low-income persons and others who cannot afford or readily use automobile transportation. Consistent with this presidential directive, members of the Federal Interagency Coordinating Council on Access and Mobility (CCAM) adopt the following policy statement:

“Member agencies of the Federal Coordinating Council on Access and Mobility resolve that Federally-assisted grantees that have significant involvement in providing resources and engage in transportation should coordinate their resources in order to maximize accessibility and availability of transportation services”.

#### **Background:**

Often Federal grantees at the State and local levels restrict transportation services funded by a Federal program to clients or beneficiaries of that Federal program. Some grantees do not permit vehicles and rides to be shared with other federally-assisted program clients or other members of the riding public. Federal grantees may attribute such restrictions to Federal requirements. This view is a misconception of Federal intent. In too many communities, this misconception results in fragmented or unavailable transportation services and unused or underutilized vehicles. Instead, federally assisted community transportation services should be seamless, comprehensive, and accessible to those who rely on them for their lives, needs, and livelihoods.

#### **Purpose:**

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This policy guidance clarifies that Federal cost principles do not restrict grantees to serving only their own clients. To the contrary, applicable cost principles enable grantees to share the use of their own vehicles if the cost of providing transportation to the community is also shared. This maximizes the use of all available transportation vehicles and facilitates access for persons with disabilities, persons with low income, children, and senior citizens to community and medical services, employment and training opportunities, and other necessary services. Such arrangements can enhance transportation services by increasing the pool of transportation resources, reducing the amount of time that vehicles are idle, and reducing or eliminating duplication of routes and services in the community.

### **Applicable Programs:**

This policy guidance applies to the programs listed at the end of this document, as well as any other Federal program that allows funds to be used for transportation services. Any specific arrangements would be subject to the rules and policies of participating program(s). This guidance pertains to Federal program grantees that either directly operate transportation services or procure transportation services for or on behalf of their clientele.

### **Federal Cost Principles Permit Sharing Transportation Services:**

A basic rule of appropriations law is that program funds must only be used for the purposes intended. Therefore, if an allowable use of a program's funds includes the provision of transportation services, then that Federal program may share transportation costs with other Federal programs and/or community organizations that also allow funds to be used for transportation services, as long as the programs follow appropriate cost allocation principles. Also, if program policy permits, vehicles acquired by one program may be shared with or used by other Federal programs and/or community organizations to provide transportation services to their benefiting population.<sup>1</sup>

Federal agencies are required to have consistent and uniform government-wide policies and procedures for management of Federal grants and cooperative agreements – i.e., a “Common Rule.” Federal agencies are also required to follow uniform cost principles for determining allowable costs found in Office of Management and Budget (OMB) circulars, the guidance which the OMB developed on these matters.

These circulars set forth the standard Federal cost principles for determining allowable costs. For example, the allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions in OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*. The allowability of costs incurred

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<sup>1</sup> Program funds mean Federal funds. To the extent allowable under the applicable program's statutory and regulatory provisions, program funds also mean any State or local funds used to meet the Federal program's matching or cost-sharing requirement.

by non-profit organizations is determined in accordance with the provisions in OMB Circular A-122, *Cost Principles for Nonprofit Organizations*. The allowability of costs incurred by education institutions is determined in accordance with the provisions in OMB Circular A-21, *Cost Principles for Education Institutions*. The OMB Circulars are available at <http://www.whitehouse.gov/omb/circulars/index.html> .

OMB also required Federal agencies that administer grants and cooperative agreements to State, local and Tribal governments to put the uniform standards into their respective regulations. The table below illustrates where in the Code of Federal Regulations (CFR) you may find the uniform management and financial standards for applicable programs by responsible department.

<b>Department</b>	<b>Grants Management Common Rule (State &amp; Local Governments)</b>	<b>OMB Circular A-110 (universities &amp; non-profit organizations)</b>
Agriculture	7 CFR 3016	7 CFR 3019
Commerce	15 CFR 24	15 CFR 14
Defense	32 CFR 33	32 CFR 32
Education	34 CFR 80	34 CFR 74
Energy	10 CFR 600	10 CFR 600
Health & Human Services	45 CFR 92	45 CFR 74
Housing & Urban Development	24 CFR 85	24 CFR 84
Interior	43 CFR 12	43 CFR 12
Justice	28 CFR 66	28 CFR 70
Labor	29 CFR 97	29 CFR 95
State	22 CFR 135	22 CFR 145
Transportation	49 CFR 18	49 CFR 19
Treasury	--	--
Veterans Affairs	38 CFR 43	--

OMB established Title 2 of the CFR as the single location where the public can find both OMB guidance for grants and cooperative agreements (subtitle A) and the associated Federal agency implementing regulations (subtitle B). To date, the provisions of OMB Circular A-110 have been codified at 2 CFR Part 215; OMB Circular A-21 at 2 CFR Part 220; OMB Circular A-87 at 2 CFR Part 225; and the OMB Circular A-122 at 2 CFR Part 230. Once the consolidation

project has been completed, title 2 of the CFR will serve as a “one stop-shop” for grant policies and governmental guidance on applicable financial principles and single audit policy.

None of the standard financial principles expressed in any of the OMB circulars or associated Federal agency implementing regulations preclude vehicle resource sharing, unless the Federal program’s own statutory or regulatory provisions restrict or prohibit using program funds for transportation services. For example, one common financial rule states the following. “The grantee or sub grantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing that such use will not interfere with the work on the project or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate. Notwithstanding the encouragement to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.”<sup>2</sup> Hence, this directive clearly signals Federal policy calling for multiple and full use of equipment purchased with grant funds. Grantees may even charge reasonable user fees to defray program costs. Program income includes income from fees for services performed and from the use or rental of real or personal property acquired with program grant funds. As a general matter, each program would use its share of the income in accordance with the program’s regulations or the terms and conditions of the award

In summary, allowability of costs is determined in accordance with applicable Federal program statutory and regulatory provisions and the cost principles in the OMB Circular that applies to the entity incurring the costs. Federal cost principles allow programs to share costs with other programs and organizations. Program costs must be reasonable, necessary, and allocable. Thus, vehicles and transportation resources may be shared among multiple programs, as long as each program pays its allocated (fair) share of costs in accordance with relative benefits received.

A limited number of Federal block grant programs are exempt from the provisions of the OMB uniform standards and the OMB cost principles circulars. Excluded programs in the U.S. Department of Health and Human Services include the Community Services Block Grant program, the Social Services Block Grant program, the Community Mental Health Services Block Grant program, and the Substance Abuse Prevention and Treatment Block Grant program. The State Community Development Block Grant program under the U.S. Department of Housing and Urban Development (HUD) is also an excluded program. State fiscal policies apply to grantees and their subrecipients under these programs. Unless Federal law or any applicable

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<sup>2</sup> Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments, in the regulations shown in column two of the above table. For example, these provisions appear in the Department of Agriculture’s regulation at 7 CFR 3016.32 and in the Department of Health and Human Services’ regulation at 45 CFR 92.32. These provisions also appear in the Uniform Administrative Requirements for Grants and Agreements with Institution of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110) at 2 CFR 215.34.



implementing program regulations restrict or prohibit the use of Federal program funds for transportation services, we believe that it is unlikely that a State's fiscal policies would impede vehicle sharing.

Of course, all recipients (e.g., grantees, subgrantees and subrecipients) of Federal program funds must use the funds in ways that meet all applicable programmatic requirements, together with any limitations, restrictions, or prohibitions.

### **Possibilities for Meeting Transportation Needs:**

- Partner with other program agencies. For example, a program serving the aging population owns and operates shuttle buses that provide transit services for senior citizens in several rural communities. The agency partnered with other programs to expand service to provide transportation for persons with disabilities working in community rehabilitation programs to provide transportation to key employment locations, and to provide Medicaid non-emergency medical transportation. This was done via a cost-sharing arrangement.
- Maximize use. For example, a for-profit organization receiving Federal Head Start funds purchased specially equipped buses to transport children to and from their Head Start facility. Generally, the buses are only used during specific hours of the day. During the idle periods (including evenings and week-ends), the organization rents the vehicles to another program serving seniors and persons with disabilities to provide transportation for recreational events, and personal needs (e.g., grocery shopping, hair dresser, medical appointments). The rental contract includes payment for extra costs incurred, such as expanded insurance coverage and additional fuel expenses. While this extra service is not allowable with Head Start funds, the income generated by the use of the buses during idle periods may be viewed as incidental to the primary use of the buses, as long as such use does not interfere with regular Head Start transportation services.
- Pool resources. For example, a community action and economic development agency, another non-profit organization, and a community mental health center receiving Community Service Block Grant funds, Community Development Block Grant funds, Social Service Block Grant funds, Community Mental Health Block Grant funds and/or Substance Abuse Prevention and Treatment Block Grant funds teamed up with the State agency that administers the Temporary Assistance for Needy Families (TANF) program and the State's Labor Department. Each funding source provided an allocable amount of seed money to start a shuttle operation service in the local service areas with high unemployment and no public transportation services. Each funding source also pays its fair share of allowable ongoing costs in accordance with the benefit received by each party. The operation is based on fixed routes that connect individuals to job and training sites, outpatient mental health services, and substance abuse treatment and counseling services in the area. The operation also provides a feeder service to connect clientele to public transportation that goes into the downtown area.

- Partner with non-profit or other community organizations. For example, several agencies contracted with a local organization that operates a van service to provide door-to-door service for their clientele, transporting them to key places in the area. Such places include hospitals and other medical facilities, child care centers, senior citizen centers, selected employment sites, and prisons for family visitation purposes.
- Engage the business community. For example, various programs within the State's transportation department, labor department, the TANF agency, and agencies that provide community health care and assistance for the aged worked with employers in the area to contribute to the expansion of a local transportation system. The private system provides shuttle service to selected employment sites and curb-to-curb services to community rehabilitation programs, senior citizen centers, retail centers, community health centers or substance abuse treatment and counseling centers, hospitals and other locations. The service is sustained through a fare-based system, with each agency benefiting from the expanded service subsidizing an allocable portion of the fares for their clientele. This service helps participating employers and their family members, as well as job seekers, dislocated workers, current employees and their family members to have access to a range of services and opportunities.
- Facilitate car-pooling. For example, a local Workforce Investment Board identified clientele with reliable cars living in various locales that they pay to pick-up other people in their area going to the same employment or training site. Participating riders pay a fare to ride. The State's TANF agency and the State's Office for the Aging also participate in the car pooling activity by defraying a portion of the fare for their riders. These other agencies also help to expand the available cars in different locales by paying for necessary car repairs and insurance cost for their share of participants.
- Arrange ride sharing. For example, an agency that receives program funds to assist elderly individuals purchased a van to transport their clientele to medical services and other destinations. Other program agencies worked out a financial agreement with this agency to pick up their clients living in the same neighborhoods and take them to and from destinations along the van's route.
- Earn income: For example, the State's Department of Transportation noticed that some of the shuttle buses that they own have been underutilized. The Department of Transportation used three of those shuttle buses to launch a fixed bus route service in areas of the State lacking access to adequate transportation to shopping, work, school, training, medical services, and other daily needs. The bus service is open to the public and fares are charged. Other State agencies, such as the Department of Human Services entered into a Memorandum of Agreement to provide program funds to the Department of Transportation for applicable fare costs for their respective clientele benefiting from the service. The

income generated could be used to defray operating costs or for other program purposes, in accordance with the applicable program and administrative rules.

**Programs Covered:**

The following Federal programs generally allow program funds to be used for transportation services. Nevertheless, you should still check with your program liaison as needed, to determine whether the particular service you would like to provide would be an allowable use of funds. For example, under HUD's Community Block Grant Program, funds may be used to pay for certain transportation services (e.g., fares), but not others (e.g., personal auto repair costs or personal auto insurance).

***Department of Transportation***

DOT/Federal Transit Administration (FTA)/Capital Improvement  
DOT/FTA/Elderly and Persons with Disabilities  
DOT/FTA/Job Access Reverse Commute  
DOT/FTA/New Freedom  
DOT/FTA/Non Urbanized Formula (Rural)  
DOT/Urbanized Formula

***Department of Education***

ED/Assistance for Education of All Children with Disabilities (Individuals with Disabilities Education Act)

***Department of Health and Human Services - Administration for Children and Families (ACF)***

HHS - ACF/Community Services Block Grant Program  
HHS - ACF/Head Start  
HHS - ACF/Social Services Block Grants  
HHS - ACF/State Councils on Developmental Disabilities and Protection & Advocacy Systems  
HHS - ACF/Temporary Assistance for Needy Families  
HHS - ACF/Promoting Safe and Stable Families Program  
HHS - ACF/Development Disabilities Project of National Significance  
HHS - ACF/Refugee and Entrant Assistance Discretionary Grants  
HHS - ACF/Refugee and Entrant Assistance State Administered Programs  
HHS - ACF/Refugee and Entrant Assistance Targeted Assistance  
HHS - ACF/Refugee and Entrant Assistance Voluntary Agency Programs

## **HHS-Administration on Aging**

HHS – Administration on Aging (AoA)/Grants for Supportive Services and Senior Centers

HHS - AoA/Programs for American Indian, Alaskan Native, and Native Hawaiian Elders

### ***HHS - Centers for Medicare and Medicaid (CMS)***

HHS - CMS/Medicaid

HHS – CMS/State Children’s Health Insurance Program

### ***HHS - Health Resources and Services Administration (HRSA)***

HHS - HRSA/ Community Health Centers

HHS - HRSA/Healthy Communities Program

HHS - HRSA/HIV Care Formula

HHS - HRSA/Rural Health Care Network

HHS – HRSA/Rural Health Care Outreach Program

HHS – HRSA/Healthy Start Initiative

HHS – HRSA/Maternal and Child Services Grants

HHS – HRSA/Ryan White CARE Act Programs

### ***HHS - Substance Abuse Mental Health Services Administration (SAMHSA)***

HHS - SAMHSA/ Community Mental Health Services Block Grant

### ***Department of Housing and Urban Development (HUD), Office of Community Planning and Development (OCPD)***

HUD - OCPD/Community Development Block Grant

HUD - OCPD/ Housing Opportunities for Persons with AIDS

HUD - OCPD/Supportive Housing Program

***Any other Federal program that allows funds to be used for transportation services.***



## **Federal Interagency Coordinating Council on Access and Mobility**

### **Coordinated Human Service Transportation Planning**

#### **FINAL POLICY STATEMENT**

##### **Policy Statement**

Consistent with the requirements of the Executive Order and the statutory creation of a locally-developed, coordinated public transit human service transportation planning process established in the Safe, Affordable, Flexible, Efficient, Transportation Equity Act-A Legacy for Users (SAFETEA-LU), members of the Federal Interagency Coordinating Council on Access and Mobility (CCAM) adopt the following policy statement:

“Member agencies of the Federal Coordinating Council on Access and Mobility resolve that federally-assisted grantees that have significant involvement in providing resources and engage in transportation delivery should participate in a local coordinated human services transportation planning process and develop plans to achieve the objectives to reduce duplication, increase service efficiency and expand access for the transportation-disadvantaged populations as stated in Executive Order 13330.”

NOTE: Significant involvement is defined as providing, contracting for and/or subsidizing individual transportation trips for individuals with disabilities, older adults, or people with lower incomes.

##### **Background**

Presidential Executive Order 13330 on the Coordination of Human Service Programs issued by the President on February 24, 2004, creates an interdepartmental Federal Council on Access and Mobility to undertake collective and individual departmental actions to reduce duplication among federally-funded human service transportation services, increase the efficient delivery of such services and expand transportation access for older individuals, persons with disabilities,

persons with low-income, children and other disadvantaged populations within their own communities.

As a first principle to achieve these goals, federally-assisted grantees involved in providing and funding human service transportation need to plan collaboratively to more comprehensively address the needs of the populations served by various Federal programs. In their report to the President on the Human Service Transportation Coordination, members of the Council recommended that “in order to effectively promote the development and delivery of coordinated transportation services, the Administration seek mechanisms (statutory, regulatory, or administrative) to require participation in a community transportation planning process for human service transportation programs.

In August 2005, the President signed legislation consistent with this recommendation to reauthorize Federal public transportation and Federal highway programs that contained provisions to establish a coordinated human services transportation planning process. This legislation, the Safe, Affordable, Flexible, Efficient Transportation Equity Act, A Legacy for Users (SAFETEA-LU), created a requirement that a locally-developed, coordinated public transit/human service planning process and an initial plan be developed by 2007 as a condition of receiving funding for certain programs directed at meeting the needs of older individuals, persons with disabilities and low-income persons. The plan must be developed through a process that includes representatives of public, private and non-profit transportation providers and public, private and non-profit human service providers and participation by the public. Complete plans, including coordination with the full range of existing human service transportation providers, are required by Fiscal Year 2008

### **Implementation**

Members of the Federal Council on Access and Mobility will undertake actions within six months of Council adoption to accomplish Federal program grantee participation in locally-developed, coordinated public transit/human service coordinated planning processes.

## Appendix J: Outstanding Sub-Issues

### Subpart A:

- 604.2 (c) Exemption for charter operators getting FTA #
- 604.4 (c) Definition of Charter
- (k) Definition of Pattern of Violations

### Subpart B

- 604.7 (a) # service hours for gov't exception
- 604.15 Reporting Req. for Exceptions
- Fully Allocated Costs for Exceptions
- 604.11 Handship

### Subpart D

- 604.20 (c) Cease + desist

### ALJs

### Subpart C

- 604.16 (a) (5) private charter op - williness to provide free or reduced

### Subpart D

- 604.18 (b) receive free or reduced
- (c) challenge free or reduced - status to reduced



Appendix K: Final CBNRAC Regulatory Text Document

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## **PART 604—CHARTER SERVICE**

### **Subpart A—General Provisions**

**Sec.**

- 604.1 Purpose**
- 604.2 Applicability**
- 604.3 Exemption**
- 604.4 Definitions**
- 604.5 Charter Service Agreement**

### **Subpart B—Exceptions**

**Sec.**

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- 604.7 Government Officials**
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- 604.11 Hardship**
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- 604.13 Events of Regional or National Significance**
- 604.14 When No Registered Charter Provider Responds to Notice from a Recipient**
- 604.15 Agreement with Registered Charter Providers**
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### **Subpart C—Procedures for Registration and Notification of Private Charter Operators**

**Sec.**

- 604.17 Registration of Private Charter Operators**
- 604.18 Notification to Registered Charter Providers**

### **Subpart D—Procedures for Registration of Qualified Human Services Organizations and Duties for Recipients Regarding Charter Registration Website**

**Sec.**

- 604.19 Registration of Qualified Human Services Organizations**
- 604.20 Duties for Recipients Regarding Charter Registration Website**

### **Subpart E—Advisory Opinions**

**Sec.**

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- 604.21 Purpose**
- 604.22 Request for an advisory opinion**
- 604.23 Processing of Advisory Opinions**
- 604.24 Effect of advisory opinion**
- 604.25 Special Considerations**

#### **Subpart F—Complaints**

**Sec.**

- 604.26 Purpose**
- 604.27 Complaints, answers, replies, and other documents**
- 604.28 Complaints for removal from registration list**
- 604.29 Dismissals**
- 604.30 Incomplete complaints**
- 604.31 Filing**
- 604.32 Service**

#### **Subpart G—Investigations**

**Sec.**

- 604.33 Investigation of complaint**
- 604.34 Agency initiation of investigation**

#### **Subpart H—Referrals to an Administrative Law Judge**

**Sec.**

- 604.35 Chief Counsel’s referral to an ALJ**
- 604.36 Separation of functions**

#### **Subpart I—Hearings**

**Sec.**

- 604.37 Powers of an Administrative Law Judge**
- 604.38 Appearances, parties, and rights of parties**
- 604.39 Discovery**
- 604.40 Depositions**
- 604.41 Public disclosure of evidence**
- 604.42 Standard of proof**
- 604.43 Burden of proof**
- 604.44 Offer of proof**
- 604.45 Record**
- 604.46 Waiver of procedures**
- 604.47 Initial decisions by ALJ**
- 604.48 Remedies**

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## **Subpart J—Appeal to Administrator and final agency orders**

**Sec.**

**604.49**            **Appeal from ALJ initial decision**

**604.50**            **Administrator’s discretionary review of ALJ initial decision**

## **Subpart K—Judicial review**

**604.51**            **Judicial review**

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## **Subpart A—General Provisions.**

### **§ 604.1 Purpose.**

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

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

### **§ 604.2 Applicability.**

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

(b) The requirements of this Part shall not apply to a recipient transporting their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within their geographic service area or proposed geographic service area for the purpose conducting oversight functions such as inspection, evaluation, or review.

(c) ~~\*\*\*no consensus\*\*\*~~The requirements of this Part shall not apply to private charter operators that receive, directly or indirectly, Federal 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, 49 U.S.C.5317 or section 3038 of the Transportation Equity Act for the 21<sup>st</sup> Century, as amended.

(d) The requirements of this Part shall not apply to a recipient transporting their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

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(e) The requirements of this Part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this Part shall not apply to a recipient in a non-urbanized area transporting their employees, other transit system employees, transit management officials, transit contractors and bidders to or from transit training outside its geographic service area.

### **§ 604.3 Exemption. \*\*\*no consensus\*\*\***

- (a) Recipients, who do not engage or intend to engage in charter services using equipment or facilities funded under the Federal Transit Laws, may file an affidavit certifying that they will not provide charter services covered by this Part.
- (b) If a recipient files an affidavit described in this section, the recipient shall not provide charter service under any of the exceptions contained in subpart B and shall be exempt from the notification requirements of subpart C.
- (c) The affidavit described in this section shall state:

I, (insert name and title), hereby swear or affirm that (insert name of applicant or recipient) and all contractors or recipients through (insert name of applicant or recipient) will not provide charter service that uses equipment or facilities funded under the Federal Transit Laws.

I, (insert name and title), also understand that by swearing out this affidavit, (insert name of applicant or recipient) and all contractors or recipients through (insert name of applicant or recipient) could be subject to the penalties contained in 18 U.S.C. §1001 for submitting false information to the government and may subject (insert name of applicant or recipient) and all contractors or recipients through (name of applicant or recipient) to a withholding of Federal financial assistance as described in 49 CFR 604 subpart I.

- (d) The affidavit described in paragraph (c) shall be notarized and three copies sent to: Office of the Chief Counsel, TCC-20, Room 9316, Washington, DC 20590. In addition, the above affidavit shall be submitted electronically to <http://dms.dot.gov> and placed in the Charter Service Exemption Docket number xxxxx.
- (e) An affidavit described in this section shall be sent to FTA by the third week of September each year.
- (f) A recipient may revoke an affidavit filed under this part by sending a notice to the address and docket identified in paragraph (d) of this subpart indicating they revoke the affidavit and agree to comply with charter service requirements of this Part.

### **§ 604.4 Definitions.**

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

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- (a) The term “Federal Transit Laws” means 49 U.S.C. 5301 *et seq.*, and includes 23 U.S.C. 103(e)(4), 142(a), and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.
- (b) The term “Administrator” means the Administrator of the Federal Transit Administration or their designee.
- (c) **[\*\*\*no consensus\*\*\*]** The term “charter service” means . . .
- (d) The term “Chief Counsel” means the Office of the Chief Counsel within the Federal Transit Administration.
- (e) The term “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.
- (f) The term “FTA” means the Federal Transit Administration.
- (g) The term “interested party” means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.
- (h) The term “registration list” means the current list of registered charter providers and qualified human service organizations maintained on FTA’s charter registration website.
- (j) The term “geographic service area” means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state, and Federal law.
- (k) **[\*\*\*no consensus\*\*\*]** The term “pattern of violations” means . . .
- (l) The term “public transportation” has the meaning set forth in 49 U.S.C. 5302(a)(10).
- (m) The term “registered charter provider” means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA’s charter registration website.
- (n) The term “recipient” means an agency or entity that receives Federal financial assistance, either directly or indirectly, under the Federal Transit Laws. This term does not include 3<sup>rd</sup> party contractors.

#### **§ 604.5 Charter Service Agreement.**

- (a) A recipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a “Charter Service Agreement” as set out in paragraph (b) of this section.
- (b) A recipient shall enter into a Charter Service Agreement if it intends to provide charter service using equipment and facilities funded under Federal Transit Laws. The terms of the Charter Service Agreement are as follows:

The recipient agrees that it, and each of its subrecipients and third party contractors at any tier, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only

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in compliance with the regulations set out in 49 CFR 604 *et seq.*, the terms and conditions of which are incorporated herein by reference.

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

### **Subpart B—Exceptions.**

#### § 604.6 Purpose.

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

#### § 604.7 Government Officials.

(a) Except for a recipient with 1000 or more buses in peak hour service, a recipient may provide charter service to government officials (Federal, state, and local) for non-transit related purposes, if the recipient:

- (1) provides the service in its geographic service area;
- (2) does not generate revenue from the charter service, except as required by law; and
- (3) records the charter service in a separate log that identifies the purpose of the trip, date, time, destination, number of government officials on the trip and vehicle number.

(b) A recipient that provides charter service under this section shall be limited to \*\*\*no consensus\*\*\* XX service hours for providing trips to government officials for non-transit related purposes.

#### § 604.8 Qualified Human Service Organizations.

(a) Except for a recipient with 1000 or more buses in peak hour service, a recipient may provide charter service to a qualified human service organization serving persons:

- (1) with mobility limitations related to advanced age;
- (2) with disabilities; or
- (3) struggling for self-sufficiency.

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(b) If an organization serving persons described in paragraph (a) receives funding, directly or indirectly, from the programs listed in Appendix A of this Part, the organization shall not be required to register on the FTA charter registration website.

(c) If an organization serving persons described in paragraph (a) does not receive funding from any of the programs listed in Appendix A of this Part, the organization shall register on the FTA charter registration website in accordance with §604.19.

(d) A recipient providing charter service under this exception shall record the qualified human service organization's name, address, phone number, email address, date and time of service, number of passengers, origin, destination, trip length (miles and hours), fee collected, and vehicle number.

**§ 604.11 Hardship.** [\*\*\*no consensus\*\*\*]

### **§ 604.12 Leasing FTA Funded Equipment and Drivers.**

(a) A recipient may lease FTA funded equipment and drivers for charter service only if the following conditions exist:

(1) The private charter operator is registered on the FTA charter registration website;

(2) The registered charter provider owns and operates a charter service business;

(3) The registered charter provider received a request for charter service that exceeds its available capacity of either the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and

(4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this provision shall record the registered charter provider's name, address, telephone number, number of vehicles leased, types of vehicles leased, vehicle identification numbers, and documentation presented by the registered charter provider in support of paragraph (a)(1) through (3) of this section.

### **§ 604.13 Events of Regional or National Significance.**

(a) A recipient may petition the Administrator for an exception to the charter service regulations in order to provide charter service directly to a customer for a special event of regional or national significance. In order to petition the Administration under this exception, a recipient shall first consult with registered charter providers in the

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geographic service area to determine whether registered charter providers are capable of providing the service.

(b) After completing the consultation required in paragraph (a), recipient may petition for an exception under the following conditions:

(1) The recipient must submit its petition for an exception to the Administrator at least 90 days before the first day of the special event;

(2) The recipient's petition must describe the event, explain how it is special and of regional or national significance, explain the amount of charter service that registered charter providers are not capable of providing, and explain how registered charter providers will be utilized for the event; and

(3) File the petition in the Special Events Docket number XXXX at <http://dms.dot.gov>.

(c) Upon receipt of a petition that meets the conditions set forth in paragraphs (a), (b)(1), (b)(2), and (b)(3) of this section, the Administrator shall review the materials and issue a written decision denying or granting in whole or in part the request. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary.

(d) Any exception granted by the Administrator under this procedure shall be effective only for the special event identified in paragraph (b)(2) of this section.

#### **§ 604.14 When No Registered Charter Provider Responds to Notice from a Recipient.**

(a) A recipient may provide charter service to a customer if no registered charter provider responds to the notice issued in §604.18:

(1) Within 72 hours for charter service requested to be provided in less than 30 days; or

(2) Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates interest in providing the charter service set out in the notice issued pursuant to §604.17.

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(c) [\*\*\*no consensus\*\*\*] A recipient's provision of charter service under this exception must account for the fully allocated costs for providing the charter service, in accordance with Federal cost allocation guidelines.

(c) A recipient shall record the charter service in a separate log that identifies the customer name, address, phone number, email address, date and time of trip, origin and destination, number of passengers, trip length (miles and hours), fee collected, and vehicle number.

#### **§604.15 Agreement with Registered Charter Providers.**

(a) A recipient may provide charter service directly to a customer after entering into an agreement with all registered charter providers in the recipient's geographic service area.

(b) For purposes of entering into an agreement with all registered charter providers as described in paragraph (a) of this section, a recipient shall determine the registered charter providers in its geographic service area each year before January 30<sup>th</sup>.

(c) A recipient shall enter into an agreement with all registered charter providers in its geographic service area under this section before February 15<sup>th</sup> of each year.

#### **§ 604.16 Reporting Requirements for All Exceptions.**

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the notice and records required electronically and for a period of at least three years from the date of the charter service or lease.

(b) The records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) [\*\*\*no consensus\*\*\*] Starting on [insert 90 days from the effective date of this regulation], a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration website on a quarterly basis.

#### **Subpart C—Procedures for Registration and Notification.**

#### **§ 604.17 Registration of Private Charter Operators.**

(a) Private charter operators shall provide the following information to be considered a registered charter provider:

- (1) Company name, address, phone number, email address, and facsimile number;
- (2) Federal or State motor carrier identifying number;

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- (3) The geographic service areas of public transit agencies that the private charter operator is able to provide charter service in;
  - (4) A certification that the private charter operator has valid insurance; and
  - (5) \*\*\*no consensus\*\*\* Whether the private charter operator is willing to provide free or reduced rate charter services to registered qualified human service organizations.
- (b) A private charter operator that provides valid information in this subpart is a “registered charter provider” for purposes of this Part and shall have standing to file a complaint consistent with subpart F.
- (c) A recipient, a registered charter operator, or their duly authorized representative, may challenge a registered charter provider’s registration and request removal of the private charter operator from FTA’s charter registration website by filing a complaint consistent with subpart F.
- (d) FTA shall 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 FTA charter registration website.
- (e) Registered charter providers shall provide current and accurate information on FTA’s charter registration website, and shall update that information no less frequently than every two years.

#### **§ 604.18 Notification to Registered Charter Providers.**

- (a) Upon receiving a request for charter service, a recipient may:
- (1) Decline to provide the service and refer the requestor to FTA’s charter registration website;
  - (2) Provide the service pursuant to an exception set out in subpart B of this Part; or
  - (3) Provide notice to registered charter providers as set out in this section and provide the service pursuant to the exception contained in §604.14.
- (b) Upon receipt of a request for charter service, a recipient interested in providing the charter service shall provide notice to registered charter providers in the recipient’s geographic service area in the following manner:
- (1) Notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;
  - (2) Notice sent to the list of registered charter providers shall include:

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- (i) Customer name, address, phone number, and email address (if available);
- (ii) Requested date of service;
- (iii) Approximate number of passengers;
- (iv) Whether the type of equipment requested is (are) bus(es) or van(s); and
- (v) Trip itinerary and approximate duration.

(c) A recipient shall retain an electronic copy of the notice and the list of registered charter providers that were sent notice of the requested charter service for a period of at least three years from the date the notice was sent.

#### **Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients Regarding Charter Registration Website.**

##### **§ 604.19 Registration of Qualified Human Service Organizations.**

(a) Qualified human service organizations that do not receive funds from Federal programs listed in Appendix A, but serve individuals described in §604.8, shall register on FTA's charter registration website by submitting the following information:

- (1) Name of organization, address, phone number, email address, and facsimile number;
- (2) The geographic service area of the recipient in which the qualified human service organization resides;
- (3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, or is a unit of Federal, State or local government;
- (4) Whether the qualified human service organization receives funds directly or indirectly from a state or local program, and if so, which program(s); and
- (5) A narrative statement describing how the requested service is consistent with the mission of the qualified human service organization.

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

- (1) Registers on the FTA website in accordance with (a) of this section at least 60 days before the date of the requested charter service;

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- (2) Verifies FTA's receipt of its registration by viewing its information on the FTA charter registration website; and
- (3) Certifies that the funding received from a state or local program includes funding for transportation.

(c) A registered charter provider may challenge a qualified human service organization status to receive charter services from a recipient by requesting removal of the qualified human service organization from FTA's charter registration website by filing a complaint consistent with subpart F.

(d) A qualified human service organization shall provide current and accurate information on FTA's charter registration, and shall update that information no less frequently than every two years.

#### **§ 604.20 Duties for recipients with respect to charter registration website.**

A recipient that provides charter service allowed under this Part shall train its affected employees and contractors on how to use the FTA charter registration website.

#### **Subpart E—Advisory Opinions.**

##### **§ 604.21 Purpose.**

The purpose of this subpart is to set out the requirements for requesting an advisory opinion from FTA regarding specific, factual events. Advisory opinions are intended to give informal advice to a recipient, registered charter providers, or their duly authorized representative, regarding the requirements of this Part. This subpart also describes the conditions under which an advisory opinion may be used in subsequent proceedings.

##### **§ 604.22 Request for an advisory opinion.**

(a) A recipient, a registered charter operator, or their duly authorized representative, may request an advisory opinion from the Chief Counsel on a matter regarding specific, factual events only.

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

[Date]

Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW, Room 9316, Washington, DC 20590

Re: Request for Advisory Opinion

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

A. Issues involved.

[A concise statement of the issues and questions on which an opinion is requested.]

B. Statement of facts and law.

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

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

[Signature]

[Printed name]

[Title of person making request]

[Mailing address]

[Telephone number]

[email address]

(c) [\*\*\*no consensus\*\*\*] A recipient, a registered charter operator, or their duly authorized representative, may also request a “cease and desist order” as part of an advisory opinion. A request for a cease and desist order shall contain the following information and shall be included in the request for an advisory opinion:

- (1) the need for the cease and desist order;
- (2) the urgency for the cease and desist order;
- (3) a description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question; and
- (4) how the public interest will be served by avoiding or ameliorating that lost business opportunity.

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

- (1) The request contains incomplete information on which to base an informed advisory opinion;
- (2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;
- (3) The matter is adequately covered by a prior advisory opinion or a regulation;
- (4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

#### **§ 604.23 Processing of Advisory Opinions.**

(a) A request for an advisory opinion shall be sent to the address indicated in §604.22(b) of this subpart; filed electronically at <http://dms.dot.gov> or sent to the docket office located at 400 Seventh Street SW, PL-401, Washington, DC 20590, in the Charter Service Advisory Opinion Docket number xxxx; and sent to the recipient, if appropriate.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with §604.22(b). The Chief Counsel will send the response to the requestor, the docket, and the recipient, if appropriate.

(c) The Chief Counsel may respond to any request to FTA for regulatory guidance as a request for an advisory opinion, in which case the request will be filed in the Charter Service Advisory Opinion Docket, and a copy sent to the recipient, if appropriate.

#### **§ 604.24 Effect of an advisory opinion.**

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

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

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

#### **§ 604.25 Special considerations.**

(a) Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator, who may not delegate this function.

(b) \*\*\*no consensus\*\*\* The Chief Counsel may issue a cease and desist order, which is effective upon issuance, if he or she finds that—

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation would pose a lost business opportunity on a registered charter provider; and

(3) The public interest requires the avoidance or amelioration of that lost business opportunity through immediate compliance and waiver of the procedures afforded under subparts F, G, and H of this Part.

#### **Subpart F—Complaints.**

##### **§ 604.26 Purpose.**

This subpart describes the requirements necessary for filing a complaint with FTA regarding the provision of charter service by recipients or filing a complaint challenging the listing of a private charter operator or qualified human service organization on the FTA charter registration website. *Note: FTA expects all parties to attempt to resolve*

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*matters informally before beginning the official complaint process, which can be time consuming and expensive to all parties involved.*

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

(a) A recipient or a registered charter provider, or their duly authorized representative, may challenge the listing of a private charter provider or qualified human service organization on FTA's charter registration website by filing a complaint that meets the following:

- (1) States the name and address of each entity who is the subject of the complaint;
- (2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration website;
- (4) Files the complaint electronically by submitting it to the Charter Service Complaint Docket number xxxx; and
- (5) Serves the complaint by email (or facsimile number if no email address is available) and attaches documents offered in support of the complaint upon all entities named in the complaint;

(b) The private charter operator or qualified human service organization shall have 7 days to answer the complaint and shall file such answer and all supporting documentation in the Charter Service Complaint Docket number xxxxx.

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

(d) FTA shall determine whether to remove the private charter operator or qualified human service organization from the FTA charter registration website based on probative evidence of one or more of the following:

- (1) bad faith;
- (2) fraud;
- (3) lapse of insurance;
- (4) lapse of other documentation; or
- (5) the filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(e) A determination whether or not to remove a private charter operator or qualified human service organization from the registration list shall be sent to the parties within 30 days of the date of the response required in paragraph (b) of this section. FTA's decision, after consultation with the Chief Counsel, shall state:

- (1) reasons for allowing the continued listing or removing the private charter operator from the registration list;

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- (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.
- (f) FTA’s determination in this section shall not be subject to review under subparts J or K of this Part.

**§ 604.28 Complaints, answers, replies, and other documents.**

- (a) An interested party, registered charter provider, or their duly authorized representative (“complainant”), affected by an alleged noncompliance of this Part may file a complaint with the Office of the Chief Counsel.
- (b) Except as provided otherwise in §604.27, complaints filed under this subpart shall—
  - (1) Title the document “Notice of Charter Service Complaint;”
  - (2) State the name and address of each recipient who is the subject of the complaint and, with respect to each recipient, the specific provisions of the Federal Transit Laws that the complainant believes were violated;
  - (2) Serve the complaint in accordance with §604.32, *along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint*, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;
  - (3) Provide a concise but complete statement of the facts relied upon to substantiate each allegation;
  - (4) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients; and
  - (5) Identify each registered charter provider associated with the complaint.
- (c) Unless the complaint is dismissed pursuant to §604.29 or §604.30, FTA shall notify the complainant, respondent, and state recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed. Respondents shall have 30 days from the date of service of the FTA notification to file an answer.
- (d) The complainant shall file a reply within 20 days of the date of service of the respondent’s answer.
- (e) The respondent may file a rebuttal within 10 days of the date of service of the reply.
- (f) The answer, reply, and rebuttal shall, like the complaint, be *accompanied by supporting documentation upon which the parties rely*.
- (g) The answer shall deny or admit the allegations made in the complaint or state that the entity filing the document is without sufficient knowledge or information to admit or deny an allegation, and shall assert any affirmative defense.
- (h) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

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- (i) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.
- (j) The complainant may withdraw a complaint at any time after filing by serving a "Notification of Withdrawal" on the Chief Counsel and the respondent.

#### **§ 604.29 Dismissals.**

(a) Within 20 days after the receipt of a complaint described in §604.28, the Office of the Chief Counsel shall provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice under this section if:

- (1) It appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;
- (2) On its face it does not state a claim that warrants an investigation or further action by FTA; or
- (3) The complainant lacks standing to file a complaint under subparts B, C, or D of this Part.

#### **§ 604.30 Incomplete complaints.**

If a complaint is not dismissed pursuant to §604.29, but is deficient as to one or more of the requirements set forth in §604.28, the Office of the Chief Counsel will dismiss the complaint within 20 days after receiving it. Dismissal shall be without prejudice and the complainant may re-file after amendment to correct the deficiency. The Chief Counsel's dismissal shall include the reasons for the dismissal without prejudice.

#### **§ 604.31 Filing.**

(a) Filing address. Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 400 Seventh Street, SW, Room 9316, Washington, D.C. 20590 and shall file it electronically at <http://dms.dot.gov> or mail it to the docket at 400 Seventh Street, SW, PL- 401, Washington, D.C. 20590. Filings sent to the docket must include the Charter Service Complaint docket number xxxx.

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

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

(c) E-mail. A party may also send the document by facsimile or email, but delivery by either facsimile or email shall not constitute service as described in §604.32.

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

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

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

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

#### **§ 604.32 Service.**

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

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

If any of the above items change during the proceeding, the person shall promptly file notice of the change with FTA and the ALJ and shall serve the notice on all other parties to the proceeding.

(b) Docket numbers. Each submission identified as a complaint under this Part by the submitting person shall be filed in the Charter Service Complaint docket number xxxx.

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

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and email or facsimile numbers (if also served by email or facsimile) by [specify method of service]:

[list persons, addresses, and email or facsimile numbers]

Dated this \_\_\_ day of \_\_\_, 20\_\_.

[signature], for [party]

(i) Method of service. Except as otherwise provided in §604.27, or agreed by the parties and the ALJ, the method of service is personal delivery or U.S. mail.

(j) Presumption of service. There shall be a presumption of lawful service—

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- (1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under this section; or
- (2) When a properly addressed envelope, sent to the most current address submitted under this section has been returned as undeliverable, unclaimed, or refused.

## **Subpart G—Investigations.**

### **§ 604.33 Investigation of Complaint.**

- (a) If, based on the pleadings, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.
- (b) The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.
- (c) The Chief Counsel shall send a notice to complainant(s) and respondent(s) once an investigation is complete, but not later than 90 days after receipt of the last pleading specified in §604.28 was due to FTA.

### **§ 604.34 Agency initiation of investigation.**

- (a) Notwithstanding any other provision of law, FTA may initiate its own investigation of any matter within the applicability of this Part without having received a complaint. The investigation may include, without limitation, any of the actions described in §604.33.
- (b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.
- (c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to an ALJ.

## **Subpart H—Referrals to an Administrative Law Judge (ALJ). [\*\*\*no consensus on use of ALJs vs. Chief Counsel\*\*\*]**

### **§ 604.35 Chief Counsel's referral to ALJ.**

- (a) After receiving a complaint consistent with §604.28, and conducting an investigation, the Chief Counsel may refer the matter to an ALJ or dismiss the complaint pursuant to §604.29. If the Chief Counsel refers the matter to an ALJ, the Chief Counsel shall send out a hearing order that sets forth the following:

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- (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 provisions of this Part;
- (5) The name and address of the ALJ, and the assignment of authority to the ALJ to conduct the hearing in accordance with the procedures set forth in this Part; and
- (6) The date by which the ALJ is directed to issue an initial a decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the ALJ to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

#### **§ 604.36 Separation of functions.**

(a) Proceedings under this Part, including hearings under subpart I of this Part, shall be prosecuted by an FTA attorney.

(b) After issuance of an initial determination by an ALJ, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this Part will not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or designee on written appeal, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal, or FTA employees advising those officials in that capacity.

**Subpart I—Hearings.** [\*\*\*no consensus on use of ALJs vs. Chief Counsel\*\*\*]

#### **§ 604.37 Powers of an Administrative Law Judge.**

In accordance with 5 U.S.C. 554, 556, 557, and this subpart, an ALJ may:

- (1) Give notice of, and hold, prehearing conferences and hearings;
- (2) Administer oaths and affirmations;
- (3) Issue administrative subpoenas and 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

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(11) Make findings of fact and conclusions of law, and issue an initial decision.

#### **§ 604.38 Appearances, parties, and rights of parties.**

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with §604.31 and §604.32.

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

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

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

#### **§ 604.39 Discovery.**

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

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

- (1) The information requested is cumulative or repetitious;
- (2) The information requested may be obtained from another less burdensome and more convenient source;
- (3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or
- (4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

#### **§ 604.40 Depositions.**

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

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

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- (2) The deposition is deemed necessary to perpetuate the testimony of the witness;  
or
  - (3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.
- (b) Any party to the hearing desiring to take the deposition of a witness according to the terms set out in this subpart, shall file a motion with the ALJ, with a copy of the motion served on each party. The motion shall include:

- (1) The name and residence of the witness;
  - (2) The time and place for the taking of the proposed deposition;
  - (3) The reasons why such deposition should be taken; and
  - (4) A general description of the matters concerning which the witness will be asked to testify.
- (c) If good cause is shown in the motion, the ALJ in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.
- (d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

#### **§ 604.41 Public disclosure of evidence.**

- (a) Except as provided in this section, the hearing shall be open to the public.
- (b) The ALJ may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the ALJ. The person shall state specific grounds for nondisclosure in the motion.
- (c) The ALJ shall grant the motion to withhold information from public disclosure if the ALJ determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

#### **§ 604.42 Standard of proof.**

The ALJ shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

#### **§ 604.43 Burden of proof.**

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- (a) The burden of proof of noncompliance with this Part, determination, or agreement issued under the authority of the Federal Transit Laws is on FTA.
- (b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.
- (c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

#### **§ 604.44 Offer of proof.**

A party whose evidence has been excluded by a ruling of the ALJ may offer the evidence on the record when filing an appeal.

#### **§ 604.45 Record.**

- (a) The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.
- (b) Any interested person may examine the record by entering the docket number at <http://dms.dot.gov> or after payment of reasonable costs for search and reproduction of the record.

#### **§ 604.46 Waiver of procedures.**

- (a) The ALJ shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.
- (b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.
- (c) The parties may not by consent waive the obligation of the ALJ to enter an initial decision on the record.

#### **§ 604.47 Initial decisions by ALJ.**

- (a) The ALJ shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 110 days-after the referral from the Chief Counsel.

#### **§ 604.48 Remedies.**

- (a) If the ALJ determines that a violation of this Part occurred, the ALJ's initial decision may bar a recipient from receiving future Federal financial assistance, may issue a cease and desist order, may order the refund of revenue collected in violation of this Part to the U.S. Treasury, or may order the withholding of a reasonable percentage of available Federal financial assistance.

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

- (1) The nature and circumstances of the violation;
- (2) The extent and gravity of the violation;
- (3) The revenue earned by providing the charter service;
- (4) The operating budget of the recipient;
- (5) \*\*\*no consensus on cease and desist orders\*\*\* Whether FTA issued a cease and desist order regarding the violation found by the ALJ; and
- (6) Such other matters as justice may require.

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

(d) \*\*\*no consensus on definition of pattern of violations\*\*\* The ALJ shall consider a pattern of violations to be an aggravating factor when determining the remedy.

(e) The ALJ may propose withholding Federal financial assistance in a lump sum or over a period of time not to exceed five years.

**Subpart J—Appeal to Administrator and final agency orders.** \*\*\*consensus, but will need to be made consistent with decision on use of ALJs vs. Chief Counsel\*\*\*

#### **§ 604.49 Appeal from ALJ initial decision.**

(a) Each party adversely affected by the ALJ's initial decision may file an appeal with the Administrator within 21 days of the date the ALJ issued his or her initial decision. Each party may file a reply to an appeal within 21 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery consistent with §§604.31 and 604.32.

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision and order based on the record within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with the Federal Transit Laws or any regulation, or agreement the final agency order includes a statement of corrective action, if appropriate, and identifies remedies.

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

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of an ALJ initial decision that becomes a final agency decision by operation of paragraph (c) of this subpart.

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#### **§ 604.50 Administrator's discretionary review of ALJ initial decision.**

(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date the ALJ's initial decision that contains the following information:

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision subject to review by the Administrator.

(2) Parties may file one brief on review to the Administrator or rely on their post-hearing briefs to the ALJ. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery consistent with §604.31 and §604.32.

(3) The Administrator issues a final agency decision and order within 30 days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with the Federal Transit Laws, regulations or agreement, the final agency order includes a statement of corrective action, if appropriate, and identifies remedies.

**Subpart K—Judicial Review.** [\*\*\*consensus, but will need to be made consistent with decision on use of ALJs vs. Chief Counsel\*\*\*]

#### **§ 604.51 Judicial review of a final decision and order.**

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

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

(1) An FTA decision to dismiss a complaint as set forth in §§604.29 and 604.30;

(2) FTA's determination to remove or allow a listing on FTA's charter registration website in accordance with §604.27;

(3) An initial decision issued by an ALJ at the conclusion of a hearing;

(4) An ALJ decision that becomes the final decision of the Administrator because it was not appealed within the applicable time periods provided under §604.48.

Appendix L: Federal Register Notice of Proposed Rulemaking for charter services (49 CFR Part 604) on February 15, 2007



# Federal Register

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**Thursday,  
February 15, 2007**

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**Part III**

## **Department of Transportation**

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**Federal Transit Administration**

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**49 CFR Part 604  
Charter Service; Proposed Rule**

**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:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the 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 (SAFETEA-LU) of 2005, the Federal Transit Administration (FTA) established a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding unauthorized competition from recipients of Federal financial assistance. The proposed revisions contained in this notice of proposed rulemaking (NPRM) represent a complete revision to the charter service regulations contained in 49 CFR part 604. The NPRM contains the consensus work product of the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC), which was able to reach consensus on a majority of the regulatory language. Where the CBNRAC was unable to reach consensus, FTA proposes revisions to the charter service regulations based on the open, informed exchange of information that took place during meetings with the CBNRAC.

**DATES:** Comments must be received by April 16, 2007. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments by any of the following methods:

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

*Fax:* 202-493-2251.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

*Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* When submitting comments electronically to Department's Docket Management System (DMS) Web site located at <http://dms.dot.gov>, you must use docket number 22657. This will ensure that your comment is placed in the correct docket. If you submit comments by mail, you should submit two copies and include the above docket number. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to <http://dms.dot.gov>. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS. You may review the Department's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Linda Lasley, Senior Advisor, Office of the Administrator, Federal Transit Administration, 400 Seventh Street, SW., Room 9328, Washington, DC 20590, (202) 366-4011 or [Linda.Lasley@dot.gov](mailto:Linda.Lasley@dot.gov); Nancy-Ellen Zusman, Attorney-Advisor, Office of the Chief Counsel, 200 West Adams Street, Suite 320, Chicago, IL 60606, (312) 353-2789 or [Nancy-Ellen.Zusman@dot.gov](mailto:Nancy-Ellen.Zusman@dot.gov); or Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366-1966 or [Elizabeth.Martineau@dot.gov](mailto:Elizabeth.Martineau@dot.gov).

**SUPPLEMENTARY INFORMATION:****I. Statutory Authority**

Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), "Conditions on Charter Bus Transportation Service" of SAFETEA-LU, FTA established a Federal Advisory Committee on May 5, 2005, to develop recommendations through negotiated rulemaking procedures for improvement of the regulation regarding unauthorized competition from recipients of Federal financial assistance.

**II. Advisory Committee**

The Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) consisted of persons who represented the interests affected by the proposed rule (i.e., charter bus companies, public transportation agencies—recipients of FTA grant funds), and other interested entities.

The CBNRAC included the following organizations:

American Association of State Highway and Transportation Officials;  
American Bus Association;  
American Public Transportation Association;  
Amalgamated Transit Union;  
Capital Area Transportation Authority;  
Coach America;  
Coach USA;  
Community Transportation Association of America;  
FTA;  
Kansas City Area Transportation Authority;  
Lancaster Trailways of the Carolinas;  
Los Angeles County Municipal Operators Association  
Monterey Salinas Transit;  
National School Transportation Association;  
New York State Metropolitan Transportation Authority;  
Northwest Motorcoach Association/  
Starline Luxury Coaches;  
Oklahoma State University/The Bus Community Transit System;  
River Cities Transit;  
Southwest Transit Association;  
Taxicab, Limousine & Paratransit Association;  
Trailways; and  
United Motorcoach Association.

The CBNRAC met in Washington, DC on the following dates:

May 8-9  
June 19-20  
July 17-18  
September 12-13  
October 25-26  
December 6-7

FTA hired Susan Podziba & Associates to facilitate the CBNRAC meetings and prepare meeting summaries. All meeting summaries, including materials distributed during the meetings, are contained in the docket for this rulemaking (#22657). During the first meeting of the CBNRAC, the committee developed ground rules for the negotiations, which are summarized briefly below:

- The CBNRAC operates by consensus, meaning that agreements are considered reached when there is no dissent by any member. Thus, no member can be outvoted.
- Work groups can be designated by the CBNRAC to address specific issues or to develop proposals. Work groups are not authorized to make decisions for the full CBNRAC.
- All consensus agreements reached during the negotiations are assumed to be tentative agreements contingent upon additional minor revisions to the language until members of the CBNRAC

reach final agreement on regulatory language. Once final consensus is achieved, the CBNRAC members may not thereafter withdraw from the consensus.

○ Once the CBNRAC reaches consensus on specific provisions of a proposed rule, FTA, consistent with its legal obligations, will incorporate this consensus into its proposed rule and publish it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, and allows for a public comment period. Under the APA, the public retains the right to comment. FTA anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all the major issues prior to publication of a proposed rulemaking.

○ If consensus is reached on all issues, FTA will use the consensus text as the basis of its NPRM, and the CBNRAC members will refrain from providing formal negative comments on the NPRM.

○ If the CBNRAC reaches agreement by consensus on some, but not all, issues, the CBNRAC may agree to consider those agreements as final consensus. In such a case, FTA will include the consensus-based language in its proposed regulation and decide all the outstanding issues, taking into consideration the CBNRAC discussions regarding the unresolved issues and reaching a compromise solution. The CBNRAC members would refrain from providing formal negative comments on sections of the rule based on consensus regulatory text, but would be free to provide negative comments on the provisions decided by FTA.

○ In the event that CBNRAC fails to reach consensus on any of the issues, FTA will rely on its judgment and expertise to decide all issues of the charter regulation, and CBNRAC members may comment on all components of the NPRM.

○ If FTA alters consensus-based language, it will identify such changes in the preamble to the proposed rule, and the CBNRAC members may provide formal written negative or positive comments on those changes and on other parts of the proposed rule that might be connected to that issue.

A complete description of the ground rules is contained in the docket for this rulemaking.

Finally, the CBNRAC reached consensus on the issues the committee would consider during its negotiations. The committee agreed to consider the four issues included in the Conference Committee report:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including the use of Internet technology?

3. How can enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

The CBNRAC also agreed to consider four additional issues:

1. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

2. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

3. Review and clarify, as necessary, the definitions of regulatory terms.

4. FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

### III. Overview

The negotiated rulemaking process is fundamentally different from the usual process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal already developed and issued by an agency. The negotiation process involves the mutual education of the parties on the practical concerns about the impact of various regulatory approaches.

The negotiated rulemaking process for the charter service regulation resulted in a complete overhaul of the regulation. This was done in response to longstanding concerns that the existing regulation is hard to understand because it is unclear about what activities constitute "charter service." In addition, members of the CBNRAC agreed that the existing exceptions to the prohibition on charter service should be clarified. Concerns were also raised about the complaint process. Some members felt

that complaints were filed in a vindictive manner and without a substantive basis. Others felt that once a complaint was filed, the standard contained in the existing regulation made it nearly impossible to receive the relief requested. All members of the CBNRAC felt that the complaint and appeal process takes too long.

What follows is a description of the decisions reached on each of the issues that the CBNRAC agreed to consider during negotiations. Each issue raised sub-issues that the committee agreed were also worth considering, and those sub-issues are also discussed. If consensus was reached on an issue (or sub-issue), we explain the consensus. If consensus was not reached, we explain the relative positions of the two main groups: the public transit caucus and the private charter caucus, and then offer a proposal by FTA. We encourage interested parties to review the meeting summaries in the docket for a more complete description of the positions of the caucuses and the negotiations of the CBNRAC.

Furthermore, two major changes are worth noting at the outset. First, the CBNRAC agreed to discard the concept of "willing and able," that had persisted for more than 20 years. As a result, private charter operators interested in performing requests for charter service received by recipients would now be "registered charter providers." This term is appropriate because, as explained in further detail later in this document, private charter operators would register on an Internet site. This website, known as the FTA Charter Registration Website, would store the names of private charter operators interested in receiving notice from recipients. This new process would replace the old "willing and able" process.

Second, the existing regulation contains very limited requirements regarding complaints, hearings, and appeals. This proposal contains a more robust complaint, hearings, and appeals process. This would ensure that FTA has an appropriate mechanism for weeding out frivolous or vindictive complaints while ensuring that substantive complaints contain the necessary information to inform all parties involved. Further, while the existing regulations contain an option for a hearing, there are no procedures for a hearing. This NPRM contains procedures for a hearing if a complaint merits one.

To summarize, the proposals contained in this NPRM represent consensus language and informed decisions by FTA. The complete rewrite

of part 604 has been a long time in the making, and is necessary. It is the hope of FTA that the clarifications made in this proposal will assist public transit agencies in complying with charter service regulations and ensure that all parties understand when compliance has been achieved.

#### IV. Conference Committee Report Issues

##### *Issue #1: Limited Exceptions for Providing Community-Based Charter Services*

Under the current regulations governing charter service, an FTA recipient is generally prohibited from providing charter service unless one of the exceptions applies. The existing exceptions are: (1) When there is no "willing and able" private charter operator; (2) leasing equipment; (3) rural hardship; (4) special events; (5) non-profit organizations serving individuals with disabilities; (6) non-profit social service agencies listed in Appendix A; (7) non-profit organizations serving low-income or transit-dependent persons; (8) rural non-profit organizations serving the elderly; and (9) formal agreement with all willing and able private charter operators.

The CBNRAC agreed that the revised regulation should also contain exceptions. The committee reached consensus on six exceptions: (1) Government officials; (2) qualified human service organizations; (3) leasing equipment; (4) events of regional or national significance; (5) when no registered charter provider responds to notice from a recipient; and (6) agreement with registered charter providers. We discuss each of these exceptions below. We also discuss one exception where the committee could not reach consensus, which was the "hardship" exception. We have added an exception that the committee did not consider, but due to past and recent events, we believe should be added; an exception for the Administrator. Finally, we discuss three sub-issues for all exceptions: Reporting requirements, fully allocated costs, and recipients with 1,000 or more buses in peak hour service.

##### (a) Government Officials

This is a new exception to the charter regulations and would allow recipients to provide charter service to government officials for non-transit related purposes as long as the recipient provides the service in its geographic service area, does not generate revenue (except as required by law), and records the trip. The CBNRAC also agreed that there

should be an hourly annual limit for this exception, but could not reach consensus on the number of hours. The public transit caucus proposed an annual limit of 125 charter service hours. The private charter caucus proposed an annual limit of 80 charter service hours. Neither caucus explained why one limit should prevail over the other.

Since this is a new exception to the charter regulations, FTA proposes to accept the private charter caucus' annual limit of 80 hours of charter service to government officials for non-transit related purposes within the recipient's geographic service area. In accepting this proposal, however, FTA believes that extenuating circumstances may arise where additional hours may be necessary. As a result, FTA added a provision to allow for additional charter service hours under this exception, at the Administrator's discretion, in rare or unusual circumstances, if the recipient submits a written request: (1) Describing the event; (2) explaining why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); (3) describing the number of charter service hours requested to perform the service; and (4) presenting evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area. FTA would review the request and respond to the recipient. The recipient would then be responsible for emailing FTA's response to the registered charter providers in its geographic service area. As with all exceptions under the proposed regulation, the recipient would be responsible for recording the service in an electronic log.

##### (b) Qualified Human Service Organizations

This exception would essentially collapse three exceptions contained in the existing regulation pertaining to the elderly, individuals with disabilities, and low-income individuals into one exception for "qualified human service organization." Consistent with the President's Executive Order on Human Service Transportation Coordination (February 24, 2004), the CBNRAC reached consensus on allowing recipients to provide charter service to "persons with mobility limitations related to advanced age, persons with disabilities, and persons struggling for self-sufficiency \* \* \*" If an organization serving the above individuals also receives funds from one or more of the 65 Federal programs to be listed in Appendix A to the

regulation, then the recipient would only need to record the charter service in order to provide it. If the organization does not receive Federal funds from the programs listed in Appendix A, but serves individuals described in this section, then the organization would need to register on FTA's Charter Registration Web site and the recipient would need to record the charter service. FTA will provide Appendix A in the final rule and will update it from time to time as new Federal programs are created to assist individuals and organizations covered by this exception or when a party sends a petition to the Administrator requesting an update to Appendix A.

##### (c) Leasing FTA-Funded Equipment and Drivers

The existing exception under the charter regulations allows for a recipient to lease equipment to a private charter operator if the private charter operator receives a request that exceeds its capacity, or the private charter operator does not have equipment accessible to the elderly or individuals with disabilities. The CBNRAC reached consensus on maintaining this exception with a few minor changes. First, the private charter operator would have to be registered on the FTA Charter Registration Website. Second, the private charter operator would have to own and operate a charter service business. Third, the private charter operator would have to exhaust all available vehicles from other private charter operators in the recipient's geographic service area. Fourth, the recipient would have to record the vehicles leased and retain the documentation provided by the private charter operator that demonstrates compliance with the first three requirements.

##### (d) Events of National or Regional Significance

This exception in the current regulation requires a petition to the Administrator personally in order to provide charter service for a special event. The only limitation is that the service can be provided "to the extent that private charter operators are unable to provide the service." The CBNRAC reached consensus on retaining this exception, but with a more formal process for petitioning the Administrator. The revised exception would require recipients to first consult with private charter operators registered in the recipient's geographic service area. After consultation, the recipient may petition the Administrator only if the recipient (1) submits the petition at

least 90 days before the event; (2) describes the importance of the event, the amount of charter service needed, and how private charter operators will be utilized; and (3) files the petition in the special events docket. The Administrator would review the petition, request any additional information necessary to make a decision, and then post the decision in the special events docket. The Administrator's approval of a petition under this exception would be limited to the event described in the petition.

(e) When No Registered Charter Provider Responds to Notice From a Recipient

The existing regulation allows a recipient to provide any and all charter service to the extent that there are no private charter operators interested in providing the service. The CBNRAC reached consensus on retaining this exception, but with a modification designed to make the whole process more responsive. As noted earlier, the implementation of an FTA Charter Registration Website would allow recipients and registered charter providers to respond in real time regarding charter service requests. Under this exception, a registered charter provider would have 72 hours to respond to a request for charter service to be provided in less than 30 days and 14 days to respond to a request for charter service to be provided in more than 30 days. If a registered charter provider responds to the request, then the recipient may not provide the service, even if the registered charter provider and the customer are not able to agree upon a price. Alternatively, if no registered charter provider responds to a request, then the recipient may provide the service so long as it records the proper information in an electronic log.

(f) Agreement With Registered Charter Providers

This exception in the current regulation allows a recipient to enter into an agreement with all private charter operators in its geographic service area to allow it to provide charter service directly to a customer. The CBNRAC reached consensus on retaining this exception with certain modifications to account for the use of the Charter Registration Website instead of the annual willing and able process. Under the revised exception, the recipient would have to ascertain registered charter providers in its geographic service area from the Charter Registration Website by January 30th of each year. The recipient would have to

enter into an agreement with those registered charter providers by February 15th of each year.

1. Additional Exceptions

(i) "Hardship"

The CBNRAC was unable to reach consensus regarding the "hardship" exception that currently exists in the charter regulation. This exception is intended to allow non-urbanized (rural) areas to provide charter service if a private charter operator's provision of this service would create a hardship on the customer because the private charter operator imposes a minimum duration that is longer than the trip length or the private charter operator is located "too far" from the origin of the charter service.

The CBNRAC could not reach consensus on what constitutes "too far." The private charter caucus proposed retaining the exception as is. The public transit caucus offered to replace "too far" with "deadhead time exceeding total trip time from initial pick-up to final drop-off."

FTA proposes to retain the hardship exception and replace "too far" with the public transit caucus' proposal. We believe that this proposal sufficiently clarifies what is meant by "too far" without opening up the exception to abuse.

(ii) Administrator's Discretion

FTA proposes to add a new exception to address unique situations in which it may not be practical or feasible to provide notice to registered charter providers. Specifically, FTA proposes an Administrator's discretion exception that would allow the Administrator to personally approve a recipient's use of Federally-funded assets to provide charter service for such events as funerals of local, regional, or national significance. Such an event is unanticipated and requires an immediate response. For example, the deaths of Presidents Ronald Reagan and Gerald Ford underscore the need for flexibility when using Federally-funded assets to assist in funeral preparation activities and on the day of the funeral. Thus, FTA proposes an Administrator's discretion exception to the charter regulations. A recipient would have to submit a written request, by facsimile or e-mail, that describes the event, describes the charter service requested, explains the time constraints for providing the charter service, describes the anticipated number of charter service hours needed for the event, the type of equipment requested, approximate number of vehicles

needed, duration of the event, and explains how provision of the charter service is in the public's interest. Recipients granted an exception under this section would need to retain the record of approval from the Administrator for three years and include the approval in its electronic records for quarterly reporting on the Charter Registration Web site.

(2) Reporting Requirements for All Exceptions

The CBNRAC agreed that for most of the exceptions a recipient must record certain information about the charter service provided. Specifically, the committee reached consensus on reporting that would require recipients to record an organization's name, address, phone number, e-mail address, date and time of service, number of passengers, destination, trip length (miles and hours), fee collected, and vehicle number. This would be required for charter service provided under the exceptions for government officials, qualified human service organizations, hardship, and when no registered charter provider responds to a notice. For the leasing equipment exception, the recipient would have to record the registered charter provider's name, address, telephone number, number of vehicles leased, types of vehicles leased, vehicle identification numbers, and documentation presented to the recipient in support of the rule's requirements. A recipient would have to retain this information in an electronic format and for at least three years. The recipient would also identify in the record the exception that the recipient relied upon when providing charter service.

The CBNRAC could not reach consensus on whether or not the above electronic records should be posted on the Charter Registration Web site. The public transit caucus believes that posting their electronic records to a public Web site may implicate privacy concerns. That caucus instead favors the provision of records via e-mail upon request. The private charter caucus insisted that electronic records should be posted to the Web site in order to facilitate transparency. FTA agrees with the private charter caucus, but also recognizes that there may be some situations where certain information should not be posted on the Web site. Thus, FTA proposes to include a provision in the regulation that allows recipients to provide only generalized origin and destination information when safety or security is an issue.



## (3) Fully Allocated Costs

The CBNRAC was unable to reach consensus on whether the concept of “fully allocated costs” should apply to public transit agencies that provide charter service. The public transit caucus felt as though the requirement would be a barrier to providing community-based transportation, but the private charter caucus argued that the requirement is necessary to protect private charter operators.

In the past, FTA required public transit agencies to recover fully allocated operating and capital costs and ensure that the charter service did not interfere with the intended use of the asset. FTA allowed this “incidental use” because it believed the charter service provided supported the mission of FTA.

We propose to eliminate the concept of “fully allocated costs.” The exceptions included in the proposed regulation would allow recipients to provide charter service that is in the public interest, and is consistent with the overall mission of public transit operators as mobility managers within their communities. Hence, the charter service that would be allowed under the proposed rule would be an incidental use of FTA-funded equipment and facilities, and the recovery of fully allocated costs would not be required.

Further, in the case of service provided to “qualified human service organizations,” the Federal Interagency Coordinating Council on Access and Mobility is currently engaged, in cooperation with the Office of Management and Budget, in developing cost allocation principals to share fairly the costs of human service transportation. To require FTA recipients to recover fully allocated costs from those qualified human service organizations, including a share of capital costs already subsidized by FTA, would impose unfair conditions on those interagency deliberations.

That being said, FTA encourages and expects recipients that provide charter services under the provisions of part 604 to develop fair charges to recover as much as possible of the marginal operating cost of the service, consistent with the public purpose of the charter service, and the ability of the requesting entity to pay. As noted earlier, under section 604.12, if a registered charter provider responds to the request for charter service, the recipient may not provide the service, even if the private charter operator’s fee for the service prevents the requester from purchasing the trip. This provision protects the private charter industry from

competition with transit operators that receive subsidies from FTA.

## (4) 1,000 or More Buses in Peak Hour Service

The CBNRAC reached consensus on limiting the application of two exceptions—qualified human service organizations and government officials—to recipients with 1,000 or more buses in peak hour service. The public transit caucus requested this limitation, but the private charter caucus wholly supported it because of the potentially negative impact on private charter operators in urban areas where there are higher concentrations of qualified human service organizations and government officials. Both caucuses viewed the potential number of requests as problematic and felt that it was in each caucuses’ interest to place a limitation on those two exceptions. FTA requests comments from qualified human service organizations and governmental officials on the practical impact of this limitation in the final regulation.

*Issue #2: How Can We Better Communicate Charter Administration and Enforcement to the Public?*

The CBNRAC reached consensus on the use of Internet technology to improve communications regarding the charter service regulations. Members of the committee acknowledged that virtually all private charter companies and public transit agencies have access to the Internet and to email. The ability to maintain lists of private charter companies, informing the public about allowable activities for public transit under the charter service regulations, and posting FTA decisions and complaints were all cited as valuable ways to use the Internet.

To effectuate the Internet-based approach, FTA would develop a Charter Registration Web site that would serve as a single point of contact for private charter operators, recipients, and members of the public to obtain information regarding charter service in their geographic area. In addition, while FTA currently posts decisions regarding charter complaints on its Web site, under the revised regulation, we propose to make better use of the Department’s Docket Management System (DMS) by establishing an exemption docket, special event docket, advisory opinion docket, complaint docket, and hearing docket. These dockets would be available 24 hours a day and seven days a week. Further, DMS has listserv capabilities so that the public can receive notice each time the government places a document in the

docket. We believe this level of transparency would go a long way toward informing the public as to which transit agencies do not provide charter service (exemption docket); private charter operators as to when a public transit agency requests a special event exception (special event docket); when FTA provides formal advice to private charter operators and recipients (advisory opinion docket); when a complaint has been filed against a transit agency (complaint docket); and when a complaint has been referred for a hearing (hearing docket). The CBNRAC reached consensus on this issue.

*Issue #3: How Can Enforcement of Violations of the Charter Bus Regulations Be Improved?*

The CBNRAC reached consensus on improved enforcement of charter service regulations by focusing on deterrence of risky behavior. Members of the committee noted that the seminal question regarding enforcement is: “What is charter service?” For the public transit caucus, it is important to protect the public transit agency’s ability to provide public transportation and serve its community. This includes the ability to modify routes to address congestion or improve mobility for the elderly, disabled or low-income populations. For the private charter caucus, charter service by public transit agencies should not be “dressed up” to look like public transportation. The private charter caucus believed that service for special events of an irregular nature constitutes charter service and the public transit agencies should be prohibited from providing such service unless there is no private charter operator interested in performing the service.

The proposed regulation would implement a new remedial scheme, giving the decision-maker discretion to determine the type and amount of the remedy based on a number of relevant factors, including, but not limited to, the gravity of the violation, the revenue earned by providing charter service, and the operating budget of the recipient. The remedy could take the form of withholding a “reasonable percentage” of available Federal financial assistance, a complete bar on receiving future Federal funds, or a refund to the U.S. Treasury of revenue collected in violation of the rule.

Besides flexibility in the assessment of a remedy, the CBNRAC reached consensus on several other ways to improve the enforcement process, specifically (1) issuing advisory opinions and (2) conducting

investigations. The CBNRAC could not reach consensus on whether the following measures should be included in a new and improved charter service enforcement regime: (1) Cease and desist orders, (2) using neutral decision-makers, and (3) considering a pattern of violations as an aggravating factor to any remedy assessed. We discuss each of these issues below.

#### (a) Advisory Opinions

CBNRAC reached consensus that the new rule should incorporate a provision enabling public transit agencies and registered charter providers to obtain advisory opinions on a case-by-case basis regarding whether or not a particular type of transportation would constitute charter service. These advisory opinions would serve as a mechanism for expedited review by FTA before the recipient performs the service. Through this mechanism, recipients and registered charter providers alike would receive formal advice about compliance with charter service requirements. An advisory opinion would represent the formal position of FTA on a matter and may be used in administrative or court proceedings. The advisory opinion would be limited, however, to the factual circumstances described in the request and would not be binding upon a decision-maker adjudicating a charter complaint.

Advisory opinions represent a more formalized "letter of determination," which is currently issued when private charter operators or recipients seek regulatory advice from FTA before providing charter service. This more formal process would provide transparency and consistency regarding FTA's advice. The CBNRAC reached consensus on this issue.

#### (b) Investigations

Another way to improve enforcement is to ensure that a complaint filed has a substantive basis. Members of the CBNRAC raised concerns regarding the filing of incomplete complaints or frivolous complaints. Thus, the proposed regulation includes a new provision allowing FTA ninety days to conduct an investigation regarding a complaint. This provision is consistent with the statutory requirement: "On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred." 49 U.S.C. 5323(d) (2). Thus, the CBNRAC reached consensus on revised regulatory language that would allow FTA to conduct an investigation after a registered charter provider files a

complaint. The proposed revision would also allow FTA to investigate on its own initiative. After an investigation is complete, FTA may dismiss the complaint, issue an initial decision based on the pleadings to date, or refer the matter to a neutral decision-maker for a hearing.

#### (c) Cease and Desist Orders

The CBNRAC was unable to reach consensus on whether advisory opinions should also offer an opportunity to request a cease and desist order. The public transit caucus worried that such an order could be issued wrongfully, thus preventing public transit agencies from providing public transportation. The private charter caucus encouraged the inclusion of a cease and desist provision as a way to prevent financial harm to private charter operators without going through a full-blown complaint and hearing process.

This NPRM does not include a cease and desist provision. While FTA believes that a properly worded cease and desist provision would protect against "wrongfully" issued cease and desist orders, we are reluctant to implement a cease and desist process because FTA does not have the human resources to administer a cease and desist provision. FTA is concerned that interested parties would inundate the agency with cease and desist requests. Furthermore, we believe that revisions to the charter service definition, coupled with clear exceptions and strong remedies for violations of the regulation provide sufficient protection of a private charter operator's financial interest.

#### (d) Neutral Decision-Maker

During the CBNRAC negotiations, members of the committee expressed the deeply held belief that FTA decisions regarding charter service complaints are inconsistent. Both caucuses described experiences of receiving inconsistent decisions from FTA regarding whether a particular service is prohibited charter service. The private charter caucus also stated that FTA was biased in favor of public transit agencies by advising agencies on how to tailor the charter service so as to look like public transportation. As a consequence, members of the committee agreed that decision-making regarding charter service complaints should be removed from the regional offices and sent to FTA headquarters. The caucuses differed, however, on who should render a determination once a complaint is sent to FTA headquarters. The public transit caucus favored

having FTA headquarters make the initial decision regarding the complaint. The private charter caucus contended that FTA headquarters is biased in favor of public transit agencies regarding charter service complaints. Thus, the private charter caucus favors the use of an Administrative Law Judge (ALJ) to make the initial decision regarding a complaint.

After careful consideration of the above positions, and considering FTA's limited resources, we propose to include a new provision in the proposed regulation that would allow a headquarters office to make an initial decision regarding a charter service complaint or to refer the matter to a neutral decision-maker (Presiding Official) for a hearing. The Presiding Official might be an Arbitrator or other hearing officer and the parties to the proceeding would be the public transit agency and the complaining party. The Presiding Official would then issue a recommended decision to an appropriate headquarters office that would reject, ratify, or adopt with modifications the recommended decision. Any initial decision may be appealed to the Administrator. This proposed process allows FTA to make a determination that a hearing is unnecessary and issue an immediate decision based on the pleadings to date or to refer the matter for a hearing. We believe that this approach is less resource intensive but still provides a neutral decision-maker for more serious cases that require a hearing.

#### (e) Pattern of Violations

As part of the revised rule's more rigorous enforcement scheme, the proposed regulation contains language that would increase any remedy ordered if the decision-maker determines that there is a "pattern of violations." The CBNRAC could not reach consensus on this issue. The private charter caucus believed that more than one violation of the charter service regulations should incur a severe penalty. The public transit caucus believed that more than one violation of the same requirement should be treated more severely. The public transit caucus argued that more than one violation of different charter service requirements should not constitute a pattern of violations, because the public transit agency is unlikely to know what constitutes a violation of the charter service regulations until FTA informs the public transit agency of the violation.

As will be discussed later in the definitions section of this NPRM, we propose to define a pattern of violations as: "more than one finding of non-

compliance of this Part by FTA beginning with the most recent finding of noncompliance and looking back over a period of 72 months.” We intend to apply this definition in the “remedies” section of the rule. Under that section, if the decision-maker determines there is a pattern of violations, then the decision-maker “shall bar a recipient from receiving Federal transit assistance in an amount \* \* \* considered appropriate.” This means that a public transit agency violating the charter service regulation for the first time would be treated differently, and less severely, than a public transit agency that has violated the charter service regulations more than once over the past six years. Further, we determined that looking at a six year period would be sufficient to determine whether the public transit agency has a history of non-compliance with the charter service regulations. FTA believes that the new provision on “pattern of violations” would deter conduct that leads to complaints, would reduce the number of complaints, and would promote consultation with FTA.

*Issue #4: How Can the Charter Complaint and Administrative Appeals Process Be Improved?*

All CBNRAC members agreed that the complaint process should be designed so as to produce consistent decisions on charter bus complaints. The perceived inconsistency in past charter decisions by FTA was attributed in part to region-based adjudication under the current rule. The committee expressed concern over the diverse approaches for addressing charter violations taken by different regions. To this end, the committee recommended that regional offices should no longer handle charter complaints. Instead, complaining parties would bypass the regional offices and file their complaints directly with the FTA Office of the Chief Counsel. FTA headquarters would receive complaints, post complaints in a complaint docket, and investigate alleged violations.

Furthermore, the committee reached consensus on a more detailed complaint process. The existing rule only requires the filing of a complaint that “is not without obvious merit and that \* \* \* states grounds on which relief may be granted.” This generalized pleading process has led to frivolous filings or complaints that do not contain enough information to determine the violation of the charter service regulations. The revised regulations would require a complainant to identify the specific provisions of the charter service regulation allegedly violated, provide a

complete and concise statement of the facts relied upon in filing the complaint, and submit all documents offered in support of the complaint.

Additionally, the CBNRAC reached consensus on new filing and service provisions. In the past, there were instances where the complainant failed to notify the public transit agency. Instead, the FTA regional office sent the complaint. The revised regulation would require a complainant to file the complaint with the public transit agency and send proof of service to FTA headquarters. Furthermore, the committee agreed that associations may file a complaint as a duly authorized representative of a registered charter provider. The private charter caucus advocated for this position so that registered charter providers who work with public transit agencies would not have to file a complaint directly. Even so, the association would have to identify on whose behalf the complaint is filed.

Moreover, we would appreciate comments on how to address State involvement in the complaint process. For instance, in the case of a complaint against a rural transit operator funded as a subrecipient of a State under section 5311, we propose that the private charter provider should submit a complaint with the State Department of Transportation (FTA’s direct recipient) first. If the State Department of Transportation cannot resolve the complaint, then the private charter operator would proceed under subpart F. This option was not presented to the CBNRAC and we have not revised regulatory text to reflect this proposal. We would, however, appreciate comment on the topic.

In addition to a more detailed complaint process, the CBNRAC agreed that the appeals process should have more flexibility, the conciliation period should be eliminated, parties should be able to complain about a private charter operator or qualified human service organization’s registration on the FTA Charter Registration Web site, and it should be easier for FTA to dismiss incomplete or non-substantive complaints. Each of these points is discussed below.

(a) Appeals

The CBNRAC reached consensus on an improved appeals process that gives the Administrator discretion to take an appeal or modify an initial decision. Previously, the Administrator could only consider an appeal if “the appellant presents evidence that there are new matters of fact or points of law that were not available or not known

during the investigation of the complaint.” 49 CFR 604.20(b). Members of the committee viewed that provision as too limiting, and advocated for broader discretion. Thus, the new provision would allow an appeal so long as the appellant meets the relevant deadlines. Further, even if the appellant has not filed an appeal, the Administrator, on his or her own motion, may review an initial decision. As noted earlier, the initial decision would be made either by a headquarters office or by an Arbitrator after a hearing and ratification by a headquarters office. Additionally, the new regulation would set out specific timeframes for FTA to make decisions regarding the complaint and appeal. Specifically, the initial decision would have to be issued 110 days after the investigation is complete. A decision on an appeal would have to be made within 30 days.

(b) Conciliation Period

The committee also determined that the mandatory conciliation period in the existing rule was almost never used and had no effect other than delaying the adjudicatory process. The committee recommended that FTA remove this requirement from the new rule and instead include a statement that encourages the parties to resolve their dispute informally before filing a complaint. Thus, we proposed not to include a conciliation period in the revised regulation.

(c) Removal From Charter Registration Web Site

The CBNRAC reached consensus on providing a new provision that allows registered charter providers or recipients to file a complaint challenging the registration of a private charter operator or qualified human service organization on the Charter Registration Web site. Members of the committee approved of this provision because it would allow the removal of private charter operators that act vindictively when responding to requests for charter service. In other words, a private charter operator that responds affirmatively to a notice from a recipient requesting charter service but then does not contact the customer or negotiates in bad faith with the customer could be removed from the Web site and not receive future requests for charter services. The proposed regulation sets out specific reasons why FTA could remove a registered charter provider from the registration list. In addition, we plan to develop an Appendix B that would set out examples of each basis for removal.

On the other hand, a registered charter provider could file a complaint to remove a qualified human service organization from the registration list. FTA may remove a qualified human service organization for the same reasons a registered charter provider may be removed from the registration list (e.g., bad faith and lack of documentation).

Thus, under this new process, a complaint would be filed electronically in the complaint docket and a response would be required in seven days. FTA would then consider the complaint and response and issue a decision in ten business days. FTA's decision would be posted in the complaint docket and would identify the reasons for removing or allowing the private charter operator or qualified human service organization on FTA's Charter Registration Web site. If removal is ordered, the decision would identify the length of time for removal and when the party may reapply for registration.

#### (d) Dismissals

Furthermore, to ensure the integrity of the complaints filed, the CBNRAC reached consensus on new provisions that would allow FTA to dismiss a complaint, without prejudice, if it is incomplete. FTA may also dismiss a complaint, with prejudice, if the complaint, on its face, is outside the jurisdiction of FTA, fails to state a claim that warrants further investigation, or if the complainant lacks standing to file the complaint.

### V. Additional Issues Considered by the CBNRAC

#### *Issue #5: A New Process for Determining If There Are Private Charter Bus Companies Willing and Able To Provide Service That Would Utilize Electronic Notification and Response*

The CBNRAC discussed this issue because the private charter caucus and public transit caucus were close to an agreement on this issue during previous negotiations before the formation of the CBNRAC. Essentially, the committee viewed the current "willing and able" process as protection for private charter operators from unsuccessful negotiations with customers who might expect lower prices from public transit agencies. The current process also allows public transit agencies to provide charter service when there is no private charter operator interested in performing the service. Even so, the committee recognized that the existing willing and able process is outdated and agreed to eliminate it in favor of a web-based registration process.

The Charter Registration Web site would serve as a database of private charter operators who are interested in receiving notice from recipients regarding requests for charter service. In order to register, private charter operators would have to answer several questions about their business and the geographic areas they serve. Recipients, upon receiving a request for charter service that a recipient is interested in providing, would be required to send an email to registered charter providers listed on FTA's Charter Registration Web site in the recipient's geographic service area. The notification would have to be sent by close of business on the day the recipient receives the request, unless the recipient received the request after 2 p.m., in which case the recipient would have to send the notice by the close of business the next business day. The recipient may then provide charter service if no registered charter provider responds to the notice within 72 hours for charter service requested to be provided in less than 30 days; or within 14 calendar days for charter service requested to be provided in 30 days or more. The recipient would have to retain an electronic copy of the notice and the list of registered charter providers notified of the requested charter service for a period of at least three years from the date the notice was sent. The recipient would also record certain information about the charter service for purposes of quarterly reporting. Members of the CBNRAC expressed approval of this real-time notification process.

The CBNRAC could not reach consensus on whether a private charter operator should be required to answer whether it would provide free or reduced rate services to qualified human service organizations. The public transit caucus argued in favor of such a requirement while the private charter caucus argued against a requirement and advocated instead that it be optional.

The proposed regulation includes language that would make it optional for a private charter operator to indicate whether they would provide free or reduced rate charter services to qualified human service organizations. We believe that private charter operators wish to support their communities in the same way that many recipients support their communities and that they would likely take advantage of this option because qualified human service organizations can conduct a search on the Charter Registration Web site to look only for those private charter operators with free or reduced rates. We do not

believe, however, that private charter operators should be required to provide such information.

#### (a) Registration of Qualified Human Service Organizations

In addition to registering private charter operators, the Charter Registration Web site would also serve as a database for qualified human service organizations that do not receive funding from the Federal programs listed in Appendix A to the regulation. In order to register, qualified human service organizations would have to answer several questions about their organization, its funding, and its mission.

After registering, these qualified human service organizations would be eligible to receive free or reduced rate charter services from either recipients or registered charter providers. The committee reached consensus on this issue.

FTA requests comment from qualified human service organizations, not receiving funding from the Federal programs listed in Appendix A, on the practical impact of these registration requirements.

#### *Issue #6: A New Exception for Transportation of Government Employees, Elected Officials, and Members of the Transit Industry To Examine Local Transit Operations, Facilities, and Public Works*

The CBNRAC reached consensus on a new applicability provision for the charter service regulations. Under the new provision, the charter service regulations should not apply to a recipient transporting its own employees, other transit system employees, management officials, contractors and bidders, government officials and their contractors and official guests to or from transit facilities or projects within their geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

During the discussions on this issue, members of the CBNRAC noted that movement of transit employees or officials for transit purposes is simply not charter service. Further, as discussed in greater detail in the next section, under the new definition of charter, movement of transit employees from one work station to another is also not charter service. The CBNRAC also reached consensus on the following applicability provisions:

(a) The charter service regulations would not apply to a recipient that transports its employees, or other transit system employees or officials for

emergency preparedness planning and operations.

(b) The charter service regulations would not apply to recipients of 49 U.S.C. 5310, 5316, or 5317 funds, when used for program purposes.

(c) The charter service regulations would not apply in the case of local, regional, or national emergencies lasting fewer than three days. Otherwise, the recipient would have to follow the provisions of 49 CFR part 601 subpart D.

(d) The charter service regulations would not apply to a non-urbanized area transporting its employees outside of its geographic service area for training purposes.

The CBNRAC could not reach consensus on whether the charter service regulations apply to private charter operators receiving funds, directly or indirectly, from programs under 49 U.S.C. 5307, 5309, 5310, 5311, 5316, 5317 or section 3038 of the Transportation Equity Act for the 21st Century. The private charter caucus requested this provision because it believes that the receipt of Federal funds should not hinder the private charter operator's ability to conduct its business. The public transit caucus asserted that private charter operators receiving Federal funds should be subject to the same limitations as public transit agencies.

We propose to include this provision because the receipt of funds from the Federal government should not interfere with a private charter operator's business. This regulation has its genesis in the protection of the private charter operators from unfair competition by public transit agencies. To subject private charter operators to the charter service regulations undermines the very purpose of these regulations.

*Issue #7: Review and Clarify, as Necessary the Definitions of Regulatory Terms*

One of the main points of contention for the CBNRAC was the definition of "charter service" and "pattern of violations." For all other definitions, the CBNRAC was able to reach consensus. Additionally, since the conclusion of the negotiations, we decided that definitions of "qualified human service organization" and "charter service hours" are necessary. Thus, what follows is a discussion of the negotiations regarding the definitions of charter service and pattern of violations. We also offer our proposed definitions of qualified human service organization, charter service hours, and special transportation.

(a) Definition of Charter Service

CBNRAC was unable to come to an agreement on the definition of the term "charter service." The controversy centered on a particular category of transportation service provided on an irregular basis for occasional local events such as golf tournaments, festivals, state fairs, July 4th celebrations, flower shows, home shows, and sporting events. The public transit caucus considers open-door bus service to these types of events to be public transportation that serves the community at large (by providing traffic mitigation and other public benefits) even though the transit agency may need to create new or modified routes on a temporary basis for the duration of the event in order to provide the service. The private charter caucus believes that such services constitute "charter service" because a third party event sponsor is usually involved through some type of contractual arrangement; a new, temporary route has to be created to transport people to and from the event (as opposed to published, regular transit routes); and because the service is not continuous, and lasts only for the duration of the event. Despite lengthy discussions and an exchange of various proposals between the two sides, these differences could not be resolved by the committee. We recommend that interested parties review the docket for the exact proposals offered by each caucus.

In response to the discussions held by the CBNRAC, we propose a definition of charter service that recognizes concerns raised by each caucus and provides examples of what would be considered charter service. In providing this definition of charter service, we note that the term "buses" includes rubber-tire replica trolleys.

First, the caucuses were able to agree, although they did not reach consensus, on the proposition that charter service has three components: The transportation of a group of persons pursuant to a single contract with a third party; a fixed charge; and an itinerary determined by someone other than the public transit agency. The CBNRAC agreed that these three elements would have to be present in order for a particular service to be considered charter service.

Second, members of the CBNRAC felt it was important to provide examples of what is and is not charter service. Thus, we propose a definition that includes three examples of charter service: (1) Use of buses or vans to transport school students, school personnel or school equipment; (2) shuttle service to events

that occur on an irregular basis or for limited duration; or (3) shuttle services limited to a group of individuals pursuant to a contract with an institution, university, corporation or government.

We also include in the definition examples of what is not charter service. Specifically, we propose that the following do not constitute charter service: (1) Adding equipment or days to an existing route; (2) extending service hours on an existing route; (3) demand-responsive service that is part of coordinated public transit human service transportation; and (4) new or modified service that is open to the public, where the recipient establishes and controls the route and the service continues from year to year.

In an effort to provide further clarification of what service would be considered charter service or public transportation, FTA will publish an Appendix C with the final rule that contains more examples and frequently asked questions. We would appreciate comments with questions that should be included in Appendix C.

(b) Definition of Pattern of Violations

The CBNRAC did not reach agreement on the definition of "pattern of violations." Some participants advocated that the term should mean "more than one instance of noncompliance with charter service regulations." Under this interpretation, FTA could find in a single decision that a transit agency engaged in a pattern of charter service violations. A pattern could be established, for instance, if the public transit agency's one-time provision of charter service violated several requirements of the charter service rule.

Others sought a more limited definition, whereby a recipient commits a pattern of violations of the charter service regulations only if FTA makes a series of findings of successive charter service violations over a period of time. Still others advocated a definition that recognizes a pattern only if the same regulation is violated more than once over a period of time.

We propose to adopt a definition of pattern of violations that looks at violations over a period of time. The violation need not be a violation of the same regulation, although it could be, in order for FTA to find a pattern of violations. Further, we propose to look at the recipient's six-year history to determine whether or not it has engaged in a pattern of violations. Thus, a violation in the year 2006 means that FTA could look back to the year 2000 to determine whether other violations

exist, which would constitute a pattern of violations. Violations found by FTA in 1999 could not be used to find a pattern of violations. This definition strikes a balance between the need to penalize recipients that routinely violate the charter service requirements and the need to place a time limit on how far back FTA may look for other violations. This definition, as with all provisions of this rulemaking, does not take effect until FTA issues a final rule.

(c) Definition of Qualified Human Service Organization

After the conclusion of negotiations, and as we began to make decisions about the outstanding issues, it became clear that we needed to include a definition of "qualified human service organization" in the proposed regulation. We believe this definition is necessary to elaborate on the exception for qualified human service organizations contained in the regulation with the Executive Order on Human Service Transportation Coordination signed by the President on February 24, 2004. Thus, we propose to define "qualified human service organization" as an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age.

(d) Definition of Charter Service Hours

We also did not present a definition of "charter service hours" to the CBNRAC. While the committee reached consensus that charter service hours is the appropriate measurement for the annual limit contained in the "government officials" exception, FTA did not provide a definition of charter service hours for review by the committee. Thus, we now propose to define charter service hours as the total hours operated by buses or vans while in charter service, including the hours operated while carrying passengers for hire and associated deadhead hours.

(e) Definition of Special Transportation

The CBNRAC did not discuss the definition of special transportation during its deliberations, but we believe the term should be defined to avoid confusion in the future. The statutory definition of "public transportation" includes a reference to "special transportation." There is no definition of "special transportation" in statute or in the charter service regulations. Legislative history, however, indicates that the term includes service

exclusively for the elderly and persons with disabilities, and service for workers who live in the innercity but commute to a factory in the suburbs. See, H.R. Rep. No. 1785, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. Ad. & News 2941. In order to provide clarity, we believe it would be helpful to include a definition of "special transportation" in the proposed charter service regulation. Thus, we propose to define "special transportation" as demand response or paratransit service that is regular and continuous and is a type of "public transportation."

*Issue #8: FTA Policies Relative to the Enforcement of Charter Rules and the Boundary Between Charter and Public Transit Services in Specific Circumstances, Such as University Transportation and Transportation to/from Special Events*

The committee reached consensus to include an appendix to the final rule that would provide specific examples of situations that do or do not qualify as charter service. In close cases, the parties affected by the rule could refer to these illustrative situations for guidance in making decisions about whether or not requested service would constitute charter or public transportation under the charter service regulation.

CBNRAC members reached consensus to include in the proposed rule a limited exception to allow transit operators to provide transportation to events of regional or national significance on a case-by-case basis. In order to take advantage of this exception, a recipient would petition the Administrator after first consulting with registered charter providers in the recipient's geographic area to determine whether registered charter providers are capable of performing the service. To be eligible for the exception, the recipient would also have to satisfy a number of conditions set out in the rule. The Administrator would have full discretion to grant or deny the request.

## VI. Other Revisions to the Charter Service Regulations

The CBNRAC also reached consensus on the revision to the general purpose statement and the charter service agreement. The committee was unable to reach consensus on whether the regulation should contain an exemption provision.

The general purpose statement for the charter service regulation simply states

that the purpose of the regulation is to protect private charter operators from unauthorized competition with recipients of Federal financial assistance. There was no major discussion or disagreement on this provision, and, therefore, we propose the language developed by the CBNRAC.

The charter service agreement has not been updated for over twenty years. This regulation updates the charter service agreement, which is included in the Grant Agreement or Cooperative Agreement entered into by the recipient of Federal funds. The CBNRAC reached consensus that the charter service agreement should incorporate by reference the terms of the charter service regulations, and, therefore, we propose to include those provisions.

Finally, the CBNRAC was unable to agree to the terms of an exemption provision. An exemption provision would allow a recipient to make an affirmative declaration that it would not provide charter service, under any conditions, in or out of its geographic service area. This provision was developed to address concerns by the committee that recipients that do not wish to provide charter service should be readily identifiable by the public, other recipients, and private charter operators. The private charter caucus supported such a provision because such an exemption would assist private charter operators in determining when a recipient is in violation of the charter service regulations. The public transit caucus did not object to the specific terms of the provision, but believed that no public transit agency would utilize an exemption provision.

We propose to include an exemption provision. The process would be for the recipient to provide its declaration by the third week of September each year. The recipient would file this declaration in an exemption docket. Thus, a member of the public could easily determine which recipients have declared that they would not provide charter service. If after three years there are no recipients that use the exemption provision, FTA proposes to rescind that portion of the rule.

## Distribution Tables

For ease of reference, we provide a distribution table to indicate proposed changes in section numbering and titles.

Section Title and Number:

Old section	New section
(Subpart A)	(Subpart A)
Purpose ..... § 604.1	Purpose ..... § 604.1.
Applicability ..... § 604.3	Applicability ..... § 604.2.
Definitions ..... § 604.5	Definitions ..... § 604.3.
Charter Agreement ..... § 604.7	Charter Agreement ..... § 604.5.
Charter Service ..... § 604.9	Exceptions ..... (Subpart B).
§ 604.9(a) .....	..... § 604.12(b).
§ 604.9(b)(1) .....	..... removed.
§ 604.9(b)(2) .....	..... § 604.10.
§ 604.9(b)(3) .....	..... § 604.9.
§ 604.9(b)(4) .....	..... § 604.11.
§ 604.9(b)(5) .....	..... § 604.8.
§ 604.9(b)(6) .....	..... § 604.8.
§ 604.9(b)(7) .....	..... § 604.8.
§ 604.9(b)(8) .....	..... § 604.13.
Procedures for determining if there are any willing and able private charter operators. § 604.11	..... (Subpart C).
Reviewing evidence submitted by private charter operators. § 604.13	Registration of private charter operators. § 604.16.
Filing a complaint ..... (Subpart B)	..... removed.
§ 604.15(a) .....	Complaints ..... (Subpart F).
§ 604.15(b) .....	..... § 604.27(a).
§ 604.15(c) .....	..... removed.
§ 604.15(d) .....	..... § 604.27(b).
§ 604.15(e) .....	..... § 604.27(c).
§ 604.15(f) .....	..... § 604.34 or 46.
§ 604.15(g) .....	..... § 604.32 or 33.
§ 604.15(h) .....	..... (Subpart I).
§ 604.15(i) .....	..... § 604.36.
Remedies ..... § 604.17	..... § 604.37.
Appeals ..... § 604.19(a)	Remedies ..... § 604.45.
§ 604.19(b) .....	Appeal to Administrator and final agency orders. § 604.47.
§ 604.19(c) .....	..... (Subpart J).
§ 604.19(d) .....	..... § 604.48(a).
§ 604.19(e) .....	..... § 604.48(b).
Judicial Review ..... § 604.21	..... § 604.48(c).
	..... § 604.48(a).
	..... § 604.48(b).
	..... (Subpart K).
	§ 604.50.

*Rulemaking Analyses and Notices*

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

FTA has determined preliminarily that this rulemaking is not a significant

regulatory action within the meaning of Executive Order 12866, and is not significant under Department of Transportation regulatory policies and procedures. This NPRM contains revisions that are clarifying in nature. Where possible, we have adopted provisions to lessen the burden on public transit agencies while ensuring that those entities do not engage in unfair competition with private charter operators.

FTA has not conducted a cost analysis for this rulemaking because the changes proposed do not impose any cost on the industry. Since this rulemaking is designed to protect private charter operators from unfair competition by public transit agencies, the changes should increase opportunities for private charter operators when the requested service is not subject to one of the community-based exceptions.

FTA welcomes comments on whether there are economic impacts from this proposed regulation. Comments regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating whether there are cost impacts for this proposed rule.

**Regulatory Flexibility Act**

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The nature of this rulemaking is to prevent unfair competition by public transit agencies with private charter operators. Thus, any economic impact on small entities will be a positive one. FTA hereby certifies that the proposals for the charter service regulation contained in this NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities. FTA invites comment from members of the public who believe there will be a significant impact on small entities.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure of non-Federal funds by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$120.7 million in any one year (2 U.S.C. 1532).

#### **Executive Order 13132 (Federalism)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Comment is solicited specifically on the Federalism implications of this proposal.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

FTA has an existing approved information collection (OMB Control Number 2132-0543) that expires on December 31, 2007. FTA has determined that revisions in this proposal will require an update to the information collection request. However, FTA believes that any increase in burden hours per submission is more than offset by decreases in the frequency of collection for these information requirements and the use of electronic technology.

#### **Executive Order 13175 (Tribal Consultation)**

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

#### **Executive Order 13211 (Energy Effects)**

We have analyzed this action under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," dated May 18, 2001. We have determined that it is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### **Regulation Identification Number**

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

#### **List of Subjects in 49 CFR Part 604**

Charter Service.

In consideration of the foregoing, FTA proposes to revise title 49, Code of Federal Regulations, part 604 as set forth below:

#### **Title 49—Transportation**

1. Revise Part 604 to read as follows:

#### **PART 604—CHARTER SERVICE**

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

## Subpart A—General Provisions

### § 604.1 Purpose.

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

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

### § 604.2 Applicability.

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

(b) The requirements of this Part shall not apply to a recipient transporting their employees, other transit system officials, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within their geographic service area or proposed geographic service area for the purpose conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this Part shall not apply to private charter operators that receive, directly or indirectly, Federal 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, 49 U.S.C. 5317 or section 3038 of the Transportation Equity Act for the 21st Century, as amended.

(d) The requirements of this Part shall not apply to a recipient transporting their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this Part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this Part shall not apply to a recipient in the event of a national, regional, or local emergency lasting fewer than three business days. If an emergency exists that the recipient

expects to last longer than three business days, the recipient shall follow the procedures set out in subpart D of 49 CFR part 601.

(g) The requirements of this Part shall not apply to a recipient in a non-urbanized area transporting their employees, other transit system employees, transit management officials, transit contractors and bidders to or from transit training outside its geographic service area.

### § 604.3 Exemption.

(a) Recipients, who do not engage or intend to engage in charter services using equipment or facilities funded under the Federal Transit Laws, may file an affidavit certifying that they will not provide charter services covered by this Part.

(b) If a recipient files an affidavit described in this section, the recipient shall not provide charter service under any of the exceptions contained in subpart B and shall be exempt from the notification requirements of subpart C.

(c) The affidavit described in this section shall state:

I, (insert name and title), hereby swear or affirm that (insert name of applicant or recipient) and all contractors or recipients through (insert name of applicant or recipient) will not provide charter service that uses equipment or facilities funded under the Federal Transit Laws.

I, (insert name and title), also understand that by swearing out this affidavit, (insert name of applicant or recipient) and all contractors or recipients through (insert name of applicant or recipient) could be subject to the penalties contained in 18 U.S.C. 1001 for submitting false information to the government and may subject (insert name of applicant or recipient) and all contractors or recipients through (name of applicant or recipient) to a withholding of Federal financial assistance as described in 49 CFR part 604 subpart I.

(d) The affidavit described in paragraph (c) of this section shall be notarized and an original copy sent to: Office of the Chief Counsel, TCC-20, Room 9316, Washington, DC 20590. In addition, the above affidavit shall be submitted electronically to <http://dms.dot.gov> and placed in the Charter Service Exemption Docket number xxxxx.

(e) An affidavit described in this section shall be sent to FTA by the third week of September each year.

(f) A recipient may revoke an affidavit filed under this part by sending a notice to the address and docket identified in paragraph (d) of this section indicating they revoke the affidavit and agree to comply with charter service requirements of this Part.

### § 604.4 Definitions.

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

(a) The term “Federal Transit Laws” means 49 U.S.C. 5301 *et seq.*, and includes 23 U.S.C. 103(e)(4), 142(a), and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.

(b) The term “Administrator” means the Administrator of the Federal Transit Administration or their designee.

(c) The term “charter service” means providing transportation service using buses or vans to a group of riders pursuant to a single contract with a third party, for a fixed charge, and according to an itinerary determined by someone other than the recipient.

(1) The term charter service includes, but is not limited to, the following when the conditions in paragraph (c) of this section are met:

(i) The use of buses or vans for the exclusive transportation of school students (*e.g.*, elementary, secondary, university, or trade), school personnel, or school equipment;

(ii) Shuttle service to events such as festivals, sporting events, conventions, and similar functions that occur on an irregular basis or for a limited duration; or

(iii) Shuttle services limited to a specific group of individuals, provided under an agreement with an institution, such as a university, corporation, or government.

(2) The term charter service does not include the following:

(i) Addition of equipment or days to an existing route;

(ii) Extending service hours for an existing route;

(iii) Demand responsive service that is part of coordinated public transit human service transportation;

(iv) New or modified service that is open to the public, where the recipient establishes and controls the route, and the service continues from year to year; or

(v) The transportation of transit employees from one work location to another work location.

(d) The term “charter service hours” means total hours operated by buses or vans while in charter service including (1) hours operated while carrying passengers for hire, plus (2) associated deadhead hours.

(e) The term “Chief Counsel” means the Office of the Chief Counsel within the Federal Transit Administration.

(f) The term “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.

(g) The term “FTA” means the Federal Transit Administration.

(h) The term “interested party” means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.

(i) The term “registration list” means the current list of registered charter providers and qualified human service organizations maintained on FTA’s charter registration website.

(j) The term “geographic service area” means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state, and Federal law.

(k) The term “pattern of violations” means more than one finding of non-compliance with this Part by FTA beginning with the most recent finding of non-compliance and looking back over a period of 72 months.

(l) The term “public transportation” has the meaning set forth in 49 U.S.C. 5302(a)(10).

(m) The term “qualified human service organization” 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 (February 24, 2004).

(n) The term “registered charter provider” means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA’s charter registration website.

(o) The term “recipient” means an agency or entity that receives Federal financial assistance, either directly or indirectly, under the Federal Transit Laws. This term does not include third-party contractors.

(p) The term “special transportation” means demand response or paratransit service that is regular and continuous and is a type of “public transportation.”

#### **§ 604.5 Charter service agreement.**

(a) A recipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a “Charter Service

Agreement” as set out in paragraph (b) of this section.

(b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. The terms of the Charter Service Agreement are as follows:

The recipient agrees that it, and each of its subrecipients and third party contractors at any tier, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR part 604 *et seq.*, the terms and conditions of which are incorporated herein by reference.

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

#### **Subpart B—Exceptions**

##### **§ 604.6 Purpose.**

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

##### **§ 604.7 Government officials.**

(a) Except for a recipient with 1,000 or more buses in peak hour service, a recipient may provide charter service to government officials (Federal, State, and local) for non-transit related purposes, if the recipient:

- (1) Provides the service in its geographic service area;
- (2) Does not generate revenue from the charter service, except as required by law; and
- (3) Records the charter service in a separate log that identifies the purpose of the trip, date, time, destination, number of government officials on the trip and vehicle number.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for non-transit related purposes.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

(1) Description of the event and the number of charter service hours requested;

(2) Explanation of why registered charter providers in the geographic service area cannot perform the service (*e.g.*, equipment, time constraints, or other extenuating circumstances); and

(3) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.

##### **§ 604.8 Qualified human service organizations.**

(a) Except for a recipient with 1,000 or more buses in peak hour service, a recipient may provide charter service to a qualified human service organization serving persons:

- (1) With mobility limitations related to advanced age;
- (2) with disabilities; or
- (3) struggling for self-sufficiency.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from the programs listed in Appendix A of this Part, the organization shall not be required to register on the FTA charter registration Web site.

(c) If an organization serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in Appendix A of this Part, the organization shall register on the FTA charter registration Web site in accordance with § 604.18.

(d) A recipient providing charter service under this exception shall record the qualified human service organization’s name, address, phone number, e-mail address, date and time of service, number of passengers, origin, destination, trip length (miles and hours), fee collected, if any, and vehicle number.

##### **§ 604.9 Hardship.**

(a) A recipient in a non-urbanized area may provide charter service to an organization if the charter service provided by a registered charter provider would create a hardship on the organization because:

- (1) The registered charter provider imposes a minimum trip duration and the requested charter service is less than the minimum trip duration; or
- (2) The registered charter provider has deadhead time exceeding total trip time from initial pick-up to final drop-off.

(b) A recipient providing charter service under this section shall record the organization’s name, address, phone number, e-mail address, date and time of service, number of passengers, destination, trip length (miles and hours), fee collected, if any, and vehicle number.

##### **§ 604.10 Leasing FTA funded equipment and drivers.**

(a) A recipient may lease FTA-funded equipment and drivers for charter service only if the following conditions exist:

(1) The private charter operator is registered on the FTA charter registration Web site;

(2) The registered charter provider owns and operates a charter service business;

(3) The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and

(4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this provision shall record the registered charter provider's name, address, telephone number, number of vehicles leased, types of vehicles leased, vehicle identification numbers, and documentation presented by the registered charter provider in support of paragraph (a)(1) through (3) of this section.

**§ 604.11 Events of regional or national significance.**

(a) A recipient may petition the Administrator for an exception to the charter service regulations in order to provide charter service directly to a customer for a special event of regional or national significance. In order to petition the Administrator under this exception, a recipient shall first consult with registered charter providers in the geographic service area to determine whether or not registered charter providers are capable of providing the service.

(b) After completing the consultation required in paragraph (a) of this section, a recipient may petition for an exception under the following conditions:

(1) The recipient shall submit its petition for an exception to the Administrator at least 90 days before the first day of the special event;

(2) The recipient's petition shall describe the event, explain how it is special and of regional or national significance, explain the amount of charter service that registered charter providers are not capable of providing, explain how registered charter providers will be utilized for the event; and

(3) File the petition in the Special Events Docket number XXXX at <http://dms.dot.gov>.

(c) Upon receipt of a petition that meets the conditions set forth in paragraphs (a), (b)(1), (b)(2), and (b)(3) of this section, the Administrator shall review the materials and issue a written

decision denying or granting in whole or in part the request. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary.

(d) Any exception granted by the Administrator under this procedure shall be effective only for the special event identified in paragraph (b)(2) of this section.

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

(a) A recipient may provide charter service to a customer if no registered charter provider responds to the notice issued in § 604.17:

(1) Within 72 hours for charter service requested to be provided in less than 30 days; or

(2) Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates interest in providing the charter service set out in the notice issued pursuant to § 604.17.

(c) A recipient shall record the charter service in a separate log that identifies the customer name, address, phone number, email address, date and time of trip, origin and destination, number of passengers, trip length (miles and hours), fee collected, if any, and vehicle number.

**§ 604.13 Agreement with registered charter providers.**

(a) A recipient may provide charter service directly to a customer after entering into an agreement with all registered charter providers in the recipient's geographic service area.

(b) For purposes of entering into an agreement with all registered charter providers as described in paragraph (a) of this section, a recipient shall determine the registered charter providers in its geographic service area each year before January 30th.

(c) A recipient shall enter into an agreement with all registered charter providers in its geographic service area under this section before February 15th of each year.

**§ 604.14 Administrator's discretion.**

(a) A recipient may petition the Administrator personally for an exception to the charter service regulations in order to provide charter service directly to a customer for a unique and time sensitive event, usually funerals of local, regional, or national significance. In order to petition the Administrator under this exception, a

recipient shall submit a request with the following information:

(1) A description of the event and why it is unique and time sensitive;

(2) The type of charter 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 provision of the requested charter service is in the public's interest.

(b) Upon receipt of a petition that meets the requirements set forth in paragraph (a) of this section, the Administrator shall review the materials and issue a written decision under his or her own signature denying or granting in whole or in part the request. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary.

(c) Any exception granted by the Administrator under this procedure shall be effective only for the unique event identified in paragraph (a) of this section.

(d) A recipient shall send the request to the Administrator by facsimile or email.

(e) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration Web site.

**§ 604.15 Reporting requirements for all exceptions.**

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the notice and records required electronically and for a period of at least three years from the date of the charter service or lease.

(b) The records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Starting the first quarter after the effective date of this rule, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter (*i.e.*, January 30th, April 30th, July 30th, and October 30th).

(d) In unusual circumstances described in the record for the service, a recipient may record generalized origin and destination information for safety or security reasons.

### Subpart C—Procedures for Registration and Notification

#### § 604.16 Registration of private charter operators.

(a) Private charter operators shall provide the following information to be considered a registered charter provider:

(1) Company name, address, phone number, email address, and facsimile number;

(2) Federal or State motor carrier identifying number;

(3) The geographic service areas of public transit agencies that the private charter operator is able to provide charter service in;

(4) A certification that the private charter operator has valid insurance; and

(5) A private charter operator may also indicate whether they are willing to provide free or reduced rate charter services to registered qualified human service organizations.

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

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

(d) FTA shall 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 FTA charter registration Web site.

(e) Registered charter providers shall provide current and accurate information on FTA’s charter registration Web site, and shall update that information no less frequently than every two years.

#### § 604.17 Notification to registered charter providers.

(a) Upon receiving a request for charter service, a recipient may:

(1) Decline to provide the service and refer the requestor to FTA’s charter registration Web site;

(2) Provide the service pursuant to an exception set out in subpart B of this Part; or

(3) Provide notice to registered charter providers as set out in this section and provide the service pursuant to the exception contained in § 604.12.

(b) Upon receipt of a request for charter service, a recipient interested in providing the charter service shall

provide notice to registered charter providers in the recipient’s geographic service area in the following manner:

(1) Notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;

(2) Notice sent to the list of registered charter providers shall include:

(i) Customer name, address, phone number, and email address (if available);

(ii) Requested date of service;

(iii) Approximate number of passengers;

(iv) Whether the type of equipment requested is (are) bus(es) or van(s); and

(v) Trip itinerary and approximate duration.

(c) A recipient shall retain an electronic copy of the notice and the list of registered charter providers that were sent notice of the requested charter service for a period of at least three years from the date the notice was sent.

### Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients Regarding Charter Registration Web site

#### § 604.18 Registration of qualified human service organizations.

(a) Qualified human service organizations that do not receive funds from Federal programs listed in Appendix A but serve individuals described in § 604.8, shall register on FTA’s charter registration Web site by submitting the following information:

(1) Name of organization, address, phone number, email address, and facsimile number;

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

(3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under sections 501(c)(1), (3), (4), or (19) of the Internal Revenue Code, or is a unit of Federal, State or local government;

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

(5) A narrative statement describing how the requested service is consistent with the mission of the qualified human service organization.

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

(1) Registers on the FTA Web site in accordance with paragraph (a) of this section at least 60 days before the date of the requested charter service;

(2) Verifies FTA’s receipt of its registration by viewing its information on the FTA charter registration Web site; and

(3) Certifies that the funding received from a state or local program includes funding for transportation.

(c) A registered charter provider may challenge a qualified human service organization’s status to receive charter services from a recipient by requesting removal of the qualified human service organization from FTA’s charter registration Web site by filing a complaint consistent with subpart F.

(d) A qualified human service organization shall provide current and accurate information on FTA’s charter registration, and shall update that information no less frequently than every two years.

#### § 604.19 Duties for recipients with respect to charter registration Web site.

A recipient that provides charter service allowed under this Part shall train its affected employees and contractors on how to use the FTA charter registration Web site.

### Subpart E—Advisory Opinions

#### § 604.20 Purpose.

The purpose of this subpart is to set out the requirements for requesting an advisory opinion from FTA regarding specific, factual events. Advisory opinions are intended to give formal advice to a recipient, registered charter providers, or their duly authorized representative, regarding the requirements of this Part. This subpart also describes the conditions under which an advisory opinion may be used in subsequent proceedings.

#### § 604.21 Request for an advisory opinion.

(a) A recipient, a registered charter provider, or their duly authorized representative, may request an advisory opinion from the Chief Counsel on a matter regarding specific, factual events only.

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

[Date]

Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590

Re: Request for Advisory Opinion

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

**A. Issues involved.**

[A concise statement of the issues and questions on which an opinion is requested.]

**B. Statement of facts and law.**

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

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

[Signature]

[Printed name]

[Title of person making request]

[Mailing address]

[Telephone number]

[email address]

(c) 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;

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

**§ 604.22 Processing of advisory opinions.**

(a) A request for an advisory opinion shall be sent to the address indicated in § 604.21(b) of this subpart; filed electronically at <http://dms.dot.gov> or sent to the docket office located at 400 Seventh Street SW., PL-401, Washington, DC 20590, in the Charter Service Advisory Opinion Docket number xxxx; and sent to the recipient, if appropriate.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with § 604.21(b). The Chief Counsel will send the response to the requestor, the docket, and the recipient, if appropriate.

(c) The Chief Counsel may respond to any request to FTA for regulatory guidance as a request for an advisory opinion, in which case the request will be filed in the Charter Service Advisory Opinion Docket, and a copy sent to the recipient, if appropriate.

**§ 604.23 Effect of an advisory opinion.**

(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in § 604.24 of this subpart, obligates the agency to follow it until it is amended or revoked.

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

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

**§ 604.24 Special considerations.**

Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator, who may not delegate this function.

**Subpart F—Complaints****§ 604.25 Purpose.**

This subpart describes the requirements necessary for filing a complaint with FTA regarding the provision of charter service by recipients or filing a complaint challenging the listing of a private charter operator or qualified human service organization on the FTA charter registration Web site. **Note:** FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process, which can be time-consuming and expensive to all parties involved.

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

(a) A recipient, a registered charter provider, or their duly authorized representative, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration Web site by filing a complaint that meets the following:

(1) States the name and address of each entity who is the subject of the complaint;

(2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration website;

(3) Files the complaint electronically by submitting it to the Charter Service Complaint Docket number xxxx; and

(4) Serves the complaint by email (or facsimile number if no email address is available) and attaches documents offered in support of the complaint upon all entities named in the complaint.

(b) The private charter operator or qualified human service organization shall have 7 days to answer the complaint and shall file such answer and all supporting documentation in the Charter Service Complaint Docket number xxxxx.

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

(d) FTA shall determine whether to remove the private charter operator or qualified human service organization from the FTA charter registration website based on probative evidence of one or more of the following:

(1) Bad faith;

(2) Fraud;

(3) Lapse of insurance;

(4) Lapse of other documentation; or

(5) The filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(e) A determination whether or not to remove a private charter operator or qualified human service organization from the registration list shall be sent to the parties within 30 days of the date of the response required in paragraph (b) of this section. FTA's decision, after consultation with the Chief Counsel, shall state:

(1) Reasons for allowing the continued listing or removing the private charter operator or 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.

(f) FTA's determination in this section shall not be subject to review under subparts J or K of this Part.

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

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

(b) Except as provided otherwise in § 604.26, complaints filed under this subpart shall—

(1) Title the document "Notice of Charter Service Complaint;"

(2) State the name and address of each recipient who is the subject of the complaint and, with respect to each recipient, the specific provisions of the Federal Transit Laws that the complainant believes were violated;

(3) Serve the complaint in accordance with § 604.31, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(4) Provide a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients; and

(6) Identify each registered charter provider associated with the complaint.

(c) Unless the complaint is dismissed pursuant to § 604.28 or § 604.29, FTA shall notify the complainant, respondent, and state recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed.

Respondents shall have 30 days from the date of service of the FTA notification to file an answer.

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

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

(f) The answer, reply, and rebuttal shall, like the complaint, be accompanied by supporting documentation upon which the parties rely.

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

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

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

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

**§ 604.28 Dismissals.**

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

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

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

(3) The complainant lacks standing to file a complaint under subparts B, C, or D of this Part.

**§ 604.29 Incomplete complaints.**

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

**§ 604.30 Filing.**

(a) Filing address. Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 400 Seventh Street, SW., Room 9316, Washington, DC 20590 and file it electronically at <http://dms.dot.gov> or mail it to the docket at 400 Seventh Street, SW., PL-401, Washington, DC 20590. Filings sent to the docket shall include the Charter Service Complaint docket number xxxx.

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

(1) On the date of personal delivery;

(2) On the mailing date shown on the certificate of service;

(3) On the date shown on the postmark if there is no certificate of service; or

(4) On the mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) E-mail. A party may also send the document by facsimile or email, but delivery by either facsimile or email shall not constitute service as described in § 604.31.

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

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

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

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

**§ 604.31 Service.**

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

(1) The title of the document;

(2) The name, post office address, telephone number; and

(3) The facsimile number, if any, and email address(es), if any.

If any of the above items change during the proceeding, the person shall promptly file notice of the change with FTA and the Presiding Official, if appropriate, and shall serve the notice on all other parties to the proceeding.

(b) Docket numbers. Each submission identified as a complaint under this Part by the submitting party shall be filed in the Charter Service Complaint docket number xxxx.

(h) Who must be served. Copies of all documents filed with FTA shall be served by the entity filing them on all parties to the proceeding. A certificate of service shall accompany all

documents when they are tendered for filing and shall certify concurrent service on FTA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and email or facsimile numbers (if also served by email or facsimile) by [specify method of service]:

[list persons, addresses, and email or facsimile numbers]

Dated this \_\_\_ day of \_\_\_, 20\_\_.

[signature], for [party]

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

(j) Presumption of service. There shall be a presumption of lawful service—

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

(2) When a properly addressed envelope, sent to the most current address submitted under this section has been returned as undeliverable, unclaimed, or refused.

### Subpart G—Investigations

#### § 604.32 Investigation of complaint.

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

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

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

#### § 604.33 Agency initiation of investigation.

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

(b) Following the initiation of an investigation under this section, FTA

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

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

### Subpart H—Initial Decisions by FTA and Referrals to a Presiding Official (PO)

#### § 604.34 Initial decisions and referrals to a PO.

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

(1) Issue an initial decision, signed by a headquarters office, based on the pleadings filed to date;

(2) Refer the matter to a PO; or

(3) Dismiss the complaint pursuant to § 604.28.

(b) If the Chief Counsel refers the matter to a PO, 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 provisions of this Part;

(5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this Part; and

(6) The date by which the PO is directed to issue an initial decision.

#### § 604.35 Separation of functions.

(a) Proceedings under this Part shall be handled by an FTA attorney.

(b) After issuance of an initial decision by a headquarters office, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this Part will not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or designee on written appeal, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal, or FTA employees advising those officials in that capacity.

### Subpart I—Hearings

#### § 604.36 Powers of a PO.

A PO may:

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

(b) Administer oaths and affirmations;

(c) Issue administrative subpoenas and issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

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

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

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law, and issue an initial decision.

#### § 604.37 Appearances, parties, and rights of parties.

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with § 604.30 and § 604.31.

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

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

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

**§ 604.38 Discovery.**

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

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

(1) The information requested is cumulative or repetitious;

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

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

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

**§ 604.39 Depositions.**

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

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

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

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

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

(1) The name and residence of the witness;

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

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

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

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

(d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The

written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

**§ 604.40 Public disclosure of evidence.**

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

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

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

**§ 604.41 Standard of proof.**

The PO shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

**§ 604.42 Burden of proof.**

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

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

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

**§ 604.43 Offer of proof.**

A party whose evidence has been excluded by a ruling of the PO may offer the evidence on the record when filing an appeal.

**§ 604.44 Record.**

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

(b) Any interested person may examine the record by entering the docket number at <http://dms.dot.gov> or

after payment of reasonable costs for search and reproduction of the record.

**§ 604.45 Waiver of procedures.**

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

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

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

**§ 604.46 Recommended decision by a PO.**

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

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

**§ 604.47 Remedies.**

(a) If the headquarters office determines that a violation of this Part occurred, the headquarters office shall take any of the following actions:

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

(2) Order the refund of revenue collected in violation of this Part to the U.S. Treasury; or

(3) Order the withholding of a reasonable percentage of available Federal financial assistance.

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

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation;

(3) The revenue earned by providing the charter service;

(4) The operating budget of the recipient; and

(5) Such other matters as justice may require.

(c) The headquarters office shall mitigate the remedy when the recipient can document corrective action of alleged violation. The headquarters office's decision to mitigate a remedy shall be determined on the basis of how much corrective action was taken by the recipient and when it was taken. Systemic action to prevent future



violations will be given greater consideration than action simply to remedy violations identified during FTA's inspection or identified in a complaint.

(d) In the event the headquarters office finds a pattern of violations, the remedy ordered shall bar a recipient from receiving Federal transit assistance in an amount that the headquarters office considers appropriate.

(e) The headquarters office may propose to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

#### **Subpart J—Appeal to Administrator and Final Agency Orders**

##### **§ 604.48 Appeal from a headquarters office initial decision.**

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

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision and order based on the record within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with the Federal Transit Laws or any regulation, or agreement the final agency order includes a statement of

corrective action, if appropriate, and identifies remedies.

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

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of a headquarters office initial decision that becomes a final agency decision by operation of paragraph (c) of this section.

##### **§ 604.49 Administrator's discretionary review of a headquarters office's initial decision.**

(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date the headquarters office's initial decision that contains the following information:

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision subject to review by the Administrator.

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

(3) The Administrator issues a final agency decision and order within 30

days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with the Federal Transit Laws, regulations or agreement, the final agency order includes a statement of corrective action, if appropriate, and identifies remedies.

#### **Subpart K—Judicial Review**

##### **§ 604.50 Judicial review of a final decision and order.**

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

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

(1) An FTA decision to dismiss a complaint as set forth in §§ 604.28 and 604.29;

(2) FTA's determination to remove or allow a listing on FTA's charter registration website in accordance with § 604.26;

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

(4) A headquarters office decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.

Issued this 12th day of February, 2007.

**James S. Simpson,**  
*Administrator.*

[FR Doc. E7–2715 Filed 2–14–07; 8:45 am]

**BILLING CODE 4910–57–P**

Appendix M: Letters exchanged after the negotiations



AMERICAN  
PUBLIC 435252  
TRANSPORTATION  
ASSOCIATION

January 5, 2007

Mr. David B. Horner  
Chief Counsel  
Office of the Chief Counsel  
Federal Transit Administration  
400 Seventh Street, S.W., Room 9328  
Washington, DC 20590

FTA-2005-22657-92

Dear Mr. Horner:

The public transit system members of the Charter Bus Negotiated Rulemaking Advisory Committee write in response to the FTA's request for comments on its draft charter bus rule following the final meetings of the Committee. While we are supportive of the overall negotiated rulemaking process in this matter, we believe that in the rush to complete the final meetings some issues were not clarified or remain incomplete, and we offer our comments in that regard below. Most of these comments were made by our representatives at the drafting session subsequent to the final meetings but are not reflected in the final draft.

**Section 604.12(a) (4)**

We do not believe that consensus was reached on the issue under section 604.12 a (4), which states that a private charter operator can only lease equipment from a recipient if the private charter operator has exhausted all available equipment from all private registered charter providers within the service area. This would be a change from current regulations and current practice. Our side does not support a change in this provision. Moreover, we do not believe there was consensus on the requirement that the transit agency be responsible for maintaining documentation supplied by a registered charter operator in support of a leasing arrangement as stated in subsection (b).

**Section 604.8 - Qualified Human Services Organizations**

We are concerned about the addition of these three screening conditions – (a) (1) to (3) - before asking the question of whether or not an agency is listed on Appendix A. In the last draft, an agency was either on Appendix A, or could petition to be treated as an agency listed in Appendix A (registering on the web site). As drafted, we must first determine if the agency fits into one of these three categories before using Appendix A. We do not support these three conditions; rather, our understanding is that being listed on Appendix A should indicate absolute eligibility for this exception, and there should be no additional conditions.

- Chair  
Howard Silver
- First Vice Chair  
Michael S. Townes
- Secretary-Treasurer  
Paul P. Skoutelas
- Immediate Past Chair  
Richard A. White
- Vice Chairs
  - Allen D. Biehler  
State Affairs
  - Christopher P. Boylan  
Government Affairs
  - Mattie P. Carter  
Transit Board Members
  - Michael P. DePalo  
Rail Transit
  - Fred M. Gilliam  
Bus and Paratransit Operations
  - Kim R. Green  
Business Members
  - John M. Inglish  
Research and Technology
  - Jeanne Krieg  
Human Resources
  - William D. Lochte  
Business Member-at-Large
  - Gary W. McNeil  
Canadian Members
  - Jeffrey A. Nelson  
Small Operations
  - Vacant  
Management and Finance
  - David L. Turney  
Marketing
  - Kathryn D. Waters  
Commuter and Intercity Rail
- President  
William W. Millar

#### **604.19 - Registration of Qualified Human Service Organizations**

The provision at (b)(3) that funding *includes funding for transportation* was not agreed to.

#### **Charter Exceptions**

We are concerned that under the charter exceptions, there are different reporting requirements. We believe the reporting requirements should be made consistent for the exceptions.

#### **Non-Registered Charter Operator Cannot Make Complaint**

The consensus position, as we understood it, was that standing to complain would be limited to registered charter operators or those acting on their behalf, such as a trade association. As written, the provision allows anyone with a financial interest – presumably including non-registered providers – to file a complaint.

#### **Day-To-Day Transportation of Transit Employees**

The consensus position, as we understood it, was that transit agencies would be free to transport their own employees within their geographic service areas, not only for oversight or emergency functions. As written, the exemption is not included in the rule. The presence of specific language authorizing employee transportation for oversight and emergency purposes but not for day-to-day functions outside those two areas implies day-to-day transportation would not be acceptable. We would appreciate clarification of this issue.

#### **Reporting Requirements Limited for Safety or Security Reasons**

We believe consensus was reached on a provision allowing transit agencies to omit specific origin and destination information in their logs when prudent to protect vulnerable populations. This provision was apparently dropped without discussion or note.

#### **Notification to Registered Charter Providers**

The consensus position was that pre-notification was appropriate only in cases where a transit agency proposed to provide service based on the absence of an interested private provider. As written, the section concerning notification (subsection (b)) suggests that any request for charter service – even for exceptions - requires notification. Read in conjunction with subsection (a), the provision is, at best, ambiguous on the requirement.

#### **Advisory Opinions**

Although little of this subpart is listed as ‘no consensus,’ we believe there is little on which consensus was reached. The effects of advisory opinions, special considerations, generally, and even the processing requirements were subject to significant disagreement.

**Whether a Private Charter Operator Could be Subject to the Charter Bus Restrictions**

This is recognized to be a non-consensus issue. Frankly, we think that this is an issue not for the Committee to have decided but rather for FTA to opine on. Are there situations in which a private operator may be subject to charter bus limitations or other federal requirements? We think there may be such situations under federal transit law. We also note that SAFETEA-LU includes a new provision that would characterize a private operator as a "subrecipient" in certain situations for the first time (under new section 5311(a)(2) of 49 USC Chapter 53). Additionally, we understand that there may be situations in which a private charter operator may hold title to and become an operator of federally funded vehicles. Certainly in these situations, use of federally funded buses and vans for private charter work would be an instance where the private charter operator would be subject to the charter bus restrictions as well as to other federal requirements. We ask that this issue be addressed in the preamble to the rule.

**Language Consistent With Other FTA Regulations**

We have mentioned from time to time the importance of keeping the charter bus regulation as consistent as possible with other FTA regulations in citing federal laws and the like to support clarity and consistency across all FTA regulations.

Thank you for your consideration of these comments. If you have any questions about these matters, please contact APTA's Daniel Duff or James LaRusch.

Sincerely yours,

Daniel Duff  
American Public Transportation  
Association

Carl G. Sedoryk  
Monterey-Salinas Transit

Sandra Draggoo  
Capital Area Transportation Authority

Hugh E. Kierig  
Oklahoma State University

Dale J. Marsico  
Community Transportation Association of  
America

Ron Baumgart  
River Cities Transit

David Spacek  
Illinois Department of Transportation

Stephanie Negriff  
Santa Monica Big Blue Bus

Mark E. Huffer  
Kansas City Area Transportation  
Authority

Richard L. Ruddell  
Fort Worth Transportation Authority

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**RICHARD P. SCHWEITZER, P.L.L.C.**

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436-378

January 12, 2007

Mr. David B. Horner  
Chief Counsel  
Office of the Chief Counsel  
Federal Transit Administration  
400 Seventh Street, S.W., Room 9328  
Washington, DC 20590

FTA-2005-22057-44

**Re: Comments on Charter Bus Negotiated Rulemaking Process**

Dear Mr. Horner:

The private charter bus operator members of the Charter Bus Negotiated Rulemaking Advisory Committee ("CBNRAC") write in response to the Federal Transit Administration's request for comments on its final draft proposal of the charter bus rule and to counter some mischaracterizations set out in the comments of the public members of the CBNRAC in their letter to you dated January 5, 2007.

First, we take issue with the statement in their January 5 letter that "in the rush to complete the final meetings" that "some issues were not clarified." The CBNRAC negotiations took place over the course of some eight months, meeting two days per month for seven to eight hours per day. There was ample time for all parties to air their views, offer solutions and express concerns. Should the process have warranted it, the facilitator could have afforded additional time as well. Nevertheless, on the final day of the last session, December 7, 2006, the meeting ended several hours *earlier* than scheduled because there were no more issues for which the parties believed additional discussion would be fruitful.

Moreover, the private sector operators and the public transit agencies, represented by the American Public Transportation Association ("APTA"), tried in good faith to negotiate a mutually agreeable revision to the charter rule for over three years prior to the enactment of SAFETEA-LU in August 2005 and the establishment of the CBNRAC. APTA and its members have enjoyed every opportunity to express their views to the private operators and to the FTA officials staffing the CBNRAC.

Now APTA is attempting to create a false impression that its members are being forced to acquiesce to proposed rules where there was no consensus in the CBNRAC. The tone of the January 5 letter, and several comments made by public sector members of the CBNRAC during the final few meetings of the Committee, seek to discredit the CBNRAC process and the

Mr. David B. Horner  
Federal Transit Administration  
January 12, 2007  
Page 2

valuable results achieved through many months of hard work by all the parties involved, including the FTA staff.

In particular, we are surprised and disappointed by comments from at least one of the public sector members that they were authorized to negotiate only to preserve the *status quo* and not to create a new charter bus rule. Our understanding was that all participants were required to negotiate the rule in good faith as a precondition to acceptance of appointment to the CBNRAC.

The private sector CBNRAC participants undersigned below applaud the FTA for facilitating this process and bringing the parties together in an effort to reach consensus. That effort was largely successful. The public and private sector participants in the CBNRAC discussed all of the issues directed by Congress in the conference report to SAFETEA-LU and also raised a number of other issues. We agreed on some 80% of the items discussed during the negotiations. These agreed items will be included in the proposed rule that the FTA will publish in the Federal Register.

On the 20% of the items where consensus was not reached, the parties engaged to educate each other about the nature of their operations, their economic realities, political obligations, and administrative burdens. Even where there was no consensus the parties now have a better understanding of the concerns raised by the other "side." Additionally, on several crucial issues, such as the definition of "charter bus service," the CBNRAC process was able to identify the core areas of interest for each side, allowing the FTA to make a reasoned decision in developing its proposed rule.

As to the specific issues raised in the January 5 letter, we have the following comments.

**Section 604.12(a)(4)**

APTA opposes the language in section 604.12(a)(4), which states that a private charter operator may only lease equipment from a recipient if the private charter operator has exhausted all available from all private registered charter providers in the service area. We believe this requirement is important to forestall collusion between unscrupulous private operators (or sham front operations with no equipment at all) from bidding on charter bus contracts with no intention of providing the service and then "leasing" equipment and drivers from a transit agency as a means to circumvent the charter rules. This has been a frequent problem under the current rules.

We also support retaining the requirement for transit agencies documenting all leasing transactions with private operators. This promotes transparency and adds validity to the triennial review process.

**Section 604.19 – Registration for Qualified Human Services Organizations**

The provision at (b)(3) that funding for the qualified human service organizations must include funding for transportation is included in the current rule and, to our knowledge, has not

proven to be a hardship. Eliminating this requirement could allow transit agencies to expand significantly the type and number of organizations for which they might provide direct charter bus service. The private sector participants adamantly do not agree to such a back door approach to opening up their markets to additional competition from transit agencies.

### **Day to Day Transportation of Transit Employees**

The consensus position was as presented in the latest draft—*i.e.*, that transit agencies are free to transport their own employees within their geographic service areas for oversight and emergency functions. This issue was discussed over the course of several months during the CBNRAC negotiations, the private sector generously agreed to a limited exception to the charter rules for employee transportation, and that agreement is reflected in the draft. We see no reason to reopen the issue at this time.

### **Reporting Requirements Limited for Safety or Security Reasons**

There was no consensus on allowing transit agencies to omit specific origin and destination information in their logs “when prudent to protect vulnerable populations” or otherwise. This information is critical for private operators seeking to ensure that transit agencies are complying with the rules.

### **Notification to Registered Charter Providers**

We agree that transit agencies need not provide prior notice to private operators under 604.18 when the charter service requested is subject to an exception. We would support a revision to draft subsection 604.18(b) to make that clear.

### **Advisory Opinions**

There was no consensus on the creation and use of advisory opinions, but the public sector balked at the use of advisory opinions from the FTA Chief Counsel as means to prevent charter violations before an event occurs. This is a critical issue for the private sector. The complaint process generally takes several months to complete at best, and by then the business has been lost regardless of whether a violation has been found. There is no provision in the regulations to award damages to the private operator injured by a charter violation, so the private participants in the CBNRAC strongly desire a mechanism whereby they may file a complaint with a request for an expedited consideration in the form of an advisory opinion to prevent harm before it occurs.

### **Application of Charter Rules to Private Operators**

The private CBNRAC participants also strongly oppose any application of the charter bus rules to private operators and support the applicability exclusion in section 604.2(c) as currently drafted. Otherwise, such a requirement would have the absurd result of forcing private charter bus operators out of the charter bus business simply because they receive federal funding to offset some of the costs of providing public transportation service or to equip their vehicles with wheelchair lifts. Such a result is neither required by law nor justified by the policy underlying the charter bus regulations, and neither APTA nor its members have offered any compelling policy justification for such a rule.



Mr. David B. Horner  
Federal Transit Administration  
January 12, 2007  
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Once again, we appreciate the tremendous investment of hours and resources into the CBNRAC process by the FTA, and we look forward to working with you over the coming months to complete a final rule that will provide clarity and afford additional protections to private charter bus operators.

Respectfully submitted,

Clyde Hart  
American Bus Association

Gladys Gillen  
Northwest Motorcoach Association

John Corr  
National School Transportation Association

Michael Waters  
California Bus Association

Victor Parra  
United Motorcoach Association

Jack Burkert  
Trailways Transportation System

Harold Morgan  
Taxicab, Limousine & Paratransit Assn.

Dale Moser  
Coach USA



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

400 Seventh St., S.W.  
Washington, D.C. 20590

February 14, 2007

Mr. Daniel Duff  
Chief Counsel & Vice President for Government Affairs  
American Public Transportation Association  
1666 K Street, NW, Suite 1100  
Washington, DC 20006

Mr. Richard P. Schweitzer  
Attorney at Law  
1776 K Street, NW, Suite 800  
Washington, DC 20006

Dear Messrs. Duff and Schweitzer:

I am in receipt of letters from each of you, signed by several other members of your respective caucuses, regarding the final consensus language for the Charter Service regulation.

The Federal Transit Administration (FTA) appreciates all the hard work each of your organizations provided in developing the proposed regulatory text for the Charter Service regulation. We have sent thank you letters to all committee members and their alternates recognizing the value of their participation.

In addition, FTA understands, and the meeting minutes confirm, that consensus was reached on approximately 80 percent of the regulatory language, or, all but twelve issues. Given this, I expect that each of you will counsel your respective members that according to the ground rules established and agreed to at the beginning of the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) sessions, your respective caucuses may not withdraw from the consensus and may not submit negative comments on consensus language. If you or your caucuses fail to abide by the ground rules, then we will consider such failure a violation of your "written commitment to negotiate in good faith," which you know was a prerequisite to committee membership.<sup>1</sup>

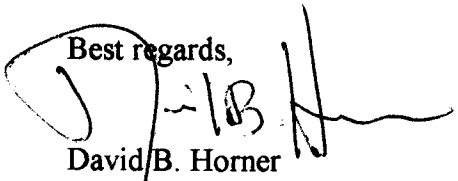
That being said, we anticipate publication of the notice of proposed rulemaking (NPRM) in the *Federal Register* this week. The points raised in APTA's and ABA's letters are addressed in the NPRM, and, therefore, we feel it inappropriate to respond to each point at this time.

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<sup>1</sup> See Notice of Intent to Form Federal Advisory Committee, 71 Fed. Reg. 5037, 5040 (January 31, 2006).

If you have any questions you may contact Linda Lasley at (202) 366-1674.

Best regards,

A handwritten signature in black ink, appearing to read "D. B. Horner", with a large, stylized flourish on the left side that loops around the text.  
David B. Horner

cc: Bill Millar, President, APTA  
Peter Pantuso, President, ABA