

§ 604.11

notice explaining why it is seeking an exception and state that they have at least 30 days to submit written comments to the recipient on the request;

(2) The recipient must send a copy of the notice, all comments received, and any further information it desires in support of its request to the Chief Counsel.

(3) The Chief Counsel shall review the materials submitted and issue a written decision denying or granting in whole or in part the request. In making this decision, the Chief Counsel may seek such additional information as the Chief Counsel determines is needed.

(4) Any exception that the Chief Counsel grants under 49 CFR 604.9(b)(3) shall be effective for not longer than 12 months from the date that the Chief Counsel grants it.

(d) The process for requesting and granting and exception under 49 CFR 604.9(b)(4):

(1) The recipient must submit its petition for an exception to the Administrator at least 90 days prior to the day or days on which it desires to provide charter service.

(2) The petition must describe the event, explain how it is special, and explain the amount of charter service which private charter operators are not capable of providing.

(3) The Administrator will 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 determines is needed.

(4) Any exception granted by the Administrator under 49 CFR 604.9(b)(4) shall be effective solely for the event for which the recipient requests an exception.

(e) Any charter service that a recipient provides under any of the exceptions in this part must be incidental charter service.

[52 FR 11933, Apr. 13, 1987, as amended at 53 FR 53355, Dec. 30, 1988; 58 FR 36899, July 9, 1993; 58 FR 52685, Oct. 12, 1993; 59 FR 51134, Oct. 7, 1994]

49 CFR Ch. VI (10-1-06 Edition)

§ 604.11 Procedures for determining if there are any willing and able private charter operators.

(a) To determine if there is at least one private charter operator willing and able to provide the charter service that the recipient desires to provide, the recipient must complete a public participation process:

(1) At least 60 days before it desires to begin to provide charter service if it is not doing so on May 13, 1987; or

(2) Not more than 90 days after May 13, 1987 if the recipient is providing charter service on May 13, 1987 and desires to continue to provide charter service.

(b) The public participation process must at a minimum include:

(1) Placing a notice in a newspaper, or newspapers, of general circulation within the proposed geographic charter service area;

(2) Sending a copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private charter service operator that requests notice;

(3) Sending a copy of the notice to the United Bus Owners of America, 1300 L Street, NW., suite 1050, Washington, DC 20005, and the American Bus Association, 1100 New York Avenue, NW, Suite 1050, Washington, DC 20005-3934.

(c) The notice must:

(1) State the recipient's name;

(2) Describe the charter service that the recipient proposes to provide limited to the days, times of day, geographic area, and categories of revenue vehicle, but not the capacity or the duration of the charter service.

(3) Include a statement providing any private charter operator desiring to be considered willing and able with at least 30 days from the date of the notice to submit written evidence to prove that it is willing and able;

(4) State the address to which the evidence must be sent.

(5) Include a statement that the evidence necessary for the recipient to determine if a private charter operator is willing and able includes only the following:

(i) A statement that the private operator has the desire and the physical capability to actually provide the categories of revenue vehicle specified; and

(ii) A copy of the documents to show that the private charter operator has the requisite legal authority to provide the proposed charter service and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter service.

(6) Include a statement that the recipient shall review only that evidence submitted by the deadline, shall complete its review within 30 days of the deadline, and within 60 days of the deadline shall inform each private operator that submitted evidence what the results of the review are.

(7) Include a statement that the recipient shall not provide any charter service using equipment or facilities funded under the Acts to the extent that there is at least one willing and able private charter operator unless the recipient qualifies for one or more of the exceptions in 49 CFR 604.9(b).

(d) Any recipient that desires to continue to provide charter service using FTA funded equipment or facilities shall follow the procedures in 49 CFR 604.11 (b) and (c) annually during the month in which it published its first newspaper notice to redetermine the extent to which there is at least one willing and able private charter operator.

(e) Any recipient, including the State in State administered programs, may elect to comply with this procedure for all of its subrecipients, or delegate this responsibility to the subrecipients, or delegate this responsibility to only some of its subrecipients.

(Approved by the Office of Management and Budget under Control No. 2132-0543)

[52 FR 11933, Apr. 13, 1987, as amended at 55 FR 34932, Aug. 27, 1990; 59 FR 43778, Aug. 25, 1994]

§ 604.13 Reviewing evidence submitted by private charter operators.

(a) The recipient shall review the evidence submitted in response to the notice given under 49 CFR 604.11 within 30 days of the deadline for the submission of evidence.

(b) Within 60 days of the deadline for the submission of evidence, the recipient shall notify each private charter operator that submitted evidence of the recipient's decision.

(c) The recipient must review the evidence submitted to determine if the evidence proves that the private charter operator has:

(1) The desire and the physical capability to actually provide charter service using the categories of revenue vehicles; and

(2) The required legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter service.

(d) The recipient must determine that a private charter operator which meets the requirements in 49 CFR 604.13(c) is willing and able.

(e) A recipient may look behind the evidence submitted by a private charter operator only if the recipient has reasonable cause to believe that some or all of the evidence has been falsified.

(f) A recipient may, within its discretion, stop reviewing the evidence submitted by private charter operators when the recipient has determined that there is one or more private charter operators willing and able to provide all of the charter service that the recipient proposed to provide in its notice. A recipient may, however, review the evidence submitted by all private charter operators and create a roster of willing and able private charter operators.

(g) The entity that complies with the public participation process under 49 CFR 604.11(e) shall be responsible for complying with the requirements in 49 CFR 604.13.

(Approved by the Office of Management and Budget under Control No. 2132-0543)

Subpart B—Complaint Process

§ 604.15 Filing a complaint.

(a) An interested party ("complainant") who believes that a recipient is in violation of the requirements of this part may submit a written complaint to the FTA Regional Administrator. The complainant shall also send a copy of the complaint to the recipient ("respondent").

(b) If the Regional Administrator determines that the complaint is not