

(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

## § 604.17

without obvious merit and that it states grounds on which relief may be granted, the Regional Administrator shall advise the complainant and respondent to attempt to conciliate the dispute. The period for informal conciliation shall last for up to 30 days from the date of receipt of the Regional Administrator's order unless an extension is mutually agreed upon by the parties.

(c) If the parties are unable to conciliate the dispute, either party may so notify the Regional Administrator in writing. The Regional Administrator shall send a copy of the complaint to the respondent and provide it with 30 days from the receipt of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant.

(d) After the Regional Administrator receives that respondent's evidence, the Regional Administrator shall inform the complainant that it has 30 days from the receipt of the notice to rebut the respondent's evidence. The complainant shall provide a copy of its rebuttal to the respondent.

(e) The Regional Administrator shall review the evidence submitted and prepare a written decision. The Regional Administrator shall attempt to transmit the written decision to the parties within 30 days of receiving all of the evidence.

(f) If the Regional Administrator determines that further investigation is necessary, including the submission of additional information or the holding of an informal evidentiary hearing, the Regional Administrator shall so inform the parties in writing.

(g) Either party may request an informal evidentiary hearing prior to the transmission of the Regional Administrator's decision. The Regional Administrator may grant or deny the request.

(h) If an informal evidentiary hearing is held, the date and location shall be arranged by the Regional Administrator in consultation with the parties. Any new evidence introduced by the parties at the informal evidentiary hearing shall be submitted to the Regional Administrator within 10 days after the hearing.

(i) The Regional Administrator may extend the deadlines imposed in this

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

part for administrative convenience by notifying all parties in writing of the extensions.

[52 FR 11933, Apr. 13, 1987, as amended at 58 FR 52685, Oct. 12, 1993]

### § 604.17 Remedies.

(a) If the Regional Administrator determines that a violation of this part has occurred, the Regional Administrator may order such remedies as the Regional Administrator determines are appropriate.

(b) If the Regional Administrator determines that there has been a continuing pattern of violation of this part, the Regional Administrator may bar the respondent from the receipt of further financial assistance for mass transportation facilities and equipment.

[52 FR 11933, Apr. 13, 1987, as amended at 58 FR 52685, Oct. 12, 1993]

### § 604.19 Appeals.

(a) The losing party may appeal the Regional Administrator's decision to the Administrator within 10 days of receipt of the decision. The losing party ("appellant") shall include in its appeal the basis for the appeal and evidence to support the position. The appellant shall send a copy of the appeal to the prevailing party ("appellee").

(b) The Administrator will only take action on 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.

(c) If the Administrator takes action on an appeal, the Administrator shall provide the appellee with 10 days from the receipt of the notice to respond to the evidence contained in the appeal.

(d) The Administrator shall send a copy of the appellee's response to the appellant and provide it with 10 days from the receipt of the notice to rebut the appellee's response.

(e) The Administrator shall endeavor to make a final determination on the appeal within 10 days of the receipt of the appellant's rebuttal.

[52 FR 11933, Apr. 13, 1987, as amended at 58 FR 52685, Oct. 12, 1993]