

Subpart A—General**§ 604.1 Purpose.**

The purpose of this part is to implement section 3(f) and section 12(c)(6) of the FT Act.

§ 604.3 Applicability.

This part applies to all applicants and recipients of Federal financial assistance under:

(a) Sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the FT Act; or

(b) Sections 103(e)(4), 142(a), or 142(c) of Title 23 United States Code which permit the use of Federal-Aid Highway funds to purchase buses.

§ 604.5 Definitions.

(a) All definitions in the FT Act (at 49 U.S.C. 1608) are applicable to this part, except as may otherwise be provided in this section.

(b) *The Acts* means the FT Act and those parts of Title 23 United States Code, 23 U.S.C. 103(e)(4), 142(a) and 142(c), that provide for assistance to public bodies for purchasing buses.

(c) *Administrator* means the Administrator of FTA or his or her designee.

(d) *Categories of Revenue Vehicle* means bus or van.

(e) *Charter Service* means 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 (in accordance with the carrier's tariff) 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. This definition includes the incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment.

(f) *Chief Counsel* means the Chief Counsel of FTA.

(g) *Days* means calendar days in subpart A and Federal working days in subpart B.

(h) *Designated Official* means the applicant's and recipient's employee authorized to file applications on behalf of the applicant or to enter into agreements on behalf of the recipient.

(i) *Incidental Charter Service* means charter service which does not: (1) interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts; or (2) does not shorten the mass transportation life of the equipment or facilities.

(j) *Interested Party* means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter service.

(k) *Non-urbanized area* means an area with a population of less than 50,000 people.

(l) *Recipient* means one that has received or is receiving Federal financial assistance under the Acts. The term includes subrecipients of a recipient, subrecipients in FTA's State administered programs, public bodies that receive assistance that will be passed on to another public or quasi-public body, any operator for a recipient, whether publicly or privately owned, and may include lessees of federally assisted buses and other equipment. For any FTA State administered program, the State is the recipient.

(m) *State Administered Program* means any FTA grant program in which the State is the recipient of funds, passes the funds to subrecipients, and administers the program for FTA.

(n) *FT Act* means the Federal Mass Transit Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

(o) *FTA* means the Federal Transit Administration.

(p) *Willing and able* means having the desire, having the physical capability of providing the categories of revenue vehicles requested, and possessing the legal authority, including the necessary safety certifications, licenses and other legal prerequisites, to provide charter service in the area in which it is proposed to be provided.

§ 604.7 Charter agreement.

(a) Every applicant for financial assistance under sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the FT Act, or under 23 U.S.C. 103(e)(4), 142(a) or 142(c), must include two copies of a

charter bus agreement signed by the applicant's designated official with each grant application submitted to FTA after May 13, 1987. For FTA's State administered programs, the State is the applicant.

(b) The text of the agreement must be as follows:

I, (name), (title), agree that (name of applicant) and all recipients through (name of applicant) will provide charter service that uses equipment or facilities provided under the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 et seq.) or under 23 U.S.C. 103(e)(4), 142(a) or 142(c) (the Acts) only to the extent that there are no private charter service operators willing and able to provide the charter service that (name of applicant) and all recipients through (name of applicant) desire to provide unless one or more of the exceptions in 49 CFR 604.9 applies.

I further agree that (name of applicant) and all recipients through (name of applicant) will comply with the provisions in 49 CFR part 604 before they provide any charter service using equipment or facilities provided under the Acts, that the requirements of 49 CFR part 604 will apply to any such charter service that is provided, and that the definitions in 49 CFR part 604 apply to this agreement.

Applicant

Name

Title

Date

Federal Transit Administration

Name

Title

Date

(c) If FTA approves the grant application, the approving official shall sign the agreement when the grant application is approved. One copy of the signed agreement will be retained by FTA and the other copy will be returned to the recipient, formerly the applicant.

(d) Once the applicant and FTA enter into a charter agreement, the applicant may incorporate that agreement by reference into any subsequent grant application instead of submitting an agreement under 49 CFR 604.7(a).

(e) Each State in FTA's State administered programs must:

(1) Obtain a certification of compliance with this part from each of its current subrecipients within 60 days of May 13, 1987. The certification shall state: "(Name of subrecipient) certifies that it shall comply with 49 CFR part 604 in the provision of any charter service provided with FTA funded equipment or facilities.";

(2) Retain this certification as long as the subrecipient is a subrecipient; and

(3) Assure in each application submitted to FTA after May 13, 1987, that all subrecipients have submitted the certification.

(f) If any recipient does not anticipate submitting a grant application to FTA during Federal fiscal year 1987, the recipient must submit two copies of the agreement set forth in §604.7(b) of this part within 60 days of May 13, 1987, to the appropriate FTA regional office. FTA will sign the agreement, retain one copy of the agreement and return the other to the recipient.

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

§ 604.9 Charter service.

(a) If a recipient desires to provide any charter service using FTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service which the recipient desires to provide. To the extent that there is at least one such private operator, the recipient is prohibited from providing charter service with FTA funded equipment or facilities unless one or more of the exceptions in §604.9(b) applies.

(b) *Exceptions.* (1) A recipient may provide any and all charter service with FTA funded equipment and facilities to the extent that there are no willing and able private charter operators.

(2) A recipient may enter into a contract with a private charter operator