

### Appendix B to Part 604—Basis for Removal From Charter Registration Web Site

The following is an explanation of terms contained in Section 604.27(d) concerning reasons for which FTA may remove a private charter operator or a qualified human service from the FTA charter registration Web site.

#### *What is bad faith?*

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

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would not be bad faith for a registered charter operator to fail to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided.

#### *What is fraud?*

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

Examples of fraud include but are not limited to: (1) A registered charter operator indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; (3) a registered charter provider intentionally misrepresents its legal geographic service area.

#### *What is a lapse of insurance?*

A lapse of insurance occurs when there is no policy of insurance in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place.

Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

#### *What is a lapse of other documentation?*

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, e-mail address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal of state motor carrier identifying number.

Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

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

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

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

### Appendix C to Part 604—Charter Service Questions and Answers

The following questions were taken from comments submitted to the Notice of Proposed Rulemaking. Some questions have been modified slightly from the original text.

#### (a) Applicability

(1) Q: How do I know if these charter regulations apply to my transit agency?

A: If your transit agency accepts FTA financial assistance, the charter regulations probably apply. Your next step is to look at the exemptions contained in section 604.2 ("Applicability"). If none of these exemptions apply, look at the definition of charter service contained in section 604.3 ("Definitions"). Determine if the activity your agency is about to engage in fits within that definition. If not, then the charter regulations do not apply. If the activity does fit within the definition of charter service, then you need to determine whether the activity fits within one of the exceptions contained in subpart B ("Exceptions"). Remember that you may not provide the service if a registered charter provider indicates an interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

(2) Q: How are registered private charter providers identified? Is there some kind of proof requirement that charter operators can actually provide service to a particular area? Or, do charter operators have to have a history of providing service to the area they claim to serve?

A: A registered charter provider is a private operator who wishes to receive notification of pending charter service requests directed

to public transit agencies and has registered on FTA's charter registration Web site. When registering, charter providers are required to provide specific information, including areas served. They are not required to provide proof of such service. Additionally, the entire registration process is a self-certification process; FTA does not confirm the representations or information that the registered charter provider provides. Finally, a registered charter provider also does not have to demonstrate a history of providing service in the areas it claims to serve.

(3) Q: Is there any geographical limitation on where a private charter operator can register?

A: No. There is no geographical limitation on which areas a private charter operator may register. This means a private charter operator may register for several states or across the United States. If a registered charter provider, however, indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and a public transit agency was willing to provide the service, then the public transit agency can file a complaint under 49 CFR section 604.26 against the registered charter provider.

(4) Q: Who is considered a "private charter operator?" What are the criteria to establish that classification?

A: A "private charter operator" is any private, for-profit entity (i.e., individual, group or company) that provides chartered transportation on a regular basis with its own equipment (e.g., bus and/or van).

(5) Q: Is there a definition of "geographic service area?"

A: Yes. Geographic service area is defined under 49 CFR section 604.3(j) as, "the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state and Federal law."

(6) Q: Do charter service hours include time spent waiting for passengers where the vehicle is not available for other services?

A: Yes. Charter service hours include both time spent transporting passengers and time spent waiting for passengers. Charter service hours also include "deadhead" hours which is the time spent getting from the garage to the origin of the trip and then the time spent from the trip's ending destination back to the garage, since the vehicle is unavailable during that time period as well.

(7) Q: Qualified Human Service Organizations (QHSOs) that do not receive funds from Federal programs listed in Appendix A are required to certify that their federal funds include funding for transportation. However, most Federal funds are passed through one or more levels of state and local government, so how can we be certain what the original purposes of the Federal funds were?

A: The regulation, 49 CFR 604.15(b), has been modified. That provision no longer requires QHSOs to certify that their funding included funding for transportation.

(8) Q: What is the status of sub-grantees and entities with equipment and operations not assisted with federal funds?

A: The regulations do not apply to equipment that is fully funded with local funds and is stored in a locally funded

facility and is maintained with only local funds.

(9) Q: Must a private charter provider that provides public transportation services under contract or agreement with a public transit agency abide by the limitations in the proposed rule?

A: Yes. Private charter providers that provide public transportation service under contract with a public transit agency are covered by the new regulation when they are operating FTA funded equipment or services. These private charter operators are standing in the shoes of the public transit agency, and therefore cannot use federally funded equipment to provide charter services. This does not mean, however, that a private charter operator that contracts with a public transit agency and uses one of the private charter operator's own vehicles is subject to the charter service regulations (see section 604.2(c)).

(10) Q: Does the analysis change under different contractual scenarios (e.g., turnkey operations, operation and maintenance of vehicles provided by the public transit agency, or operation of contractor owned buses maintained in a federally funded facility owned by a public transit agency)?

A: Yes. The regulations, however, only apply when the contract is funded with FTA funds or the buses are funded with FTA funds or the equipment is maintained in an FTA funded facility.

(11) Q: May a private charter operator that qualifies as a sub-grantee of a state, under an FTA-administered program, use vehicles purchased with federal assistance to provide private charter services?"

A: It depends. A private charter operator that receives FTA assistance can use FTA-funded equipment to provide service for program purposes (see section 604.2(e)), but not for other charter service. Under the provisions of section 604.2(c), however, the regulations do not apply to non-FTA funded activities of private charter operators that receive directly or indirectly FTA financial assistance under programs such as sections 5307, 5309, 5310, 5311, 5316, and 5317. Further, an intercity bus operator that receives assistance under section 5311(f) to provide rural intercity bus service may provide charter service using a FTA-funded vehicle only if one of the exceptions applies. A vehicle equipped with a lift using FTA assistance under section 3038 of TEA-21 may be used for charter service.

(12) Q: Is there an emergency charter exception for 'actual, imminent or anticipated possibility of injury, loss of life, or loss of property?' For instance, there could be a poison gas plume or threat of one from an industrial accident or railcar derailment. A transit agency could be called to do a rapid evacuation of an apartment, hospital, school, elder care facility or some other facility requiring group or individual evacuation. Must the public transit agencies wait for the Administrator to declare this incident an event of 'regional or national significance' so that transit buses can be used?

A: Yes, there is an exception for emergencies. Section 604.2(f) contains an exemption that allows for public transit agencies to respond to emergencies that last

fewer than 45 days. If an emergency lasts longer than 45 days, the public transit agency must follow the procedures set out in subpart D of 49 CFR part 601. The Administrator does not declare an emergency. Rather, the President, Governor, or Mayor declares the emergency.

(13) Q: If an emergency is exactly 45 days long, is the emergency services exception still applicable?

A: Yes. If the emergency lasts exactly 45 days the emergency services exception is still applicable. The regulation refers to calendar days, not business days. Therefore, if the emergency lasts more than 45 calendar days, the public transit agency must follow the procedures set out in subpart D of 49 CFR part 601.

(14) Q: Do emergency situations include matters of security—e.g., when the Secret Service requests vehicles with no under-vehicle luggage compartments?

A: No. Situations involving the Secret Service would fall under the government officials section of the regulation (49 CFR section 604.7), which allows up to 80 hours annually of charter service to government officials on official government business, which can include non-transit purposes.

(15) Q: Are rural transit operators (section 5311) exempt from the rule? What about recipients of 5310 vehicles or JARC or New Freedom grants?

A: Recipients under section 5311, 5310, 5316, and 5317 are not subject to the charter rule when using FTA-funded vehicles to provide public transportation or coordinated human service transportation or to serve groups of individuals with disabilities, the elderly, or low income individuals. The charter rule does apply, however, if the FTA recipient wants to provide other charter service using FTA-funded or maintained vehicles. A rural transit operator may provide other charter service only under the exemptions/exceptions contained in the rule.

#### (b) Exemptions

(16) Q: Does the exemption of demand response service from the definition of charter service exclude rural and small urban systems entirely?

A: No. The exemption of demand response service from the definition of charter service is intended to exclude service provided to individuals, as opposed to a group, who request service such as paratransit service. In addition, the exception contained in section 604.7 does not include service provided to QHSOs (organizations providing service to persons with disabilities, low income individuals, and the elderly).

(17) Q: Is there an expedited process to obtain the Administrator's decision and signature for time sensitive events so that there could be sufficient time to plan and implement service?

A: Petitions to the Administrator for events of regional or national significance will be processed as quickly as practicable.

#### (c) Definitions

(18) Q: If a transit agency provides service that is irregular or on a limited basis for an exclusive group of individuals, but provides the service free of charge, is the service exempt from the charter regulation?

A: Yes. So long as the transit agency does not charge a premium fare for the service and

there is no third party paying for the service in whole or in part.

(19) Q: Does "qualified human service agency" include any non-profit entity that provides services to the disabled, or economically disadvantaged without reference to age?

A: Yes, so long as the QHSO either receives funding from one of the programs listed in Appendix A or registers as a QHSO on the FTA charter Web site. Under section 604.7, a recipient may provide charter service to entities that meet the definition of "qualified human service organization." This includes organizations that serve persons who qualify for human service or transportation-related programs or services due to a disability, income or advanced age. All three are not required, however, so an organization may qualify as a QHSO but serve only persons with low income.

(20) Q: Is it charter service when the local transit authority provides event or fair service, that is open to the public, with or without charge, where the transit authority determines the routes and times and it is scheduled for the same time every year, but the Fair Association subsidizes all or part of the costs?

A: Yes. The fact that the Fair Association pays for the service in whole or in part means the service is charter under section 604.3(c)(2).

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

A: The inclusion of "indirect" financial assistance as part of the definition of "recipient" is covers "subrecipients." We modified the definition of recipient in the final rule to make this point clear.

(22) Q: When a transit authority contracts out its smaller accessible vehicles for use during football games to offer service free of charge for persons with disabilities and their escorts, is it charter service?

A: Yes. Under the facts presented, this type of service falls under the definition of charter service in section 604.3(c)(1). Since "contracting out" involves a third party, exclusive use, and a negotiated price. Thus, the transit authority would need to determine whether one of the exceptions under subpart B applies.

(23) Q: Is it considered charter service when the transit authority funds shuttles to and from football games? Regularly scheduled service is suspended on these days, but this service partially follows the existing route and is open to the public at the regular fare.

A: No. If the service provided by the public transit agency costs the same as the customary fixed route fare and it is open to the public then it is not charter.

(24) Q: Is shuttle service for a one-time event considered charter service, if the service is open to the public, widely advertised, and the itinerary is determined by the transit operator? What if the service has been provided for decades?

A: No. So long as the transit authority charges its customary fixed route fare for the shuttle service, and there is no third party involvement, then the service is not charter. Widely advertising the service or providing the service for decades has no bearing on whether the service is charter.

(25) Q: Is demand response service included in the definition of charter service?

A: No. Demand response service is excluded from the definition of charter service under section 604.3(c).

(26) Q: Is it charter service when a university pays a public transit agency a fixed charge to allow all faculty, staff, and students to ride the transit system for free?

A: No. So long as the public transit agency provides the service on a regular basis, along a fixed route, and the service is open to the public, the fact that the university may be subsidizing student and faculty rides, does not convert the service to charter.

(27) Q: Can a transit agency provide service when the customer wants a particular type of equipment such as a (rubber tire) trolley bus, vintage bus, or CNG bus that the private operators do not have?

A: No. Public transit agencies cannot provide charter service solely based on a customer's vehicle preferences. FTA only recognizes two categories of vehicles: buses and vans.

(28) Q: What is a "qualified human service organization?"

A: A qualified human service organization is an organization that provides service to individuals that qualify for federally conducted or assisted transportation related programs due to disability, income or advanced age. See section 604.3(q).

(29) Q: If a transit agency has restored or preserved historic electric buses for limited, special use, are the buses subjected to charter bus restrictions?

A: Yes, if the public transit agency purchased the historic electric buses with Federal funds or maintains those vehicles in federally funded facilities.

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

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

(31) Q: Does "pattern of violations" apply from the effective date of the final rule?

A: Yes. The new definition of pattern of violations applies from the effective date of the final rule. In other words, in order to establish a pattern of violations, the violation had to occur after the effective date of the final rule.

(32) Q: What is a violation? Does it require an official charter decision or could it also include an oversight finding or other means of identifying shortcomings?

A: The new rule defines "violation" as a finding by FTA of a failure to comply with one of the requirements of this part. A finding may be an official charter decision by the Chief Counsel or the Administrator. An oversight finding would also qualify as an FTA finding.

(33) Q: Are sightseeing trips still not charter?

A: Yes. "Sightseeing" is excluded from the definition of "public transportation" under 49 U.S.C. Section 5302(a)(10). Therefore, it is not permissible for public transit agencies to provide sightseeing service with FTA-funded assets.

(34) Q: If a transit agency provides vehicles to a special event, but the event is open to the public, the route is controlled by the transit agency, the route is advertised similarly to the transit agency's regular routes, the buses are not identified as "special service" or any other different markings, and the vehicles go to and from fixed stops in an express bus manner, is this charter?

A: No. So long as the transit authority does not charge a premium fare for the service and a third party does not pay for the service in whole or in part. Advertising or different markings on the bus are longer determinative of whether the service is charter.

(35) Q: Does FTA consider wait time as a factor, in and of itself, when determining whether service is charter service?

A: No. Wait time is not, in and of itself, considered a characteristic of charter service.

(36) Q: What if there is no "contract" under the "single contract" factor and the transit agency merely sees a need and provides the charter-type service on its own initiative, is that charter?

A: No. If a transit agency sees a need and wants to provide service for a limited duration at the customary fixed route fare, then that service is not charter service. The existence of a contract is no longer determinative of whether service is charter service.

(d) Exceptions

(37) Q: If the federal government calls on a public transit agency for transit service and it will exceed the proposed 80 hour limitation, are public operators to refuse this service or seek a waiver directly from the federal government?

A: A public transit agency can petition for more service hours if it exceeds the 80 hour annual allowance. Instructions on how to file a petition are more fully described under 49 CFR Section 604.6(c) of the new regulation. Public transit agencies should be mindful that the Administrator will grant such requests under extraordinary circumstances only.

(38) Q: What kind of events qualify for the "Events of Regional and National Significance" exception?

A: First, this exception is now located in section 604.11 and is called "Petitions to the Administrator." Second, the exception is designed to allow public transit agencies to participate in providing service to large events that will attract a lot of visitors. Some examples are: the Kentucky Derby, the Indianapolis 500, a bridge opening, or a new transit facility opening. If a transit authority is unsure whether a particular event fits within the exception, the transit authority may request an Advisory Opinion from FTA according to section 604.17.

(39) Q: What should a transit agency do when it is in the process now of planning for an event of regional significance? Will the new rules terminate these plans?

A: The new rule will impact a transit authority's planning process for an event of

regional significance. Any service provided by the transit authority after the effective date of the rule—April 30, 2008—is subject to the provisions of the new rule.

(40) Q: What can a public transit agency do if there is a time sensitive event in which the agency does not have time to consult with all the private charter operators in their area? For example, the presidential inauguration.

A: Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators.

(41) Q: How should a public transit agency handle the situation of a regional or nationally significant event when there is a requirement to plan significant events (e.g., the Super Bowl) many years in advance long before the list of registered charter service providers is compiled?

A: If the transit agency plans to provide service to an event of regional or national significance after the effective date of the rule—April 30, 2008—then that service is subject to the requirements of the new rule.

(42) Q: Does the hardship exception apply to small urban operators?

A: Yes. Under section 604.11, the hardship exception applies to non-urbanized areas under 50,000 in population or a small urbanized area under 200,000 in population.

(e) Notice

(43) Q: May a transit agency indicate in the notice that goes out to registered charter providers that the customer requested specific equipment?

A: No. In terms of type of vehicles, the notice can include whether the customer needs a bus or a van. The registered charter provider, when it contacts the customer will learn of the specific customer needs. At that time, the registered charter provider can determine whether to seek out the specialized equipment from other private charter operators or a public transit agency.

(44) Q: Must a public transit agency provide notice of all potential charter trips to registered charter providers?

A: No. A public transit agency needs to provide notice only for charter trips that it is interested in providing. If an exemption or one of the exceptions applies, then the public transit would, after providing the service, record the service as required by section 604.12.

(45) Q: What does "notifying private operators" entail? What actions are to be taken when a notification e-mail is undeliverable? Is it sufficient to provide phone numbers of private operators when people call in for charter service?

A: Only "registered charter providers" need to be contacted. In order to qualify as a "registered charter provider" the information provided, including contact information, must be valid. If the e-mail is undeliverable, then the notice should be faxed to the registered charter provider. If the public transit agency declines to provide the service to the customer, then they should

refer the customer to the FTA charter registration Web site. It is not necessary to provide the customer with the registered charter provider's phone number if the public transit agency refers the customer to the charter registration Web site.

(46) Q: May a recipient provide service that allows customers to park at a distant location, like a museum, and then have a transit vehicle take them to a sporting event for a fare that is higher than the normal fixed route fare? May a recipient prevent a private charter operator from providing a similar service from the same starting point to the same destination?

A: No. In this case, since the recipient charges a premium fare for the service, it meets the definition of charter. In order to provide the service, the recipient must give notice to registered charter providers in accordance with section 604.14. A recipient may not prevent a private charter operator from providing a similar service. This is true whether or not the private charter operator is registered on the FTA Charter Registration Web site.

(f) Complaint & Investigation Process

(47) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint under the new rule?

A: Yes. A registered charter operator or its duly authorized representative, who can include a trade association, may file a complaint under section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA's charter registration Web site may not file a complaint.

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

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

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

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

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

A: FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

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

A: An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6 which states that the service that was provided was within the allowable 80 hours of government official service.

(52) Q: May a state waive participation in the complaint proceedings and forward the complaint directly to FTA after initial receipt and review?

A: A state is no longer involved in the complaint process, and, therefore, no waiver is necessary. In order for a complaint to be filed, it must be filed directly with the Office of the Chief Counsel.

(53) Q: What can a transit agency do if it believes that a private provider is not bargaining in good faith with a group and responds to a notice with a price or terms that are not acceptable to that group?

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

(54) Q: What actions can a private charter operator take when it becomes aware of a transit agency's plan to engage in charter service just before the date of the charter?

A: As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

(55) Q: When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

(56) Q: Who qualifies as a presiding official, what are the duties, and what other limitations are imposed?

A: A presiding official will have training and/or experience in conducting hearings. More important, the person may not have any conflicts of interest or previous contact with the parties concerning the issue in the proceeding. A presiding official's duties include, but are not limited to, convening a hearing, issuing orders, ruling on motions, and drafting recommended decisions.

(57) Q: What recourse does a transit operator have when a registered charter provider indicates interest in providing the charter service set out in the notice and then does not do so?

A: A transit operator can and should file a complaint for removal against the registered charter provider. This notifies FTA of the registered charter provider's alleged actions. FTA will then investigate the allegations and potentially remove the registered charter provider from the registration list.

(58) Q: Are there any measures to regulate who is considered a registered charter provider? And, are there any penalties for those that register and actually are not in a position to perform the needed services—for example an individual who owns a taxicab.

A: Yes. Through the self-registration process, a registered charter provider certifies that the information it provides on the charter registration Web site is true and accurate. The penalty for providing inaccurate or untrue information is removal from the registration Web site and possibly criminal penalties under 18 U.S.C. 1001.

(59) Q: If a customer hosts a large community event and the public transit agency cannot provide service because of the charter regulations and private operators will not provide service because the payment is not sufficient, is there any alternative means or does the service not get provided at all?

A: A public transit agency may provide the service if, after providing the notice required in section 604.14, no registered charter providers in the transit agency's geographic service area are interested in providing the service.

(60) Q: What will result if a registered charter operator cannot actually provide the service, but responds to a recipient's notice anyway?

A: If a registered charter provider responds to a notice, then it is expected to negotiate in good faith with the customer to provide the service. If a registered charter provider vindictively responds to a notice in order to prevent a public transit agency from providing the service, then that registered charter provider may be subject to a complaint for removal from the charter registration Web site.

(61) Q: What method will the decision maker employ in determining the penalty for violating the charter regulations?

A: Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See section 604.47 and Appendix D for more details.

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

A: Yes. A pattern of violations is defined as more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months. While a single complaint may contain several violations, the complaint must contain more than a single event that included unauthorized charter service in order to establish a pattern of violations.

(g) Recordkeeping

(63) Q: What if the public transit provider does not have sufficient time to evaluate a request and make sure that all the information is complete before notifying the registered private charter companies?

A: A recipient should wait to provide notice that is consistent with 49 CFR Section 604.14.

(h) Miscellaneous

(64) Q: Are body-on-van-chassis vehicles classified as buses or vans under this provision?

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

(65) Q: Are there adequate provisions to ensure that the registry site will be maintained in such a way that carriers provide evidence of insurance?

A: Registered charter providers are required to certify that they have insurance but are not required to provide evidence of insurance. If there is information that indicates the provider has provided a false certification, then it can be subject to criminal penalties under 18 U.S.C. 1001 and removed from the FTA Charter Registration Web site.

(66) Q: Will the registration Web site be fully functional and grantees receive training on how to use the Web site before the rule's effective date?

A: Yes. The Web site will be fully functional before the rule's effective date. A

training manual will also be distributed before the effective date. FTA intends to also do a roll-out of the regulation prior to the effective date of the final rule.

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

A: Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

(68) Q: Do FTA's attorneys have the necessary training to serve as administrative law judges and makes rulings on motions, a task that heretofore has not been a part of the day-to-day activities of regional counsel?

A: Yes. FTA attorneys who have the delegated responsibility to serve as a Presiding Official may rule on motions and will possess the necessary qualifications to carry out their delegated tasks and responsibilities.

(69) Q: Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers in its geographic service area,

registered charter providers have enough vehicles to provide all of the service to the event?

A. No. If after consultation with registered charter providers and there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

**Appendix D to Part 604—Matrix of Remedies for Violations**

Remedy Assessment Matrix:

**EXTENT OF DEVIATION FROM REGULATORY REQUIREMENTS**

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

FTA's Remedy Policy:

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

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation (“extent of deviation from regulatory requirements”);

(3) The revenue earned (“economic benefit”) by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

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

Issued this 7th day of January, 2008.

**James S. Simpson,**  
*Administrator.*

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