

JUSTIFICATION STATEMENT
Charter Service Operations

1. Circumstances that make the collection necessary.

The Charter Service rule contains 3 provisions that impose information collection requirements on recipients of financial assistance from the Federal Transit Administration (FTA) for capital or operating expenses under 49 U.S.C. 5301 et seq. 49 U.S.C. Section 5323(d) provides protections for private intercity charter bus operators from unfair competition by FTA recipients. 49 U.S.C. Section 5302(a)(10) as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right to provide charter bus service with FTA-funded facilities and equipment only if it is incidental to the provision of mass transportation service. These statutory requirements have been implemented in FTA's charter regulation, 49 C.F.R. Section 604.

First, 49 C.F.R. Section 604.7 requires all applicants for financial assistance under 49 U.S.C. Section 5309, 5336, or 5311 to include 2 copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. (FTA's Section 5311 program distributes the Section 5311 funds by formula to the States, which include the Commonwealth of Puerto Rico and the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands. The States in turn pass the funds to the eventual user or subrecipients. There are approximately 1,000 subrecipients.) The applicant signs the agreement, but FTA executes it only upon approval of the application. FTA then retains one copy of the agreement and returns it to the applicant who is then considered a recipient. The rule requires that the submission of the agreement be a one-time submission with incorporation by reference in subsequent grant applications.

Second, 49 C.F.R. Section 604.1 requires a recipient that desires to provide charter bus operations with FTA's assistance to provide notice to all private charter operators and allow them to demonstrate that they are willing and able to provide the charter service that the recipient is proposing to provide. The recipient must publish the notice in a newspaper, send it to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. The recipient must comply with this notice requirement annually if it is to provide any charter bus operations with FTA assistance.

Third, 49 C.F.R. Section 604.13(b) requires a recipient to notify each private operator that presented evidence of the recipient's determination whether the private operator meets the definition of "willing and able." The notification must occur within 60 days of the deadline for the submission of evidence and include a list of all the private operators that met the definition of "willing and able." Since recipients that desire to provide charter bus operations with FTA's assistance must undergo the public participation process annually, the notification requirement is also an annual requirement.

On December 30, 1988, FTA issued an amendment to the Charter Service regulations which created additional exceptions to the charter regulation for certain nonprofit social service groups. Under tow of the exceptions, certain nonprofit social service agencies are allowed to contract directly with grantees for charter services for handicapped persons or, in nonurbanized areas, for elderly persons. To be eligible for these exceptions, the nonprofit social services agency must certify to the grantee that it is a government entity or is exempt from taxation under Section 501(c)(1), (3), (4) and (19) of the Internal Revenue Code; the requested charter trip is consistent with its function and purpose; and that it either serves a significant number of handicapped persons or receives State funds from certain United States Department of Health and Human Services programs. FTA estimates that a total of approximately 1,000 agencies per year submit such certifications.

The amendment also establishes a process whereby a State may petition FTA on behalf of nonprofit organizations which meet certain criteria. The State's petition must include the following information: the name and description of the organization that is a government entity or is exempt from taxation under Sections 501(c)(1), (3), (4), and (19) of the Internal Revenue Code; the requested charter trip is consistent with its function and purpose; and that it either serves a significant number of handicapped persons, or receives State funds from certain United States Department of Health and Human Services programs. FTA estimates that a total of approximately 1,000 agencies per year submit such certifications.

The amendment further establishes a process whereby a State may petition FTA on behalf of nonprofit organizations which meet certain criteria. The State's petition must include the following information: the name and description of the organization that is a government entity or is exempt from taxation under Section 501(c)(1), (3), (4), and (19) of the Internal Revenue Code and either receives or is eligible to receive State or local public welfare funds for purposes that include the transportation of transit-dependent persons.

2. How, by whom and for what purpose the information is to be used.

The agreement in 49 C.F.R. Section 604.7 is required to satisfy the provision in 49 U.S.C. Section 5323(d) that requires all applicants to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR 1.51(a)).

The notice requirement in 49 C.F.R. Section 604.11 is necessary to ensure that all private operators that may be willing and able to provide the charter bus operations proposed by the recipients have the opportunity to prove that they are willing and able. The notification requirement in 49 C.F.R. Section 604.13 is necessary to ensure that the private charter bus operators that did present evidence are informed of the recipient's determination whether they meet the definition of "willing and able." The petition process of 49 C.F.R. Section 604.9(b)(2)(iii) is designed to ensure that the nonprofit social service agency which has requested the charter trip has a clear need for publicly subsidized charter and serves a clientele similar to that served by certain United States Department of Health and Human Service programs.

If the collection of information is not conducted, FTA will not be able to ensure that FTA recipients are complying with the protections for private intercity charter bus operators required by 49 U.S.C. Section 5323(d) and that FTA-funded facilities and equipment are used in a manner which does not interfere with or detract from its use in public transportation per Section 5302(a)(10).

3. Describe whether collection of information involves information technology and any consideration of using information technology to reduce the burden.

All recipients of FTA funds are required to use FTA's Transportation Electronic Award Management (TEAM) system from the initial application stage through post award management.

4. Describe efforts to identify duplication. Show specifically why any similar Information already available cannot be used or modified for use for the purposes described in Item 2.

FTA has attempted to identify whether the information that is required to be submitted to FTA is collected by other federal agencies. Our research indicates that it is not collected by other agencies.

FTA does not believe that information similar to that which is required is available.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Since the requirements are minimal and are not burdensome, no special methods are used for small entities.

6. Describe consequences to federal program or policy activities if information were not collected or collected less frequently, as well as any technical or legal obstacles to reducing burden.

An applicant has to comply with the agreement in 49 C.F.R. Section 604.7 once if the application is approved by FTA. If not approved, the grant applicant must comply each time until approved by FTA. If this collection were done less frequently, the requirement in 49 U.S.C. Section 5323(d) for a charter bus agreement would not be satisfied.

A recipient must comply with the notice and notification requirements in 49 C.F.R. Section 604.11 and 604.13 only when desiring to provide charter bus operations with FTA assistance. Recipients that continue to provide such service must comply with these requirements annually. The certifications of 49 C.F.R. Sections 604.9(b)(5)(i) and (ii) will be made on a trip-by-trip basis. The petition of 49 C.F.R. Section 604.9(b)(8) will be submitted on a one-time basis. If this information collection requirement were conducted less frequently, private charter bus operators and FTA could not ensure that private operators are being protected from unfair competition by FTA recipients. In addition,

FTA would not be able to ensure that FTA-funded equipment and facilities were being used to provide charter service in a manner that does not interfere with or detract from the use of such equipment for the provision of public transportation service.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 C.F.R. 1320.6.

The information collection requirements are consistent with 5 C.F.R. 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views.

A 60-day Federal Register Notice was published on August 24, 2007 (page 48727) soliciting comments prior to submission to the Office of Management and Budget (OMB). No comments were received. A 30-day Federal Register Notice was published on November 7, 2007.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is made to respondents.

10. Describe any assurance of confidentiality provided respondents.

There is no assurance of confidentiality provided to recipients for the information that they provide under the regulation. The information is intended for the public.

11. Additional justification for any questions of a sensitive nature.

No sensitive information is required.

12. Estimates of the hour burden of the collection of information and annualized cost to respondents.

<u>Requirements</u>	604.11	604.13	604.9(b) 5(i)&(ii)	604.9(b) 5(iii)	Total
No. of respondents	318	318	1,000	20	1,656
No of responses per respondent	1	1	1	1	--
Annual	318	318	1,000	20	--
Hours	2	1	1	1 ½	--
Total	636	318	1,000	30	1,984

The cost to respondents/grantees under 49 C.F.R. Section 604.7, which requires that every applicant for financial assistance under 49 U.S.C. Sections 5304, 5336, or 5311 submit a Charter Bus Agreement with each grant application, is not negligible. The majority of FTA grantees have completed the one-time submission and now will only have to refer to the agreement in future applications.

FTA's estimate of the burden associated with the notice requirements in 49 C.F.R. Section 604.11 is two hours per recipient. Of this time ½ hour is spent preparing the notices and 1 ½ hours are spent typing and sending the notices. FTA estimates that the salary of the preparer would be equivalent to a GS-12.5 or approximately \$26.00 per hour and the clerical wage rate, as above, is \$11.00 per hour, giving an average per hour cost of \$18.50. Thus, the annual cost is estimated as follows:

$$318 \text{ respondents} \times 2 \text{ hours per response} = 636 \text{ responses} \times \$18.50 \text{ per response} = \$11,766.00 \text{ per year for Section 604.11.}$$

FTA estimates that the notification requirements in 49 C.F.R. Section 604.13 impose one burden hour per recipient. The time is equally divided between the employees preparing the notification and the clerical employees who type and send the notification. Using the same wage rates as above, the total annual cost is:

$$318 \text{ annual respondents} \times \$18.50 \text{ per hour} = \$5,883.00 \text{ for Section 604.13.}$$

FTA estimates that for the paperwork requirements in 49 C.F.R. Section 604.9(b)(5)(i) and (ii), it would take one hour for each nonprofit social service agency to write, type and sign the certification. FTA expects that 1,000 certifications will be made the first year and that this number will remain constant in subsequent years.

Using the same wage rates as above, the total annual cost to respondents is:

$$1,000 \text{ annual certifications} \times \$18.50 \text{ per certification} = \$18,500.00 \text{ for Section 604.9(b)(5)(i) and (ii).}$$

FTA estimates that for the paperwork requirements in 49 C.F.R. Section 604.9(b)(5)(iii), it takes 90 minutes for each grantee to write, type, and submit a petition to FTA. However, to date, no petitions under Section 604.9(b)(iii) can be determined at this time.

The grand total estimated cost to the respondents is:

Section 604.11	\$11,766.00
Section 604.13	5,883.00
Section 604.9(b)(5)(i) & (ii)	<u>18,500.00</u>
Total Cost	\$36,149.00

13. Estimate of total annual cost burden to respondents or recordkeepers resulting from the collection of information (not including the cost of any hour burden shown in items 12 and 14.

There is no additional cost beyond that shown in items 12 and 14.

14. Estimate of annualized cost to the federal government.

The estimated annualized cost to the federal government of processing the Charter Bus requirement under 49 C.F.R. Section 604.7 is approximately \$858.00. FTA employees review, sign and return, if approved, each applicant's charter bus agreement. It is estimated that it takes one minute to perform each of the three tasks: review, sign, and return. The tasks are performed by three different FTA employees. A grant representative reviews the application to ensure that the agreement is included. The Regional Administrator signs the agreement for FTA and a secretary returns the signed agreement to the applicant as part of the grant approval package. The average grade for these employees is GS-12.5, GS-15, and GS-4, respectively, with a corresponding hourly wage rate of \$32.93, \$48.03, and \$11.82, and \$31.00 being the average. Therefore, the estimated annual cost is:

656 submissions x 3 minutes per submission = 1,968 minutes
or 33 hours x \$31.00 per submission = \$1,023.00

When the State submits a petition under Section 604.9(b)(5)(iii), it must be reviewed by an FTA staff attorney and the agency's determination must be reviewed and signed by the Chief Counsel. Since the implementation of the December 30, 1988, amendment to the Charter Service regulation, FTA received no petitions from States under Section 604.9(b)(5)(iii).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB Form 83-1.

There are no changes.

16. Plans for tabulation and publication for collections of information whose results will be published.

FTA does not plan to publish the results of the information collected for statistical use.

17. If seeking approval not to display the expiration date for OMB approval, explain the reasons.

There is no reason not to display the expiration date of OMB approval.

18. Explain any exception to the certification statement identified in Item 19 of OMB Form 83-I.

No exceptions are stated.