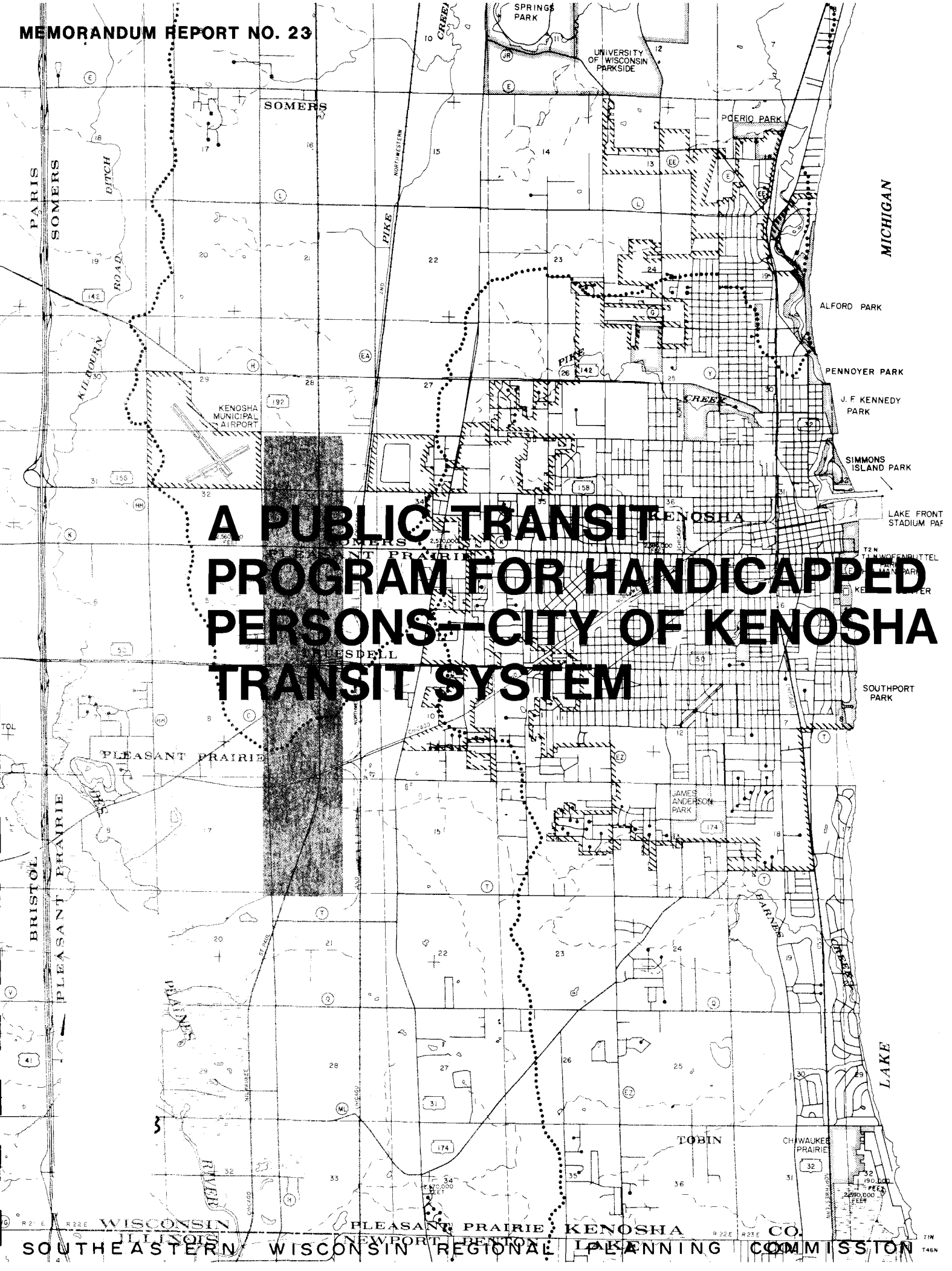
MEMORANDUM REPORT NO. 23



A PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS--CITY OF KENOSHA TRANSIT SYSTEM

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MEMORANDUM REPORT NUMBER 23

A PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS--CITY OF KENOSHA TRANSIT SYSTEM

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Table of Contents

List of Appendices

List of Tables

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SEWRPC Memorandum Report No. 23

A PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS--CITY OF KENOSHA

INTRODUCTION

On May 23, 1986, the U. S. Department of Transportation, Urban Mass Transportation Administration (UMTA), issued amended regulations governing nondiscrimination on the basis of handicap in federally assisted public transportation programs relative to the nondiscrimination requirements of Section 504 of the federal Rehabilitation Act of 1973. A major requirement of this regulation is that past and present recipients of federal transit assistance under the UMTA Sections 3, 5, 9, or 9A funding programs that operate a bus system serving the general public must establish a program for providing public transportation service to handicapped persons who, because of the nature of their physical handicap, are unable to use the recipient's regular bus service for the general public. The planning for, and development of, such service must be undertaken in consultation with handicapped groups and with agencies providing transportation or social services to the handicapped person. The process followed to develop the service must also allow for a 60-day public comment period on the recipient's proposed program, during which at least one public hearing on the proposed program must take place.

A description of the locally approved public transit program must be submitted to UMTA by June 23, 1987. Failure to submit the required program to UMTA is grounds for the recipient to be found in noncompliance with the obligations of the final rule. A recipient who is determined by UMTA to be in noncompliance with the provisions of the final rule may ultimately face legal proceedings brought by the U. S. Department of Justice and the suspension or termination of, or refusal to grant or continue, federal assistance to the recipient's programs and activities which are not in compliance with the rule.

In response to these regulations, the City of Kenosha requested the assistance of the Southeastern Wisconsin Regional Planning Commission in the preparation of a report documenting the City's required public transportation program for handicapped persons. The request for this assistance was made to the Regional Planning Commission staff by the Director of Transportation for the City of Kenosha on February 6, 1986. To provide guidance to the Regional Planning Commission in preparing the required report, the City of Kenosha created an Advisory Committee on Transportation for Disabled Persons in the City of Kenosha. The membership of this Committee is listed on the inside front cover of this report.

This report describes the City's proposed public transportation program for handicapped persons. The report consists of six sections following this introduction. The first section presents a review of past actions taken by the City to comply with federal laws and regulations bearing on the provision of public transportation service to handicapped persons. The second section

describes the characteristics of the existing specialized transportation service operated by the City of Kenosha to serve the transportation needs of handicapped residents. The third section summarizes the requirements of the new Section 504 regulations recently issued by the U. S. Department of Transportation. The fourth section sets forth a series of possible service options that the City of Kenosha could follow in meeting the transportation needs of handicapped persons in the City. The fifth section describes the recommended program for providing transportation services to handicapped persons in the City of Kenosha. Finally, the last section provides a summary of the information provided in the previous five sections and includes a summary of the public comments received from the handicapped community on the proposed public transportation program and the City's response to the issues raised by those comments.

BACKGROUND: PAST ACTIONS TAKEN TO COMPLY WITH PREVIOUS FEDERAL LAWS AND REGULATIONS CONCERNING PUBLIC TRANSPORTATION FOR HANDICAPPED PERSONS

Section 16(a) of the federal Urban Mass Transportation Act of 1964, as amended, sets forth a national policy that elderly and handicapped persons shall have the same right as other persons to use public transportation facilities and services, and directs that "special efforts" be made in the planning, design, and delivery of public transportation facilities and services to make those facilities and services available which elderly and handicapped persons can effectively use. Section 504 of the federal Rehabilitation Act of 1973 provides that no handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity, such as public transit service, that receives federal financial assistance. Together, these two acts form the basis for requiring that every federally aided transit system in the nation takes into account the special needs of persons having handicaps.

Adopted Regional Transportation Plan for the Transportation Handicapped

In response to the provision set forth in Section 16(a) of the federal Urban Mass Transportation Act, as amended, the Administrator of the federal Urban Mass Transportation Administration issued rules on April 30, 1976, governing the making of special efforts by public transit systems in providing facilities and services for handicapped persons. While not specifying any particular program design that would meet the special efforts requirement, the Urban Mass Transportation Administration set forth illustrative examples of levels of effort that would be deemed to satisfy the special efforts requirement for each recipient of federal transit assistance. Such examples included: the expenditure on an average annual basis of at least 5 percent of the apportionment of federal transit operating assistance made available to any urbanized area on a program to provide specialized transit services for wheelchair users and semiambulatory persons; the purchase of only wheelchair-accessible buses until one-half of the recipient's bus fleet was accessible; or the operation of a transit service of any design that would assure that every wheelchair user or semi-ambulatory person would have public transit service available on request for at least 10 round trips per week, at fares comparable to those charged on the recipient's regular transit buses for trips of similar lengths.

It was under these guidelines that, in cooperation with the public transit operators of the Region, the Regional Planning Commission prepared and, after

public hearings, adopted in 1978 a regional transportation plan for the transportation handicapped.[1] The plan was designed to reduce and--to the extent practicable--to eliminate the existing physical and/or economic barriers to independent travel by transportation handicapped individuals. In accordance with the thrust of the federal rules then in effect, the plan recommended that the local bus systems serving the Milwaukee, Kenosha, and Racine urbanized areas be equipped with wheelchair lifts and ramps or other conveniences to the extent that the nonpeak hour bus fleets would be fully accessible to wheelchair users and semiambulatory persons. For those transportation handicapped persons in the three urbanized areas who would continue to be unable to use public bus systems, the institution of a user-side subsidy program was recommended. Such a program would enable eligible transportation handicapped persons to arrange for their own transportation by taxi or private chair car carrier, with the local transit operator subsidizing the cost of the trip.

These plan recommendations were developed under the guidance of technical and citizen advisory committees established in each of the three urbanized areas within the Region. The regional plan contained the following three major recommendations for the Kenosha transit system:

1. Wheelchair lifts and appurtenant devices should be included on the entire fleet of buses operating during the base--or nonpeak--periods of transit system operation. About 12 buses would have to be equipped with wheelchair lifts in order to meet this recommendation, given the need for maintenance down time. This recommendation was structured in part to meet the special efforts guidelines and rules then in effect. These federal rules specified that any separate, specialized transit service provided in lieu of wheelchair lifts on a bus fleet would have to be provided with user fares that were "comparable" to fares charged on the mainline transit system for similar distances traveled. This was interpreted at that time by the Urban Mass Transportation Administration to mean "equal" fares. In essence, then, a special efforts strategy by the City of Kenosha that would consist only of a user-side subsidy program,[2] or only of a specialized transit service provided by the City--in lieu of lift-equipping the bus fleet--would have to include a base fare equal to the base fare charged on the mainline transit system. This was deemed impractical from a cost standpoint by the advisory committee concerned, and was one of the major factors that led to the recommendation to equip the mainline bus fleet with wheelchair lifts. By so doing, it would ensure that the City would be free to establish and operate a user-side subsidy program or specialized transportation service with user fares set at more reasonable levels, reflecting the quality door-to-door service being provided.

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[1] See SEWRPC Planning Report No. 31, A Regional Transportation Plan for the Transportation Handicapped in Southeastern Wisconsin: 19781982.

[2] A user-side subsidy program is a subsidy that is given to a transportation user in the form of a ticket, token, or other credential for purchasing specialized transportation of the user's choice at less than the actual cost. Passengers can use any specialized service--such as taxicab, chair car carrier van, or minibus--that has agreed to participate in the particular program.

A second major factor influencing the plan recommendations was the formulation of replacement rules governing this entire matter by the Urban Mass Transportation Administration. Such rules are required under the terms not only of the Urban Mass Transportation Act of 1964 as amended, but also the Federal Rehabilitation Act of 1973. Draft rules under consideration at the time the Commission was completing the original regional transportation plan for the handicapped clearly indicated intent by the then current federal administration to abandon the special efforts approach in favor of requiring that all buses purchased with federal funds be equipped with wheelchair lifts, thus ensuring over time total mainline bus fleet accessibility.

2. A user-side subsidy program should be established to enable those handicapped persons in the Kenosha area living more than two blocks from a local bus route and those transportation handicapped persons who, regardless of place of residence, cannot physically use wheelchair lift-equipped buses to increase their mobility. It was envisioned that such a service would provide adequate mobility to all handicapped persons in the Kenosha urbanized area.

3. Efforts should be made to coordinate all existing public and private transportation services for the transportation handicapped provided by area social service agencies. It was envisioned that this coordination would improve both the availability and delivery of transportation services for the transportation handicapped.

According to this plan, the process of implementing these three recommendations was to have begun in July 1978. In accordance with this strategy, the City of Kenosha programmed a project to retrofit 12 buses with wheelchair lifts in the 1978 annual element of the transportation improvement program (TIP) for the Southeastern Wisconsin Region, and prepared a UMTA Section 5 capital improvement grant application for federal funds to assist with 80 percent of the cost of the wheelchair-lift retrofit project. After receiving notification of approval of this grant in November 1978, the City began preparing wheelchair-lift retrofit design specifications and contract bid documents, anticipating the completion of the project by spring 1980.

Four significant developments in 1979, however, caused the City to reconsider and eventually change its adopted special efforts strategy prior to completing the wheelchair-lift retrofit project. First, through discussions with manufacturers of lifts, it was determined that the cost per installed lift would approximate $25,000 to $30,000 per vehicle--substantially more than the $9,000 per vehicle estimate used in the original UMTA Section 5 grant application. Thus, to proceed further with this project would have necessitated obtaining a sizable capital improvement grant amendment.

Second, it was learned that the installation of these lifts could not be performed easily on-site, and that each bus would have to be out of service for at least 30 days and transported to Illinois or possibly as far as California to have the lift installed. With only one spare bus in a 28-bus fleet during peak periods, additional buses would have had to be leased or purchased in order to take a bus out of service for this length of time.

Third, the City of Kenosha learned through discussions with other transit properties throughout the country and through industry journals that wheelchair lift devices "retrofitted" on existing buses, often did not operate properly, and that lift maintenance costs for retrofitted vehicles would be high.

Fourth, a new federal regulation specifying requirements for providing transportation services to the handicapped was issued in May 1979. The new regulation discouraged retrofitting older buses with lift devices and favored achieving accessibility by purchasing new wheelchair lift-equipped vehicles in which the lifts are designed and installed during the construction of the bus.

For these reasons, the City of Kenosha chose to modify its special efforts strategy in the following manner: 1) to abandon the project of retrofitting buses in the existing fleet with wheelchair lifts and, instead, meet the fleet accessibility requirements by purchasing new wheelchair lift-equipped buses as part of its regular fleet replacement program; and 2) to expend in the interim period, until the fleet accessibility requirements were met, no less than 2 percent of the Kenosha urbanized area's UMTA Section 5 allocation in support of a demand-responsive transportation service. This service would be comparable to the regular local bus service in terms of fares, hours of service, and total travel time. The availability of this service, if requested, would be guaranteed to any wheelchair user or semi-ambulatory person in the Kenosha urbanized area for up to 10 round trips per week. This modified strategy was subsequently implemented by the City of Kenosha on January 1, 1980, when the City of Kenosha began supporting a specialized transportation service that was to serve as its special efforts strategy. The service was offered as an expansion of the advance-reservation transportation service for disabled persons already offered in the Kenosha urbanized area by the Kenosha Achievement Center.

Section 504 Transit Operators Plan Amendment

As noted above, a major contributing factor to the decision made by the City of Kenosha to change its special efforts strategy was the publication of new rules by the U. S. Department of Transportation on May 31, 1979, aimed at carrying out the intent of Section 504 of the Rehabilitation Act of 1973. These rules were put in place alongside the previously issued rules and, hence, did not formally supersede the old rules. The new rules required all public transit systems receiving federal aid to make one-half of the fixed route buses in service during the peak hour accessible to handicapped persons within a three-year period. In addition, the new rules required that all buses purchased with federal assistance after the effective date of the regulation be accessible to handicapped persons through wheelchair lifts or ramps.

In response to these new rules, the Regional Planning Commission and the City of Kenosha jointly conducted a supplemental planning effort designed to amend the adopted regional transportation plan for the transportation handicapped. This supplemental effort, termed the "Section 504 planning effort," culminated in a series of amendments to the plan.[3] Given the mandate for wheelchair

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[3]See SEWRPC Community Assistance Planning Report No. 39, A Public Transit System Accessibility Plan, Volume One, Kenosha Urbanized Area, May 1980.

lifts by the federal government, this plan amendment set forth a revised schedule for ensuring that the City of Kenosha's transit system bus fleet would meet the accessibility requirements within the time periods specified in the federal rules. One change from the earlier plan involved the definition of bus fleet accessibility. Under the new plan, one-half of the buses in fixed route service during the peak hour were to be equipped with wheelchair lifts. Under the previous plan, accessibility was required for the entire fleet in service during the nonpeak periods.

This plan amendment was formally adopted by a special advisory committee on transit service planning for handicapped persons in the Kenosha urbanized area on May 27, 1980; the Kenosha Common Council on July 21, 1980; and by the Regional Planning Commission on September 11, 1980. In the interim period, until bus fleet accessibility was achieved, the City of Kenosha was to continue to provide accessible specialized transportation service for elderly and handicapped persons who could not use regular bus service. In accordance with these recommendations, the City during 1981 continued to support the specialized transportation service provided by the Kenosha Achievement Center--a private, nonprofit agency which provides rehabilitation training services and sheltered workshop programs for physically, mentally, and emotionally handicapped persons. In addition, the City purchased five new buses equipped with wheelchair lift devices.

Interim Final Federal Regulation

On July 20, 1981, the Secretary of the U. S. Department of Transportation, acting in response to a federal court decision that Section 504 of the Rehabilitation Act of 1973 did not authorize the Secretary to require that all buses be made accessible to handicapped persons, issued a proposed new rule amending the rule issued on May 31, 1979. In effect, the amendment which was promulgated on an interim basis reinstated the special efforts rules that were first set forth in 1976 with some modifications. The interim final rule restated examples illustrating a level of effort by a public transit system that would be deemed by the Urban Mass Transportation Administration to satisfy all federal requirements. Such examples included the implementation of any one of the following actions:

1. Operation of a program for wheelchair users and semi-ambulatory persons that would involve the expenditure of an average annual dollar amount equivalent to at least 3.5 percent of the federal transit operating and capital grant assistance received by each recipient under the UMTA Section 5 formula[4] grant program on an average annual basis.

2. Making one-half of the bus fleet accessible to wheelchair-bound individuals.

3. Providing a substitute transit service with wheelchair-accessible vehicles, with coverage and service levels similar to those of the regular transit system.

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[4]The UMTA Section 5 formula grant program was replaced by the Section 9 formula block grant program beginning with federal fiscal year 1984. The UMTA Section 9 program continues to make available transit operating and capital assistance funds on a formula basis to urbanized areas.

4. Operation of a system of any design that would assure every wheelchair user or semi-ambulatory person public transit service upon request for at least 10 round trips per week at fares comparable to those charged on standard transit buses for trips of similar lengths.

Under the interim final rules, each transit system was to submit certification that it is making appropriate special efforts to provide transportation services that handicapped persons are able to use. The filing of such a certification by a transit system was deemed compliance with all of the federal laws and regulations dealing with transportation for handicapped individuals.

In light of the interim final rules, the City of Kenosha once again reevaluated the strategy it intended to pursue in carrying out special efforts to provide transportation for handicapped persons. Based on the above-stated examples of appropriate special efforts projects and given the past history in the Kenosha urbanized area on this matter, the City of Kenosha chose to meet the spirit and intent of the interim final federal rules by continuing to provide a limited level of accessible fixed route bus service, using the five wheelchair lift-equipped buses in the existing vehicle fleet, and to expend annually at least 3.5 percent of the federal transit formula operating and capital assistance funds received under the UMTA Section 5 program on the specialized door-to-door transportation service in which it currently participates.

EXISTING PUBLIC TRANSIT PROGRAM FOR TRANSPORTATION HANDICAPPED PERSONS

The City of Kenosha currently supports a dual special efforts strategy for providing transportation services to handicapped persons. This strategy consists of the provision of accessible fixed route bus service on the regular city bus routes, and the participation in, and provision of financial support to, a specialized door-to-door transportation service that operates throughout the City of Kenosha which is administered by the Kenosha County Department of Aging, and is provided by the Kenosha Achievement Center, Inc.

Accessible Fixed Route Bus Service

The City of Kenosha provides accessible bus service for wheelchair users over its regular fixed route bus system. As of January 1987, five of the 29 buses in the Kenosha transit system fleet were equipped with wheelchair lifts. The City of Kenosha uses these buses to provide accessible bus service by assigning the wheelchair lift-equipped buses to specific scheduled bus routes on an advance-reservation basis. Handicapped individuals intending to use this service must call the transit system and indicate on what routes and at what time they would like to travel. It is suggested that such requests be made at least 24 hours in advance of the time service is needed to enable the transit system to adjust its daily vehicle assignments to accommodate the requests.

The Kenosha transit system operates seven regular routes on published schedules from 6:00 a.m. to 6:00 p.m. on weekdays and Saturdays. No service is provided on Sundays or holidays. Wheelchair lift-equipped bus service is available--on an advance-reservation basis--on all seven bus routes operated by the City. The fare for a one-way trip is $0.25 each for eligible users and any attendants. Eligible users are limited to elderly and nonelderly individuals who require the use of a wheelchair. Information on the use of the wheelchair lift-equipped buses is available through the general office of the

transit system. Trip requests for use of the wheelchair lift-equipped buses are not prioritized in any manner, as the current level of service is capable of meeting actual demand.

Although the exact number of individuals using the wheelchair lifts is not tabulated separately from the total number of people using the transit system, the City has estimated that, on an average weekday, six one-way trips requiring the use of the wheelchair lifts are made on the regular city bus route system. To date, the City has not kept separate records of the cost of repairing, maintaining, and operating the wheelchair lift service on its regular buses. These activities are performed as part of the ongoing general operation and maintenance of the entire transit system bus fleet. The transit system management, however, has estimated the annual maintenance and repair cost to approximate $1,500 per wheelchair lift. In addition, the Kenosha transit system also sponsors demonstration and training sessions with the wheelchair lift-equipped buses at locations througout the City of Kenosha so that potential wheelchair users may become familiar with using the wheelchair lifts. The cost of this instructional service is also included in the total system operating costs.

Specialized Door-to-Door Transportation Service

As the second part of its dual special efforts strategy, the City of Kenosha participates in, and contributes funds toward, the operation of the "Care-A-Van" program--a specialized door-to-door transportation service jointly sponsored by the City of Kenosha and the Kenosha County Department of Aging. The Care-A-Van is one of several specialized transportation services sponsored by Kenosha County, and is provided under contract to both the City of Kenosha and Kenosha County by the Kenosha Achievement Center. The Kenosha Achievement Center is a private nonprofit agency that provides rehabilitation training services and sheltered workshop programs for physically, mentally, and emotionally handicapped persons. An important support program of the Center is the provision of elderly and handicapped specialized transportation services, which were begun in 1967. Originally known as "Project Accessibility," the Care-A-Van program provides the entire portion of Kenosha County east of IH 94--including the entire service area of the fixed route bus system operated by the City of Kenosha--with accessible transportation service for elderly and handicapped persons.[5] The participation of the City of Kenosha in the provision of Care-A-Van service allows a much higher level of specialized transportation service to be provided for city residents who find it difficult to use, or who cannot use, the regular local bus system than can be provided by the program without city participation.

To provide the specialized door-to-door transportation service, the City of Kenosha contracts with the Kenosha Achievement Center, which supplies the wheelchair lift-equipped vans under the terms of a contract. Although the Center presently uses up to three vehicles to provide the specialized service, a fleet of 13 vehicles of various types which could be used to supply the service is maintained by the Center. The contract specifies that the Center must

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[5]That portion of the Care-A-Van program funded by Kenosha County also provides service in the area of the County lying west of IH 94. The City of Kenosha does not participate in or contribute funds toward the operation of any services west of IH 94.

certify that all its drivers are properly licensed to drive vehicles in accordance with the State of Wisconsin requirements; that all drivers have been properly trained and sensitized as to the needs of the handicapped users; and that the Center has a safety program functioning to ensure safe operation of the transportation service it provides. Supervision of drivers for the program is the responsibility of the Kenosha Achievement Center.

The service offered by Care-A-Van is provided on an advance-reservation basis, with the vehicles each capable of carrying up to two wheelchair-bound persons. To be assured of receiving service, eligible users must request service at least 24 hours in advance of the time service is needed. Priority is given first to medical trips, then to nutritional, employment, adult daycare, educational, and recreational trips, respectively. The advance-reservation system allows the program to refuse requests for low priority trips when the total requests for trips exceed the available capacity of the service. This prioritization of trips is a requirement of the State of Wisconsin's specialized transportation assistance program for counties, which funds a significant portion of the specialized transportation service sponsored by Kenosha County. Because of the required priority that is assigned to each trip request, a small number of trips occasionally have to be rescheduled to different times of the day, or to different days, because of insufficient capacity during peak periods of travel.

The service area for the Care-A-Van program includes all of Kenosha County east of IH 94 and, therefore, includes all areas within one-quarter mile of any Kenosha transit system bus route. As of January 1987, the specialized service is provided Mondays through Fridays between 7:30 a.m. and 7:00 p.m. except on Tuesdays and the fourth Wednesday of every month, when service is provided from 7:30 a.m. to 9:00 p.m. On Saturdays, service is provided from 9:00 a.m. to 7:00 p.m. No service is available on Sundays or holidays. The specialized service is intended to serve persons 60 years of age or older, and handicapped persons of any disability who do not have physical, economic, or geographic accessibility to other means of transportation. However, the main population targeted for this service is the elderly and nonelderly handicapped persons who have difficulty using, or who cannot use, the regular city bus service. Eligible individuals are enrolled into the program during their first request for service, during which the dispatcher requests enrollment data identifying the person's age and/or disability. While no documentation is required to prove age or disability, any passenger must be able to present evidence of the same if requested. Handicapped persons with both permanent and temporary disabilities, and who are residents of Kenosha County, are eligible to use the service offered under the Care-A-Van program. A fare of $1.00 is charged for each one-way trip except for trips to nutrition sites, for which a $0.50 fare is charged. Information on the Care-A-Van program is available through either the general offices of the transit system or the Kenosha Achievement Center.

Table 1 provides a summary of the one-way trips made on the Care-A-Van service east of IH 94. As shown in this table, a total of about 13,100 one-way trips were made during 1986 on the service, primarily by elderly persons and primarily for medical care-related trips. The total cost—excluding depreciation of vehicles--for operation of the specialized transportation during 1986 was $116,918, or about $8.90 per one-way trip. Passengers generated $11,822 in

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Table 1

SUMMARY OF TRIPS USING CARE-A-VAN SERVICE
PROVIDED BY KENOSHA ACHIEVEMENT CENTER
EAST OF IH 94 DURING 1986 BY
MOBILITY AND TRIP PURPOSE CLASSIFICATIONS

Trip Classification	One-Way Trips	
	Number	Percent of Total
Mobility		
Ambulatory[a]/Elderly	6,893	52.5
Ambulatory[a]/Nonelderly	674	5.1
Nonambulatory[b]/Elderly	3,342	25.4
Nonambulatory[b]/Nonelderly	2,228	17.0
Total	13,137	100.0
Trip Purpose		
Medical	6,326	48.2
Employment	1,494	11.3
Nutrition	1,755	13.3
Education/Training	309	2.4
Social/Recreation	2,114	16.1
Personal Business/Shopping	1,139	8.7
Total	13,137	100.0

[a]Ambulatory persons are defined as those who can walk or board and exit a vehicle with little or no assistance and includes persons using crutches, canes, walkers, or other persons with mobility aids.

[b]Nonambulatory persons are defined as those confined to wheelchairs.

Source: Kenosha Achievement Center and SEWRPC.

revenues--about $0.90 per one-way trip--leaving a required total public subsidy of $105,096, or about $8.00 per one-way trip. The City of Kenosha's public transportation program funded $57,960, or about 55 percent of the total subsidy for the service during 1986, amounting to $4.41 per one-way trip. The remaining funds for the service were obtained from the State's specialized transportation assistance program for counties, authorized under Section 85.21 of the Wisconsin Statutes, from the Title XIX program administered by the Wisconsin Department of Health and Social Services, and from Kenosha County.

The City of Kenosha has contracted for accessible specialized transportation service with operating characteristics similar to those described above since 1980. Table 2 shows the expenditure levels for the Care-A-Van program by the City of Kenosha since 1985--covering the current and two previous fiscal years--in order to meet the special efforts requirements suggested under the interim final rule issued in 1981. The table also shows how this expenditure level compares with the required expenditure levels on specialized transportation service set forth in the interim final rule of 3.5 percent of the average annual UMTA formula transit assistance funds a recipient has received during the current and two previous fiscal years. As indicated in the table, about $63,600 is expected to be spent annually on the specialized transportation service for the three-year period from 1985 through 1987. This expenditure level is equivalent to about 6.4 percent of the average annual UMTA formula assistance funds expected to be received by the City of Kenosha over the period, significantly exceeding the 3.5 percent funding requirement suggested in the interim final federal rule. Thus, the City of Kenosha was in compliance with the UMTA special efforts requirements of the interim final rule.

FINAL REGULATIONS ON PUBLIC TRANSPORTATION SERVICE FOR HANDICAPPED PERSONS

The Surface Transportation Act of 1982 included specific provisions directed at ensuring that adequate public transportation service was provided to handicapped persons by recipients of federal transit assistance. Under Section 317(c) of the Act, Congress directed the U. S. Department of Transportation to publish a new regulation that included minimum service criteria for the provision of transportation services to handicapped and elderly individuals. In addition, the statute required that the rule provide for public participation in the establishment of programs to provide services for handicapped persons and for monitoring of each recipient's compliance with the provisions of the regulation.

Acting in response to the provisions of Section 317(c), the Secretary of the U. S. Department of Transportation published on September 8, 1983, a notice of proposed rule making containing the provisions of a proposed final rule that would replace the interim final rule issued on July 20, 1981. Based upon comments received by the U. S. Department of Transportation, the proposed final rule was subsequently refined and a new final rule was issued by the Department on May 23, 1986.[6] The intent of the final rule is to ensure adequate

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[6]See "Nondiscrimination on the Basis of Handicap in the Department of Transportation Financial Assistance Programs: Final and Proposed Rule," Federal Register, Volume 51, No. 100, May 23, 1986, pp. 18994-19038. A copy of this regulation is reproduced in Appendix A.

Table 2

CITY OF KENOSHA EXPENDITURE LEVELS FOR CARE-A-VAN
SERVICE PROVIDED BY KENOSHA ACHIEVEMENT CENTER: 1985-1987

Expenditure Category	Transit System Expenditures			
	Year			Average Annual
	1985	1986[a]	1987[b]	
UMTA Section 9 Funds				
Operating Assistance Received	$ 743,471	$ 841,181	$ 615,000	$ 733,217
Capital Assistance Received	--	774,800	--	258,267
Total	$ 743,471	$1,615,981	$ 615,000	$ 991,484
Kenosha Transit System Operating Expenditures				
Fixed Route Bus System	$1,899,490	$1,972,013	$1,978,183	$1,949,895
Specialized Transportation Services for Elderly and Handicapped Individuals				
Care-A-Van Service	52,500	57,960	57,960	56,140
Wheelchair Lift Maintenance	7,500	7,500	7,500	7,500
Total Specialized Transportation Services	$ 60,000	$ 65,460	$ 65,460	$ 63,640
Total Transit System	$1,959,490	$2,037,473	$2,043,643	$2,013,535
Specialized Transportation Service Expenditures as a Percent of UMTA Section 9 Funds	8.1	4.0	10.6	6.4

[a]Estimated

[b]Projected.

Source: City of Kenosha and SEWRPC.

public transportation service for handicapped persons without placing undue cost burdens upon the recipients of federal transit aids. The final rule specifically addresses the requirements of present and past recipients of federal transit assistance under the UMTA Section 3, 5, 9, or 9A programs who operate a bus system for the general public within an urbanized area.

Service Options and Minimum Service Criteria

The final rule removes some of the flexibility allowed recipients under the existing interim final rule in selecting how to best meet their oblication to provide transportation for handicapped persons. Under the final rule, each funding recipient's public transportation program is responsible for making transportation services available to handicapped and elderly persons through one of the following service options:

1. By providing some form of demand-responsive specialized transportation service which is accessible to wheelchairbound and semiambulatory persons.

2. By providing fixed route bus service which is accessible to wheelchairbound and semiambulatory persons over the regular routes operated by the recipient on either a regularly scheduled or on-call basis. This would be accomplished through equipping buses used in fixed route transit service with wheelchair lifts, ramps, or other accessibility features. The number of buses required to be equipped with such accessibility features would be the number which is sufficient to allow the recipient to provide a level of accessible bus service which meets the minimum service criteria for accessible bus service specified in the final rule.

3. By providing a mix of both accessible specialized door-to-door transportation and accessible bus services.

Whichever service is ultimately selected by the recipient, it must meet certain minimum service criteria specified in the rule for each service option. In this respect, the service provided by the recipient must be available to all persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public. The service must also serve the same geographic area as the recipient's service for the general public at the same times and at comparable fares. There cannot be restrictions or priorities based on trip purpose; and the response time for service once a request has been made must be reasonable. The specific minimum service criteria for each service option are listed in Table 3.

Limits on Expenditures and Eligible Expenses

The recipient is required to meet the minimum service criteria for whichever service option it selects, subject to a "cap"--or maximum required--level of annual expenditures by the recipient. A cap level of annual expenditures equal to 3 percent of the recipient's average operating expenses for all public transportation services provided, calculated based upon projected current year expenditures and expenditures for the two immediately proceeding fiscal years, has been set forth in the final rule. The recipient is not required to spend more than this limit, even if, as a result, it cannot provide a level of service which fully meets all the service criteria for the service option it has selected. In this case, the recipient can reduce expenditures down to the expenditure limit by modifying one or more of the afore-

Table 3

MINIMUM SERVICE CRITERIA FOR SERVICE OPTIONS SPECIFIED UNDER FINAL RULE

Service Characteristic	Minimum Service Criteria			
	Demand-Responsive Specialized Transportation Service	Accessible Fixed Route Bus Service		Mixture of Accessible Bus and Specialized Transportation Services
		Regularly Scheduled Service	On-Call Service	
Eligibility	All persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public.	All persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public.	All persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public.	All persons who, by the nature of their handicap, are physically unable to use recipient's regular bus service for the general public.
Response Time	Service provided within 24 hours of time request for service is made.	Not applicable--service provided to meet schedules rather than to respond to specific requests for service.	Service provided within 24 hours of time request for service is made.	Minimum criteria for specialized transportation service and accessible bus service apply to specialized service and accessible bus components of the system, respectively, for the portions of the service area and/or days and times in which each operates.
Restrictions or Priorities Placed on Trips	None.	None.	None.	None.
Fares	Fares comparable to fares for a trip of similar length made at a similar time of day charged to a user of the regular bus for service for the general public.	Fares no higher than fares charged other users of the regular bus service for the general public. Off-peak fares the elderly and handicapped must be in effect on accessible buses.	Fares no higher than fares charged other users of the regular bus service for the general public. Off-peak fares for the elderly and handicapped must be in effect on accessible buses.	Minimum criteria for specialized transportation service and accessible bus service apply to specialized service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times in which each operates.
Hours and Days of Operation	Service provided on same days and hours of operation as recipient's bus service for the general public.	Service provided on same days and hours of operation as recipient's bus service for the general public, and at intervals that allow for practicable use by handicapped persons.	Service provided on same days and hours of operation as recipient's bus service for the general public, and at intervals that allow for practicable use by handicapped persons.	Minimum criteria for specialized transportation service and accessible bus service apply to specialized service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times in which each operates.

-continued-

Table 3 (continued)

Service Characteristic	Minimum Service Criteria			
	Demand-Responsive Specialized Transportation Service	Accessible Fixed Route Bus Service		Mixture of Accessible Bus and Specialized Transportation Services
		Regularly Scheduled Service	On-Call Service	
Service Area	Service provided throughout the same geographic area as served by the recipient's regular bus service for the general public.	Service provided on all recipient's bus routes on which a need for accessible bus service has been established through the planning and public participation process.	Service provided on all recipient's regular bus routes, upon request, as needed to complete each handicapped person's trip. components of the system,	Minimum criteria for specialized transportation service and accessible bus service apply to specialized and accessible bus components of the system, respectively, for the portions of the service area and/or days and times in which each operates.

Source: U. S. Department of Transportation and SEWRPC.

mentioned service criteria, with the exception of the criterion governing service eligibility. The final rule requires that the recipient's service must meet the specified eligibility criterion regardless of whether the recipient can meet all service criteria without exceeding the limit on required expenditures. How the recipient chooses to modify the other service criteria for the particular service option it selects must be determined through the public participation process outlined below. If the recipient can provide a level of service which fully meets the minimum service criteria for an amount less than the expenditure limit, then the limit can be ignored.

Only certain expenses are eligible to be counted in determining whether the recipient has exceeded the limitation on required expenditures incurred in meeting the service criteria for the service option selected. To be eligible to be counted toward the required expenditure limitation, an expenditure must meet two basic criteria. First, it must be an expenditure by the recipient of funds from its own public transportation program, including any federal or state transit assistance it receives for the program. Second, it must be an expenditure specifically undertaken to comply with the requirements of the final rule. In both cases, the total expenditures a recipient makes are counted, not just the net expenditures after farebx or other revenues are considered. Expenditures by other agencies on transportation services for handicapped persons other than those provided to comply with the final rule cannot be counted for this purpose. Expenditures by the recipient that may be counted in determining whether the recipient has exceeded its limitation on required expenditures include the following:

1. The total capital and operating costs of specialized transportation services;

2. The incremental capital and operating costs of accessible bus systems;

3. The administrative costs directly attributable to coordinating transportation services for handicapped persons provided by the recipient with those provided by other service providers;

4. The incremental costs of training the recipient's personnel to provide transportation services to handicapped persons;

5. Any incremental costs associated with providing half-fares for elderly and handicapped persons during nonpeak hours of transportation service operation; and

6. The incremental costs of construction or modification of facilities to enable handicapped persons to transfer readily between accessible bus or specialized transportation service systems and accessible rail systems.

Only expenditures made specifically to comply with the requirements of the final rule are eligible to be counted toward the maximum expenditure limit. Thus, if a recipient chooses to provide a level of transportation service above and beyond what the final rule requires, only the expenditures actually needed to meet the final rule are eligible to be counted. With respect to transportation services provided by a recipient which may serve more than just the required handicapped persons--such as ambulatory elderly persons--only those expenditures for the service attributable to the transportation of the

eligible handicapped persons may be counted in determining whether the recipient has exceeded the cap level of required expenditures. In addition, expenditures for the purchase of vehicles and other major capital expenditures must be annualized over the expected useful life of the item. Only that portion of the capital expenditure attributable to a given fiscal year may be counted in determining the recipient's eligible expenses for that year.

Program Documentation and Public Participation Requirements

Recipients of UMTA Section 3, 5, 9, or 9A funds who operate a bus system within an urbanized area serving the general public must prepare and submit to UMTA documentation on the required program for handicapped persons. This documentation should include a description of the service option selected by the recipient; the characteristics of the service to be provided; the schedule for implementing the proposed service; and the sources of funding for the proposed service. The program must also include "milestones," or statements of the progress the recipient intends to make each year toward implementing the proposed service, in accordance with the proposed schedule.

The final rule requires that the recipient's plan and milestones must provide for full implementation of the proposed services as soon as reasonably feasible. UMTA, in reviewing the proposed program, will approve a "phase-in" period for each recipient on a case-by-case basis, reflecting the "as soon as feasible" policy prescribed in the final rule, as well a the realistic needs of each recipient for time to phase in service. The final rule provides for a maximum phase-in period of up to six years. During this phase-in period, the recipient must continue to provide at least the level of service that it certified it would provide under the former interim final rule issued on July 20, 1981.

The final rule states that the planning and development of the recipient's program must be done through a locally developed public participation process. The public participation process followed by the recipient must allow for the following:

1. Consultation during the planning process with handicapped persons and groups representing them, social service organizations, concerned state and local officials, and the Metropolitan Planning Organization.[7]

2. A 60-day comment period on the recipient's proposed program during which at least one public hearing on the proposed program must take place; and

3. The distribution of notices and materials pertaining to the program in a form useable by persons with vision and hearing impairments.

The recipient must make efforts to accommodate, but is not required to adopt, any significant comments on the proposed program made by the public or by the Metropolitan Planning Organization as part of the public participation process. Responses to the significant comments made including the recipient's reasons for not accommodating significant comments must be made available to

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[7]The Southeastern Wisconsin Regional Planning Commission has been designated by the Governor as the official areawide Metropolitan Planning Organization for the seven-county Southeastern Wisconsin Region.

the public by the recipient no later than the time it adopts the program for transmittal to UMTA.

The recipient must also provide for a continuing public participation process to be followed in the development, implementation, and operation of the transportation service for handicapped persons called for in the recipient's adopted program. The process must ensure that consultation with handicapped groups and with agencies providing transportation or social services to handicapped persons continues during the development, implementation, and operation of the recipient's transportation service for handicapped persons. Should the recipient determine that significant changes are needed to its adopted program following its approval by UMTA, the recipient must follow the same public participation process used in developing the original program, as well as secure UMTA approval of the altered program.

Program Submittal and UMTA Review

The final rule requires each recipient to submit to UMTA a copy of its adopted program for providing public transportation to handicapped persons and a summary of the public comments received on the program, together with the recipient's responses to the comments received. In addition, the submittal by the recipient should also include documentation of the projected cost of implementing the recipient's program, the cost of any alternatives considered by the recipient, the projected amount of the cap level of required expenditures for the recipient, and the rationale for any reduction of service quality below levels which fully meet the aforementioned minimum service criteria. Upon receiving the recipient's submittal, UMTA will then complete a review of each recipient's program submission and notify the recipients in writing that the program is either approved as submitted; that it requires certain specified changes in order to be approved; or that is is disapproved. If the program is not approved as submitted, the recipient will have between 30 to 90 days to submit a modified program to UMTA for approval. UMTA may condition approval of the re-submitted program on specified changes to its content or additional public participation activities.

In states which have elected to administer the UMTA Section 5, 9, or 9A formula grant programs for UMTA, the recipient will submit the above materials to the designated state agency rather than to UMTA. The designated state agency will act for UMTA to review and approve, as required, the program materials submitted by each recipient. However, within the State of Wisconsin, UMTA has administered the aforementioned UMTA programs for all urbanized areas within the State. Accordingly, the City of Kenosha would submit its program materials to UMTA.

Program Compliance and Monitoring

The final rule states that, once the recipient's proposed program has been approved by UMTA, the recipient has the obligation to actually provide the service to handicapped persons that is prescribed in its program. In this respect, the recipient must take all actions necessary to ensure that the service is actually provided. The final rule states that the recipient's obligation to assure the provision of such service includes, but is not limited to, the following:

1. Ensuring that vehicles and equipment are capable of accommodating all handicapped users for whom the service is designed, and that vehicles and equipment are maintained in proper operating condition;

2. Ensuring that a sufficient number of spare vehicles is available to maintain the levels of service called for in the program;

3. Ensuring that personnel used in providing this service are trained and supervised so that they operate vehicles and equipment safely and properly, and treat handicapped users of the service in a courteous and respectful way;

4. Ensuring that adequate assistance and information concerning the use of this service are available to handicapped persons, including those with vision or hearing impairments. This obligation would include making adequate communications capacity available to enable all potential handicapped users to obtain information about the service and to enable such users to make requests for service;

5. Ensuring that service is provided in a timely manner in accordance with the times service has been requested or with scheduled pick-up times; and

6. Ensuring that eligible handicapped persons capable of using the recipient's regular service for the general public are not denied the service on the basis of the nature of their handicap or type of mobility assistance device--such as canes, crutches, walkers, or guide dogs--the handicapped user may require, even though the recipient may also provide a specialized transportation service for handicapped individuals.

UMTA will monitor the compliance of each recipient through a regular review process required for each recipient under the UMTA Section 9 transit assistance program. Under the Section 9 program, UMTA is required every three years to review and evaluate the entire spectrum of each Section 9 recipient's federally assisted mass transit activities. For recipients of federal transit assistance other than UMTA Section 9 funds, who would normally not be subject to the UMTA review process, UMTA will conduct a similar triennial review and evaluation of the performance under this regulation just as if such a review were in conjunction with the Section 9 review process.

If a recipient falls behind the schedule for phasing in the transportation service prescribed under its adopted program, the recipient must submit a report to UMTA. This "slippage" report must describe the problem or delay experienced, the reasons for the problem or delay, and the corrected action or actions the recipient has taken or has proposed to take to ensure that the approved implementation schedule for its prescribed service is met. The report is to be submitted to UMTA by no later than the program approval anniversary date of any year in which any such slippage occurs. This same reporting requirement will apply after the recipient's proposed service has been fully implemented for any year in which the recipient's service for any reason falls below the prescribed performance level. Failure to make the required report to UMTA is, in itself, a ground for a recipient's being found in noncompliance with the obligations under the final rule. A recipient who is

determined by UMTA to be in noncompliance with the provisions of the final rule may ultimately face legal proceedings brought by the U. S. Department of Justice and the suspension or termination of, or refusal to grant or continue federal assistance to, the recipient's programs and activities which are not in compliance with the rule.

ALTERNATIVE PROGRAMS FOR PROVIDING TRANSPORTATION SERVICES TO HANDICAPPED PERSONS IN THE CITY OF KENOSHA

The final rule allows recipients of federal transit assistance a choice of three alternative service options for providing transportation service to handicapped persons. These three options are: providing accessible bus service; providing some form of specialized transportation service; or providing some combination of specialized transportation and accessible bus service. The potential for each of these three basic service options to meet the public transportation needs of handicapped persons in the City of Kenosha was evaluated.

Option No. 1: Provide Accessible Bus Service

The first service option allowed under the final rule is to provide accessible bus service. Under this service option, a recipient would equip the buses used in the operation of its fixed route transit system with wheelchair lifts, ramps, or other accessibility features in order to make them accessible to wheelchairbound and semiambulatory handicapped persons. The intent of the final rule is for recipients to make their vehicle fleet accessible through the acquisition of accessible vehicles as part of the fleet replacement and expansion program for its transit system, rather than through retrofitting older vehicles. The final rule allows the recipient a phase-in period of up to six years from the date of the initial UMTA determination concerning approval of its program. Assuming this determination will be made some time during 1987, a recipient will have up until the program approval anniversay date in 1993 to make its fixed route transit service accessible to handicapped persons.

Accessible bus service can be provided in two ways. The first way is to make part of the regularly scheduled bus service accessible by providing service with accessible vehicles on the same days and hours of operation as the regular bus service for the general public and at intervals--or headways--that allow for practicable use by handicapped persons. On the Kenosha transit system, the weekday nonpeak headways for each route are about one hour. Of the active fleet of 29 buses, weekday peak period service requires 28 buses, of which 19 are for the regular local service and nine are for peak hour tripper service. Weekday nonpeak period service requires 10 buses. Therefore, to make such service reasonably available to handicapped persons, all the buses required to operate the weekday nonpeak period base service would have to be accessible. Under this type of operational arrangement, a minimum of 11 vehicles--which includes one spare vehicle--would need to be accessible. The second way to make the regularly scheduled bus service accessible is to provide "on-call" accessible bus service; that is, a user calls the transit system and says he or she would like an accessible bus to be on a particular route at a particular time. The transit system makes sure that the accessible bus is provided by scheduling the bus runs so that accessible vehicles are on the appropriate routes. Under this type of accessible bus service, a smaller number of accessible vehicles may be required than would be required for normal weekday nonpeak period base service.

Although the Kenosha transit system currently provides a limited amount of accessible bus service using wheelchair lift-equipped vehicles, the service option of making all the regularly scheduled bus service accessible was not considered to be a viable alternative by the City of Kenosha for its fixed route transit system. There were three reasons for this. The first reason is that the City of Kenosha may not be able to justify replacing sufficient buses with accessible buses by the deadline imposed by the six-year time period allowed under the final rule. The current vehicle fleet for the transit system consists of 29 buses, including 24 buses purchased new in 1975 and five purchased new in 1981. The five buses purchased in 1981 are equipped with wheelchair lifts and have a kneeling feature which lowers the front curbside corner of the bus to reduce the front step height. The transit system has on order six new buses which are expected to be placed in service during 1987. The six new buses will not have wheelchair lifts but will be equipped with the kneeling feature. Typically, the expected useful life of a transit bus--for costing and amortization purposes--is 12 years, although 15 to 20 years of use is not uncommon if the bus is maintained properly. Because no other new buses are currently on order, and because the replacement of 11 of the existing 1975 buses may require at least two separate acquisitions because of federal, state, and local capital improvement funding restrictions, it is unlikely that a sufficient portion of the transit system fleet could be made accessible within the six-year time period allowed under the final rule. Furthermore, because the transit system currently has no plans to expand the size of its existing bus fleet, accessible vehicles in the transit system could not be acquired as part of planned fleet expansion. Purchasing additional new accessible buses, or retrofitting older unaccessible buses to make them accessible to wheelchair users, for the sole purpose of complying with the federal regulation was not considered as a viable option by the City of Kenosha due to the substantial capital costs entailed.

The second reason for rejecting this service option is that semiambulatory persons would not be able to use the wheelchair lifts. Many handicapped individuals who would need to use the wheelchair lifts are considered to be semiambulatory; that is, the individuals are not confined to wheelchairs, but do require the use of a walker, cane, crutches, or guide dogs. Thus, such individuals would use the wheelchair lift as standees. The types of wheelchair lifts currently used on the Kenosha transit system buses, as well as many of the wheelchair lifts available from manufacturers, are not designed to accommodate standees. For example, not all lifts have hand rails that a standee can grasp. Some wheelchair lifts may operate in a fashion that makes retaining balance while standing difficult, particularly for elderly or handicapped persons. Other lifts may enter the bus at a level relative to the door opening that could cause a standee to hit his or her head on the entranceway. Because of these safety concerns, it is not commonplace for transit system operators to allow standees to use wheelchair lifts. Thus, the buses equipped with wheelchair lifts used on regular bus routes, while being accessible to wheelchair users, are not accessible for semiambulatory handicapped persons.

The third reason for rejecting this service option was that the City of Kenosha recognized the potential difficulty of wheelchair users in getting to the bus stops. In this respect, while equipping buses with wheelchair lifts would enable wheelchair users to board transit buses, wheelchair users will still be required to get to a bus stop to board the accessible vehicle. This requirement alone can be viewed as a formidable task for four to six months of each

year due to the particularly harsh winter weather routinely experienced in the Kenosha area. During this time, wheelchair users would risk dramatically greater exposure to life and safety because of ice or snow covered surfaces, the presence of snow banks, and frigid temperatures.

Option No. 2: Provide Specialized Transportation Service

The second service option allowed under the final rule is the provision of specialized transportation service. Under this service option, a recipient would provide door-to-door lift-equipped vehicle service to handicapped individuals using either buses or vans. The intent of the final rule under this option is for the recipient to provide transportation specifically designed to serve the needs of persons who, by reason of their handicap, are physically unable to use the regular bus system designed for use by the general public. Such service is characterized by the use of vehicles smaller than a transit bus which are usable by handicapped persons and would provide a demand-responsive point-of-origin to point-of-destination service with flexible routing and scheduling.

Under this service option, any transportation services to handicapped persons provided by the City of Kenosha would be limited to the specialized door-to-door van service. At present, the City of Kenosha not only provides such door-to-door service through the Care-A-Van program described earlier in this report, but also provides accessible bus service on an on-call basis over its fixed route system. Because the provision of service to handicapped persons solely through the Care-A-Van program would represent a reduction in the level of service presently available, this option was not considered to be a practical alternative by the City of Kenosha. Indeed, five of the 29 buses in the Kenosha transit system bus fleet are equipped with wheelchair lifts and were recently placed in service in 1981. These five vehicles are expected to be part of the active bus fleet at least through 1994. Given the investment in the wheelchair lift equipment on these vehicles and the significant use that the lifts receive, the City of Kenosha considered it appropriate to use this equipment to the extent possible, even though the lifts can accommodate only wheelchair users and not semiambulatory persons.

Option No. 3: Provide Combination of Accessible Bus and Specialized Transportation Services

The third service option allowed under the final rule is to provide a mix of both accessible specialized transportation service and accessible regular fixed route bus service. Under this service option, the City of Kenosha would continue to provide the transportation services presently provided for handicapped persons. To meet the requirements of the final rule, a public transit program for handicapped persons must meet certain minimum service criteria subject to a cap level of expenditure by the recipient. A comparison of the dual special efforts strategy for providing special transportation service for handicapped persons by the City of Kenosha, with the minimum service criteria specified under the final rule, is provided in Table 4.

The information presented in this table indicates that the specialized transportation program presently provided by the City of Kenosha meets the minimum service criteria of the final rule. The service characteristics of the existing on-call accessible fixed route bus service, together with the Care-A-Van service operated east of IH 94, in four of the six areas addressed under the

TR77A/b
3/26/87

Table 4

COMPARISON OF THE EXISTING CITY OF KENOSHA TRANSPORTATION SERVICES FOR HANDICAPPED PERSONS WITH THE MINIMUM SERVICE CRITERIA SPECIFIED UNDER THE FINAL RULE

Service Characteristic	Characteristics of Regular Transit Service Provided by the Kenosha Transit System Fixed Route Bus System	On-Call Accessible Transit Service Over Regular Fixed Route Bus System	
		Minimum Service Criteria Prescribed Under Final Rule	Characteristics of Existing Service Provided by Kenosha Transit System
Eligibility	All persons physically capable of using regular transit buses.	All persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public.	All handicapped individuals who must use a wheelchair.
Response Time	Service provided on the basis of regular fixed schedules.	Service provided with 24 hours of time request for service is made.	Advance notice of 24 hours suggested, but not required.
Restrictions or Priorities Placed on Trips	None.	None.	None.
Fares	Base adult cash fare of $0.50 per one-way trip all day. Transfers free.	Fares no higher than fares charged other users of the regular bus service for the general public. Off-peak	One-way trip fare of $0.25 all day. Transfers free. fares for the elderly and handicapped must be in effect on accessible buses.
Hours and Days of Operation	Weekdays: 6:00 a.m.-6:00 p.m. Saturdays: 6:00 a.m.-6:00 p.m. Sundays and holidays: No service.	Service provided on same days and hours of operation as recipient's bus service for the general public, and at intervals that allow for practicable use by handicapped persons.	Weekdays: 6:00 a.m.-6:00 p.m. Saturdays: 6:00 a.m.-6:00 p.m. Sundays and holidays: No service.
Service Area	Area within one-quarter mile of seven regular bus routes.	Service provided on all recipient's regular bus routes, upon request, as needed to complete each handicapped person's trip.	Service provided on demand over all seven regular bus routes.

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Table 4 (continued)

Service Characteristics	Accessible Demand-Responsive Specialized Transportation Service	
	Minimum Service Criteria Prescribed Under Final Rule	Characteristics of Existing Service Provided by Care-A-Van Program
Eligibility	All persons who, by the nature of their handicap, are physically unable to use the recipient's regular bus service for the general public.	All persons 60 years of age or over and handicapped persons of any disability who do not have physical, economic, or geographic accessibility to other means of transportation.
Response Time	Service provided within 24 hours of time request for service is made.	Service on a 24-hour advance reservation basis.
Restrictions or Priorities Placed on Trips	None.	Priority given first to medical trips, then to nutritional, employment, adult day care, educational, and recreational trips, respectively.
Fares	Fares comparable to fares for a trip of similar length made at a similar time of day charged to a user of the regular bus for service for the general public.[a]	One-way trip fare of $0.50 to nutritional sites. One-way trip fare of $1.00 to all other destinations.
Hours and Days of Operation	Service provided on same days and hours of operation as recipient's bus service for the general public.	Weekdays: 7:30 a.m.-7:00 p.m. (Except on Tuesdays and the fourth Wednesday of every month, when service is extended to 9:00 p.m.) Saturdays: 9:00 a.m.-7:00 p.m. Sundays and holidays: No service.
Service Area	Service provided throughout the same geographic area as served by the recipient's regular bus service for the general public.	All Kenosha County east of IH 94 including the entire City of Kenosha and Kenosha transit system service area.

[a]In determining the comparability of fares charged on a recipient's fixed route bus service and specialized transportation service, UMTA will consider as the basis for making this comparison the fare which the individual would be charged for making the trip on the recipient's fixed route bus service if he or she were not handicapped.

Source: U. S. Department of Transportation, City of Kenosha, and SEWRPC.

final rule--eligibility, response time, fares, and service area--clearly satisfy the specific minimum service criteria. With respect to a fifth criterion--hours and days of operation--the hours of operation of the Care-A-Van service vary slightly from the hours and days of operation provided by the Kenosha transit system. Service is provided by the Kenosha transit system from 6:00 a.m. to 6:00 p.m. Monday through Saturday. Service is provided by the Care-A-Van program from 7:30 a.m. to 7:00 p.m. on weekdays; and 9:00 a.m. to 7:00 p.m. on Saturdays. On Tuesdays and the fourth Wednesday of every month, service continues until 9:00 p.m. Thus, the Care-A-Van service is available an average of 70 hours per week, whereas the Kenosha transit system service is available a total of 72 hours per week. It should be noted that the hours of operation for the Care-A-Van service are periodically reviewed and have, in fact, been adjusted over the years in response to user suggestions and comments given at local public hearings. Thus, in the opinion of the City of Kenosha, the service offered by the Care-A-Van together with the on-call accessible service offered as part of the Kenosha transit system's regular routes are comparable to the regular transit service offered by the fixed route bus system.

With respect to the sixth criterion--restrictions or priorities placed on trips--trip requests for the Care-A-Van program are prioritized when necessary, with priority given first to medical care-related trips, then to nutritional, employment, adult day care, educational, and recreation-related trips respectively. As described earlier in this report, this prioritization of trips is a requirement by the State of Wisconsin specialized transportation assistance program which participates in the funding of the Care-A-Van program. However, the ultimate scheduling of trip requests for a time other than the time initially requested by the user is not a routine occurrence. Furthermore, even though an occasional trip is rescheduled, no trip requests are denied. Thus, it is the opinion of the City of Kenosha that, with respect to this service criterion, the service offered by the Care-A-Van together with the on-call accessible service offered as part of the Kenosha transit system's regular routes are comparable to the regular transit service offered by the fixed route bus system. The public transit program for handicapped persons currently provided by the City of Kenosha should, consequently, satisfy all the minimum service criteria specified under the final rule.

RECOMMENDED CITY OF KENOSHA PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS

Based on a review of the alternative service options allowed under the final rule, the City of Kenosha determined that it would comply with the current federal regulation by continuing to provide a specialized transportation service for handicapped persons. The City also determined that it would retain, without change, the existing dual special efforts strategy of providing accessible service on the regular city bus route and continuing to participate in the Care-A-Van door-to-door demand-responsive transportation service which is sponsored jointly with Kenosha County. These services are described in a previous section of this report.

Modification of Minimum Service Criteria

Based upon a comparison of service characteristics of the specialized transportation currently provided with the minimum service criteria for specialized

transportation as set forth in the final rule and as shown in Table 4, public transportation services for handicapped persons as currently provided through the Kenosha transit system and the Care-A-Van program would, in the opinion of the City of Kenosha, meet the prescribed minimum service criteria. Consequently, no modifications to the minimum service criteria prescribed under the final rule would be envisioned for the City's public transit program for handicapped persons.

Implementation Schedule

Because the City of Kenosha proposes to retain without change the program of specialized transportation service which it currently provides as its required public transportation program for handicapped persons, no time would be required for the City to phase in a proposed program. The proposed program will be fully implemented at the full-performance level prescribed under the final rule at the time it is approved by UMTA, presumably during the second half of 1987.

Expenditure Limit

The final rule specifies a cap level annual expenditure by the recipient for its program equal to 3 percent of the recipient's average operating expenses for all public transportation service it provides, calculated based upon the current year expenditures and expenditures for the two immediately preceding fiscal years. The recipient is not required to expend more than this limit, even if as a result it cannot provide a level of service which fully meets all the service criteria for the service option it has selected. If the recipient can provide a level of service which fully meets the service criteria or an amount less than the expenditure limit, then the limit can be ignored for the fiscal year in question.

The cap level of expenditures by the City of Kenosha for its public transit program for handicapped persons calculated for the period 1985-1987 would be about $60,400, as shown in Table 5. The average expenditures of funds on the City's handicapped transportation program during this period is expected to be about $58,900, about 2.9 percent of the total operating budget of the Kenosha transit system for both the fixed route and specialized transportation programs. This amount would be about $1,500 below the cap level of expenditure prescribed under the final rule. However, because the public transit program for handicapped persons currently provided by the City of Kenosha would meet minimum service criteria set forth in the final rule, there is no need for the City to increase expenditures on this program. It should be noted that the actual expenditures of funds upon this program during 1986 was 3 percent of the total operating budget of the Kenosha transit system.

In guidance describing its interpretation of various provisions of the final rule, UMTA has indicated that only the costs of the special service attributable to carrying handicapped persons may be counted toward the required cap level of operating expenditures. For purposes of these rules, UMTA defines handicapped persons as only those persons who by reason of the handicap are physically unable to use the recipent's regular bus service. Therefore, the costs of the special service attributable to carrying people with cognitive, not physical, disabilities, or elderly persons who are ambulatory cannot be counted toward the required cap level. Accordingly, the costs, shown in Table 6, of the City of Kenosha's participation in providing the Care-A-Van service

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Table 5

COMPARISON OF AVERAGE ANNUAL EXPENDITURES FOR THE CITY OF KENOSHA PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS WITH CAP LEVEL OF EXPENDITURE PRESCRIBED UNDER THE FINAL RULE: 1985-1987

Kenosha Transit System Expenditure Category	Transit System Expenditures[a]				
	Year			Average Annual	
	1875	1986[b]	1987[c]	Amount	Percent of Total
Regular Fixed Route Bus System.....	$1,908,572	$1,982,040	$1,988,210	$1,959,607	97.3
Specialized Transportation Services for Handicapped Individuals					
Accessible Fixed Route Bus System Wheelchair Lift Maintenance[d]....	7,500	7,500	7,500	7,500	0.4
Annualized Capital Cost of Wheelchair Lifts[e].....	5,000	5,000	5,000	5,000	--
Care-A-Van Service for Handicapped Individuals[f].....	43,418	47,933	47,933	46,428	2.3
Total Kenosha Transit System Operating Expenditures Including Specialized Transportation Services for Handicapped Individuals.....	$1,959,490	$2,037,473	$2,043,643	$2,013,535	100.0
Total Kenosha Transit System Expenditures Eligible to be Counted in Determining Annual Cost of Specialized Services.....	$ 55,918	$ 60,433	$ 60,433	$ 58,928	2.9
Cap Level of Expenditures for Handicapped Public Transportation Program Under Final Rule.....				$ 60,406	3.0

[a]Per federal definition.

[b]Unaudited.

[c]Projected.

[d]Assumes annual wheelchair lift maintenance cost of $1,500 per lift for five wheelchair lift-equipped buses currently operated by the transit system.

[e]Assumes a capital cost of $12,000 per wheelchair lift and an expected operating life of 12 years for each wheelchair lift on the five wheelchair lift-equipped buses currently operated by the transit system.

[f]Includes estimated operating expenditures attributable to transporting nonambulatory and semiambulatory individuals only.

Source: City of Kenosha and SEWRPC.

TR77A/g

Table 6

DISTRIBUTION OF OPERATING DEFICIT BY
SOURCE OF FUNDS FOR TRANSIT SERVICES PROVIDED
BY CITY OF KENOSHA: 1985-1987

Source of Funds	Operating Deficit				
	Year			Average Annual	
	1985	1986[a]	1987[b]	Amount	Percent of Total
Federal Operating Assistance...	$ 743,471	$ 841,181	$ 615,000	$ 733,217	46.1
State Operating Assistance.....	593,363	756,792	766,366	705,507	44.4
Local Tax Dollars.....	141,021	163,000	148,500	150,840	9.5
Total	$1,477,855	$1,760,973	$1,529,866	$1,589,564	100.0

[a]Estimated.

[b]Projected.

Source: City of Kenosha and SEWRPC.

reflect the cost attributable only to carrying nonambulatory and semiambulatory persons. Trips by nonambulatory and semiambulatory persons represent 70 percent of the total one-way trips using the Care-A-Van service.

Source of Funds

The costs of operating the City of Kenosha's public transit program are included in the total operating budget for the public transportation services provided by the City. Public funds to cover the operating deficit for the transit services provided by the City, including the specialized transportation services for handicapped persons, have historically been obtained through federal and state transit operating assistance programs and local tax dollars. The actual and projected funding of the operating deficits for the City of Kenosha transit system for the period from 1985 through 1987 is shown in Table 6. The City of Kenosha intends to continue to use federal and state funds available in future years to reduce the amount of operating deficits which are funded through local tax dollars.

PUBLIC REACTION TO THE PROGRAM

To obtain public reaction and solicit comments on its proposed handicapped transit program from the local handicapped community, as well as from the general public, the City of Kenosha followed a two part public participation process. Under the first part of this process, the proposed program was presented to the Advisory Committee on Transportation for Disabled Persons in the City of Kenosha. The membership of this Committee is listed on the inside front cover of this report. Under the second part of the process, the proposed program was made available for public review and comment through a 60-day public comment period during which a formal public hearing was held.

The official public comment period for the City's proposed transit program for handicapped persons extended from Saturday, April 11, 1987, through Tuesday, June 9, 1987. The public hearing on the program was held on Tuesday, May 19, 1987, in the City of Kenosha Municipal Building, which is accessible to handicapped persons. Approximately four weeks prior to the public hearing, a legal notice announcing the public hearing and the public comment period were published in the official local newspapers for the City of Kenosha, The Kenosha News and the Kenosha Labor.

A copy of the entire preliminary draft report documenting the City's proposed handicapped transit program, as well as a copy of the aforereferenced public notice, were available for public review at the offices of the City of Kenosha Department of Transportation, located in the City of Kenosha Municipal Building, at the Clerk's office in the Kenosha County Courthouse, at the Kenosha Achievement Center, and at the four City of Kenosha public libraries. Provision was also made to provide a loan copy of the report on cassette tape to anyone requesting such a tape.

A total of 10 persons attended the public hearing held on May 19, 1987, and several chose to ask questions or make comments. The questions asked were generally of an informational nature, such as in reference to the clamp mechanism used to secure wheelchairs on the wheelchair lift-equipped buses, the extent to which wheelchair lift-equipped buses were used, and whether or not there is sensitivity training for drivers. Comments made were in reference to the new bus stop signs recently installed on regular transit routes

and in support of the availability of specialized transportation services for handicapped individuals. No modifications to the existing City of Kenosha public transit program for handicapped persons were requested or suggested by those attending the public hearing. A summary of the comments made at this public hearing together with an attendance roster for the public hearing and a copy of the legal notice for the public hearing are included in Appendix B of this report. No letters or oral comments on matters pertaining to the proposed program were received during the public comment period. It was also noted that two public hearings were previously held during October 1986 concerning the specialized transportation services jointly provided by Kenosha County and the City of Kenosha, and that the subject matter of those two hearings was essentially the same as the subjct matter covered at the May 19, 1987, hearing.

Conclusion

No substantive issues were raised either during the public hearing or throughout the public comment period which had not been previously carefully considered in the preparation of the City's proposed handicapped transit program. Consequently, the City of Kenosha determined that no changes were required to be made in its public transit program for transportation handicapped persons as it was presented for public comment. At a meeting of the Kenosha Transit Commission held on June 4, 1987, the draft report for the program, together with the additional sections describing the public reaction to the program, were approved, with any further written or oral comments submitted prior to the June 9, 1987, public comment period deadline to be included in the final report and considered by the Advisory Committee and Transit Commission as necessary.

CONTINUING PUBLIC PARTICIPATION PROCESS

The City of Kenosha intends to maintain a public participation process which provides for an active role by the local handicapped community. In the event that significant changes to the City's public transit program for handicapped persons are proposed in the future, the City will present its proposed program revisions to the handicapped community in accordance with the public participation process outlined in the final federal regulations--including soliciting comments from the handicapped community through a formal public comment period and through a public hearing. A report will then be prepared by the City documenting any proposed revisions to the public transit program for handicapped persons, the schedule for implementing any proposed changes, public comments received from the handicapped community concerning the proposed program revisions, and the City's responses to any significant comments received. This report will then be sent to UMTA for its review and ultimate approval in accordance with the procedures prescribed under the final federal regulations.

SUMMARY AND CONCLUSIONS

On May 23, 1986, the U. S. Department of Transportation, Urban Mass Transportation Administration (UMTA), issued amended regulations governing nondiscrimination on the basis of handicap in federally assisted public transportation programs relative to the nondiscrimination requirements of Section 504 of the Federal Rehabilitation Act of 1973. A major requirement of this regulation is that recipients of federal transit assistance under the UMTA Sections 3, 5, 9, or 9A funding programs who operate a bus system serving the general public

establish a program for providing public transportation service to handicapped persons who, because of the nature of their physical handicap, are unable to use the recipient's regular bus service for the general public. This report has presented the City of Kenosha's proposed public transportation program for handicapped persons.

Existing Specialized Transportation Service for Handicapped Persons

All the planning and implementation actions taken to date toward the provision of public transportation services which can be effectively used by handicapped persons have been significantly affected by federal regulations governing such services. In this respect, the City of Kenosha's current public transit program for handicapped persons was developed and implemented to comply with federal regulations previously issued on July 20, 1981. The City of Kenosha supports a dual special efforts strategy to provide mobility to handicapped persons unable to use the regular bus service offered by the City's transit system. This strategy consists of the provision of accessible fixed route bus service over the regular city bus routes on an on-call basis, and participation in, and provision of financial support to, a specialized door-to-door transportation service--known as Care-A-Van--using wheelchair lift-equipped vans. To provide the door-to-door service, the City of Kenosha contracts with the Kenosha Achievement Center, Inc.--a private nonprofit agency in the area. The City of Kenosha has contracted for accessible specialized transportation service with operating characteristics similar to the Care-A-Van service since 1980. The accessible buses used on the regular fixed route system have been in operation since 1981.

Final Regulations on Public Transportation Service for Handicapped Persons

The final federal regulation, issued on May 23, 1986, specifically addresses the requirements of the present and past recipients of federal transit assistance under the UMTA Sections 3, 5, 9, and 9A programs who operate a bus system for the general public within an urbanized area. The final regulatio removes some of the flexibility allowed recipients under previous federal regulations in selecting how they will meet their obligations to provide public transportation services for handicapped persons. Under the final regulation, each funding recipient's public transportation program is responsible for making transportation services available to handicapped persons through one of three service options including: providing some form of demand-responsive and specialized transportation service which is accessible to wheelchair-bound and semiambulatory persons; providng fixed route bus service which is accessible to wheelchairbound and semiambulatory persons over the regular routes operated by the recipient; or providing a mix of both accessible specialized transportation and accessible bus services. Whichever service option is ultimately selected by the recipient, it must meet specified minimum service criteria governing service area, service availability, fares, trip restrictions or priorities, waiting time, and user eligibility, subject to a cap level of annual expenditures by the recipient. Only expenditures by the recipient of funds from its own public transportation program specifically undertaken to comply with the requirements of the final federal regulation are eligible to be counted in determining whether the recipient has exceeded the cap level of annual expenditures incurred in meeting the service criteria for the service option selected.

Recipients of UMTA funds addressed in the final regulation must prepare and submit to UMTA a program which provides the documentation of the required

public transportation services for handicapped persons. The final regulation requires that the recipient's program must provide for full implementation of the proposed transportation services as soon as reasonably feasible, but no later than six years after the proposed program has been approved by UMTA. In addition, the planning and development of the recipient's proposed program must be done through a locally developed public participation process which allows for consultation with handicapped groups and with agencies providing transportation and social services to handicapped persons; the conduct of at least one public hearing on the proposed program during a 60-day comment period; and the distribution of notices and materials pertaining to the program in a form usable by persons with vision and hearing impairments. A copy of the recipient's proposed program for providing public transportation for handicapped persons and a summary of the public comments received on the program, together with the recipient's responses to comments received, must be submitted to UMTA for its review by no later than June 23, 1987.

Once the recipient's proposed program has been approved by UMTA, the recipient will have the obligation to actually provide the service to handicapped persons that is described in its program. The recipient must also take all actions necessary to ensure that the proposed service is actually provided. UMTA will monitor the compliance of each recipient through the regular triennial review process required for each recipient under the UMTA Section 9 transit assistance program. If a recipient falls behind the schedule for phasing in the transportation service described under its adopted program, the recipient must submit a report to UMTA describing the problem or delay experienced; the reasons for the problem or delay; and the corrected action or actions the recipient has taken or has proposed to take to ensure that the approved implementation schedule for its described service is met. Failure to make the required report to UMTA is, in itself, grounds for a recipient's being found in noncompliance with the obligations under the final rule.

Alternative Transportation Programs for Handicapped Persons

In response to the final federal regulation, the City of Kenosha has reevaluated the potential of each of the three basic service options allowed under the final regulation to meet the transportation needs of handicapped persons in the Kenosha area. Based on this reevaluation, the City of Kenosha determined that the two service options which required the City to provide specialized transportation service entirely through accessible buses operating over the regular fixed route system, or entirely through the provision of door-to-door demand-responsive service would not be viable alternative service options.

This determination was based upon the following reasons. The service option of making the regularly scheduled fixed route service accessible would require a minimum of 11 wheelchair lift-equipped vehicles. Because of the remaining useful life of the present bus fleet used by the Kenosha transit system, the City of Kenosha may not be able to justify replacing a sufficient number of buses with accessible buses by the deadline imposed by the six-year time period allowed under the final rule. Furthermore, the transit system currently has no plans to expand the size of its existing bus fleet. Accessible vehicles in the transit system could not be acquired as part of planned fleet expansion. Also, semiambulatory persons who require the use of a walker, cane, crutches, or guide dogs, and who are not confined to wheelchairs may not be able to easily use wheelchair lifts because of safety and liability

reasons. In addition, while wheelchair lifts on the regular buses would enable wheelchair users to board the buses, those users may experience potential difficulty in getting to the bus stop, especially during the four to six months each year that particularly harsh winter weather is experienced in the Kenosha area. The service option which required the Kenosha transit system to provide all transportation services to handicapped persons solely through the use of specialized door-to-door van service was also concluded not to be a viable alternative service option by the City, since this would represent a reduction in the level of service presently available. Given the investment by the City of Kenosha and the federal government in the wheelchair lift equipment that is currently used on transit system vehicles, as well as the significant use that the wheelchair lifts currently receive, the City considered it appropriate to continue using this equipment to the extent possible.

The City of Kenosha, therefore, selected the remaining service option allowed under the final regulation, which allows recipients to provide a combination of accessible bus and specialized transportation services to handicapped persons. This service option would allow the City of Kenosha to continue its strategy of providing both on-call accessible bus service over the regular transit routes of the Kenosha transit system, as well as the door-to-door demand-responsive van service offered under the Care-A-Van program.

Recommended Public Transportation Program for Handicapped Persons

The City of Kenosha's recommended program for handicapped persons consists of the existing dual special efforts strategy provided by the City of Kenosha. Under this program, the City of Kenosha provides on-call accessible fixed route bus service on the regular fixed routes, and participates in the provision of a specialized door-to-door transportation service that operates throughout the City of Kenosha.

The City of Kenosha does not propose to change the operating service characteristics for its existing public transit program for handicapped persons in order for it to serve as the program required under current federal regulations. In this respect, the service currently provided as part of the accessible fixed route bus service is available to all elderly and nonelderly individuals who require the use of a wheelchair. The service currently provided under the Care-A-Van program is available to persons 60 years of age or older and to all handicapped persons of any disability who do not have physical, economic, or geographic accessibility to other means of transportation. Both services are available on an advance-reservation basis, with eligible Care-A-Van users required to schedule service 24 hours in advance, and eligible accessible fixed route bus service users requested, but not required, to make such requests 24 hours in advance of the time service is needed. Trips made on the Care-A-Van service are prioritized, as required by the State of Wisconsin's special transportation assistance program which funds a significant portion of the service. However, even though a low number of trips occasionally have to be rescheduled at different times because of insufficient capacity during peak periods of travel, no trip requests are denied. Furthermore, trips made by accessible fixed route bus service are not prioritized.

Individuals using service provided by Care-A-Van are currently charged a one-way fare of $0.50 for trips to nutritional sites and $1 for trips to other

destinations. Individuals using the accessible fixed route bus system are currently charged a one-way fare of $0.25 per trip. These fares compare with the base adult fare of $0.50 per one-way trip charged to users of the regular fixed route bus system. Transportation service under the Care-A-Van program is provided between 7:30 a.m. and 7:00 p.m. on weekdays, except on Tuesdays and the fourth Wednesday of the month, when service is extended to 9:00 p.m., and between 9:00 a.m. and 7:00 p.m. on Saturdays. Accessible fixed route service over the Kenosha transit system is provided between 6:00 a.m. and 6:00 p.m. Monday through Saturdays, the same hours of service provided for the regular fixed route bus system. No service is provided by either the specialized transportation services or the regular fixed route bus system on Sundays or holidays. The hours and days of operation for the specialized transportation services are virtually the same as the regular hours of operation for the fixed route bus system operated by the City of Kenosha. The area served by both the accessible fixed route bus service and the Care-A-Van service encompasses all areas served by the Kenosha transit system's regular bus routes.

The service characteristics of the City of Kenosha public transit program for handicapped persons satisfies the minimum service criteria specified under the final federal regulation for specialized transportation services. More importantly, the service provided by this program would best address the mobility problems experienced by the handicapped population in the Kenosha area. Because the City of Kenosha proposes to retain without change the program of specialized transportation service currently provided as its required public transportation program for handicapped persons, the proposed program would be fully implemented to the full performance level prescribed in the final regulation at the time it is approved by UMTA, presumably during the second half of 1987.

The cap level of expenditures by the City of Kenosha for its public transit program for handicapped persons calculated for the period 1985 through 1987 would be about $60,400. The average expenditure of funds on the program during this period is expected to be about $58,900, about 2.9 percent of the total operating budget of the Kenosha transit system for both fixed route and specialized transportation services. This amount would be about $1,500 below the cap level of expenditures prescribed under the final federal regulation. However, because the specialized transportation services currently provided under the City of Kenosha's public transit program for handicapped persons would meet all the minimum service criteria set forth in the final regulation, the City of Kenosha would not be required to increase its expenditures on this program.

Public funds used to cover the expenditures for the specialized transportation services provided under this program currently are through federal and state transit operating assistance programs and through local tax dollars. The City of Kenosha intends to continue to use federal and state funds available in future years to reduce the amount of operating expenditures for the program which are funded through local tax dollars.

Public Reaction to the Program

To obtain public reaction and solicit comments on its proposed handicapped transit program from the local handicapped community, the City of Kenosha followed a public participation process which included presenting the proposed

program to the Advisory Committee on Transportation for Disabled Persons in the City of Kenosha; and making the program available for public review and comment through a 60-day public comment period, during which a formal public hearing was held. No substantive issues were received either during the public hearing or throughout the public comment period which had not been previously considered by the City in the preparation of its proposed program. Therefore, the City made no changes to the program which it had presented for public comment during the 60-day public comment period and at the public hearing.

Continuing Public Participation Process

The City of Kenosha intends to maintain a public participation process which provides for an active role by the local handicapped community in the development and operation of its handicapped transit program. This process will be followed in the future, should the County desire to make any significant changes to its handicapped transit program.

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APPENDICES

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Appendix A

federal register

Friday
May 23, 1986

Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 27 and 609
Nondiscrimination on the Basis of Handicap in Financial Assistance Programs; Final and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 56b; Amdt. No. 27-3]

Nondiscrimination on the Basis of Handicap in the Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule requires recipients of financial assistance from the Department of Transportation for urban mass transportation to establish programs to provide transit services to handicapped persons. The service must meet certain service criteria. The rule also establishes a limit on the amount of money a recipient must spend to meet these criteria. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. In an accompanying notice of proposed rulemaking, the Department is proposing provisions concerning commuter rail systems and certain other matters.

EFFECTIVE DATE: This final rule is effective June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426–4723 (voice) or (202) 755–7687 (TDD). The Department is currently in the process of installing a new telephone system. As a result, the voice information number is expected to change, during July 1986, to (202) 366–9305. The TDD number is not expected to change. This rule has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION:

Highlights of the Rule

This final rule creates a new Subpart E of 49 CFR Part 27, Department's rule on nondiscrimination on the basis of handicap in financial assistance programs. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. The new Subpart E replaces the present § 27.77, which originated in a July 1981 interim final rule.

With a few exceptions, the new rule requires each recipient of financial assistance from the Urban Mass Transportation Administration (UMTA) to prepare a program for providing transportation services to handicapped persons. The recipient must go through a public participation process, including consultation with handicapped persons. Within a year from the effective date of this rule, the recipient must transmit the program to UMTA for approval.

Recipients may fulfill their obligations under the rule by choosing either a special service (e.g., dial-a-van, taxi voucher), an accessible bus system (either a scheduled or on-call accessible bus system), or a mixed system (i.e., a system having both special service and accessible bus elements). Whatever type of service the recipient elects to provide, the service must meet the following six service criteria:

(1) All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public must be eligible to use the service for handicapped persons;

(2) Service must be provided to a handicapped person within 24 hours of a request of it;

(3) Restrictions or priorities based on trip purpose are prohibited;

(4) Fares must be comparable to fares charged the general public for the same or a similar trip;

(5) The service for handicapped persons must operate throughout the same days and hours as the service for the general public; and

(6) The service for handicapped persons must be available throughout the same service area as the service for the general public.

The rule spells out how the six criteria apply to each kind of transportation system.

The rules establishes a limit on the amount of money a recipient is required to spend to meet these service requirements. This limit on required expenditures is calculated by taking 3.0 percent of the recipient's average operating costs over the current and two previous fiscal years.

If the recipient cannot meet the six criteria for the type of service it chooses without exceeding this limit on required expenditures, the recipient may modify its service to keep its expenditures within the limit, after consultation through its public participation process.

The rest of the rule's provisions are primarily administrative in nature. They concern such subjects as the expenses eligible to be counted in determining whether a recipient has exceeded its limit on required expenditures, UMTA monitoring of recipients' actions, special provisions for small recipients and multi-recipient regions, and technical exemption procedures.

The Department has performed a Regulatory Impact Analysis (RIA) in connection with this rule. This analysis, based on case studies of several existing systems and a computer model study of a large sample of systems, projects the annual and long-term costs and cost-effectiveness of various approaches to providing transportation service to disabled persons. A copy of the RIA has been placed in the docket for this rulemaking.

In an accompanying notice of proposed rulemaking (NPRM), the Department is proposing requirements for commuter rail systems, on which comments are being requested for 90 days. The NPRM also proposes to incorporate vehicle and fixed facility standards, as well as the reduced fare requirement for elderly and handicapped passengers, from 49 CFR Part 609, which would be withdrawn.

Background of the Rulemaking

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in federally-assisted programs. The Department's existing regulation, 49 CFR Part 27, implements this statute in the Department's mass transit programs. This 1979 regulation imposed accessibility requirements for DOT-assisted highways, airports, intercity rail service, and mass transit.

In *American Public Transit Association* v. *Lewis*, 556 F.2d 1271 (D.C. Cir., 1981), the U.S. Court of Appeals for the District of Columbia Circuit held that, under section 504, a transit authority might be required to take "modest, affirmative steps to accommodate handicapped persons." The Court said, however, that the 1979 regulation, as applied to mass transit, exceeded the Department's section 504 authority because it required overly costly efforts to modify existing systems.

The Department reviewed the rule and determined that its policy is that recipients of Federal assistance for mass transit must provide transportation that handicapped persons can use but that local communities have the major responsibility for deciding how this transportation should be provided.

Consistent with this policy and the Court decision, the Department issued

an interim final rule in July 1981. It deleted the mass transit requirements of the original regulation and substituted a new § 27.77. This section required recipients to certify that special efforts are being made in their service area to provide transportation that handicapped persons can use.

In 1983 Congress passed section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)). It provides as follows:

> In carrying out subsection (a) of this section [section 16(a) of the Urban Mass Transportation Act of 1964, as amended] section 165(b) of the Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (consistent with any applicable government-wide standards for the implementation of such section 504), the Secretary shall, not later than 90 days after the date of enactment of this subsection, publish in the Federal Register for public comment, proposed regulations and, not later than 180 days after the date of such enactment, promulgate final regulations, establishing (1) minimum criteria for the provision of transportation services to handicapped and elderly individuals by recipients of Federal financial assistance under this Act or any provisions of law referred to in section 165(b) of the Federal-Aid Highway Act of 1973, and (2) procedures for the Secretary to monitor recipients' compliance with such criteria. Such regulations shall include provisions ensuring that organizations and groups representing such individuals are given adequate notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations.

In order to implement this statute, as well as to replace the interim final rule with a permanent regulation, the Department published a notice of proposed rulemaking (NPRM) on September 8, 1983 (48 FR 40634). The NPRM proposed that recipients' service for handicapped persons had to meet a series of service criteria, but recipients were not required to spend more than a certain amount in a given year to provide this service.

The Department received more than 650 comments on the NPRM. The commenters included handicapped persons and groups representing them, local transit authorities and state transportation agencies, other transportation providers, private and public human service agencies, members of Congress, and members of the general public.

Legal Background and Issues

Basic Statutes

The legal authority for DOT's regulatory efforts in the area of mass transit service for handicapped persons comes from three statutes in addition to section 317(c). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) provides that

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

Section 165(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)) provides that

> It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.

Section 165(b) of the Federal-aid Highway Act of 1973, as amended, applies a similar requirement to mass transit projects funded under the Federal-aid Highway Act's interstate transfer provisions.

Court Interpretations of Section 504 and Section 16(a)

Since the mid-1970s, numerous court decisions have interpreted section 504 and section 16(a). The case law generally supports the proposition that these statutes do not require specific facilities or vehicles to be made accessible (e.g., there is no statutory right to bus accessibility). *See, e.g., United Handicapped Federation* v. *Andre*, 558 F.2d 413 (8th Cir. 1977); *Leary* v. *Crapsey*, 556 F.2d 863 (2nd Cir. 1977); *Vanko* v. *Finley*, 440 F. Supp. 656 (N.D. Ohio 1977); *Dopico* v. *Goldschmidt*, 518 F. Supp. 1161 (S.D.N.Y. 1981), *rev'd on other grounds* 687 F.2d 644; *Lloyd* v. *Chicago Regional Transportation Authority*, 518 F. Supp. 575 (N.D. Ill. 1982).

This same line of cases holds that the rights of handicapped users of federally-assisted mass transit services, and the obligations of transit authorities, are defined by DOT's regulations. These cases emphasize the Secretary's discretion in carrying out the statutes. In addition to the cases cited above, see also *Atlantis Community* v. *Adams*, 453 F. Supp. 831 (D. Colo., 1978) and *Michigan Paralyzed Veterans* v. *Coleman*, 451 F. Supp. 7 (E.D. Mich. S.D., 1977). This proposition was most recently reaffirmed in *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority (RIPTA)*, 718 F.2d 490 (1st Cir., 1983), where the court explicitly held that a transit authority that complied with the present 49 CFR 27.77 had met its statutory obligations.

The courts have held that an agency's discretion in fashioning rules in this area has some limits, however. This line of cases began with *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979).

Davis involved a federally-funded nurse training program. The hearing-impaired plaintiff was denied entry into the training program on the ground that her hearing disability made it unsafe for her to practice as a nurse and to participate safely in normal clinical training programs.

The Supreme Court held that it was not a violation of section 504 for the College to deny plaintiff's entry into the training program, saying that section 504 does not mandate "affirmative action" to accommodate the needs of handicapped individuals. 442 U.S. at 441. The court noted that:

> Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances may also enable attainment of these goals without imposing undue financial and administrative burdens on a state. Thus situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory.

442 U.S. at 412–413.

Davis was applied to the Department of Transportation's 1979 section 504 regulation by *APTA, supra*. The Court of Appeals held that section 504 did not provide authority to the Department for the regulation it had issued. Citing the portions of the *Davis* case quoted above, the court said:

> Applying these standards to public transit, we note that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities.

695 F.2d at 1278.

The court remanded the rule to the Department to consider whether section 16(a) and 165(b) would independently support the 1979 requirements. The preamble to the July 1981 interim final rule noted that "while the court allowed the Department to consider whether section 16 and section 165, among other statutes, might support the requirements of Subpart E, we believe that these statutes do not mandate, although they

may permit, the kinds of affirmative action that Subpart E contained." (46 FR 37491, July 20, 1981).

The *Dopico* case further elaborated the scope of obligations that can be imposed under section 504. The Second Circuit Court said that, while section 504 does not authorize massive relief, the statute can authorize some portion of the relief plaintiffs asked for, within appropriate statutory limits. The court stated that the *APTA* case only

> Sketches the outer limits, in the mass transportation context, of the limitation laid down by the Supreme Court in *Davis*. The key issue is whether *Davis* not only proscribed forcing massive restructuring of transportation programs, but in fact prohibits any . . . prospective relief in this setting.

687 F.2d at 651.

The court commented that since, according to *APTA*, section 504 may require "modest affirmative steps" to accommodate handicapped persons in public transportation, it is logical to assume that Congress intended that some steps could be required to be taken to effectuate the intent of the statute.

In the *Davis* fact situation, the court pointed out, the college would have had to restructure its training program to render unnecessary a nursing student's ability to hear. This was a fundamental change in the nature of the program. In *Dopico*, however,

> Plaintiffs do not seek fundamental changes in the nature of a program by means of alterations in its standards. They do not, to adapt the [*Davis*] example. . ., demand that the physical qualifications for the job of bus driver or motorman be altered so the handicapped are not excluded. The existing barriers to the "participation" of the wheelchair-bound are incidental to the design of facilities and allocation of services rather than being integral to the nature of the public transportation itself, just as a flight of stairs is incidental to a law school's construction but has no bearing on the ability of a otherwise qualified handicapped student to study law . . . The issue here is purely economic and administrative—how much accommodation is called for by regulations implementing the Rehabilitation Act . . . While it is bounded, after *Davis*, by a general proscription against "massive" expenditures, the question is one of the degree of effort necessary rather than whether any effort at all is required.

687 F.2nd at 653. *See also Lloyd*, 548 F. Supp. at 584–85.

A recent Supreme Court decision, *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), elaborated further on the "undue burdens" standard originating in the *Davis* and *APTA* cases.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*Id.* at 721) and that *"reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration(s) in the nature of a program.' " (*Id.*, n.20, citations omitted).

Because *Alexander* was decided after the comment period on the proposed regulation closed, the Department would have allowed additional comments if it believed that a change in the rule was necessary. *Alexander*, however, supports the position, based on *Davis*, *APTA*, and other cases, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens, that the refusal to undertake the accommodations is not discriminatory. Thus, the failure to include an "undue burdens" provision like § 27.97 could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Therefore, the *Alexander* case does not significantly alter the legal bases for the rule. The limit on required expenditures of § 27.97 ensures that the rule will not unduly burden recipients, and further changes to or comments upon the rule are not necessary in response to *Alexander*.

Section 317(c) and its Legislative History

An amendment to the Surface Transportation Assistance Act of 1982 concerning transportation services for elderly and handicapped persons was introduced by Senator Alan Cranston, for himself and Senator Donald Riegle, as floor amendment No. 5011 on December 14, 1982 (128 Cong. Rec. S 14740). The text of amendment No. 5011, which differs in a number of ways from the enacted version of section 317(c), is as follows:

> In carrying out subsection (a) of this section, section 165(b) of the Federal-aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973, the Secretary, not later than 90 days after the date of the enactment of this paragraph, shall publish in the **Federal Register** for public comment, proposed regulations and, not later than 180 days after the date of such enactment, shall promulgate final regulations, establishing (A) minimum criteria for each recipient of Federal financial assistance under this Act or the Federal-aid Highway Act of 1973 to provide handicapped and elderly individuals with transportation services that such individuals can use and that are the same as or comparable to those which such recipient provides to the general public, and (B) procedures for the Secretary to monitor and ensure compliance with such criteria. Such regulations shall include provisions for ensuring that organizations and groups representing such individuals are fully consulted by such recipients in the process of determining and carrying out actions to provide such transportation services to such individuals.

Senators Cranston and Riegle, in discussing their proposed amendment, made several points. First, they made it clear that their amendment did not mandate a return to the full accessibility standards of the Department's 1979 section 504 regulation. For example, Senator Riegle said

> I am not proposing an enormously costly burden for transit systems or requiring an immediate return to the controversial, tough standards that were in place before July 1981. (128 Cong. Rec. S15714).

Second, the sponsors of the amendment said that provision of service by recipients under the Department's July 1981 Interim Final Rule was inadequate. They cited a General Accounting Office (GAO) survey of 84 transit systems. This survey showed, they said, that only 30 of the systems surveyed intended to have 50 percent or more of their buses lift-equipped. Of the 66 that offered paratransit service, 22 had waiting lists, 61 required 24 hours or more advance notice, 38 set service priorities by trip purpose and only 6 did not deny requests for service. Compared to the bus service in these 66 systems, 45 systems had shorter service hours, 35 operated on fewer days, and the geographical area covered by paratransit service was less extensive in 15 cases. In addition, 25 percent of the paratransit vehicles these systems used were not wheelchair accessible. (128 Cong. Rec. S14741, statement of Sen. Cranston). Both Senator Riegle and Senator Cranston later referred to the survey as showing "wide-spread deficiencies" in paratransit service. (128 Cong. Rec. S14719, S15716).

The sponsors of the amendment proposed the minimum service criteria requirement as a response to these perceived deficiencies. In describing this requirement, Senator Cranston said

> It would require the Secretary to establish national criteria for providing handicapped and elderly persons with comparable usable transportation services. In this regard, I would note that the Secretary would have broad discretion to formulate those criteria, and I am not sure that I or many others deeply concerned about these issues would

necessarily be satisfied with the criteria that the Secretary would develop. But I believe it is even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line. (128 Cong. Rec. S14742, S15716).

Senator Riegle described the kinds of issues that the "comparability" standard raises:

> Services for handicapped and elderly persons should cover the same general geographic area as do services for the general public. The fares charged handicapped and elderly persons should not on the average exceed the fares charged the general public for trips between the same destinations. Services for handicapped and elderly persons should not be denied or delayed based on the purpose of their trips.
>
> The response time for services for handicapped and elderly persons should not impose an undue burden upon them. I would hope the Secretary would allow no more than 24 hours advance notice—preferably less—to be required. He could provide for progressively diminishing advance-notice maximums. (128 Cong. Rec. 515715).

The sponsors denied proposing an "enormously costly burden for transit systems." (128 Cong. Rec. S14741). As a means of dealing with the costs of providing such service, the Senators referred to the discretionary 3.5 percent "set-aside" provision of their amendment. In this context, Senator Cranston said

> Recognizing that the proposed gas tax would provide a new source of funding for transit for capital improvements, this amendment would authorize—but not require—the Secretary of Transportation to set aside a modest portion of that new funding for capital improvements specifically for the purpose of enabling the needs of elderly and handicapped persons to be met . . . These funds could well be spent to help correct the situation (128 Cong. Rec. S 14742; see also 128 Cong. Rec. S 15714–15715, statement of Sen. Riegle).

Senator Riegle also commented on the issue of costs, saying that

> With respect to the requirement that regulations be promulgated, as I am sure Senators can appreciate, since the criteria that this amendment would require would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they might entail for transit systems. Obviously, for those systems that have continued to make progress toward providing adequate service for handicapped persons, the costs would be minimal. For those who have neglected the needs of these individuals the costs can be expected to be more substantial. In any event, through the use of the discretionary set-aside, the Secretary would be able to minimize the cost impact. (128 Cong. Rec. S15715).

A Conference Committee wrote the final version of the statute. The Committee dropped the "same or comparable" language and substituted minimum criteria "for the provision of transportation services to elderly and handicapped individuals." In addition, the Conference Committee version requires that elderly and handicapped individuals be "given notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations," instead of being "fully consulted" about "determining and carrying out" recipients' actions.

In discussing the Conference version of section 317, Senator Cranston made several points. He mentioned again that the Secretary has the authority "to set aside up to 3.5 percent [of UMTA appropriations] for the provision of section 16(b) assistance for handicapped and elderly individuals' transportation."

Senator Cranston also asserted that the provision in the compromise version was

> Faithful to the purposes of the Senate-passed amendment—to make clear the fundamental Federal responsibility to make provision for the transportation needs of handicapped and elderly individuals. It requires the Secretary of Transportation to establish national uniform criteria for the provision of transportation services to handicapped and elderly persons: thus the compromise rejects as unsatisfactory the Department of Transportation's July 1981 Interim Final Rule, which fails to establish any such criteria. (128 Cong. Rec. S16029).

Senator Cranston's statement does not mention the deletion of the "same or comparable" language.

Senator Cranston also said that the Conference version requires that

> The Secretary's regulations establish procedures for monitoring transit system activities in order to ensure compliance with the newly established criteria and include provisions for ensuring that handicapped and elderly persons are provided, through groups representing them, with a meaningful role in the planning of services meeting their needs by requiring that they be afforded adequate notice of and the opportunity to comment on proposed activities of recipients to achieve compliance with the new criteria. (*Id.*)

Neither Senator Cranston's proposed amendment nor anything similar to it was ever independently considered by the House of Representatives. Consequently, there is no legislative history from the House.

Legal Issues Affecting the Final Rule

(a) *"Comparability".* Many commenters asserted that key portions of the NPRM were legally wrong. The American Public Transit Association (APTA) provided the most thorough statement of transit industry arguments. Representative statements of the position of advocacy groups for disabled persons are found in the comments of the Disability Rights Education and Defense Fund and the Paralyzed Veterans of America.

APTA's first major argument is that the service criteria of the NPRM, taken singly or together, create, in effect, a requirement for providing the same or comparable service. Referring to the deletion in conference of the "same or comparable" language of the original Senate version of section 317(c), APTA argues that the statute cannot be viewed as a justification for criteria having this effect. APTA also asserts that the criteria represent an overly expansive response to section 317(c), saying that

> There is no evidence or justification for the inclusion of regulatory language covering any or all of the six specific criteria included in the proposal. Achieving compliance with the service criteria, as presently proposed, even under a cost cap, is likely to result in fundamental alterations to recipients' existing programs . . ., *in direct contradiction* of the Supreme Court decision in *Southeastern Community College* vs. *Davis*. . . .

The deletion by the Conference Committee of the "same or comparable" language of the original version of the amendment may reasonably be interpreted as meaning that the minimum criteria required by this statute do not have to result in service for handicapped persons that is the same as or comparable to that provided to the general public. However, it is not reasonable to read the statute as saying that the Department is prohibited from establishing criteria that, to some degree, approach having that effect. Senator Cranston's post-conference statement specifically said that the statute was faithful to the purposes of his amendment, and that it required the Secretary to establish "national uniform criteria" for the provision of transportation services to handicapped persons. (128 Cong. Rec. S 16028).

(b) *Service Criteria.* APTA's claim that "there is no evidence or justification for the inclusion of regulatory language covering any or all the six specific criteria included in the proposal" is at odds with the legislative history of section 317(c). The criteria address, for example, several of the deficiencies in service in current service cited by Senators Cranston and Riegle on the basis of the GAO Study. The two Senators explicitly sought to correct these deficiencies through the service criteria provision of their amendment. The criteria also are very similar to those incorporated in 1980 legislative proposals on this subject, which formed

an important part of the background for the amendment.

(c) *"Fundamental Alteration" of Transit Programs.* We do not agree that achieving compliance with the NPRM's service criteria, given the limit on required expenditures, would result in a "fundamental alteration to recipients' existing programs." The Circuit Court in *Dopico* made a persuasive distincition between fundamental changes, in the sense discussed by *Davis*, and other changes to accommodate handicapped persons in mass transit systems. The plaintiffs in *Dopico*, the court said, were not seeking fundamental changes in the nature of a program analogous to those in *Davis*. Rather, in the court's view, they were simply seeking to eliminate incidental physical barriers to the participation of handicapped persons in a program that would continue to operate in its usual way. *See* 687 F.2nd at 653.

A nursing program without a clinical component is clearly a very different kind of program. There is no such dramatic qualitative difference between an inaccessible bus system and a bus system that handicapped people can use because its buses have lifts. A paratransit system that provides curb-to-curb service to wheelchair users is not fundamentally changed by a requirement that it provide that same service on weekends as well as Monday through Friday. Under these circumstances, the nature of the program does not undergo a fundamental change.

(d) *Undue Financial Burden.* APTA also said that expenditures to comply with the NPRM, even though constrained by the regulatory cost limit, would represent such a significant increase in funding devoted to transportation for elderly and handicapped persons as to constitute an "undue financial and administrative burden" on recipients, contrary to the D.C. Circuit Court's ruling in the *APTA* case.

The court in *APTA* was quite specific about the things it considered to impose unacceptably heavy burdens. The court said that the 1979 regulations

> Require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities. Every new bus or subway car must be accessible to wheelchair users regardless of cost; elevators and other modifications must be added to existing subways. . . . These are the kinds of burdensome modifications that the *Davis* court held to be beyond the scope of section 504.

695 F.2nd at 1280.

This final rule differs markedly from the 1979 regulations. Recipients have a choice of how to meet their obligations and can choose a less costly, rather than more costly, approach to compliance. Even if a recipient chooses to comply through bus accessibility, every new bus need not be accessible to wheelchair users. Only those buses needed to meet service criteria must be accessible. Accessibility requirements are not "regardless of cost;" a limit is explicitly provided to constrain the cost exposure of recipients. Accessibility modifications to subway facilities and vehicles are not required at all.

As noted in the section of the preamble concerning the cost limit, many recipients are likely to be able to comply for less than their "limit" amounts. This is particularly true for recipients in larger cities and those who choose a less costly and more cost-effective means of providing service, such as user-side subsidies through private sector service providers. The phase-in period of up to six years will prevent recipients from having to incur unreasonably high start-up costs, or from having abruptly to increase their expenditures. The overall projected costs of this rule are far lower than those of the 1979 rule. We project the following 30-year discounted present value:

1979 rule (DOT estimate)—$3.99 billion
1979 rule (Congressional Budget Office estimate)—$9.04 billion
1986 rule cost limit (3.0% of nationwide operating costs)—$2.37 billion
1986 rule, Paratransit alternative costs—$.98 billion
1986 rule, 50% accessible bus system costs—$.69 billion

All costs are expressed in 1983 dollars.

We would also point out that the rule, and its requirements for service criteria, rest, in addition to section 504, on section 317(c), a statute passed since the *APTA* case, and section 16(a), to which the *APTA* holding does not specifically apply. While the Department may reasonably consider and limit the cost impacts of a regulation promulgated under all these authorities, the *APTA* "undue burdens" strictures apply directly only to section 504.

(e) *Consistency of a Limit on Required Expenditures with Section 317(c).* Many handicapped commenters argued that it was inconsistent with section 317(c) for the Department to provide a cost cap to limit the expenditures that transit authorities are required to make in meeting the regulation's service criteria. The Disability Rights Education and Defense Fund, for example, said that

> The two concepts, minimum service criteria and spending limitation, are mutually exclusive. If service criteria can be traded-off for cost considerations, there is no minimum level of service. Therefore, the DOT proposed rule does not adequately implement section 317(c).

In other words, the Fund contends, section 317(c) requires the Secretary to establish "minimum" criteria for the provision of transportation service to handicapped persons. If a recipient is able to avoid meeting some of the prescribed criteria because it has reached a certain level of expenditure, then the criteria are not truly "minimums."

Because the *APTA* case's "undue burdens" language was not specifically applied to section 16 and section 165(b), the Fund believes, the Department's view that regulations should be designed to avoid the imposition of undue financial and administrative burdens is mistaken. Though none of the commenters making this argument explicitly say so, their argument clearly implies that the Department has an obligation under section 16 to impose minimum service criteria without any regard to the cost of compliance.

Much of the weight of these commenters' position that the Department cannot establish a limit on required expenditures rests on what is, in context, an overly literal reading of the word "minimum." We do not believe that this reading will bear the weight. The Department's approach is consistent with the directions of Congress.

Case law, and section 317(c) itself, suggest that recipients' obligations under all the relevant statutes should be viewed together. There is no evidence that Congress considered, let lone intended to mandate, that section 317(c) would require the Department to do what it is prohibited from doing under section 504—impose open-ended, undue administrative and financial burdens in order to improve service for handicapped persons. Indeed, section 317(c) says that this rule must be "consistent with any applicable government-wide standard for the implementation of [section 504]. . . ." These standards, of course, are read in light of the *Davis* and *APTA* cases.

Both sponsors of section 317(c) said "I am not proposing an enormously costly burden for transit systems. . . ." (128 Cong. Rec. S 14741, S 15719). Senator Riegle differentiated between recipients that have already made progress toward making adequate service for handicapped persons, saying that their costs would be minimal, and recipients who have neglected the needs of handicapped individuals, whose costs could be expected to be more substantial (128 Cong. Rec. S 15715).

This statement recognizes that costs will be imposed on transit authorities, in varying degrees, but does not suggest that these costs cannot be limited. Indeed, Senator Riegle said that "since the criteria that this amendment requires would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they may entail for transit systems." *(Id.)* This statement suggests that the sponsors of the amendment contemplated that the Secretary could exercise discretion and control with respect to the imposition of costs.

As noted above, both Senators referred to the authorized 3.5 percent set-aside under the section 317(a) of UMTA discretionary funds for use in transportation for elderly and handicapped persons. The maximum amount available to the Secretary under this set-aside would have been approximately 43 million dollars for fiscal year 1984 and 38 million dollars for fiscal years 1985 and 1986. If these amounts would be able to "help" or "minimize" the cost impact of the criteria established by the Secretary, then the sponsors of the amendment did not contemplate that the Secretary's criteria would have massive, open-ended cost impacts on recipients.

Senator Cranston, after noting that the Secretary would have discretion to formulate criteria, said that even if he might not be satisfied with the criteria the Secretary established, it was "even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line." (128 Cong. Rec. S14712). In discussing the conference version of the amendment, he added that it rejected as "unsatisfactory the Department of Transportation's July 1981 Interim Final Rule which fails to establish any such criteria." (128 Cong. Rec. S16028). From these and similar statements in the legislative history, it is clear that the central thrust of the amendment was to ensure the replacement of the interim final rule with a regulation that had a "bottom line." A rule incorporating a set of specific service criteria, and a limit on the money that recipients are required to spend to achieve them, constitutes a "bottom line" approach that differs substantially from the approach of the 1981 interim final regulation and is consistent with section 317(c).

Section-by-Section Analysis

This portion of the preamble discusses each section of the final rule, focusing on the significant comments on each issue, the Department's response to these comments, and the Department's reasons for making the decisions incorporated in the final rule. Additional guidance concerning the Department's interpretations of the regulatory provisions themselves is found in the appendix that follows the text of the regulations.

Amendments to Section 27.5 Definitions.

In addition to creating a new Subpart E of 49 CFR Part 27, the Department has decided to add two new terms to the definitions in § 27.5 of the regulation. These two terms, "special service system" and "mixed system," are used frequently in Subpart E, making the publication of definitions useful for the sake of clarity.

"Special service system" is defined as a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are unable to use mass transit systems designed for the use of the general public. This definition encompasses a wide variety of ways of providing service. The second sentence of the definition is intended to identify the typical characteristics of a special service system.

The Department recognizes that some recipients will probably choose not to use the same mode of providing service to handicapped persons at all times and in all places. For instance, a recipient might provide transit authority operated dial-a-van service during peak hours, but rely on a user-side subsidy system through private providers for off-peak service. A number of combinations of accessible bus and special service are possible. A "mixed system" is any one of these combinations.

Section 27.81 Program requirement.

The NPRM required that all recipients create a program for the provision of transportation services to handicapped persons. This requirement attracted little comment. In the Department's view, this requirement is necessary in order to serve as a focus for the planning process and to produce documentation that the public, the Metropolitan Planning Organization (MPO), and UMTA can review to ensure that the recipient's service for handicapped persons will be adequate and consistent with regulatory requirements.

In response to suggestions from transit authorities and other commenters that the regulation should allow a phase-in period for substantive compliance with this rule, the Department has decided to permit recipients to take up to six years to reach the full performance level, if this time is necessary. The recipient will be expected to plan to provide service at the full performance level as soon as reasonably feasible, within this six year period. This phase-in period is set forth in section 27.95 of this Subpart. Consistent with this provision, paragraph (a) requires the recipient's program to call for providing service at the full performance level within the phase-in period. In addition, in response to comments from handicapped advocacy groups and planning agencies, paragraph (a) requires recipients' programs to include "milestones" showing how, year-by-year, the recipient will progress toward the full performance level.

The NPRM proposed that section 18 recipients (section 18 of the UMT Act establishes a program of financial assistance to small urban and rural areas) would not have to create a program like that of urban mass transit authorities, since the needs for service and the resources and means for providing service and administering Federal regulatory requirements in rural areas are likely to differ from the situation of cities.

Almost all the transit agencies commenting on this issue supported the NPRM approach, and there were few objections from handicapped persons. The Department will continue to treat section 18 recipients separately. Several commenters suggested that we extend the separate treatment afforded section 18 recipients to small rural and urban systems which may also receive funds under other UMTA programs. We have decided to adopt this comment, and the reference to recipients covered by § 27.91(a) excepts from the program requirement all recipients which do not serve an urban area of over 50,000 population.

Some commenters were concerned about recipients which do not themselves provide transportation services, but merely pass on UMTA funds to other transit providers. For example, an MPO or a city government may receive section 9 money, which it passes on to a transit authority. Only the transit authority actually provides service. Paragraph (a) requires only the public agency that actually provides the service to prepare and submit a program. This provision is intended to ensure that local agencies do not have to duplicate one another's efforts.

In addition, a few rail-only operators, whose service facilities are either already accessible pursuant to Architectural Barriers Act requirements or whose rail systems are not covered by the rule, said that the rule should not impose program requirements on them. We agree. Therefore, the program

requirement will apply only to recipients which provide transportation services to the public by bus.

A few comments discussed special problems of section 16(b)(2) recipients. These recipients (normally private, non-profit social service agencies) typically provide services only to handicapped persons. One recipient, whose UMTA funds come from sources other than section 16(b)(2), also said that its system served only elderly and handicapped persons, the rest of the public being served by a privately-operated bus system.

The Department agrees that section 16(b)(2) recipients, and other recipients who provide service only to elderly and/or handicapped persons, are a special case, and they will not have to submit programs under this section.

Section 27.83 Public participation and coordination.

Section 27.77(g)(1)–(4) of the NPRM set forth public participation requirements. Recipients were to consult with handicapped persons and other interested individuals and groups, have a 60-day public comment period and at least one public hearing, submit their program to the local MPO for comment, and respond to the significant comments made by the public or the MPO.

A large number of handicapped persons and groups representing handicapped persons commented on this portion of the NPRM. Relatively few transit authorities addressed the section. Some social service agencies, private transportation providers, and other persons also commented on public participation.

Amost all of the handicapped commenters said that the public participation mechanism of the proposed rule was inadequate. A primary reason for this inadequacy, they said, is that it required public participation only at the time that the recipient was putting its program together. Public participation should be required, according to these commenters, at all stages of the planning and implementation of the recipients' service.

The Conference Committee version of section 317(c), unlike the original amendment, required only an opportunity for notice and comment on the recipient's program. This is precisely what the NPRM proposed. However, the Department believes that a reasonable degree of continuing public participation is valuable to the effective implementation of recipients' programs. Continuing participation permits users of the services, and other interested persons, to have access to the recipient with respect to questions and problems that arise concerning the provision of service. In addition to allowing the voices of consumers to be heard, such participation can also provide useful information to the recipient that will help it to respond quickly and appropriately to service-related problems.

Therefore, the Department has added a provision that requires the recipient to establish a mechanism for continuing public participation. This provision is drawn from § 27.107(b) of the Department's 1979 section 504 regulation. Recipients appeared to have little problem with establishing such mechanisms under the 1979 rule; several recipients commented to the dockiet that they had such mechanisms in operation. The Department believes that this requirement will create little additional burden for recipients.

Many handicapped commenters wanted further requirements in this area, suggesting that DOT mandate the creation of handicapped advisory committees. Some of these comments also requested that DOT establish rules for the membership and operation of tnese committees and require recipients tc obtain the committees' approval for their programs.

The Department is not adopting these suggestions. Advisory committees can be a useful tool. Many such committees already exist, and the Department encourages their formation and effective use. However, the Department does not believe it should be mandatory for all recipients to establish such committees. In some localities, other mechanisms could be equally effective in ensuring continuing public participation.

Some comments mentioned problems with some existing advisory committees. For example, it is alleged that recipients have "packed" advisory committees with individuals who favored the recipients' positions, excluding critics. It is also alleged that recipients have failed to provide the committees with adequate information, or have ignored the committees' recommendations.

The Department believes that it would not be feasible to impose a Federal requirement concerning the membership of advisory committees. A reasonable specific membership requirement would be very difficult to devise on a national basis, and a more general requirement would be difficult to interpret and implement. Any such requirement would be very intrusive. While a broadly representative committee is desirable, its membership should be determined locally.

Advisory committees, and other mechanisms for continuing public participation, are intended to provide advice and recommendations. A prudent transit authority will thoroughly consider and make appropriate use of the advice and recommendations it receives. However, UMTA does not require transit authorities to be bound by consumer and interest group input concerning any aspect of public mass transportation. Giving any local group a veto over transit decisions would not be consistent with the way the UMTA program is designed.

The NPRM proposed requiring that the recipient pursue a public participation process, like the one required for the initial program submission, for significant changes in the recipient's program. Almost all handicapped commenters addressing public participation favored this requirement; a few transit operators opposed the requirement as adding an unnecessary administrative burden. The Department believes this requirement is necessary, lest a significant alteration in the nature or direction of a recipient's service undermine the utility of public participation. For example, a recipient might follow the public participation process and submit a program for a paratransit system, which UMTA approves. The next year, after a change in leadership, the transit authority might decide that it made more sense to comply with the rule by creating an accessible bus system. In such a situation, the public should not lose its opportunity to participate because the transit authority was making its second, rather than its first, decision on the subject.

The NPRM proposed that recipients respond to comments made during the public participation process. The formulation of this response—that recipients would accommodate significant comments or explain why they did not—is very similar to that used by Federal agencies in rulemaking or in intergovernmental relations matters. Most handicapped commenters who addressed this issue favored the requirement; a few transit industry commenters opposed it, saying that it was an inappropriate intrusion in the local planning process as well as an administrative burden.

This provision of the rule asks no more of recipients than the Department is required to do in a rulemaking. The provision, which has been modified from the NPRM version to stress that recipients are not required to adopt commenters' suggestions, requires responses only to significant comments (i.e., those of some substantive

importance, not comments that are trivial or irrelevant).

Section 27.85 Submission and review of program.

This section is derived from, and modifies, §§ 27.77(a) (1) and (3) and (g)(5)–(7) of the NPRM. Section 27.77(a)(1) provided that all section 3, 5, 9, and 9A recipients would certify that they had in effect a program meeting the requirements of the regulation. Section 27.77(a)(3) provided that this certification would be regarded by the Department as constituting compliance with recipients' obligations under section 504 and section 16.

Section 27.77(g)(5)–(7) provided that, along with its certification, a recipient would have to submit to UMTA a copy of its program, cost estimates, and public comments on the program and the recipient's response to the comments. This material had to be submitted within nine months of the effective date of the final rule. UMTA could reject the program or require the recipient to modify it, but the certification and its accompanying material would be deemed to be accepted if UMTA has not done so within 90 days of its submission.

A substantial number of handicapped commenters said that DOT should require recipients of all DOT funds, not only mass transit funds, to certify their compliance with section 504. This comment appears to be based on a misunderstanding of this rulemaking, which is concerned solely with mass transit services. Other DOT financial assistance programs (e.g., intercity rail service, airport and highway construction) are already covered under 49 CFR Part 27. Most of the relatively few transit authorities that commented on certification acceptance favored the NPRM approach. A few transit authorities also said that submitting the certification and its accompanying material was an administrative burden.

A substantial number of comments from disabled persons and groups representing them opposed certification acceptance, saying that certification acceptance would permit transit authorities to get away with providing inadequate service. In addition, some commenters expressed the concern that because UMTA would have a heavy workload in reviewing recipients' submissions, inadequate programs might go into effect by default if UMTA staff had not had time to review them within 90 days. A number of commenters wanted UMTA, MPOs, or handicapped persons' organizations to review and approve recipient's programs instead of, or in addition to, the proposed certification acceptance by UMTA.

The Department has decided to require recipients to submit their programs for prior approval by UMTA. There are several reasons for this decision. First, the transportation systems that recipients will establish for providing service to handicapped persons will probably be in place for a substantial period of time. The Department believes that it is important that these programs be reviewed carefully to ensure that the service they call for will be fully adequate and consistent with the regulation.

Second, the problem of inadequate programs going into effect by default could be a real one. We recognize that a prior approval approach may have the corresponding problem of delays in program approval and implementation. However, UMTA is committed to employing sufficient resources to minimize any such problems. The regulation establishes a 120-day deadline for UMTA action on programs that are submitted.

Third, the major reason for establishing a certification acceptance approach in any regulation is to reduce administrative burdens for recipients. In a "pure" certification acceptance system, the recipient sends only its certification, and is not required to prepare or submit any additional information. The approach proposed by the NPRM was far from a "pure" certification acceptance approach, and some transit industry comments suggested that the Department should establish something more similar to a pure certification acceptance system.

The Department decided that it was not feasible to take a pure certification acceptance approach. Such an approach would virtually eliminate the accountability of recipients concerning the substance of their programs and the procedures for adopting them. While we might attempt to compensate by increasing accountability measures at the local level (e.g., by requiring the MPO or a handicapped advisory committee to approve the program), it is likely that this would be at least as burdensome as submitting material to UMTA. Given the emphasis on DOT oversight and monitoring in section 317(c), it could also be difficult to reconcile this approach with the intent of Congress.

The Department, therefore, does not believe that it is practicable to reduce the program submission requirement to less than it was in the NPRM. The final rule, though it replaces a certification acceptance approach with a prior approval approach, demands nothing more of recipients than the NPRM with respect to the material required to be prepared and transmitted to UMTA. The content of the recipient's submission to UMTA, specified in paragraph (b), closely follows the proposals of § 27.77(g)(5) of the NPRM. In response to some transit industry comments, UMTA will accept reasonable summaries of public comments in lieu of copies of the actual comments.

A substantial number of transit authorities, state transportation agencies, and other transportation providers commented on the issue of what the deadline should be for recipients to submit their programs after this rule goes into effect. About two-fifths of the commenters believed the NPRM's proposal of nine months was adequate. The remainder favored extending the deadline to a year or more. There was also support in these comments for a provision allowing recipients to apply to UMTA for an extension of up to six months, for good cause, or to automatically receive such an extension if they wanted it.

In response to these comments, the Department has decided to increase the time permitted for recipients to submit their programs to 12 months from the effective date of the regulation. This increase is made in recognition of the legitimate problems transit authorities could have in planning and obtaining local approval of a program before submitting it to UMTA.

However, the Department does not believe it is necessary or advisable to extend the deadline further or permit individual recipients to extend the deadline. Doing so could unreasonably prolong the planning period. Reasonably tight deadlines are one way of ensuring that work does not "slip" unnecessarily. This problem would be especially acute if recipients could automatically extend the deadline by six months. This would effectively make the deadline 18 rather than 12 months, and would still not guarantee timely submission of programs.

Permitting applications to UMTA for "good cause" extensions of the deadline could have two additional negative effects: transit authorities might divert time and effort away from the job of completing their programs to produce justifications of why the programs could not be completed in a timely manner, and UMTA might be faced with potentially difficult, time-consuming decisions to make on extension requests at the same time as other transit authorities were submitting their programs for approval.

Section 27.87 Provision of service.

This section is derived from two paragraphs of the NPRM: § 27.77(f), "provision of service", and § 27.77(i), "disparate treatment". Because the subjects of these provisions are closely related, the Department decided to combine them.

A substantial number of handicapped persons objected to the provision of service paragraph of the NPRM, which stated that recipients must ensure that services are provided to handicapped persons as set forth in the recipient's program. These commenters objected because providing the service set forth in the program might not be the same thing as providing service meeting the service criteria of the regulation.

The Department believes that this concern has been adequately addressed in the final regulation. UMTA will review and approve the recipient's program. UMTA will not approve any recipient's program that does not meet all of the requirements of the regulation, including the service criteria (subject to the limit on required expenditures). Consequently, a recipient providing service as set forth in its program, as approved by UMTA, will be meeting the requirements of the regulation.

The NPRM also required recipients to ensure that equipment is maintained, personnel are properly trained and supervised, and program administration is carried out in a manner that does not permit actual service to fall below the level set forth in the recipient's program. Some comments asked for greater specificity in these requirements, particularly with respect to the maintenance of lift-equipped buses. For the sake of clarity, the final rule spells out these requirements in greater detail. They concern maintenance of vehicles and equipment, provision of sufficient spare vehicles, training of personnel, and provision of sufficient assistance and information concerning the use of service to handicapped users.

Several comments, primarily from handicapped individuals and groups representing them, requested a specific provision concerning interim service. Some of these comments requested the reissuance of the interim accessible service provision of the 1979 DOT regulation. The Department does not believe it is necessary to reintroduce the 1979 provision; moreover, such a specific interim transportation requirement would be too difficult to apply accurately to the choices recipients would make under this rule.

Finally, several commenters requested that the rule include a "maintenance of effort" provision. Section 27.77(g)(8) of the NPRM proposed that the recipient's certification under the July 1981 interim final rule remain in effect until its new program goes into effect. The Department believes that this requirement is sufficient for "maintenance of effort" purposes under this section. Therefore, the final rule provides that, in the time between the effective date of this rule and the recipient's achievement of the full performance level, the recipient's certification under the July 1981 interim final rule—and the service provided pursuant to that certification—must remain in effect.

Most of the relatively small number of comments on the "disparate treatment" section of the NPRM, from handicapped persons and other commenters, favored the retention of this requirement. The Department will retain the requirement, with only minor editorial changes from the language proposed in the NPRM.

Section 27.89 Monitoring.

The NPRM's monitoring provision would have required each recipient to send an annual report to UMTA containing information about transportation services provided, any problems meeting the service criteria in light of the cost cap, the recipient's progress toward meeting its service requirements, any changes in the program, and a description of any actual or expected alterations in service to handicapped persons. Both handicapped persons and their groups and transit authorities objected to this proposal.

The principal objection to the annual report provision from handicapped persons was that the reporting requirement was too passive. What these parties meant by "monitoring," they said, was an active effort by UMTA to conduct compliance reviews of recipients. Anything less would be inadequate from a programmatic point of view and would fail to carry out the intent of Congress.

Most of the transit authority commenters argued that an annual report was administratively burdensome. They suggested that the monitoring or reporting function be carried out in conjunction with section 9 audits or evaluations, the transportation improvement program process, or other existing reporting or monitoring requirements.

The monitoring provision of the final rule responds, in part, to both lines of comment. An annual report will not be required. This will reduce the paperwork burden on recipients. Monitoring will take place, as transit authorities requested, in connection with the section 9 triennial review and evaluation process. As handicapped commenters requested, this review and evaluation will be performed by UMTA personnel, and will constitute, in effect, a compliance review of the recipient's activities with respect to transportation services. In connection with the reviews, UMTA may, of course, request that certain materials be provided by recipients. This will be an "active" monitoring process by UMTA, but will not occur so frequently as to constitute an additional, significant burden upon transit authorities.

In establishing this triennial review process, the Department was concerned that it might not become aware of problems happening in the intervening years unless a complaint were filed with the Department. Consequently, the final rule establishes a "slippage report." If the recipient falls behind its UMTA-approved implementation schedule, or below its approved level of service, the recipient must forward a report to UMTA no later than the anniversary date of the approval of its program. The report would describe the delay or problem, explain the reasons for it, and set forth the recipient's corrective action. On the basis of this report UMTA could, it necessary, undertake a special compliance review or other corrective action.

The Department is concerned that, as UMTA reviews and evaluates the compliance of recipients with their obligations under this regulation, users and other interested members of the public have the opportunity for input. Consequently, as part of its review and evaluation, UMTA will consult informally with persons involved in the continuing public participation mechanism established under § 27.83 of this regulation.

Section 27.91 Requirements for small recipients.

Section 27.77(a)(2) of the NPRM proposed that, instead of following the requirements of the proposed rule applicable to other recipients, recipients of funds only under section 18 of the UMT Act would certify that special efforts were being made in their service area to provide transportation service for handicapped persons.

Section 18 is an UMTA program for rural and small urban areas. The NPRM proposed that the service that section 18 recipients make available to handicapped persons would have to be reasonable in comparison to that provided to the general public and would have to meet a significant fraction of the actual transportation needs of handicapped persons. These

two criteria are substantively identical to those that section 18 recipients were required to meet under the July 1981 interim final rule and the Federal Highway Administration/UMTA rules that previously governed the section 18 program.

Relatively few commenters addressed requirements for section 18 recipients. Many of the state and local transportation agencies that commented supported the NPRM provision. Some of these commenters suggested that the coverage of the provision be expanded to cover section 18 recipients who also receive funds under section 3 or 9 or other recipients serving small cities. For example, commenters suggested that the "small recipients" provision should apply to all recipients with 50 or fewer buses, or who served areas of up to 50,000 or 200,000 population.

Other commenters recommended that the final rule include more stringent provisions for small recipients than the NPRM did. Some of the suggestions for additional requirements included annual recertifications of compliance, additional public participation and planning requirements, application of the six proposed service criteria and cost cap to small recipients, a specific requirement to furnish accessible vehicles, and greater reporting by recipients and monitoring by UMTA to ensure compliance.

The Department believes that the NPRM's basic approach is sound. Section 18 recipients operate diverse services in areas of low population concentration, usually with little administrative staff and budget. It makes sense to establish separate, more flexible, less administration-intensive requirements for these smaller recipients.

Therefore, the Department will retain the certification acceptance approach for small recipients who, unlike their counterparts in larger cities, will not be required to submit or to obtain prior UMTA approval of a program for providing transportation service to handicapped persons. As suggested by some commenters, the Department will make this provision applicable to any recipients who serve only non-urbanized areas, even if they receive UMTA funds from sources other than section 18. The Department did not extend the reach of this section farther, however, since we were not persuaded by the comments that cities of up to 200,000 did not share important characteristics with larger cities with respect to providing transportation service to handicapped persons.

We did not adopt additional or more stringent requirements because doing so would go counter to the objective of fashioning a more flexible, less burdensome set of requirements for small recipients. In addition, some of the suggestions (e.g., annual recertifications) would add paperwork without improving service for handicapped persons.

The Department has, however, responded to concerns about public participation and monitoring by adding new provisions to this section. Following the statutory language of section 317(c), this section will now require small recipients to ensure adequate notice of and opportunity to comment on the recipients' present and proposed activities for complying with this regulation. This requirement also applies to significant changes in the recipient's service. In order to permit UMTA monitoring of the more than 900 small recipients, these recipients will be required to submit brief status reports (a year after this Subpart goes in effect) and updates (every three years thereafter) concerning their service. For section 18 recipients, these reports will be submitted to the designated section 18 state agency, where UMTA personnel will periodically review them. Other UMTA recipients in areas of less than 50,000 population will submit these reports to the UMTA Regional Administrator. Finally, the section specifies that the provision of service (§ 27.87) requirements apply to small recipients as well as to their larger-city counterparts.

Several comments, particularly from handicapped commenters, requested precise definitions for terms such as "reasonable in comparison" or "significant fraction," saying that these terms were too vague. The Department has decided that it would not be appropriate to define these terms more precisely. In order for this section to apply to small recipients with appropriate flexibility, the Department believes that the generality of these terms is advantageous. They constitute minimum service criteria that UMTA can apply, on a case-by-case basis, to the great variety of local situations and types of service that exist in the section 18 program.

Moreover, these terms have governed the section 18 program for several years, and recipients are familiar with them. In the absence of compelling evidence that these terms have caused serious problems that can be remedied by the introduction of regulatory definitions, the Department believes that it is better to leave them as they are.

Section 27.93 Multi-recipient areas.

Several recipients and MPOs from major urban areas having several transit providers requested that the rule include some provision permitting multi-recipient regions to be treated as a single entity for purposes of compliance with the Department's final regulation. The rationale for this request was that, in a major urbanized area with several recipients providing service, it would be very difficult for individual recipients to plan rationally for efficient service to the area's handicapped persons. A combined approach, these commenters reasoned, would permit better planning, a more efficient use of resources, and service that was well-coordinated and easier to use.

The Department agrees that a unified regional approach to transportation for handicapped persons would have important benefits. The Department also believes that it is important that a regional approach has the full support and cooperation of the area's recipients, provides a mechanism that will ensure adequate service and funding for the service, and does not permit recipients to evade their responsibility for complying with the requirements of this regulation. The Department has therefore decided to permit the recipients in a given urbanized area to form a compact for purposes of compliance with this rule. If a compact is not formed, then each of the recipients in the urbanized area is individually responsible for meeting the requirements of the rule.

Section 27. 95 Full performance level.

Section 317(c) of the STAA requires the Department to establish minimum criteria for the provision of transportation service to handicapped and elderly persons. This section prescribes the minimum criteria that each recipient has to meet in order to comply with this Part. For convenience, we use the term "full performance level" to describe the situation of a recipient that is meeting all the criteria that apply to it, subject to the limit on required expeditures.

Timing

Section 27.77(g)(8) of the NPRM provided that the receipient's program should "go into effect" on the first day of the recipient's next fiscal year following the date the recipient was required to submit its certification and program material to the UMTA Administrator.

Approximately equal numbers of commenters took the position that the NPRM's effective date provision was reasonable and the contrary position

that the effective date of recipients' programs should be extended or that a phase-in period should be provided. Another group of commenters sought clarification of the NPRM provision. Finally, a smaller group of handicapped and other commenters said that the total time from the effective date of the regulation to the point where service meeting the criteria was operating was too long.

A number of transit industry commenters also alleged that the transition between compliance with the present § 27.77 and compliance with the NPRM's provisions could be a very large and abrupt one. That is, a transit authority spending at a level equivalent to 3.5 percent of its FY 1983 section 5 funds the year before the final rule goes into effect might have to spend five times that amount the next year in order to meet the service criteria, even with the NPRM's cost limit in effect. This rapid increase itself, these commenters argued, would constitute an undue financial burden.

The Department does not necessarily accept the commenters' estimates of cost increases that would be caused by compliance with this regulation. However, we do recognize that, where an increase in recipient spending would be necessary to comply with this rule, requiring a rapid, abrupt increase in spending levels could create some hardship even though the overall amount of expenditure would not be unreasonable. This consideration, in addition to the comments on the NPRM's effective date provision, has led us to put a phase-in period into this final rule. The phase-in period will permit a gradual, orderly, well-planned transition to the full-performance level.

Commenters had varying suggestions for how long a phase-in period should be, ranging from several months to several years. The Department has chosen a maximum six-year period. The six-year figure derives fromn UMTA's experience with bus procurements. Typically, the expected useful life of a transit bus is twelve years. In six years, it is reasonable to expect, as a general matter, that most transit authorities would be able to replace up to half of their non-accessible buses with accessible buses as part of their normal bus replacement cycles, without having to retrofit older buses. This should be sufficient to permit most recipients to acquire sufficient new vehicles to meet the full performance level.

The phase-in period is intended to be for a maximum of six years. Recipients are required to plan for service at the full performance level at the earliest reasonably feasible time. Depending on the amount of work and time needed to bring the recipient from where it is to the full performance level, UMTA will approve a phase-in period of up to the six-year maximum. The phase-in period approved by UMTA might well be less than the maximum for a recipient who had little left to accomplish to get to the full performance level, however.

The Department believes that it is reasonable to permit the same phase-in period for special service or mixed systems as for accessible bus systems. In addition to maintaining parity among the options available to recipients, the phase-in period is likely to reduce overall, long-term costs of compliance with this regulation.

For example, if all recipients were forced to phase in service at the full performance level within one year instead of within six years of the approval by UMTA of their plan, the 30-year discounted present value of the accessible bus option would rise about $190 million and the comparable cost for paratransit would rise about $270 million.

Service Options

The remainder of § 27.95 establishes the service criteria applicable to various kinds of systems. This section describes how these criteria apply to special service, accessible bus, and mixed systems. Recipients may elect to comply with the regulation by meeting the full performance level for any one of these three approaches. This local discretion to choose the mode of compliance is consistent with the Department's policy, stated in the NPRM, of permitting local areas to choose how they will provide transportation services to handicapped persons.

Generally speaking, transit industry commenters strongly favored this policy, as did some handicapped and other commenters. Providers and users of existing paratransit services also favored local discretion. The majority of handicapped commenters, however, said that local option would not result in adequate, nondiscriminatory service. They argued that accessible bus service should be mandatory. Failure to so require, it was argued, would result in a segregated, "separate but equal," system that would also fail to provide adequate service. A number of handicapped commenters, recognizing that accessible bus systems could not serve the needs of all handicapped persons, suggested that both accessible bus and supplementary special service be required. Finally, a number of handicapped and other commenters said that the final rule should require that light, rapid, and commuter rail systems (particularly new systems) be required to be accessible.

The Department's 1979 regulation on this subject took the approach advocated by many of these commenters. In the Department's experience, this approach was not successful. The high cost of making old rail systems accessible was one of the most important factors leading the Court of Appeals in the *APTA* case to declare that the 1979 rule imposed undue burdens. Also, urban light and rapid rail systems typically cover the same basic geographic service area as the local bus system. Consequently, as long as an accessible bus or special service system provides transportation to disabled persons in the area, disabled persons are not denied transportation. (See discussion of commuter rail in the NPRM accompanying this final rule.) We are aware that bus or other motor vehicle transportation may not be as fast or convenient as rail transportation. However, section 317(c) does not require that service available to disabled persons be the same as service for the general public, and we believe that the rule, as drafted, satisfies our statutory responsibilities.

Where accessible rail systems exist, recipients may use the service these systems provide to help meet their service criteria, whether their service to disabled persons is by accessible bus or special service. See § 27.95(f) and the appendix discussion of it for further information on this point.

The *APTA* v. *Lewis* decision aside, the Department has been impressed by the variety of different local conditions, preferences, and programs in the area of transportation services for handicapped persons, and by the difficulty of forcing all these differing situations into a single, made-in-Washington, mold. The reaction to the 1979 rule, including the 1980 Congressional initiatives to provide greater flexibility to localities, as well as the comments to the docket for this rulemaking, strongly support the proposition that local discretion is essential. Moreover, the statutory and case law does not support the proposition that the Department must mandate mainline accessibility. Of course, facilities of recipients subject to the Architectural Barriers Act of 1968, as amended (e.g., new rail facilities), must be constructed in accordance with accessibility requirements under that law.

Special Service Criteria

There are six service criteria for special service systems. A majority of comments on this subject approved the

service criteria in the NPRM, though many of the comments from handicapped persons objected to the relationship between the criteria and the limitation on required expenditures.

As noted in the discussion of legal issues concerning the rulemaking, the Department does not agree with transit industry comments that the criteria are not legally proper. One of the themes running through transit industry comments on the service criteria was that local transit authorities should have the discretion to decide for themselves the operational issues affected by the service criteria. While the Department favors local discretion, Congress has directed that the Department establish uniform nationwide criteria. Such criteria necessarily constrain local discretion to some extent.

Transit industry commenters also said that applying the service criteria to special service systems "biased" the regulation in favor of accessible bus service. That is, a recipient could comply more cheaply by making its bus system accessible and hence would have an incentive to do so, even if a special service system would provide better service.

The NPRM proposed that 50 percent of a recipient's bus fleet would have to be accessible, and the Department's economic studies of accessible bus systems were based on that proposal. As discussed in greater detail below, the final rule does not establish a specific minimum percentage of accessible buses that a recipient must have. Nevertheless, we believe that the Department's information is useful in estimating regulatory compliance costs. Under the final rule, it is very likely that the average percentage of buses needed to comply with the service criteria would be 50 percent or less. Consequently, the Department's cost estimates for 50 percent accessible bus service are likely to represent a reasonable upper limit of average accessible bus compliance costs under the final rule.

The Department's studies indicate that creating a 50 percent accessible bus system would be less costly, in cities under about 250,000 population, than a special service system meeting the service criteria. In larger cities, the reverse is true, if the special system is a user-side subsidy (e.g., taxi voucher) system. Transit authority-operated paratransit, with its own vehicles and drivers, is the most expensive option in all cases. The Department has modified some of the NPRM criteria in order to reduce the cost differences among the various service options.

We conclude that there is no across-the-board "bias" toward accessible bus service inherent in the Department's regulation. At the same time, we believe that there is nothing improper or unwise about offering recipients and the public a choice among different options of providing service, even though the costs of these modes may differ. We believe it is appropriate for recipients to take all cost and service factors into account in planning the service that they will provide.

A number of commenters, primarily handicapped persons and their groups, advocated additional service criteria. Those most frequently mentioned concerned dwell time (i.e., how long a vehicle remains at a given stop), ride length time, quality of phone service for paratransit (e.g., sufficient phone capacity to handle incoming calls for service in a timely fashion; use of TDDs to facilitate communication with hearing-impaired individuals), service across jurisdictional lines, training for transit personnel, maintenance of facilities and vehicles, transfer frequency, adequate marketing of and publicity for service to handicapped persons, provision for out-of-town visitors and persons with temporary disabilities, and a general requirement for "same or comparable" service.

The Department has incorporated some of these suggestions in § 27.87, "Provision of Service," since it concerns steps that recipients would take to ensure that the service they plan is delivered adequately. Section 27.87 requires, for example, that vehicles and facilities be adequately maintained, that personnel be appropriately trained, that assistance and information be available to persons with vision and hearing impairments and that there be sufficient communications capacity to enable users to get information about and obtain service. The question of service to out-of-town visitors and persons with temporary disabilities is discussed in connection with the service criterion on eligibility.

We decided not to incorporate several of the other suggestions. As noted in the discussion of legal issues, section 317(c) does not require "same or comparable" service. Dwell time, ride length time, marketing and transfer frequency are all legitimate concerns of transit users. However, it would be very difficult to devise meaningful service criteria on these aspects of service that did not involve more detailed "micromanagement" of transit operations or recordkeeping than the Department believes is practical or desirable. In addition, the Department does not believe these factors are as central to the provision of quality service for handicapped persons as the criteria included in the rule.

The Department strongly urges recipients who provide service in a given region to work together to coordinate their service so that jurisdictional lines do not create barriers to the movement of disabled persons, even where recipients do not form a compact under § 27.93. The Department believes, however, that a regulatory service criterion on the subject of interjurisdictional coordination would be neither enforceable nor particularly meaningful.

A number of the service criteria involve relationships between special service and the recipient's mass transit service for the general public. Several commenters asked whether the recipient's rail service was the point of reference. As these comments pointed out, the service characteristics of rail service often differ from bus service. In addition, this rule does not impose any specific service requirements concerning rapid or light rail systems. Special service, which, like bus transportation, uses road vehicles and public highways, is more readily compared to bus service than to rail service. For these reasons, we do not believe it would be appropriate to base service criteria for special service systems on comparisons to rail systems, and the service criteria explicitly refer to bus service. Of course, this refinement of the language of the criteria will not affect the vast majority of UMTA recipients, who have no rail service.

Eligibility

Section 27.77(b)(2) of the NPRM proposed that all elderly and handicapped persons in the recipient's service area who are unable, by reason of their handicap or age, to use the recipient's service for the general public would be eligible to use the recipient's special service system.

A substantial number of comments from handicapped persons, transit authorities and other transportation providers, social service agencies, and other commenters supported the NPRM's criterion. A majority of the transit authority commenters, however, said either that eligibility should be restricted (e.g., to persons with mobility handicaps) or that transit authorities should have the discretion to establish their own criteria for eligibility.

Among the types of eligibility standards mentioned by commenters were so-called functional standards. For example, a transit authority might regard as eligible persons who could not walk ¼ mile, wait outdoors in moderate

temperatures for more than 10 minutes, or negotiate bus steps.

Some transit authority commenters said that the eligibility requirement would force recipients to serve a larger number of people with special service than with an accessible bus system. The result, the commenters said, would be higher costs for special service systems.

Other comments by a smaller number of commenters suggested that elderly persons should be permitted eligibility only if their mobility were limited, that eligibility should be expanded beyond the NPRM criterion, and that there was no objection to the establishment by recipients of appropriate procedures for certifying eligibility.

Eligibility is a key determinant of the capacity and cost of special service systems. For example, the Department's information indicates that approximately 1.4 million persons can be regarded as "severely disabled" (essentially, persons with physical disabilities making them unable to use regular mass transit service). Another six million persons are regarded as "transportation handicapped" (i.e., persons whose disabilities in any way makes their use of transit more difficult, but not impossible). The Department's studies indicate that making these additional persons eligible could increase operating costs of special service systems, on average, about 60 percent, or between $80,000 and $325,000, depending on the size of the city involved. If the Department required all elderly and handicapped persons to be eligible, another 21.9 million persons would have to be accommodated, raising costs even higher.

This being the case, the Department does not believe it would be feasible to broaden the NPRM's eligibility requirement to include transportation for all elderly and handicapped persons. In addition, the Department believes that there is merit to the comment that requiring a recipient to transport all persons who may not be as readily capable of using the bus system as able bodied members of the general public could effectively be so cost prohibitive to remove any real prospect that the recipient would choose a special service system over an accessible bus system.

In this regard, there are a substantial number of persons whose inability to use the bus system for the general public, due to cognitive disabilities, age or illness, would not be helped by making that system physically accessible. For example, the Regulatory Impact Analysis indicates that up to four million mentally or developmentally disabled persons (not included among the 1.4 million persons in the "severely disabled" population referred to in the Analysis) may fall into this category. Inclusion of people in this category could increase special service costs by 10 to 33 percent and could clearly affect the recipient's choice among modes of service.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, however, would be able to use the regular system with appropriate training. The Department encourages recipients to provide such training. It is expected that drivers would also have to be trained to understand, be patient with, and appropriately respond to questions from mentally retarded persons.

Consistent with other parts of this regulation, this provision does not require recipients to provide special service to able-bodied persons with mental disabilities. Recipients may, however, choose to provide transportation to them even though their condition does not render them physically unable to use the bus service for the general public. In this situation, it would be inappropriate for the recipient to count costs for this special service towards the limit on required expenditures.

The final rule, therefore, requires the recipients choosing special service systems to treat as eligible only those persons who, by reason of handicap, are physically unable to use the bus system for the general public. These are the individuals who would be likely to benefit from an accessible bus system.

Section 16 speaks of transportation service for elderly and handicapped persons. This criterion, however, is not intended to make elderly persons eligible for special service solely on the basis of age. As noted above, doing so would substantially increase costs. Moreover, the Department does not believe that it is necessary, under the statute, to require that special service be provided for elderly persons who are, in fact, physically capable of using the regular service for the general public.

Waiting Lists

Section 27.77(c)(6) of the NPRM proposed that there could not be a waiting list for the provision of service to eligible users. Relatively few comments addressed this criterion; most of those that did favored retaining it. Most of the transit authorities commenting opposed the criterion or said they preferred local option concerning waiting lists. Based on the comments, it appears that waiting lists are not a subject of major concern to the transit industry or to consumers; it also appears that relatively few recipients actually use waiting lists. (The GAO study cited in Congress found only 22.)

As a result, the Department has decided not to include a criterion concerning waiting lists in the final rule. It does not appear that waiting lists are a major, central concern on a level with the other subjects of service criteria in the final rule. Like dwell time, ride length time, and other such relevant but relatively less important service characteristics, the subject of waiting lists does not, in our view, warrant a separate service criterion. A specific service criterion on this subject is unnecessary, in any event, given the eligibility criterion and the provision of service requirement.

Response Time

Section 27.77(c)(5) of the NPRM proposed that users of the special service shall not be required to wait for the service more than a reasonable time. The NPRM asked for comment on whether there should be a regulatory maximum waiting period.

Most of the comments on this criterion came from transit authorities and handicapped commenters. Most of the latter favored including a regulatory maximum waiting period; most of the former opposed doing so, saying that this was an issue that should be decided at the local level without a Federal criterion.

Commenters had varying ideas on the appropriate length for a regulatory maximum waiting period. Twenty-four hours was the time mentioned most frequently by commenters. A majority of these comments said that the maximum waiting period should be no more than 24 hours; others said that the maximum waiting period should be no less than 24 hours. Some handicapped commenters recommended shorter maximums, in the one to four hour range. Another suggestion was that the waiting time should not be longer than that encountered by the public generally for regular mass transit.

The Department studied the effect of different response time requirements on recipients' costs. The studies showed that requiring a response time shorter than 24 hours would add considerably to the costs of providing special service. For transit-authority operated paratransit, a shorter response time would increase costs about 70 percent on the average, adding $104,000 to $324,000 to operating costs, depending on city size.

The Department believes that a specific maximum will be easier to understand and enforce than the

"reasonable time" proposed in the NPRM. In a special service system, 24 hours seems a reasonable time for providers to schedule and "package" trips in an efficient manner. We believe that a response time longer than 24 hours could unduly inconvenience users. We also note that prolonged response times were one of the "deficiencies" in current systems mentioned in the legislative history of 317(c). These considerations all favor establishing a 24-hour response requirement.

Restrictions or Priorities Based on Trip Purpose

Section 27.77(c)(4) of the NPRM proposed that use of special service could not be restricted by priorities or conditions based on trip purpose. The preamble to the NPRM noted that this provision was intended to prevent recipients from refusing to provide service for some trip purposes, or providing service for certain purposes only after demand for trips with other purposes is satisfied.

Most handicapped commenters favored this service criterion. Most transit industry commenters opposed it, or recommended that the decision about restrictions and priorities be a matter of local discretion. Other commenters were roughly evenly divided on the issue.

The Department has decided to retain this criterion. The general public can use the recipient's mass transit system at any time that it operates, for any purpose. We believe that it is inappropriate for recipients to administratively limit transportation service for disabled persons to certain purposes. For a transit authority to decide that some trip purposes are more deserving of service than others can involve a kind of paternalism that disabled individuals understandably may resent.

The Department understands the concern of some commenters that, taken literally, this criterion might be thought to foreclose subscription service for work or other essential trips, which our studies show to be a very cost-effective form of special service. The Department does not intend, through this subparagraph, to prohibit recipients from providing this kind of service.

The Department's studies did not directly estimate the costs of providing service without trip purpose restrictions. However, they did include data on so-called "many-to-few" systems, in which transportation service is provided from multiple origin points to a limited number of destinations (e.g., universities, hospitals, employment centers). There are clear differences between a "many-to-few" system (which provides service for any purpose to a limited number of points) and a system with trip purpose restrictions (which provides service for the approved purposes to any point). As noted in the discussion of the trip purpose restrictions criterion in the appendix, a "many-to-few" system would not be consistent with this criterion.

However, cost data about many-to-few systems may serve as a rough surrogate for cost data about systems with trip purpose restrictions. The Department's data indicates that a "many-to-few" paratransit system operated by a recipient would cost about $75–195 thousand less per year than a destination-unrestricted system, depending on city size. The Department does not view this level of potential savings as sufficient to justify eliminating this service criterion.

Fares

Section 27.77(c)(3) of the NPRM proposed that the cost of a trip on the special service would have to be comparable to a trip of similar length, at a similar time of day, to a user of the recipient's service to the general public. The preamble explained that this did not mean the fares had to be identical; rather, the variance between the regular and special service should be relatively small and be justifiable in terms of the actual differences in cost between the two types of service.

A majority of the comments expressing approval or disapproval of the NPRM provision (including most from handicapped commenters) favored it. Some of the handicapped commenters wanted the criterion strengthened, so that it would require special service fares to be no higher than fares for similar trips on the regular mass transit system. The others, including most transit industry comments, opposed the proposed criterion or said that local discretion should be permitted concerning fares. Another sizeable group of comments asked for clarification of what a "comparable" fare was, suggesting that retaining the NPRM language would lead to uncertainty about the meaning of the criterion.

The Department considered retaining the NPRM criterion. This long-established standard is familiar to transit providers and provides a general guideline to recipients and the public and can forestall outlandish fare differentials without involving any potentially arbitrary arithmetical formula. This approach does require some exercise of judgment on a case-by-case basis, however.

The Department also considered a variety of ideas suggested by commenters, such as fares based on a percentage or regular transit fare box recovery, multiples or percentages of regular transit fares, or a specific dollar ceiling. All of these suggestions are likely to be too difficult to apply reasonably under the wide variety of local situations to which the rule must apply. They could also result in handicapped persons having to pay disproportionately high fares in some cases.

The Department also considered comments which said that the charge to the handicapped person from Point A to Point B should be the same, regardless of the mode of service. This approach has the advantages of simplicity and apparent equality. However, the approach could increase net costs of operating a special service system 40 percent or more and, by encouraging marginal trips, increase gross costs as well. This effect could help to "tilt" recipients in the direction of an accessible bus system, contrary to the Department's desire to give recipients an even-handed choice among modes of transportation service.

The Department has decided to retain the "comparable fares" criterion of the NPRM. This approach recognizes the need to keep special service fares within reasonable bounds, compared to regular transit fares. It also recognizes, however, that special service is different from bus service in a number of respects, including convenience of service and cost. Recipients should not have to charge exactly the same prices for different services. While it is necessary to work out the implications of the comparable fares requirement on a case-by-case basis, we believe that the disadvantages of other, less flexible, approaches are more serious.

Hours and Days of Service

Section 27.77(c)(2) of the NPRM proposed that the recipient's special service would have to be available on the same days and during the same hours as the recipient's service for the general public. A majority of transit industry commenters opposed the criterion, or thought that localities should have discretion concerning this service characteristic. A majority of handicapped commenters favored retaining the criterion, and other commenters divided roughly equally.

Commenters opposing this criterion said that it would not be cost-effective to maintain the availability of special service during certain non-peak hours, such as late at night or on weekends.

The Department believes that the cost-effectiveness of service during times of relatively low demand can be improved significantly by the use of user-side subsidy systems to cover those periods. For example, a transit authority that runs a relatively costly paratransit system during peak hours might shut down that system after the evening rush hour and substitute a taxi voucher system.

The Department's national computer model study did not include data from which estimates could be made of the incremental cost impact of this criterion. Neither did commenters present any information useful for analysis on this point. Data from four of the case studies suggests that this criterion could increase costs of a special service system from two to 15 percent in those cities. However, given that the rule includes a limitation on required expenditures by recipients, the inclusion of this criterion will not, in any event, result in undue financial burdens being imposed on transit providers.

Disabled persons, like other members of the public, have use for public transportation on evenings and weekends. The times when service is available is one of the key determinants of the utility of mass transit to its users. Consequently, the Department has decided to retain this criterion.

Service Area

Section 27.77(c)(1) of the NPRM proposed that special service would have to be available throughout the same service area as the recipient's service for the general public. The preamble asked for comment on how the final rule should treat extended commuter service that went well outside the normal service area.

The largest group of commenters on this issued favored a requirement for providing special service within the same area that the system for the general public serves. These commenters included some transit authorities as well as handicapped individuals and groups representing them, social service agencies, paratransit providers, and other members of the public. A few commenters said that the decision about the area served should be left to local discretion.

Almost all handicapped commenters on the issue of "extended" service said that service going beyond the normal service area should be accessible or that special service should be available. Almost all transit authorities said this matter should be left to local decision, or that requirements for service beyond the normal service area should be less stringent. There was also some comment on the question of how the "service area" should be defined. Some commenters favored defining the service area as the urbanized area, or alternatively, the "normal urban area" in which the recipient provides service to the general public. Others asked for clarification of the requirements for special service within the normal service area—did the criterion mean that special service must serve any points within the urbanized area, or did the special service have to serve only points along bus routes? Some transit authorities said the definition should be left to local discretion. A few of these pointed out that certain existing special service systems already serve a larger area than the regular bus system, asserting that a "same service area" criterion could reduce the geographic area now served.

The Department's information shows that permitting recipients to restrict the geographic area they serve to an area smaller than is served by the regular transit system can reduce expenditures. A geographic area-restricted paratransit system operated by a recipient, on average, would cost between $70 and $200 thousand less per year, depending on city size, than a similar system serving the same geographic area as the regular transit system. The corresponding difference for the less costly user-side subsidy approach would range from $20 to $45 thousand annually.

Principally because of this cost differential, the Department seriously considered eliminating or modifying the service area criterion. However, in view of the decision to include a limit on recipients' required expenditures, the Department decided that the cost differential was not sufficient to outweigh the importance of the criterion in ensuring adequate service for handicapped persons. The absence of geographic restrictions on service is among the most important factors making special service genuinely useful for disabled riders. For example, in many localities, the bus system serves a central city and its surrounding suburbs. If the special service system serves only the central city, or provides service only within certain jurisdictional or "zone" boundaries, the ability of a handicapped person to move around the area by mass transit is severely limited.

Consequently, we are retaining this criterion in the final rule. In terms of defining the service area, we have decided to adopt the suggestion to use the normal area served by the recipient's bus system (exclusive of extended commuter runs). This area is the best analog to the area in which service is available to the general public.

We recognize that it is somewhat more difficult for recipients to "draw the map" of their service area than to use the urbanized area as the basis for the service area. The boundaries of the urbanized area, as determined by the Bureau of the Census, are clearly defined. However, the Department's studies indicate that the service areas in which many recipients actually run their bus systems are smaller than urbanized areas, and using the urbanized area definition could force them to expand their service for handicapped persons well beyond the area in which the general public is served. This is not necessary as a matter of equity, and it would increase costs.

Service is required to be "throughout" the service area. Limiting service to bus stops or to areas within a certain distance of bus routes would not, therefore, meet this criterion. With respect to "extended" service, the Department believes, as handicapped commenters argued, that disabled persons should be able to take advantage of "extended" service. At the same time, the Department agrees that requirements for special service outside the normal service area should be less stringent. Therefore, the Department will require recipients to provide service for handicapped persons to only those points (e.g., terminals, bus stops) reached directly by the bus service extending outside the normal service area.

Service Criteria for Accessible Bus Systems

Section 27.77(b)(2) of the NPRM proposed that one of the ways a recipient could comply with the rule was to make 50 percent of its fixed route bus service accessible. Fifty percent of the fixed route service would be deemed accessible when half the buses the recipient used during both peak and off-peak times were accessible. The preamble explained that this meant that 50 percent of the buses "on the street" at any time had to be accessible, adding that this meant that a sufficient number of accessible buses would have to exist in the reserve fleet to ensure that 50 percent of the buses actually operating were accessible.

The preamble also asked two questions with respect to accessible bus service. First, should recipients be required to permit semiambulatory persons to use lifts? Second, how would the service criteria apply to bus service?

As a response to handicapped commenters' requests for 100 percent accessible service, and to recipients' concern that the relatively low cost of accessible bus service "biased" the rule in its favor, the Department considered requiring 100 percent accessible service, which would provide the level of service requested by the handicapped commenters while substantially reducing or eliminating the cost differential between bus and paratransit modes.

Depending on city size, the Department projects that 100 percent accessible bus service would cost between $40 and $420 thousand more per year than 50 percent accessible service, for the average transit authority. While this would reduce the cost differential with paratransit, the Department is not persuaded that it would be cost-effective to require 100 percent accessible service. It is reasonable to believe that, while a 100 percent accessible system would be more convenient for handicapped persons to use, a majority of the persons who would use accessible bus service at all would use a system in which substantially fewer than 100 percent of the buses were accessible. The overall higher costs of 100 percent accessible bus service are themselves a reason for choosing not to require service at this level.

The Department was aware that recipients will have to have some accessible buses in their reserve fleets. The NPRM mentioned this fact, and the Department's cost estimates for accessible bus service have taken it into consideration. The Department is not persuaded, however, that 50 percent accessible bus service is too costly. The Department's data indicates that such service can, in most cases, be provided well within the rule's cost limit.

There were also several comments that accessible bus service would not be fully adequate to meet the needs of disabled persons. These comments pointed out that not all handicapped persons could use accessible bus service, for reasons such as distance from bus stops, inability to use a lift, physical barriers between the bus stop and the user's origin or destination, bad weather, etc.

The Department is aware that not all handicapped persons can use accessible fixed route buses, and we agree that the ideal transportation system for handicapped persons would include both 100 percent accessible fixed route service and a substantial amount of special service. However, given the limitations of Federal and local resources, and the constraints of the *Davis* and *APTA* cases, the Department believes that it is not in a position to mandate an "ideal" system.

Rather, we believe that by giving localities a choice among various approaches that are reasonably effective, even if short of ideal, we will comply with the intent of Congress and improve considerably the services available to disabled persons. An accessible bus system meeting the final rule's service criteria is one of these reasonably effective approaches.

A number of transit authorities said that if 50 percent of the recipient's fleet was accessible, it should be regarded as in compliance, whether or not 50 percent of the buses actually operating on the street were accessible. However, accessible buses sitting in the garage or on the parking lot do not provide transportation services to handicapped persons. Use, as well as ownership, of accessible buses is necessary for the accessible bus option to work. This is as true under the final rule as under the 50 percent requirement proposed in the NPRM. In this connection, it should be remembered that, in conformity with section 317(c), the Department is required to establish criteria for the provision of service, not simply for the possession of equipment.

Some handicapped commenters said that, during off-peak hours, all buses should be accessible, or that the recipient's accessible buses should be used before inaccessible buses (this latter requirement was part of the Department's 1979 rule). It is true that off-peak schedules involve less frequent service. Consequently, off-peak accessible service could be very infrequent. Therefore, the Department encourages recipients to deploy their buses so that as many as possible of the buses in use during non-peak hours are accessible, to make service for handicapped persons more convenient.

However, the Department does not believe that it is appropriate to establish a regulatory requirement to this effect. Such a requirement is less compatible with the service criteria-centered approach of the final rule than the 50 percent accessibility proposal of the NPRM. Also, the deployment of additional accessible buses during off-peak hours is a matter best left to the discretion of local operators.

The final rule does not require that 50 percent or any other fixed percentage of the recipient's buses be accessible. Rather, the final rule requires that the recipient operate, on the street, a sufficient number of accessible buses to meet the other service criteria for bus systems. The Department has decided to take this approach because, consistent with section 317(c), the emphasis of this rule is on meeting service criteria. There is no magic percentage of buses that will ensure that the service criteria are met.

The Department is aware that recipients now operate accessible bus service in two principal ways. The majority do so by making part of their scheduled bus service accessible. However, it is also possible for a recipient to provide "on-call" accessible bus service. That is, a user calls the recipient and says that he would like an accessible bus to be on a particular route at a particular time. The recipient makes sure that the accessible bus is provided.

In the preamble to the NPRM, the Department mentioned such an arrangement as an example of a mixed system. We believe, however, that it is more reasonable to treat such an approach as a type of accessible bus system, since it is based on the use of regular accessible transit buses on regular bus routes.

It is the Department's intention to establish, as Congress intended, a set of uniform national service criteria for transportation service to handicapped persons. This is important for reasons of equity to users and providers alike. Inherent characteristics of various modes of transportation require some modifications in the way the criteria are stated, however.

Three of the six service criteria are met automatically by a scheduled accessible bus system. Scheduled accessible bus systems have no administrative eligibility requirements. They do not restrict or prioritize the availability of service based on trip purpose. Buses meet schedules, rather than arriving in response to a specific request for service. This satisfies the purpose of the response time criterion.

Of the remaining criteria, the first requires service throughout the same days and hours as the recipient's bus service for the general public. This criterion, like its parallel for special service, is designed to ensure that a recipient does not make accessible service available during only a part of the time it makes service available to the general public (e.g., peak hours).

The "reasonable intervals" language, like the requirement that the service be provided "throughout" the same days and hours as service for the general public, responds to comments that the effectiveness of some existing accessible systems has been limited by the irregularity and infrequency of accessible bus service. At the same time, this language avoids the objection of transit industry commenters to very

specific service distribution and scheduling requirements. This language is included in this criterion because intervals between vehicles is a special characteristic of a scheduled bus system not present in demand-responsive modes of service.

Accessible bus service is limited to certain routes, and does not directly serve origins and destinations throughout a circumferential area. The service area for scheduled accessible bus service, therefore, states that service must be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the rule's planning process.

The reference to the planning and public participation process, also unique to this mode of providing service, responds to those commenters who stressed the need for local flexibility in the design of accessible service and the need to avoid a rigid requirement for service on routes on which there is no demand for it.

In an accessible bus system, all passengers use the same vehicle and travel the same routes. Therefore, the differences between bus and special service that led us to require "comparable" rather than the same fares for the latter do not apply in this context. Recipients must therefore charge all passengers, including handicapped persons, the same fare for the same trip (leaving aside, of course, the off-peak half fares required for elderly and handicapped persons by 49 CFR 609.23).

Some of the criteria for on-call accessible bus service are identical to those for special service. The eligibility, response time, and restrictions or priorities based on trip purpose criteria fall into this category. The fares criterion is identical to the fares criterion for scheduled accessible bus service. The "same days and hours" criterion is the same as the first sentence of the corresponding provision for scheduled accessible bus service. The second sentence is dropped because it is not meaningful to talk of "reasonable intervals" in the context of demand-responsive accessible bus service.

The service area criterion is somewhat different than its scheduled accessible bus service counterpart. In the scheduled accessible bus service context, the schedule of accessible buses which run regularly on various routes at various times is a matter for the planning process. In an on-call accessible bus system, however, the need for and scheduling of accessible service is determined by calls requesting such service in each specific instance. Consequently, the statement of the service area criterion for on-call accessible bus service simply requires accessible service to be provided on all the recipient's routes, upon request.

This criterion also addresses a unique feature of on-call accessible bus service by stating that "all the buses needed to complete the handicapped person's trip" must be provided. Obviously, on-call accessible bus service will not be useful to a handicapped person if the first bus he or she needs to get to his or her destination is accessible, but the bus he or she needs to transfer to in order to complete the trip is inaccessible.

Some handicapped and other commenters suggested various additional criteria concerning the use of accessible buses. For example, every other bus could be required to be accessible. There could be requirements governing transfer frequency or trip length.

The "every other bus" criterion would be a surrogate for the "same days and hours" and "same service area" criteria. However, it could be unduly rigid in application, denying recipients and other participants in the planning process the opportunity to concentrate accessible service where it is most needed. In addition, it could be confusing to state the service criteria in a markedly different way for this mode. For these reasons, we decided not to adopt such a criterion. We also decided against including transfer frequency and trip length criteria, believing that these matters are best determined as a part of the local planning process.

One of the most vexing issues concerning accessible bus service is whether there should be a service criterion requiring recipients to permit semiambulatory persons and other standees to use bus lifts. At the present time, transit authority practices, as described in the comments, appear to vary widely.

Virtually all transit industry comments on this issue said that the operator should have the discretion to decide whether semiambulatory persons should be able to use lifts or that the Department should prohibit the use of lifts by such persons. Virtually all the handicapped commenters urged the Department to require recipients to allow semiambulatory persons to use lifts. A few other comments suggested that UMTA sponsor research into lifts that standees can use safely, that the Department require additional safety devices for lifts, or that semiambulatory persons be permitted to use lifts if they sign a waiver of liability.

Both major positions on this issue have merit. It is true, as handicapped commenters pointed out, that unless semiambulatory persons are permitted to use lifts of a recipient who complies through an accessible bus system, these individuals will have no access to public transportation. This is contrary to the intent of the statute and regulation, the commenters assert.

It is also true, as transit industry commenters point out, that at least some kinds of lifts are not designed to accommodate standees. Not all lifts, for example, have handrails a standee can grasp. Some may operate in a fashion that makes retaining one's balance while standing difficult, particularly for some elderly or handicapped persons. Other lifts may enter the bus at a level, relative to the door opening, that could cause a standee of a certain height to hit his or her head on the entranceway. Transit authorities are properly concerned about the safety and legal liability implications of these problems.

The Department does not have, at this time, sufficient information to evaluate the safety implications of requiring recipients to allow semiambulatory persons and other standees to use lifts. Nor are we now in a position to establish design or performance standards, or safety feature requirements, for lifts. Particularly in view of the Department's policy emphasis on transportation safety, we do not believe that it would be advisable for us to require a practice that could create safety hazards for the individuals that the rule is intended to help.

For this reason, the final rule does not include such a requirement. However, the Department will consider further the safety implications of standee use of lifts and determine what, if any, additional steps are appropriate to address this problem.

Service Criteria for Mixed Systems

Section 27.77(b)(3) of the NPRM proposed that recipients could comply with the rule by establishing a mix of accessible bus and special service. The preamble discussion of this proposed section stated that the accessible bus and special service components of the mixed system, taken together, would have to meet all the service criteria. The preamble also suggested that, in a mixed system, the recipient would not have to provide both accessible bus and paratransit service between the same two points, and it asked whether the final rule should contain any requirements concerning transfer frequency.

There was relatively little comment on this provision. Most of these comments did not object to the notion of a mixed system envisioned by the NPRM and appeared to like the flexibility that such systems provide.

A few commenters objected to the preamble's suggestion that accessible bus and special service components of a mixed system would not have to duplicate one another's routes and efforts. The idea of non-duplication, however, is essential to a mixed system. If a recipient could have a mixed system only if it provided both sorts of service everywhere at all times, then there would be little reason for the recipient to establish a mixed system.

The final rule (see amendment to section 27.5) defines a "mixed system" simply as one that provides accessible bus service at certain times in certain areas and special service at other times and/or in other areas. The full performance level for a mixed system is reached when, subject to the overall limit on required expenditures, each component of that system meets the service criteria applicable to accessible bus systems or special service systems, as the case may be.

Comments from handicapped persons emphasized the importance of convenient travel using all components of a mixed system, and most of these comments favored some limitation on the number of transfers that could be required. Most transit industry commenters favored local discretion on this matter.

The Department does not believe that a discrete national limit on transfers is feasible. The variables are too numerous, and the comparison between the mass transit system for the general public and a mixed system for handicapped persons too difficult, to make such a criterion workable in the great variety of local circumstances to which this rule has to apply. On the other hand, we believe that recipients have a responsibility to coordinate the parts of mixed systems to minimize inconvenience to users, including inconvenience related to transfers. Therefore the Department will require the recipient to ensure such coordination.

Section 27.97 Limit on required expenditures.

Section 27.77(d) of the NPRM proposed that no recipient would be required, in order to meet the NPRM's service criteria, to spend more than a certain annual sum. The NPRM set forth two different ways of calculating that sum for comment, both averaged over the current and two previous fiscal years: 7.1 percent of the recipient's annual UMTA assistance, and 3.0 percent of the recipient's operating budget.

Many commenters addressed the cost limitation issue. The largest group of comments, including virtually all those from handicapped commenters as well as members of most other categories (especially social service agencies), opposed the concept of a limitation on recipient costs like that proposed by the NPRM. As a policy matter, these comments asserted, the limit would vitiate the effect of the service criteria and result in inadequate transportation service for handicapped persons. As a legal matter, these comments said, the proposal would be inconsistent with section 317(c). If there were a limitation on required costs for recipients, many of these same commenters said, it should be set at a higher level. Some of the comments recommended setting the limit as high as 30 percent of the recipient's Federal assistance or 15 percent of its overall operating budget.

On the other hand, virtually all the transit authority comments on the subject, as well as several comments in other categories, approved the concept of the limit on required expenditures. However, these commenters said that the limit was too high to avoid the imposition of undue financial burdens.

Many of the transit industry comments suggested that the Department should ensure that recipients be required to spend no more than they would have to spend under the present § 27.77. To accomplish this objective, several comments suggested that the cost limit be established at about two percent of section 9 funds.

Transit authorities' comments about the base for the cost limit were divided. A majority favored a Federal assistance-based approach. Several MPOs and commenters in other categories also favored a Federal assistance-based limit.

One argument that proponents of a Federal assistance-based cap made was that of proportionality. That is, the amount they spend on complying with a Federal regulatory requirement should remain proportional to the amount of Federal assistance they receive.

All handicapped commenters commenting on the subject, plus about a quarter of the transit authority comments and several comments from commenters in other categories, favored an operating budget approach to the limitation on recipient expenditures. Two main arguments were advanced for this preference. First, the recipient's operating budget was viewed as a relatively more stable base for calculating the limit, since it is drawn from a variety of sources and appears less subject to fluctuation than Federal assistance. Second, these commenters view the transit service for handicapped persons as simply one aspect of a transit authority's overall service to the public. From this viewpoint, fairness requires a reasonable portion of the transit authority's overall resources to be devoted to that portion of the service to the public that handicapped persons can use.

A smaller number of commenters, from various categories, favored either letting recipients choose which base for the limit would apply in their case, or calculating both and using the higher figure. Because this approach would involve more paperwork, and create greater uncertainty, than choosing a single cost limit, the Department did not adopt this suggestion.

The Department has decided to adopt a limit on required expenditures. We have done so for a number of reasons. First, under section 504, as interpreted by the courts, the Department cannot impose undue financial burdens on recipients. The limit is designed to prevent such undue burdens.

Second, predictability is important in planning and budgeting for any public expenditure. The provision will ensure that recipients know, and can plan on the basis of, a predictable limit to their cost exposure for compliance with this rule.

Third, the provision will avoid, to a substantial degree, inequities among recipients. From the information available to the Department, it appears that the cost of providing various sorts of service to handicapped persons may vary substantially from recipient to recipient. In the absence of a limit on required expenditures, the compliance cost to one recipient (even among recipients the populations of whose service areas are similar) could be much higher than for another. The limit will help to avoid major discrepancies in the proportion of resources that recipients must devote to transportation for handicapped persons.

In addition, the Department is convinced that the limit will not result in the failure of this regulation to achieve its principal purpose—the improvement of transportation services for handicapped persons, consistent with the Department's service criteria. The Department's studies show that many recipients, including those serving the largest urban populations in the country, should be able to meet all service criteria for less than the cost limit regardless of which approach to service

they choose. By choosing cost-effective alternatives (such as user-side subsidy or coordination/brokerage programs), many other recipients can do so as well. Other recipients will make tradeoffs which still result in substantially improved service; in these situations, the public participation process is available to help determine the most productive allocation of resources.

One alternative to a limit on required expenditures that the Department considered was to provide for individual, case-by-case, "undue hardship" waivers of the requirements of the rule. Some commenters said this approach was preferable to the proposed cost limit because it did not establish an across-the-board "exemption" from the service criteria. This approach has several problems. First, the Department would have to devise neutral, broadly applicable standards for what constitutes an undue hardship or burden. Such standards might well have to include a cost limit-like threshold expenditure level. Also, the lack of clear legal definition of what constitutes an undue hardship could make standard-setting very difficult.

Second, the Department would have to deal with what, based on experience in previous rulemakings, could be a large number of waiver requests. Processing these requests could be a very time-consuming and burdensome job for the Department, leading to substantial uncertainty about and delay in providing the services for handicapped persons. In effect, the Department would be substituting a series of rulemakings of particular applicability for a rule of general applicability. Moreover, this approach would shift the emphasis in decisionmaking about service from local areas to Washington, which is contrary to the Administration's policy.

Third, it would probably be necessary to eliminate or scale back some of the service criteria in order to prevent the overall compliance costs of the rule from becoming too large. This would be undesirable, particularly in that it could result in less improvement of service in those many localities that can meet all the criteria without exceeding the limit on required expenditures.

With respect to the alternatives for the limit on required expenditures and their effects on projected recipient costs, the Department presents the following tables, based on information it gathered in studies made in connection with the Department's Regulatory Impact Analysis (RIA). These figures, and the way they were derived, are discussed in greater detail in the RIA.

TABLE 1.—ANNUAL COSTS OF SERVICE MEETING ALL SERVICE CRITERIA

City size	3.0 limit	7.1 limit	Para-transit	User side subsidy	50 per-sent bus
(1) Less than 250,000	61	75	247	92	35
(2) 250,000 to 500,000	193	184	393	126	160
(3) 500 000 to 1,000,000	506	506	515	155	300
(4) Over 1 million [1]	2,408	3,456	1,016	196	960

[1] Does not include data from New York, Chicago, Los Angeles, Philadelphia, San Francisco, and Boston.

The data in Table 1 are expressed in thousands of 1983 dollars, and represent annual operating and capital costs and cost limit figures for a system serving an average-sized city in each city size category. The accessible bus costs assume a six-year phase-in period and a 20 percent spare ratio. The user-side subsidy costs assume that supplementary lift-equipped vehicle service would be provided for persons unable to use regular taxis. The paratransit (i.e., transit authority-operated paratransit) and user side subsidy figures are projections of the cost of systems in which the service criteria are as close as possible, given the data available, to those required by the final rule. The 7.1 percent cost limit is based on all UMTA assistance in FY 1983. The 3.0 percent cost limit is based on recipient operating costs as shown in the 1981–82 reports under Section 15 of the UMT Act.

becoming too large. This would be

Table 2.—Nationwide, 30-Year Present Value of Compliance Costs

Paratransit	.98
50 percent Accessible Bus	.69
7.1 percent cost limit	2.72
3.0 cost limit	2.37

This table covers all cities, including the six largest, and assumes that all cities chose one option or the other. The numbers are expressed in billions of 1983 dollars and are based on 1983 UMTA assistance and operating budget levels. The cost limits and service figures are computed as in Table 1.

TABLE 3.—DATA FROM SEVEN CASE STUDIES

City	Present costs	Adjust-ed costs	7.1 per-cent limit	3.0 per-cent limit	2.0 per-cent of § 9 limit
Cleveland	3,900	3,119	2,900	3,189	600
Pittsburgh	2,793	2,698	7,980	3,906	668
Seattle	1,218	1,200	2,500	3,200	688
Kansas City (Missouri)	1,079	555	667	783	188
Akron (Ohio)	1,145	242	312	247	88
Hampton (Virginia)	93	103	206	162	58
Brockton (Mass.)	585	245	129	150	36

The figures in Table 3 are expressed in thousands of FY 1983 dollars (except the present costs figures for Cleveland and Seattle (Calendar Year 1983 dollars) and Akron (Calendar Year 1983 dollars). The present costs to which the table refers are the costs of the recipient's existing service for elderly and handicapped persons, whether or not the service meets the criteria of this rule. The adjusted costs are the Department's projection of what it would cost each city to operate a system meeting the service criteria while serving the eligible population defined by the rule. The costs cited are total costs. In the case studies, the systems were credited with all capital costs from 1979–present, and, although annualized, overstate actual compliance costs under the final rule. The 3.0 percent cost limit is based on 1983 total operating expenditures. The 7.1 percent cost limit is based on 1984 section 9 grant apportionments and section 3 capital funds. The 2.0 percent of section 9 limit, suggested by transit industry comments, is shown for purposes of comparison (calculated in FY 1984 funds).

Looking first at the overall, long-term picture (Table 2), the Department's figures show that, over 30 years, the present value of recipients' aggregate maximum cost exposure under the final rule would be about a third of a billion dollars less under the NPRM's 3.0 percent of operating costs limit than under the 7.1 percent of all UMTA assistance alternative. What is more interesting in Table 2 is that the 30-year present value of aggregate compliance costs for either transit authority-operated paratransit or 50 percent bus accessibility is far less than either of the proposed cost limits. (These figures are projections of what the nationwide compliance cost would be if all recipients chose one mode or the other.)

Table 1 projects the annual costs of compliance and cost limits in average-sized cities in each of four city size categories. The 3.0 percent cost limit results in a lower potential cost exposure in city size categories 1 and 4, an equal potential exposure in city size category 3, and a slightly higher potential cost exposure in category 2.

In city size categories 2, 3, and 4, both a user-side subsidy and a 50 percent accessible bus system, meeting all service criteria of the final rule, could be provided for less than either proposed cost limit amount. In each case, the user-side subsidy approach would be less costly. Transit authority-operated paratransit meeting the service criteria, in every case the most expensive alternative, could be provided for less than the cost limit amounts only in cities of more than 1,000,000 population (category 4), though cities in category 3 could come close.

Small cities would have the most difficult time meeting all the criteria for less than their cost limit amounts.

According to Table 1, the cities in category 1 (under 250,000 population) would be able to meet the criteria without exceeding the cost limit only by using an accessible bus system. Even a user side subsidy system's costs would exceed the limit on required expenditures to some extent, and a transit authority-operated paratransit system would exceed the cost limit level substantially.

One of the interesting results of the case studies displayed in Table 3 is that the present expenditures of four of the cities (Cleveland, Kansas City, Akron, and Brockton) are higher than one or both of the proposed limits on required expenditures. These expenditures are not mandated by Federal regulation. It is difficult to argue that expenditures at the cost limit levels proposed by the NPRM would constitute "undue financial burdens" for cities which have already voluntarily exceeded these levels.

Six of the seven cities (all except Brockton) could comply with the all of the final rule's service criteria by spending less than the 3.0 percent cost limit figure applicable to them. Five of the seven cities could comply with all the final rule's service criteria by spending less than the 7.1 percent cost limit figure applicable to them. The exceptions are Cleveland and Brockton. These results suggest that the proposed approaches to limiting recipients' required expenditures are reasonably related to the provision of transportation services meeting the final rule's service criteria. The figures show that cities' costs of compliance do vary substantially, which supports the argument that a cost limit is useful to prevent cities with higher costs (e.g., Cleveland) from suffering substantially higher compliance burdens than other cities.

On the other hand, the 2.0 percent of section 9 funding basis for the limit on required expenditures, recommended by transit industry comments, would fall far short of either the seven systems' current expenditures or the expenditures necessary to meet all service criteria under the final regulation. The 2.0 percent limit amounts for the seven systems average 30.9 percent of the systems' current expenditures. The same 2.0 percent limit amounts average 42 percent of the adjusted compliance costs for the seven systems. It is clear that, if the Department were to adopt the 2.0 percent of section 9 basis for the cost limit, the seven systems could comply with the regulation while providing much less service than they do now or would provide under the 3.0 or 7.1 percent cost limits.

The Department has concluded that the 2.0 percent of section 9 approach to establishing a limit on required expenditures would not be adequate. Congress clearly intended, through section 317(c), that the Department should publish a rule that would result in improved transportation services for disabled persons. The 2.0 percent of section 9 approach is explicitly intended to avoid any required increase in the aggregate resources devoted to such services. It is unlikely that expenditures at this level could improve service as Congress intended. As Table 3 shows, expenditures at this level could drastically reduce services below present levels in many cases.

The Department has decided that of the two proposed approaches to the limit on required expenditures, the 3.0 percent of operating costs approach is preferable. First, the Department is persuaded that the greater likelihood of stability, from year to year, in a figure based on overall operating costs is a significant programatic advantage. This stability should facilitate recipients' planning for service to disabled persons. It should help to avoid fluctuations in that service that would disrupt the transportation opportunities of its users. Second, the overall potential cost exposure to the transit industry is significantly less under this approach than under the 7.1 percent of UMTA assistance alternative, based on 1983 program levels. Not only is this true for the 30-year cost limit level, but it is also true in two of the three city size categories on an annual basis in which the two differ.

In addition, the Department agrees with those commenters who said that service to handicapped persons should be viewed—and funded—simply as one portion of the recipient's overall service to the public. The Department believes that it is equitable to relate the limit on required expenditures to the funds the recipient expends on services for the entire public.

Finally, this way of calculating the cost cap is based on a standardized, readily available source (UMTA section 15 data). This will facilitate administration and monitoring of the cost limit.

We understand the argument, made by proponents of linking the cost limit to UMTA assistance, that the Department should maintain proportionality between Federal funds and expenditures for Federally-mandated service. However, we do not believe that this argument outweights the considerations favoring the 3.0 percent of operating costs basis for the limit on required expenditures.

Some commenters recommended deleting, from the base from which the cost limit is calculated, expenditures specifically for service to handicapped persons, such as the costs of a special service system or the incremental costs of operating an accessible bus system. The basic rationale of this suggestion appears to be that to use these costs as part of the base for calculating the cost limit would be a sort of double counting. We have not adopted this suggestion. The cost limit relates to the overall operating expenses of the recipient for all purposes, including transportation provided to all users. It would be inconsistent with this rationale, and with the idea that service to handicapped persons is simply one facet of service to the public, to base the cost limit on three percent of 97 percent of the recipient's operating expenses. Doing so would also make administering the rule more complicated.

The NPRM proposed that the recipient could average its operating costs for the two previous fiscal years and its projected operating cost for the current fiscal year in order to form the base from which the cost limit is calculated. The rationale of this provision was to permit greater predictability and stability in the cost limit figures (e.g., to smooth out "bumps" in cost limit levels that might be caused by short-term changes in operating costs). Relatively few comments addressed this proposal, and most of them were favorable. The final rule retains this feature.

The preamble of the NPRM also asked for comment on so-called "carryover credit." This idea would involve permitting a recipient which voluntarily spends more than its cost limit in one year to take credit for the overage in subsequent years. For example, a recipient that made heavy capital expenditures in one year, spending $100,000 over its cost limit figure, would be able to comply with the rule the following year even though it spent up to $100,000 less than its cost limit figure.

The majority of the comments on carryover credit, most of which came from transit authorities, favored the concept. Other commenters favored various ways of amortizing capital investments over a period of time. The Department agrees with commenters who expressed concern that crediting the total amount of capital purchases in the year in which the purchases took place would create an uneven pattern in reported expenditures. This could result

in a recipient exceeding its cost limit some years and not others because of capital expenditures, causing fluctuations in the level of service.

As a result, we have decided to require recipients to annualize capital expenditures, over the expected useful life of the item. This requirement is expected to result in less fluctuation and greater predictability of eligible expense levels, as they relate to the limit on required expenditures. This approach will also, we believe, accommodate the concerns of those commenters who favored a "carryover credit" approach.

Section 27.99 Eligible expenses.

Since the rule includes a limitation on the costs recipients are required to incur to comply with the regulation, it is necessary to establish what kinds of expenditures by the recipient may be counted in determining whether the recipient has reached the limit.

Section 27.77(e) of the NPRM said that incremental operating costs of accessible rolling stock, operating costs of special service, capital costs for special service components and accessible rolling stock, payment of expenses of indirect methods of providing service, and incremental costs of training and coordinating service were eligible. Other costs, even if related to service for handicapped persons, were not. For example, if recipients served both eligible handicapped persons and other persons with the same service, then only the portion of the cost of the service attributable to the former could be counted. The preamble to the NPRM added that only expenditures by the recipient itself, and not expenditures by other parties, could be counted.

The latter point was a major focus of comment. Virtually all transit industry commenters said that expenditures by agencies other than the recipient itself should be counted as eligible expenses. These comments said, first, that such expenditures were intended to provide transportation service to handicapped persons. Second, the comment alleged that the cost limitation provision acted, in effect, as a minimum expenditure criterion, and, like the minimum expenditure guideline in the July 1981 interim final rule and its 1976 predecessor, should permit expenditures by other agencies to be counted. Third, the comments said that NPRM's proposal would discourage effective coordination between the recipients' services and those provided by other agencies. The larger number of handicapped commenters addressing this subject were equally united in asserting that only expenses incurred by the recipient itself should be counted.

The Department has concluded that only expenditures by recipients of their own funds should count in determining whether a recipient has reached its limit on required compliance expenditures. This conclusion follows directly from the nature of the limit on required expenditures itself.

The limit's reason for being is to prevent the requirements of this rule from imposing an undue financial burden on recipients. A recipient can suffer an undue financial burden only if it has to expend too many of its own dollars on compliance with the regulation. If a United Fund agency or a state or local public social service agency spends its dollars on transportation services for disabled individuals, the recipient's revenues are not any further depleted or burdened. If a transit authority buys ten accessible buses, the cost it has to incur is not increased by the fact that the local Center for Independent Living has bought a van. In logic and in reality, no one suffers a burden because someone else spends money.

We disagree with the objections of transit industry commenters to this approach. It is true, of course, that the expenditures of other public or private agencies for transportation services for disabled persons have a purpose similar to the purpose of this rule. But this rule imposes requirements and compliance costs only on UMTA recipients. Services provided by other agencies, and funded from other sources, create no additional costs for the UMTA recipients.

To the extent that the comments characterize the limit on required expenditures as a "minimum expenditure" provision, we believe they are mistaken. A minimum expenditure provision would require recipients to spend (or to ensure that they and some combination of other agencies spend) a certain amount of money, regardless of what service is provided.

For example, the Department's analysis projects that an average city of between 500,000 and 1,000,000 population could meet special service criteria through a user-side subsidy system for about $200,000 per year. The limit on required expenditures for such a city would be $506,000. If the cost limit were instead a minimum expenditure requirement, the city would be required to spend another $306,000 per year, notwithstanding the fact that it had already met all service criteria. Obviously, such an approach would penalize recipients who selected an economical mode of compliance with the rule.

The rule establishes minimum criteria for service; recipients can meet these criteria in a variety of ways. Given the variety of means open to recipients to comply with the rule, which can result in compliance costs below the cost limit levels in many instances, we do not believe it fair to say, even figuratively, that § 27.97 creates a minimum expenditure requirement.

We are also unpersuaded that this approach to eligible project expenses will harm coordination efforts. The recipient's program must ensure that service meeting the service criteria is provided to disabled persons. It does not matter who provides this service. That is, while expenditures made by other agencies are not eligible to be counted in connection with the recipient's limit on required expenditures, service provided by other agencies can help to meet the service requirements imposed by this rule. If there is a significant amount of service provided by various public and private agencies in an urbanized area, the recipient may coordinate that service, supplement it as needed to meet the service criteria, and possibly spend a relatively low amount of transit authority funds (see § 27.95(e)). This situation creates a strong incentive, not a disincentive, for coordination of transportation services for disabled persons, since it will help to reduce the cost of compliance for recipients.

The final rule provides that only those expenditures incurred specifically to comply with the requirements of this Subpart are eligible in connection with the limitation on required recipient expenditures. This regulation does not compel any transit authority to expend funds except to comply with its own requirements. The fact that another Federal, state, or local legal requirement or policy choice may result in expenditures beyond those required by this regulation does not convert these additional costs into burdens imposed by this regulation.

Some commenters said that costs related to improving accessibility of rail systems (e.g., facilities and vehicles for light rail and subway systems) should be eligible. This rule, however, imposes no requirements related to rail systems. No recipient has to make any changes in its rapid or light rail system in order to comply with this regulation. Therefore, any costs the recipient incurs to improve its rail system cannot be construed as burdens imposed by this rule, although the costs of improvements to permit the transfer of disabled persons between

accessible rail systems and bus or special service systems can be eligible. (As noted above, service provided on accessible rail systems can help to meet service requirements, however.) The same principle applies to costs incurred by recipients to comply with the Architectural Barriers Act or state or local accessibility laws. These costs are not burdens of compliance with this regulation.

This principle is stated in paragraph (a) and elaborated in paragraphs (b) and (c) of this section. For example, only "incremental" capital costs of accessible buses are eligible (e.g., the extra cost of a lift-equipped bus over the bus without a lift, not the entire cost of the bus). Only the costs of a special service system attributable to transporting persons required to be treated as eligible under this regulation, and not the costs of carrying additional persons (e.g., non-handicapped elderly persons) can be counted.

Several comments from handicapped commenters said that administrative expenses should not be eligible. We do not agree. Ensuring that programs are properly administered is a very important part of ensuring that transportation services are provided effectively. Those administrative expenditures directly related to service to handicapped persons should be counted just as other expenditures for operating a transportation service.

Some handicapped and transit authority commenters mentioned "half-fare" subsidies to elderly and handicapped persons as a cost item, the former opposing considering it as an eligible expense and the latter favoring doing so. The half-fare requirement of 49 CFR Part 609 remains in effect, and we are proposing in the NPRM to incorporate it into this Part. It is clearly a program specifically designed to assist elderly and handicapped persons, which the Department requires recipients to implement. It is therefore reasonable to regard the incremental costs of compliance as eligible, and the Department has decided to do so.

Section 27.101 Technical exemptions.

The Department has drafted this rule with the intent of providing substantial flexibility to recipients. Nevertheless, we realize that there may be a few unusual situations in which application of the general requirements of the rule could prove unduly burdensome or unreasonable. The Department, therefore, has decided to include an exemption provision in the rule. The Department's experience under the 1979 regulation on this subject, as well as under other rules, suggests that it is valuable to have a stated procedure for technical exemptions and standards for decision to guide recipients' applications and the Department's responses to them.

Section 27.103 Alternate Procedures for Recipients in States Administering Section 5, 9, and 9A Programs.

The Department has added a new procedural section for recipients in states which have elected to administer certain UMTA funding programs. The recipients have the same obligations as all other recipients, but they will send their program materials and other submissions to the state rather than to UMTA.

Technical Amendments to Part 27

Part 27, as published in 1979, refers throughout to the American National Standards Institute (ANSI) standards for physical accessibility of structures and other facilities. This reference is now obsolete. For purposes of all of Part 27, the new Uniform Federal Accessibility Standards (UFAS) are now the relevant accessibility standards. The General Services Administration has incorporated the UFAS into its mandatory accessibility standards for Federal and Federally-assisted facilities. These standards are already binding on DOT grantees, and we wish to update Part 27 to refer to them. This should help to avoid confusion.

Therefore, all references to the ANSI standards in Part 27 have been changed to refer to the UFAS. The language of the change to § 27.67, incorporating the principal UFAS reference, is drawn from a Department of Justice model amendment on the subject. The language of the various sections affected by this technical change is not changed substantively. However, we have inserted the word "apparent" in §§ 27.71(a) and 27.73(a) (". . . where there is *apparent* ambiguity or contradiction . . .") to emphasize that the intent of the rule is to read the UFAS and specific provisions of the DOT rule together, and that the one is not intended to allow noncompliance with the other.

When the Department published its section 504 rule in 1979, the section concerning the Federal Aviation Administration's airport programs contained a reference to "jetways." Subsequently, we learned that, like "Xerox" and "Kleenex," "Jetway" is a trade name not properly used in a generic sense. We promised to correct the oversight quite a while ago and, even though this rulemaking has to do with mass transit rather than airports, this seems like a good time to do it.

Comment Period

The Department originally established a 60-day comment period for the September 8, 1983, NPRM, which was scheduled to end on November 8. However, the Department received a number of requests, mostly from handicapped persons and their groups, requesting that the comment period be extended. These commenters suggested that the extension was needed in order to permit commenters—particularly disabled commenters—adequate time to frame their responses to the Department's proposal. The Department did extend its comment period for another 30 days, with the comment period closing on December 8, 1983.

Public Hearings

A number of commenters, primarily disabled persons and groups representing them, requested that the Department hold public hearings about the proposed regulation. In informal rulemaking under 5 U.S.C. 553, public hearings are not required by law. The Department decided that such hearings were not warranted in this rulemaking. The extended comment period gave all interested parties a fair opportunity to present their views, and the 650 persons and organizations who commented appear to represent a broad spectrum of points of view on the issues. Between the comments, and the studies that the Department conducted on transportation services for handicapped persons to provide more information on issues raised by the comments, the Department believes it has obtained the information it needs on which to base a reasonable final rule.

Impact on Small Entities

This rule could have a significant economic impact on a substantial number of small entities. The Department is required to consider and analyze such impacts by the Regulatory Flexibility Act. The small entities potentially affected include small UMTA recipients (including section 18 subrecipients), social service organizations, private transportation providers, and manufacturers of lifts and other specialized equipment used in transportation services for handicapped persons.

Transit systems in rural areas and cities under 50,000 population are not significantly affected by this regulation. These recipients of section 18 funds are subject to a special provision for small recipients, which imposes requirements less stringent and more flexible than those applying to larger cities. The small recipients will have no more substantive

requirements to meet than under present regulations. They will have small additional reporting burdens, though these too are less burdensome than the reporting requirements with which larger systems must comply.

Proportionately speaking, the rule will create the heaviest burdens on cities between 50–200 thousand population. That is, systems in these cities will have the most difficult time meeting the rule's service criteria for relatively low costs. The rule's limit on required expenditures is designed to prevent such systems from incurring undue financial burdens, by limiting required expenditures to 3.0 percent of the recipient's operating costs, as reflected in its section 15 report to UMTA. This "cost limit" device allows recipients to scale down services to those they can provide with a reasonable expenditure of resources.

The rule is likely to have a favorable impact on a number of small businesses, such as lift manufacturers, shops that customize small vehicles for use by handicapped persons, and private providers of transit services to handicapped persons (e.g., taxi cab companies, firms that operate specialized vans). The rule, by requiring more and better transportation for disabled persons, will increase the market for the products and services these businesses provide.

Notice of Proposed Rulemaking on Commuter Rail

The Department made no specific proposals concerning commuter rail systems in the September 1983 NPRM. That NPRM did request comment on what, if anything, the Department should require in the commuter rail area. The Department received few comments on this issue, most of which were from handicapped persons who wanted commuter and other rail systems to be accessible or from transit providers who said there should be no requirements concerning commuter rail.

These comments presented little, if any, data on the need for accessible commuter rail service, the population to be served, or the costs and other advantages and disadvantages of different approaches to commuter rail service. The Department does not have such data of its own, at the present time. In the absence of this information, it would be premature to promulgate a final rule.

Consequently, the Department decided to publish a new NPRM concerning commuter rail. This notice requests comment on specific alternatives for providing commuter rail service to disabled persons. In addition, it requests information concerning the need for and costs of such service. Before making a decision on whether to proceed to a final rule on this subject, the Department also intends to undertake or review studies on commuter rail accessibility, in order to ascertain whether there is a sufficient basis for such action.

This NPRM will also propose incorportation of some portions of 49 CFR Part 609 in 49 CFR Part 27 and to remove the rest of Part 609.

Environmental Considerations: Finding of No Significant Impact

The Department of Transporation finds, under the standards of the National Environmental Policy Act, that the implementation of this rule will not have a significant impact on the human environment. The regulation requires improvements in services for handicapped persons; these improvements will increase the mobility of handicapped persons, but should not have any significant impacts on the environments of communities generally. The economic impacts of the rule are discussed in detail in the Regulatory Impact Analysis.

In connection with its 1979 rule on this subject, the Department produced an Environmental Impact Statement (EIS). With respect to bus systems, the EIS considered the impacts of a 100 percent accessible bus system. (Since this rule does not require 100 percent bus accessibility, its impacts would be smaller than those of the 1979 rule). The 1979 EIS found that, to the extent that lift-assisted bus boardings cause traffic delays, additional carbon monoxide (CO) emissions would occur from the vehicles following the bus. In all cases analyzed, total annual additional CO emissions amounted to a very small fraction of areawide CO emissions. The increase in bus weight due to the lift would result in slightly increased nitrogen oxide (NO) emissions; the increase is estimated at 0.24 percent to 0.40 percent of total roadway NO emissions. The macroscale impact of this increase would be imperceptible. Construction to provide access to fixed facilities would cause short-term increases in suspended particulates only within 100 feet of the construction. These increases were well below EPA standards for suspended particulates.

The Department also considered potential impacts for paratransit systems. The most important air quality impact from paratransit services would be the additional emissions from this new fleet of vehicles added to general urban traffic. Depending upon the vehicles used for the paratransit service and the number of trips served, total CO emissions, if all recipients used paratransit, could vary from about 3,000 to 75,000 tons per year in urban areas across the country. The areawide CO emissions from paratransit would be insignificant compared to the total areawide CO emissions from all vehicles and other sources.

The likely noise impacts from accessible transit systems, such as those from operation of the lift and slightly increased dwell times, were found to be insignificant. Construction activities to make fixed facilities accessible might result in some very short-term impacts with peak noise levels exceeding recommended EPA levels, but not in the hearing loss range. Exposure to noise would be short since the activities creating those noise levels (such as operation of a jack hammer) are short-term and the unprotected passerby would not be in the immediate vicinity for long periods. Mitigation measures such as barrier enclosure or scheduling the work to reduce the number of passersby exposed would reduce the impacts.

For these reasons, we have concluded that there would be no significant impact on the human environment, and we have therefore not prepared an EIS for this rule.

Regulatory Process Matters

This rule is a significant rule under the Department of Transportation Regulatory Policies and Procedures and a major rule under Executive Order 12291. As a result, the Department has prepared a Regulatory Impact Analysis in connection with this rule. The analysis is available for public review in the rulemaking docket.

The Office of Management and Budget has approved, in connection with the NPRM for this rule, the information collection requirements it contains. These information collection requirements are virtually the same in the final rule as they were in the NPRM. The OMB Paperwork Reduction Act number for these information collection requirements is 2132–0530. The current OMB clearance for these requirements expires April 30, 1989.

The Department of Justice has reviewed and approved this rule under Executive Order 12250 and OMB has reviewed and approved the rule under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transporation takes the following actions:

PART 27—[AMENDED]

1. The authority citation for Part 27 is revised to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under section 317 (c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

1a. Paragraph (a) of the definition of "Accessible" in § 27.5, in Subpart A of Part 27, in Title 49 of the Code of Federal Regulations, is revised to read as follows:

§ 27.5 Definitions.

* * * * *

"Accessible" means (a) with respect to new facilities, (1) conforming to the accessibility standards referenced in § 27.67(d) of this Part, with respect to buildings and facilities to which these standards are applicable; and (2) with respect to vehicles other moving conveyances, (or fixed facilities to which the standards referenced in § 27.67(d) of this Part do not apply,) able to be entered and used by a handicapped person;

* * * * *

2. Paragraph (d) of § 27.67, in Part 27 of Title 49 of the Code of Federal Regulations, is retitled *"Accessibility Standards"* and revised to read as follows:

§ 27.67 [Amended]

* * * * *

(d) *Accessibility standards.* Effective as of the effective date of this Subpart, design, construction, or alteration of buildings or other fixed facilities in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings or other fixed facilities. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building or other fixed facilities is provided.

(1) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(2) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

3. Paragraph (a)(1) of § 27.71, in Part 27 of Title 49 of the Code of Federal Regulations, is amended by removing the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.71 [Amended]

(a) * * *

(1) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(2) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section.

* * * * *

4. Paragraph (a)(1)(i) of section 27.73 in Part 27 of Title 49 of the Code of Federal Regulations is amended by removing, the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.73 [Amended]

(a) * * *

(1) * * *

(i) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(1)(ii) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section.

§§ 27.71, 27.73, and 27.75 [Amended]

5. In each of paragraphs 27.71(a)(2) introductory text, 27.71(a)(2)(ix), 27.71(a)(2)(xii), 27.73(a)(1)(ii) introductory text, 27.73(a)(1)(ii)(L), and 27.75(a)(1), all of which are in Part 27 of Title 49, Code of Federal Regulations, the words "ANSI standards" are removed, and the following words are substituted: "accessibility standards referenced in § 27.67(d) of this Part."

6. Paragraph 27.71(a)(2)(v), in Subpart D of 49 CFR Part 27, is amended by removing the word "jetways" therefrom and substituting the words "level entry boarding platforms".

§ 27.77 and Appendix B to Subpart D [Removed]

7. Section 27.77, in Subpart D of Part 27 and Appendix B to that Subpart, in Title 49 of the Code of Federal Regulations, are removed.

8. In Part 27, in Title 49 of the Code of Federal Regulations, the words "Mass Transit" are removed from the title of Subpart D.

9. The table of contents for Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following:

Subpart E—Mass Transportation Services for Handicapped Persons

10. Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following definitions to § 27.5 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 27.5 [Amended]

* * * * *

"Mixed System" means a transportation system that provides accessible bus service to handicapped persons in certain areas or during certain hours and provides special service to handicapped persons in the other areas or during the other hours in which the transportation system operates.

* * * * *

"Special service system" means a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by handicapped persons, demand-

responsive service, point of origin to point of destination service, and flexible routing and scheduling.

* * * * *

11. Part 27 of Title 49, Code of Federal Regulations, is amended by adding a new Subpart E, which reads as follows:

Subpart E—Mass Transportation Services for Handicapped Persons

§ 27.81 Program requirement.

Except as provided in § 27.91(a) of this Subpart, each recipient of UMTA financial assistance under sections 3, 5, 9, or 9A of the UMT Act, which provides transportation services to the general public by bus, shall establish a program meeting the requirements of this Subpart. The program shall ensure provision of service to handicapped persons at the full performance level required by § 27.95 of this Subpart within the time called for by that section. The program shall include milestones describing the progress the recipient shall make each year until it achieves the full performance level.

§ 27.83 Public participation and coordination.

(a) Each recipient required to submit a program under this Subpart shall develop its program through a public participation process that includes, as a minimum, the following steps:

(1) The recipient shall consult, as early as possible in the planning process, with handicapped persons and groups representing them, transportation and social service organizations, concerned state and local officials, and the Metropolitan Planning Organization (MPO). This consultation shall concern the needs for service to handicapped persons in the area served by the recipient, any weaknesses or problems in present service or plans for service, and the types and characteristics of service to be provided under the recipient's program. In connection with this consultation, all cost estimates, plans, working papers, and other information pertaining to the recipient's program planning and service for handicapped persons shall be made available to all interested persons.

(2) The recipient shall provide a public comment period of at least 60 days upon the recipient's proposed program.

(3) The recipient shall hold at least one public hearing, to take place during the public comment period. Notice of the hearing shall be provided no fewer than 30 days before its scheduled date. The hearing shall be held in a facility accessible to handicapped persons, and the recipient shall take appropriate steps to facilitate the participation of handicapped persons in the hearing, including persons with impaired visiion or hearing.

(4) The recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use.

(b) The recipient shall coordinate the development of its program with the MPO and submit its proposed program to the MPO for comment at the same time as the proposed program is made available for public comment.

(c) The recipient shall make efforts to accommodate, but is not required to adopt, significant comments on its proposed program made by the MPO and by the public, as part of the public participation and coordination process. The recipient shall make available to the public, no later than the time it adopts a program for transmittal to UMTA, a response to significant comments. This response shall include the recipient's reasons for not accommodating significant comments from the MPO and the public.

(d) All recipients subject to the program requirement of § 27.81 shall provide a mechanism for continuing public participation in the development and operation of its system of transportation for handicapped persons. The mechanism shall ensure consultation, with respect to planning, implementation, and operation, with handicapped persons, available advocacy groups of handicapped persons, public and private social service agencies, public and private operators of transportation services for handicapped persons, and other interested persons.

(e) Before making significant changes to its program, the recipient shall follow the public participation process outlined in paragraphs (a)–(c) of this section and secure UMTA approval of the altered program as provided in § 27.85 of this Subpart for initial program submissions.

§ 27.85 Submission and review of program.

(a) Each recipient required to establish a program under § 27.81 of this Subpart shall submit the following materials to the appropriate UMTA Regional Administrator within 12 months of the effective date of this Subpart:

(1) A copy of the program;

(2) The comments of the public (including handicapped persons and the MPO) on the program, together with the recipient's responses to these comments, or summaries thereof;

(3) Documentation of the projected costs of implementing the recipient's program, the costs of alternatives considered by the recipient, the projected amounts of the limitation on required expenditures for the recipient, and the rationale for any reduction of service quality below a level meeting fully the service criteria of § 27.95 (b), (c), or (d), as applicable.

(b) UMTA shall complete review of each recipient's program submission within 120 days of receiving it. UMTA may extend this review period; if UMTA does so, UMTA shall send the recipient a letter, before the end of the 120-day period, explaining the reasons for the extension and providing an estimated date for the completion of review.

(c) After UMTA has completed its review on each recipient's program submission, it shall notify the recipient, in writing, that the program is either approved as submitted, requires certain specified changes in order to be approved, or is disapproved. If the program is not approved as submitted, the notification shall set a time, not less than 30 nor more than 90 days from the date of the notification, within which the recipient shall submit a modified program to UMTA for approval. UMTA may condition approval of the resubmitted program on specified changes to its content or additional public participation activities.

§ 27.87 Provision of service.

(a) Each recipient shall, at all times, provide the service called for by its program, as approved by UMTA, or under its certification pursuant to § 27.91, as applicable, to all eligible handicapped persons.

(b) The recipient's obligation to ensure the provision of such service includes, but is not limited to, the following:

(1) Ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition;

(2) Ensuring that sufficient spare vehicles are available to maintain the levels of service called for in the program, or as provided under the § 27.91 certification;

(3) Ensuring that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat handicapped users of the service in a courteous and respectful way; and

(4) Ensuring that adequate assistance and information concerning the use of the service is available to handicapped persons, including those with vision or

hearing impairments. This obligation includes making adequate communications capacity available to enable users to obtain information about and to schedule service. In the case of a scheduled accessible bus system, this obligation also includes providing information on bus schedules and other sources of information about the service concerning which runs are made with accessible buses.

(5) Ensuring that service is provided in a timely manner, in accordance with scheduled pickup times.

(c) Notwithstanding the provision of any special service to handicapped persons, a recipient shall not, on the basis of handicap, deny to any handicapped person the opportunity to use the recipient's system of mass transportation for the general public, if the handicapped person is capable of using that system. Nor shall a recipient otherwise discriminate against a handicapped person in connection with the provision of its transportation service for the general public.

(d) In the time between the effective date of this Subpart and the recipient's achievement of the full performance level established by § 27.95, service at least at the level provided pursuant to the recipient's certification under former § 27.77 of this Part (46 FR 37488; July 20, 1981), as amended, shall remain in effect.

§ 27.89 Monitoring.

(a) In connection with the triennial section 9 review and evaluation of the recipient's activities conducted by UMTA under 49 U.S.C. 1607a(g)(2), UMTA shall review and evaluate compliance of the recipient with this Subpart and its approved program for providing transportation services to handicapped persons.

(b) With respect to any recipient required to submit a program under § 27.81 of this Subpart, but which is not subject to a section 9 triennial review audit, UMTA shall conduct a triennial review and evaluation of the recipient's compliance with this Subpart and its approved program for providing transportation services to handicapped persons.

(c) If the recipient has fallen behind its approved schedule for implementing service to handicapped persons or has fallen below its full performance level for that service, the recipient shall submit a report to the appropriate UMTA Regional Administrator on the annual anniversary date of the approval of its program. The report shall describe the problem or delay experienced, explain the reasons for it, and set forth the corrective action the recipient has taken or is taking to ensure that its approved implementation schedule or its full performance level is met.

§ 27.91 Requirements for small recipients.

(a) This section applies to all recipients which provide service to the general public only in areas of 50,000 population or less. Recipients in this category shall follow the requirements of this section instead of the other requirements of this Subpart, except that § 27.87 shall apply to recipients in this category.

(b) Within 12 months of the effective date of this Subpart, each recipient shall certify that special efforts are being made in its service area to provide transportation that handicapped persons, unable to use the recipient's service for the general public, can use. This transportation service shall be reasonable in comparison to the service provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time. Recipients who have a current certification to this effect are not required to recertify.

(c) Within nine months of the effective date of this Subpart, each recipient shall ensure that handicapped persons and groups representing them have adequate notice of and opportunity to comment on the present and proposed activities of the recipient for achieving compliance with the requirements of paragraph (b) of this section. This notice and opportunity for comment shall take place before the submission of the certification required by paragraph (b) of this section and the report required by paragraph (d) of this section. Each recipient shall also ensure that there is adequate notice and the opportunity for public comment on any subsequent significant changes to its service for handicapped persons.

(d) Within 12 months of the effective date of this Subpart, each recipient shall submit a status report including:

(1) A description of the service currently being provided to handicapped persons, as compared to the service for the general public;

(2) Copies or a summary of the comments of handicapped persons received in response to the opportunity for comment;

(3) A statement of any plans to modify the service significantly; and

(4) A statement of the resources devoted to the service for handicapped persons.

(e) Each recipient shall submit update reports concerning its service for handicapped persons. The recipient shall provide such a report every three years, on a schedule determined by UMTA. Each report will include the following information:

(1) A description of the service currently provided to handicapped persons, as compared to the service for the general public;

(2) Any significant modifications made in the service since the previous report, or planned for the next three-year period;

(3) Copies of a summary of the comments on any significant changes made in the service since the previous report; and

(4) A description of the resources that have been devoted to service for handicapped persons each year since the previous report and that are planned to be devoted to this purpose in each of the next three years.

(f) All certifications and reports under this section shall be submitted to the designated state section 18 agency or, for recipients who do not receive section 18 funds, to the appropriate UMTA Regional Administrator.

§ 27.93 Multi-recipient areas.

(a) This section applies to any multi-recipient area; i.e., an urbanized area including two or more recipients required to establish a program under § 27.81 of this Subpart.

(b) The recipients in a multi-recipient area may enter into a compact for purposes of compliance with this Subpart. The compact shall meet the following standards:

(1) The compact shall establish a cooperative mechanism among the recipients to ensure the provision of combined and/or coordinated service to handicapped persons that meet all requirements of this Subpart.

(2) The compact shall ensure the provision and sharing of funding adequate to provide such service.

(3) The compact shall include a reasonable dispute resolution mechanism concerning funding and service matters.

(4) The compact shall be a formal written document, signed by all participating recipients.

(c) In order for UMTA to recognize the compact as the means through which recipients in the multi-recipient area will comply with this Subpart, the members of a compact shall submit a copy of the signed compact to the appropriate UMTA Regional Administrator within six months of the effective date of this Subpart. Following such timely submission, UMTA shall acknowledge receipt of the compact within 30 days and then regard the members of the compact as if they constitute a single

recipient for purposes of all requirements of this Subpart.

(d) The deadline for the submission of a program under § 27.85 by a multi-recipient area compact shall be 12 months from the date on which the copy of the compact is acknowledged by UMTA under paragraph (c) of this section.

§ 27.95 Full performance level.

(a) *Scope and timing.* Each recipient shall provide transportation service to handicapped persons at the full performance level. The full performance level is defined as meeting the criteria set forth in either paragraph (b), paragraph (c), or paragraph (d) of this section, subject to the limit on required expenditures provided for in § 27.97 of this Subpart. The recipient shall meet this requirement as soon as reasonably feasible, as determined by UMTA, but in any case within six years of the initial determination by UMTA concerning the approval of its program.

(b) *Criteria for special service systems.* The following minimum service criteria apply to special service systems:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service.

(2) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the special service.

(4) *Fares.* The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the recipient's bus service for the general public.

(5) *Hours and days of service.* The special service shall be available throughout the same hours of days as the recipient's bus service for the general public.

(6) *Service area.* The special service shall be available throughout the circumferential service area in which the recipient provides bus service (exclusive of extended express or commuter bus service) to the general public. The recipient shall also ensure that service to points outside this service area served by the recipient's extended express or commuter bus service shall be available to handicapped persons.

(c) *Criteria for accessible bus systems.* The following minimum service criteria apply to accessible bus systems:

(1) *Number of buses.* The recipient shall operate on the street a number of accessible buses sufficient to meet the other service criteria of paragraph (c)(2) and/or (3) of this section, as applicable.

(2) *Criteria for scheduled accessible bus systems.*

(i) *Hours and days of service.* Scheduled accessible bus service shall be available throughout the same hours and days as the recipient's bus service for the general public. The service shall be provided at reasonable intervals that make practicable the ready use of the accessible bus service by handicapped persons.

(ii) *Service area.* Accessible bus service shall be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the planning and public participation process set forth in § 27.83.

(iii) *Fares.* The fare for a trip charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(3) *Criteria for on-call accessible bus service.*

(i) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's on-call accessible bus service.

(ii) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(iii) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the on-call accessible bus service.

(iv) *Fares.* The fare charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(v) *Hours and days of service.* On-call accessible bus service shall be available throughout the same days and hours as the recipient's bus service for the general public.

(vi) *Service area.* On-call accessible bus service, including all buses needed to complete each handicapped person's trip, shall be provided, upon request, on all the recipient's bus routes.

(d) *Criteria for mixed systems.* The service criteria of paragraphs (b) and (c) of this section apply to the special service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times, in which each operates. The recipient shall ensure that the accessible bus and special service components of the mixed system are coordinated (including transfers between the components) so that inconvenience to handicapped users of the mixed system is minimized.

(e) *Services by other agencies and modes of transportation.* In meeting the service criteria, the recipient may use services provided, and funded, by agencies other than the recipient, and services delivered through other modes of transportation, if the services provided by the other agencies or through other modes of service are part of a system of transportation coordinated by the recipient.

§ 27.97 Limit on required expenditures.

(a) *Calculation.* To determine its limit on required expenditures for a given fiscal year, the recipient shall calculate 3.0 percent of its total annual average operating costs (as reported to UMTA in compliance with requirements under section 15 of the Urban Mass Transportation Act, as amended) it reasonably expects to incur in the current fiscal year and did incur during the previous two fiscal years.

(b) *Effect.* A recipient is not required, in any fiscal year, to spend more than the amount of its limit on required expenditures for that fiscal year in order to comply with this Subpart, even if, as a result, the recipient cannot provide service to handicapped persons that fully meets the service criteria specified by § 27.95 (b), (c) or (d), as applicable. Each recipient shall, in all cases, comply with § 27.95 (b)(1) or (c)(3)(i), as applicable.

(c) *Consultation.* In determining how to reduce service levels in order to avoid exceeding the limit on required expenditures, the recipient shall consult with handicapped persons and the public through the public participation mechanism established under § 27.83(d) of this Subpart.

§ 27.99 Eligible expenses.

(a) Only expenditures by the recipient of its own funds, specifically to comply with the requirements of this Subpart, are eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(b) The expenditures by the recipient that may be counted in determining whether the recipient has exceeded its limitation on required expenditures are limited to those listed in this paragraph.

No other expenditures may be counted for this purpose.

(1) Capital and operating costs for special services systems;

(2) Incremental capital and operating costs for accessible bus systems;

(3) Administrative costs directly attributable to coordinating services for handicapped persons.

(4) Incremental costs of training the recipient's personnel to provide services to handicapped persons.

(5) Incremental costs of compliance with 49 CFR 609.23.

(6) Incremental costs of construction or modification of facilities to enable handicapped persons to transfer readily between accessible bus or special service systems and accessible rail systems, provided that such construction or modification is part of the recipient's program approved under § 27.85 of this Subpart.

(c) With respect to service provided to both handicapped persons eligible to receive service under this Subpart and to other persons, only expenditures attributable to the transportation of the eligible handicapped persons may be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(d) Expenditures for the purchase of vehicles and other major capital expenditures shall be annualized over the expected useful life of the item. Only the portion of the expenditure attributable to a given fiscal year may be counted in determining the recipient's eligible expenses for that year.

§ 27.101 Technical exemptions.

(a) A recipient may request a technical exemption from any provision of this Subpart. Such a request shall be made in writing, to the Administrator of the Urban Mass Transportation Administration, through the appropriate UMTA Regional Administrator. The request may be made in conjunction with the submission of the recipient's program under § 27.85 of this Subpart.

(b) The Administrator may grant the request if—

(1) The recipient has demonstrated that special local circumstances, not contemplated or taken into account in the rulemaking establishing this Subpart, make it unduly burdensome or unreasonable for the recipient to comply with a generally applicable requirement; and

(2) The recipient has agreed to take action which the Administrator determines will result in substantial compliance with this Subpart despite the grant of a technical exemption from a particular provision of this Subpart.

(c) The Administrator may grant, partially grant, or deny any request for a technical exemption. The Administrator may also place any reasonable conditions upon the grant of a technical exemption. The Administrator's actions are subject to the concurrence of the Assistant Secretary for Policy and International Affairs.

§ 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

(a) If a state has elected to administer UMTA's section 5, 9, and 9A programs for UMTA, the recipient shall submit the materials required by §§ 27.85, 27.89(c), 27.91(f), and 27.93(c) of this Subpart to the designated state agency rather than to UMTA. The designated state agency shall act for UMTA to review and approve, as required, the materials submitted by the recipients. The time limits and procedures imposed on UMTA in these provisions shall apply to the designated state agencies.

(b) After the designated state agency has approved the recipient's program under § 27.85, it shall certify to UMTA that the recipient is in compliance with this Subpart. This certification is due to UMTA within 30 days of the approval of the program and it shall state whether the recipient has entered into a compact under § 27.93.

§§ 27.105-119 [Reserved]

Appendix to Subpart E

The material in this appendix describes the Department's interpretation of the provisions of this regulation. (For additional information concerning these provisions, please refer to the preamble published with this regulation in the **Federal Register**.) This material may be supplemented or modified, in the future, by additional guidance from the Department, including UMTA, as questions arise during the implementation of the regulation.

Section 27.81 Program requirement.

This section directs UMTA recipients who receive funds under sections 3, 5, 9, or 9A; serve the general public; and operate a bus system in an urbanized area to establish a program, consistent with this regulation's requirements, for providing transportation services to handicapped persons. Each of the qualifications of this requirement is intended and important.

Recipients receiving funds only under another section (e.g., section 8 planning funds; section 18 small urban and rural transportation program funds) do not need to create a program.

Recipients who do not provide federally-assisted transportation services at all (e.g., an MPO that receives section 9 funds but merely passes them through to a transit provider) are not required to establish a program. "Providing transportation services," in this context, is not limited to actually operating a fleet of the recipient's own vehicles with the recipient's own personnel. For example, private provider may operate federally-assisted service (e.g., as part of a private-sector participation initiative). The recipient would be providing transportation service for purposes of this section, and be responsible for ensuring that service to handicapped persons that fully meets regulatory requirements is provided, directly or through the private provider.

Only recipients providing transportation services to the general public (as distinct from providing services only to elderly or handicapped persons) are required to establish a program. Even though section 16(b)(2) funds are taken from section 3 appropriations, agencies receiving funds solely under this program are not covered by this section's requirements.

Recipients under other UMTA funding programs, if they serve only elderly and/or handicapped persons, are exempted from this requirement for the same reason. Also, recipients who do not provide transit services "by bus" (i.e., rail-only operators) are not covered by this requirement.

Section 27.91(a) creates a separate, simpler system through which section 18 recipients and other recipients in non-urbanized areas (even though they receive some section 3,5,9, or 9A funds) will comply with the requirements of this Subpart. That section, and not § 27.81, applies to recipients providing service only in areas of less than 50,000 population.

The recipient's program must provide for meeting the full performance level for services to handicapped persons within the phase-in period provided for by § 27.95. The program must include "milestones": statements of the progress a recipient will make each year toward the full performance level.

For example, a recipient planning to comply by making its buses accessible would set forth how many accessible buses it would have by the end of year one, year two, etc., and to what degree it would meet each of the various service criteria at each stage. Similar items would be presented for other needed tasks, such as driver training, structural improvements to facilities, or information services. In its review of recipients' programs, UMTA will consider whether the milestones are realistic and provide for an appropriately phased build-up to the full performance level.

These milestones are very important, and recipients should think them out very carefully. The milestones in a recipient's program, once they are approved by UMTA, became the benchmarks against which the recipient's compliance is evaluated during the phase-in period. That is, the milestones to which a recipient commits itself during the phase-in period, like the full performance level subsequently, are the levels of performance that the recipient must meet to be considered in compliance.

The recipient has to include other information in its submission, along with the program itself. Much of the required information is listed in § 27.85. Other material that should be submitted, if applicable, concerns the continuing public participation mechanism, the criteria and procedure for

determining eligibility, and accessible bus system routing and scheduling.

Section 27.83 Public participation and coordination.

The requirements for this section apply only to those recipients which must submit a program, since the section mostly pertains to the public participation and coordination process involved with preparing and adopting a program. The requirements of this section are minimum requirements. Recipients may go beyond them (e.g., a comment period longer than 60 days).

Subparagraph (a)(1) requires recipients to consult, as early as possible in the planning process, with interested people and groups. The idea of early consultation is important. Handicapped persons and groups, transportation and social services agencies, state and local officials, and the Metropolitan Planning Organization (MPO) should be regarded as partners in the planning process from the outset, not simply as commenters upon a proposed program that is already fully developed by the recipient.

The recipient's consultation should deal with the entire spectrum of concerns involved in planning service for handicapped individuals. Subsection (a) (1) mentions specifically service needs, weaknesses or problems in present service or existing plans for service, and the types and characteristics of service to be provided under the recipient's program.

Some recipients may already have a public participation mechanism in place, such as an advisory committee. The recipient may use such an existing mechanism. However, the recipient should ensure that all relevant parties have the opportunity to be included in the consultation process, even if they have not regularly participated in the advisory committee. For example, a recipient may have an advisory committee with membership drawn from several, but not all, organizations concerned with disability issues in the area, but in which the MPO is not normally represented. The recipient could base its consultation required by this subparagraph on the advisory committee, being sure that members of the additional organizations of disabled persons, social service agencies, and the MPO also were consulted and had the opportunity to participate.

The last sentence of subparagraph (a)(1) provides that cost estimates, plans, working papers and other information pertaining to the recipient's program and service for handicapped persons must be made available to all interested individuals and groups. In order to participate constructively in the planning process, those parties with whom the recipient is working need to have access to the information available to and the thinking of members of the recipient's staff. Information relevant to service cannot be viewed as "classified" or withheld from interested persons. This requirement also applies to the continuing public participation process (e.g., relevant information must be provided to an advisory committee).

In the remainder of this section, there are serveral references to the recipient's "proposed program." A proposed program is a document that the recipient has developed through its planning process. It should reflect the view of the recipient concerning such key subjects as the type and characteristics of service, schedule for implementing the service, and the funding of the service. The proposed program should not be merely a general request for views or represent an immutable decision by the recipient on what it will provide. The proposal should be sufficiently thorough and detailed to permit commenters and speakers at the public hearing to make informed criticisms and suggestions for improving the recipient's plans.

Subparagraph (a)(2) requires the recipient to provide a public comment period of at least 60 days on the proposed program. During the 60-day comment period, subparagraph (a)(3) provides that the recipient shall hold at least one public hearing. Notice of the hearing must be provided at least 30 days before the date on which the hearing is scheduled. The recipient could, for example, in notifying the public of the comment period, set a date, at least 30 days later, for the hearing, thereby avoiding the necessity for a second notice.

All hearings must be held in an accessible facility, and, if it is reasonably anticipated that persons with vision or hearing impairments will participate in the hearing, the recipient must take appropriate steps to facilitate their participation. For example, the recipient would have to ensure that an interpreter for deaf persons, or an individual to help communicate information contained on charts, graphs, or other visual aids to blind persons, was present at the hearing. The recipient should also select a time and place for the hearing that maximizes convenience to handicapped persons.

The regulation does not require that the public hearing involved be dedicated solely to the recipient's proposed program. Adequate time should be provided to ensure that all interested parties who wish to participate in the hearing have the opportunity to do so. The recipient must ensure that participation concerning the recipient's proposed program is not deterred by such techniques as the placement of its discussion at the end of a lengthy and time-consuming agenda. The program need not be the only, but should be the primary, matter discussed at any hearing held to meet the requirements of this section.

Subparagraph (a)(4) provides that the recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use. This implies notice being given in print (i.e., notices, placards in buses, newspaper advertisments, etc.) and by oral means (e.g., radio spots). For written materials other than notices of the comment period and the hearing, such as program documents and supporting information, the recipient should ensure that there are means of assisting visually handicapped individuals in learning the contents of these materials. It should be emphasized that this does not mean the recipient's personnel necessarily have to be used for this purpose. The recipient could also work with local voluntary or social service organizations to ensure that this service is provided.

Paragraph (b) requires the recipient to coordinate the development of its program with the MPO as well as to submit the proposed program to the MPO for comment at the same time as it is submitted to the public. The MPO, and concerned state and local governments, are intended to work with the recipient throughout the planning and implementation of the program.

Paragraph (c) of this section is the so-called "accommodate or explain" requirement. It should be emphasized that this paragraph does not require a recipient to make a point-by-point response to every comment. Nor does it require a recipient to agree with or adopt any or all comments it has received. The recipient is required to respond to "significant" comments it receives. That is, the recipient should respond to comments raising important substantive issues about the proposed program. Nonsubstantive or trivial comments need not receive responses.

Recipients' responses to comments may be relatively brief, so long as they give cogent reasons for the recipient's decision not to adopt a particular comment, to make a change requested by a comment, or to respond to a concern expressed by a commenter in a way different from that a commenter suggested.

The recipient may respond to comments in a variety of ways, such as letters to commenters, a preamble to the final program submitted to UMTA and made available to the public, or a separate document made available to all interested commenters and other members of the public. This document or documents should make clear to the public and to UMTA which commenters (and/or categories of commenters, in the case of individuals) made certain comments and the reasons for the recipient's responses.

Paragraph (d) concerns continuing public participation. This paragraph is not, as such, a requirement for an advisory committee. The recipient, as part of its program, may decide upon a mechanism to assure continuing public participation other than an advisory committee. The adequacy of any such mechanism would, of course, be reviewed by UMTA as part of its review of the recipient's program submission.

In setting up its advisory committee or other mechanism, the recipient should ensure its mechanism is widely representative of groups, interests and points of view on its service. Sharing of all relevant information is extremely important. An advisory committee or other public participation mechanism is of little use—and is inconsistent with the intent of this regulation—if its members are kept in the dark and their recommendations are ignored.

However, the views of the advisory committee or other continuing public participation mechanism are not required to be more than advice or recommendations. The rule does not require that the recipient adopt the suggestions of the participants in the process, or that an advisory committee be given veto or "sign-off" authority. Recipients may provide for stronger or more extensive

roles for the participants in the continuing public participation process than the rule requires, however.

Paragraph (e) requires the recipient to follow the same public participation process for significant changes to its program as in the adoption of its initial program submitted to UMTA. The intent of this requirement is to ensure that interested persons and groups have the same opportunity to participate when the recipient makes significant changes in its program as when the initial program is put together. A re-run of the public participation process in this situation would not postpone the time at which the recipient is responsible for meeting the full performance level of § 27.95, however.

The Department intends this requirement to apply only to major alterations in the scope or direction of the recipient's program and service. It would apply, for example, if the recipient, having adopted, in its original program, a transit authority-operated paratransit system, decided to change to an accessible bus system. Even if the recipient was not changing the mode of delivering transit services to handicapped persons, the requirement could apply in the case of a major cutback or realignment of its existing service.

Recipients would not have to renew the public participation process in the case of fine tuning of or routine adjustments to service. (The recipient would have to consult through the continuing public participation mechanism on such changes, however.) If the recipient is in doubt about whether or not it should renew the public participation process of paragraph (a)–(c), the recipient should consult the UMTA Regional Office for guidance.

Section 27.85 Submission and review of program.

Paragraph (a) of this section directs all UMTA recipients who must create a program under § 27.81 to submit certain materials to the appropriate UMTA Regional Administrator for review and approval within 12 months of the effective date of this rule. Timely performance of this duty is a condition of compliance with the regulation.

Subparagraphs (a) (1) and (2) require the recipient to submit to UMTA copies of the comments on the recipient's program and the recipient's responses to these comments. The recipient could submit photocopies of the comment letters it received and the responses it sent back to commenters to whom the recipient replied by letter. The recipient could submit summaries of comments and responses. The recipient could send a copy of the transcript of the public hearing. The recipient could send summaries of the comments and its responses to them, including summaries of presentations at the public hearing. It is not intended that informal replies made by the recipient's officers and employees at a hearing would be sufficient to constitute replies to comments for purposes of the "accommodate or explain" requirement, however. Whatever way the information is provided, it should allow UMTA to learn the substance of the comments and the identity of the persons or groups making the comments.

The planning process should involve a thorough analysis of the alternatives for providing transportation services to handicapped persons. The supporting documentation for the program submission should clearly reflect this analysis of alternatives (see subparagraph (a)(3)). Given what appear to be potential significant cost and cost-effectiveness advantages for private-sector related alternatives like user-side subsidies and coordination of services, and consistent with UMTA policy statements on private sector participation and user-side subsidies, UMTA will pay particular attention to recipients' consideration of these alternatives.

In looking at the costs of alternatives, including the alternative recommended in the recipient's program, the recipient should document expected eligible costs, including recurring as well as one-time capital and operating costs. This consideration of costs should cover the phase-in period to the full performance level, as well as the projected cost of providing service at the full performance level.

Subparagraph (a)(3) also requires recipients to calculate their limit on required expenditures. These limits should be estimated for at least the phase-in period and the first year of service at the full performance level. Recipients requesting approval of programs providing service that does not fully meet the service criteria should also include information about the cost, and cost-effectiveness, of trade-offs that recipients propose to make in order to permit their costs to remain below the cost limits, as well as of alternative trade-offs that the recipients considered.

The Department emphasizes that the choice of the mode of service for handicapped persons is the recipient's. However, UMTA may question the planning process or its conclusions and, as part of its response to recipients' submissions, call for additional analytic work or a reconsideration of the recipient's recommendations.

Paragraph (b) sets a 120-day deadline for UMTA to complete review of recipients' programs. If UMTA fails to meet this deadline, it has the obligation to inform the recipient of an extension of the review period before the 120 days have passed. The written notice must state the reason for the extension. It will also include a reasonable estimate of the date on which UMTA will conclude review.

UMTA will carefully scrutinize the recipient's program to ensure that it provides for meeting the full performance level as soon as reasonably feasible, but within the 3-year maximum phase-in period in any event. (UMTA will have the final decision on the appropriate length of the phase-in period.) UMTA will also check the program to ensure that its milestones lead realistically toward the full performance level. UMTA will not approve a program that does not meet these tests.

When UMTA does complete review, paragraph (c) provides that it will send one of three responses to the recipient. First, UMTA can tell the recipient that its program is approved as submitted. In this case, the program may go into effect at once, and the program's schedule for the implementation of service begins to run on the date of UMTA's approval notice. Second, UMTA can specify certain changes that need to be made in the program before it can be approved. Such a response can require both substantive changes (e.g., a change in the time, place, or manner of providing service) and procedural changes (e.g., additional public participation or recipient response to comments if UMTA concludes that procedures had not been fully adequate). UMTA can also require the recipient to revise its analysis or conduct additional analytic work.

The phase-in period would begin at the time of the original UMTA decision not to approve the program as submitted. It would not be appropriate to permit the time necessary for the recipient to fix program deficiencies to delay the implementation of full service to disabled persons. Finally, if it appears to UMTA that the program is so seriously deficient that the recipient needs to completely rework it, or it has been submitted in bad faith, UMTA may disapprove the program. UMTA has the discretion to begin enforcement action under Subpart F at this point.

If the program is not approved as submitted, UMTA's notice will give the recipient a certain amount of time—between 30 and 90 days—to make necessary changes and resubmit it. Like failure to submit a program on time in the first place, failure to resubmit a modified program in the time required by UMTA subjects the recipient to being found in noncompliance with this rule. The time and notice provisions of paragraphs (c) and (d) apply to resubmissions just as they apply to initial submissions.

However, UMTA is not obligated to "bounce" deficient programs back to recipients indefinitely. UMTA may disapprove an original or a resubmitted program, conclude that the recipient is in noncompliance, and begin enforcement proceedings.

Section 27.87 Provision of service.

Recipients have the obligation to actually provide the service to disabled persons that their programs promise. Paragraph (a) of this section makes the general statement that each recipient shall, at all times, provide the service described in its program. The "at all times" language is intended to ensure the continuity of service. For example, a recipient could not, consistent with the requirements of this section, provide service meeting all the requirements of this regulation and its program for the first 2½ weeks of a given month and then provide no service for the remainder of the month. Nor could the recipient provide the service for only 6 months out of the year. The service, moreover, must be provided to all eligible persons. It would not be consistent with this requirement for the recipient to provide service to some eligible persons but not to others.

Paragraph (b) sets out in greater detail some of the specific obligations that compliance with the general service provision requirement of paragraph (a) entails. The first of these is ensuring that

vehicles and equipment are capable of being used by the users to which the service is directed, and are maintained in proper operating condition.

The recipient must ensure that all vehicles the recipient operates or relies upon to meet its obligations under this Subpart are consistently maintained so that the vehicles can get to where they need to go in order to provide service. The recipient must also ensure that lifts and other specialized equipment needed to make vehicles usuable by handicapped persons work consistently so that handicapped persons can actually use the vehicles.

This paragraph also requires that the vehicles and equipment used by the recipient be capable of accommodating all users for which the service is designed. For example, a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on its buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section. (Of course, if a special services component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.)

UMTA will not mandate a particular spare ratio; the recipient's obligation, however, is to ensure that it has sufficient numbers of vehicles in operating condition in reserve, so that if "front line" vehicles must be taken off the road for maintenance or repair, there will be no interruption or decrease in service to handicapped individuals.

The attitudes and skills of providers' personnel are one of the most significant factors in determining whether service for handicapped persons will be good or inadequate. The recipient must ensure that all personnel who may deal with handicapped individuals (whether as drivers or as administrative personnel) know, as necessary, how to operate lifts and other equipment properly, know how to recognize and deal with the different kinds of disabling conditions that the users may have, and deal with handicapped individuals respectfully and courteously. It is the responsibility of the recipient to make sure that this training does take place, and that handicapped users of the service are not treated poorly as the result of inadequate training.

In order to use a transportation system, any individual needs adequate information concerning that service. This is particularly true of handicapped individuals. This provision requires recipients operating scheduled accessible bus systems to provide information on schedules and in other sources of information concerning which bus runs are accessible. It is clear that, unless a potential user knows which bus on which route will be accessible, the user will be unable to take advantage of the service. A recipient need do nothing elaborate to comply with this requirement. For example, an asterisk or other symbol next to accessible bus runs on printed schedules would be adequate in most cases. If the recipient has a telephone information service for the public concerning routes and schedules, that service should provide the same information, and do so in a way useful to hearing-impaired persons (e.g., via a telecommunications device for deaf persons).

In addition to making sure that information and communications links are established, the recipient must also make sure that the communications links have sufficient capacity to accommodate the demand for their use. A paratransit system requiring phone-in reservations that has only one telephone, which is chronically busy, probably cannot provide the kind of service that the recipient's program calls for.

Paragraph (c) of this section is intended to make explicit that the regulation does not permit recipients to engage in disparate treatment, to the disadvantage of handicapped persons, with respect to transportation on the recipient's regular mass transit system. Even though the recipient may also provide special services for handicapped individuals, if a handicapped person is capable of using the recipient's regular service for the general public, then the transit operator cannot deny the service to the handicapped person on the ground of handicap. This means, for example, that a recipient must permit a person using means of assistance such as dog guides or crutches to use its vehicles and services for the general public, if the person can do so. This requirement and the nondiscrimination requirement of Subpart A would also bar actions by recipients that impose unreasonably different or separate treatment for handicapped persons (e.g., an unjustified requirement that a handicapped person, who is able to travel independently, travel with an attendant).

Because this regulation permits a phase-in period between the approval by UMTA of the recipient's program and the achievement by the recipient of the full performance level, paragraph (d) is intended to ensure that there will not be a gap in the provision of any service to handicapped persons by the recipient. In reviewing and approving programs, UMTA will, of course, seek to ensure that the recipient's service to meet the requirements of this Subpart is phased in at a reasonable pace so as to provide for a steady increase in the amount and quality of service provided up to the full performance level. If the recipient is phasing out its former type of service, and phasing in a new type of service, the exact point at which the new service has been phased in, such that the old service can be phased out, will be left to the recipient's judgment, subject to UMTA oversight.

Section 27.89 Monitoring.

Under section 9 of the UMT Act (49 U.S.C. 1607a (g)(2)), UMTA is required, every three years, to review and evaluate the entire spectrum of each recipient's federally-assisted mass transit activities. These triennial reviews will be held on a schedule to be determined by the UMTA Administrator; in all likelihood, they will be held in a staggered basis, so that approximately a third of all recipients are reviewed each year.

Paragraph (a) of this section declares that the review and evaluation of recipients' activities under this regulation will be conducted at the same time as the section 9 review and evaluation. The review and evaluation of transportation services for handicapped persons will be performed by, or at the direction of, UMTA personnel. UMTA may issue further guidance to recipients concerning the recipient's responsibilities in this process. This guidance may include, either on a general or a recipient-specific basis, requests for information necessary to assist the UMTA personnel in the review.

Some recipients will receive their first review and evaluation of performance under this regulation in the second year that their program has been in effect. Others will not receive their review and evaluation until sometime during the third or fourth year after their program has been reviewed and approved. Each recipient will, however, receive subsequent reviews and evaluations every three years after their first review occurs.

Paragraph (b) of this section concerns what is likely to be a very small group of recipients: recipients who are required to submit a program under § 27.81 of this regulation but who, for some reason, do not receive section 9 funds or otherwise are not required to go through a section 9 review and evaluation every three years. Some small recipients, for example, could fall into this category. For recipients in this category, UMTA will conduct a triennial review and evaluation of performance under this regulation just as if such a review were in conjunction with the section 9 review process.

Paragraph (c) of this section concerns what might be called a "slippage report." In its program, each recipient is required to establish a schedule for phasing in its service for handicapped persons until it reaches the full performance level. If recipients fall behind this schedule, paragraph (c) requires them to submit a report to UMTA no later than the program approval anniversary date of any year in which such slippage occurs. The report must detail the kind and degree of slippage that occurred, explain the reason for the problem, and set forth the corrective action that the recipient has taken or is taking to correct the problem and bring its entire program back on schedule. This same reporting requirement applies in any year, after achievement of the full performance level, in which the recipient's service, for any reason, falls below the full performance level.

This reporting requirement is a condition of compliance with the regulation. Failure to make the required report to UMTA is, in itself, a ground for a recipient being found in noncompliance with its obligations under the rule and being subject to sanctions under Subpart F.

Section 27.91 Requirements for small recipients.

This section sets forth a separate set of requirements that apply to section 18 recipients and other recipients (regardless of what UMTA funds they receive) which provide service to the general public only in non-urbanized areas (i.e., areas of 50,000 population or less). As with the requirements for recipients in urbanized areas, these requirements apply only to recipients that provide service to the general public. This section does not apply to section 16(b)(2) recipients or other recipients providing service only to elderly and/or handicapped persons. Recipients covered by this section are not required to follow the requirements of the rest of this Subpart, except for § 27.87, "Provision of Service."

For purposes of this section, the term "recipient" should be understood to refer to the local government agencies and other organizations actually providing transportation service in nonurbanized areas. We are aware that, in the section 18 program, a state agency is the initial recipient of UMTA funds, which the state then passes through to subrecipient service providers. However, the requirements of this section are not intended to apply to the state agencies involved.

Paragraph (b) requires all recipients covered by this section to certify, within a year of the effective date of this Subpart, that they are in compliance with this rule. If a certification of the kind required by this subsection has already been provided by the recipient under the July 1981 interim final rule, and is still in effect, a new certification need not be provided. This should be the case for present section 18 recipients. Otherwise, the certification must be provided within 12 months of the effective date of the Subpart.

The effect of this requirement is that recipients have service in place within the 12-month period following the effective date of this Subpart. Given the relatively small scale of operations by recipients in this category, the 12-month period should be sufficient. This constitutes the "reasonable time" mentioned in the regulation. A similar amount of time would be permitted future new recipients.

The substance of the transportation service that recipients are required to provide in order to be able to make this certification is similar to that required for section 18 recipients under the July 1981 interim final rule. Special efforts must be made to provide transportation that those handicapped persons unable to use the recipient's service for the general public can use. It should be noted that these efforts do not have to be made by the recipient itself; the certification goes to the presence of the "special efforts" service in the service area, not to whom is providing it.

The service provided by recipients must be "reasonable in comparison to the service provided to the general public." This statement embodies a minimum service criterion for the recipient's service to handicapped persons. It requires that the characteristics of service made available to handicapped persons be reasonably comparable to the characteristics of service for the general public. UMTA's monitoring of recipients' service will focus, on a case-by-case basis, on recipients' compliance with this criterion.

The second minimum service criterion requires that the service must meet a "significant fraction of the actual transportation needs" of handicapped persons. While the criterion stops short of requiring that all transportation needs of handicapped persons or all demand for service must be met, it does require that substantially more than a token effort be made to meet that demand. Rural and small urban systems are seldom designed to meet all transportation needs of the people of the service area. In monitoring recipients' service, however, UMTA will review whether the service proportionately meets the needs of handicapped as well as non-handicapped members of the community.

Paragraph (c) follows the statutory language of section 317(c) by directing recipients to ensure that handicapped persons and groups representing them have adequate notice of and the opportunity to comment on the present and proposed activities of recipients for achieving compliance with the requirements of this regulation. This notice and comment process may take place at any time within the first nine months after the effective date of this Subpart, but must precede the submission of any of the required certifications or reports.

This requirement applies to all recipients covered by this section, including present section 18 recipients who already have made the appropriate certificate of compliance. In the case of a present section 18 recipient or other provider of existing service, the purpose of the notice and comment period would be to identify problems in and suggest improvements to the existing service.

The same public participation requirement also applies whenever the recipient proposes significant changes in its service. The participation must occur before the change is finally decided upon and implemented.

Paragraph (d) requires each section 18 recipient to provide a one-time status report on its service. This requirement applies to all recipients covered by this section, including present section 18 recipients who have already made the certification of compliance. The report is intended to be a short summary of information concerning the four listed items.

In order to permit UMTA to continue monitoring the recipient's activities, each recipient is required, under paragraph (e), to provide a similar update report at three-year intervals. UMTA will establish a schedule for the transmission of these reports: some recipients will provide their first such report after the second year this Subpart has been in effect; others will not have to do so until after the third or fourth year. Reports under this section normally go to the designated state transportation agency (paragraph (f)). UMTA will review their reports in conjunction with its normal oversight of the section 18 program.

Section 27.93 Multi-recipient areas.

Paragraph (a) provides that this section applies to recipients in any multi-recipient area. A multi-recipient area is an urbanized area that includes two or more recipients required to prepare a program under § 27.81. The purpose of the section is to provide recipients in such an area the opportunity to combine their resources to provide service for handicapped persons on a regional basis.

This section is not mandatory. Recipients are not required to join a compact and provide service in conjunction with other recipients in their area, and recipients are free to comply with regulatory requirements on an individual basis.

In most cases, all recipients in the urbanized area required to prepare a program would have to be members of the compact in order for the compact to be workable. There could be cases in which a compact with less-than-unanimous membership could be viable, however; recipients should work with their UMTA regional office to ensure that any compact which is formed would be capable of providing service meeting the requirements of this rule. Recipients outside the urbanized area, or recipients who do not have to prepare a program, may also be members of a compact.

The compact must establish a cooperative mechanism among all its signatories to ensure the provision of combined and/or coordinated service meeting all regulatory requirements. Such a mechanism could take many forms, and this section does not attempt to prescribe the institutional form the arrangement would take.

In any multi-recipient or multi-jurisdictional agreement, a key question concerns where the money is coming from. The compact must answer this question. It must provide for how the costs of service for handicapped persons in the area would be apportioned among the members of the compact, ensure the provision of adequate funding, and include reasonable decision and dispute-resolution mechanisms concerning funding and service matters. The compact must be a formal, binding, written document, signed by each participating recipient. An informal understanding among recipients in an area is not sufficient for purposes of this section.

The recipients in an urbanized area have six months following the effective date of this Subpart to form a compact and submit their agreement to UMTA. If the recipients fail to reach agreement and do not submit a compact within the six-month period, then each recipient must comply with regulatory requirements (including the 12-month deadline for program submittal) on its own. This means that recipients should not, while negotiating about forming a compact, neglect the early stages of planning service of their own.

If a compact meeting the standards of this section is submitted to UMTA in a timely fashion, then the members of the compact are treated by UMTA as if they were a single recipient for all purposes under this Subpart, including planning, public participation, service provision, calculation of the limit on required expenditures, monitoring, and compliance and enforcement. It is important for recipients to understand that one of the consequences of joining a compact is that the members of the compact may be treated by

UMTA as collectively responsible for the failure of the compact to provide the service required by the regulation and called for by the compact's approved program.

After UMTA acknowledges the compact within 30 days of its receipt, the members of the compact would submit to UMTA a single combined program for approval under § 27.85. The program submitted on behalf of the compact's members would have to reach UMTA 12 months after the date the signed compact was acknowledged by UMTA, rather than 12 months after the effective date of this regulation. This provision is intended to permit adequate time for planning on an areawide basis.

If, subsequent to the six-month period, recipients that did not originally form a compact decided to do so, UMTA has the discretion to acknowledge it. However, in such a case, the compact members would have to submit, for UMTA's review and approval, a new, joint program for providing service to handicapped persons. This program would need to provide adequate information on how the transition from individual compliance to joint compliance with the rule would work. The individual programs that had been previously approved, and the service provided according to them, would remain in effect until the new combined program was approved.

By the same token, if an existing compact dissolves, the members would then have to submit individual programs to UMTA for approval. The same would hold true for a member that pulled out of a compact. If a recipient were to drop out of a compact, it would be required to continue to provide its services per the compact agreement until its own, new, independent program were approved and in operation.

Section 27.95 Full performance level.

(a) Timing. Under section 27.85, recipients have a year from the effective date of the new Subpart E to submit their program to UMTA. UMTA has 120 days to review it. Assuming UMTA acts on the program within that time (approval, disapproval, or remand to the recipient to fix deficiencies), the phase-in period would begin to run no later than 16 months from the effective date of the rule.

During this period, recipients are obligated to phase in their service. This is not intended to be a period of delay and inaction; the recipient is obligated to implement service according to the milestones set forth in its program on time (see discussion of § 27.81).

The phase-in period may run for a maximum of six years. Many recipients (e.g., those who are starting a new system or switching to a different mode of providing service) might need all or nearly all of the six-year period. On the other hand, some recipients have systems that may come close to meeting the full performance level at the present time. It would be contrary to the intent of the rule, for example, to permit a recipient that had 90 percent of the buses it needed to meet the service criteria for an accessible bus system to take six years to acquire the other ten percent.

The rule provides that the recipient's plan and milestones must provide for attaining the full performance level as soon as reasonably feasible. UMTA, in reviewing plans, will approve phase-in periods for each transit authority on a case-by-case basis, reflecting this policy as well as the realistic needs of each recipient for time to phase-in its service, up to the six-year maximum.

This paragraph notes that a recipient can comply by meeting the requirements of either paragraph (b), or (c), or (d). This language is intended to emphasize that the recipient may decide to operate either a special service system, an accessible bus system (of either type), or a mixed system. A recipient, for example, is not required to have both an accessible bus system and a special service system. The decision on which service option to implement is intended to be made by the local recipient.

The remainder of this section lists the service criteria applicable to special service, accessible bus, and mixed systems. The Department has established six service criteria that apply to all the modes of service to handicapped persons. These concern eligibility, hours and days of service, service area, fares, restrictions and priorities based on trip purpose, and response time. Paragraphs (b), (c), and (d) explain how these six basic criteria apply, specifically, to each mode of service. Though the criteria are essentially the same, the detail of their application to the various modes of service vary somewhat in order to make sense in view of the differing characteristics of the different types of transportation.

(b) Service criteria for special service systems. The following criteria apply no matter what type of special service the recipient provides (e.g., transit authority-operated paratransit, user-side subsidy).

(1) Eligibility. The eligibility criterion provides that the recipient must treat as eligible any individual who, at the time he or she would receive service is, by reason of a disability, physically unable to use the recipient's bus service for the general public. A recipient may, of course, voluntarily provide service to other persons as well, such as non-disabled elderly persons or mentally handicapped individuals. However, the cost of providing this service to additional users is not an eligible expense under § 27.99.

This provision is not intended to permit recipients to turn away from their special service systems users who would be unable to use an accessible bus system for reasons unrelated to the system's accessibility. For example, physical or terrain barriers, bad weather, or distance may prevent some handicapped persons from getting to a bus stop. These persons are still required to be treated as eligible for special service, because they could board and use fully accessible buses if they were able to get to a bus stop.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, would be able to use the regular system with appropriate training, and the Department encourages the development and implementation of such training programs to increase the transportation opportunities for mentally handicapped persons. It is also necessary that training be provided for the drivers so that they will better understand, be patient with, and appropriately respond to questions from mentally retarded persons.

The rule does not specify the means a recipient may use to determine physical inability to use the regular bus system, although reasonable "functional criteria" may be used. The means the recipient would use to determine physical inability to use the regular bus system would be incorporated in the program submitted for UMTA approval.

The Department does not intend to require recipients to use age, by itself, as a basis for determining that an individual is physically unable to use the regular bus system. No one need be presumed to be physically unable to use the regular bus system just because he or she has reached a certain birthday. Many elerly persons may suffer mobility impairments or other handicaps that physically prevent them from using the regular bus system, but it is these disabilities, not age itself, that determines eligibility.

The key is whether or not a particular elderly person can physically use the service for the general public. Some 80 year old individuals may be able to physically use the service for the general public, and some 65 year old individuals may be unable to do so. If, because of age, an individual is physically unable to use the regular service—even if that individual does not have a specific medical condition—that individual is eligible for the special service.

A similar analysis applies to young children. If, because the recipient has a reasonable, nondiscriminatory policy against permitting very young children to ride buses unaccompanied, or because such children cannot read destination signs, such individuals cannot use the bus system, these facts do not make them eligible to use the special service. This is because their youth, rather than a handicap, caused their inability to use the regular bus system (which is not, in any event, a physical inability).

It would not be consistent with this rule, however, for a recipient to deny a non-disabled child the opportunity to accompany a disabled parent or other adult on the special service system. This could be very important, for example, in allowing the parent to take the child to a medical appointment. The converse is also true. A non-disabled parent or other adult would have to be given the opportunity to travel with a disabled child.

The rule does not prescribe any particular procedures that recipients must use to determine eligibility. Existing systems use such means as letters from a doctor, certifications by social service organizations, and eligibility determinations (e.g., concerning meeting functional criteria) by the transit provider itself. Whatever procedure is used, the recipient needs to ensure that the procedure is prompt, avoids unnecessary procedural obstacles, does not impose more than nominal costs on potential users, and is consistent with the dignity of handicapped persons applying for eligibility. The eligibility procedure should be spelled out in the recipient's program.

Section 27.97 provides that recipients must meet this eligibility criterion in all cases, regardless of whether the recipient can meet

all service criteria without exceeding the limit on required expenditures. In other words, the eligibility requirement of this rule is not subject to "tradeoff" in order to reduce recipient expenditures below the cost limit.

The Department intends that all users eligible under the Department's standard be permitted to use a recipient's special service, regardless of the user's place of residence. A visiting wheelchair user from City A is just as eligible, under the terms of this section and § 27.87, as a wheelchair user from City B to use the latter city's special service system. Recipients may need to waive or abbreviate the certification procedures they use for their regular local riders. The same point applies to persons with temporary, as opposed to permanent, disabilities.

(2) Response time. By response time, we mean the total period from the time the disabled person calls the special service provider to request service to the time the service is actually provided to the handicapped person (i.e., pickup). Recipients are obligated to provide, as well as schedule, service, within the required period. (see also § 27.87(b)(5), concerning timely provision of service).

We do not intend, however, to view recipients as being in noncompliance solely because of an occasional late pickup. Repeated, chronic failure to provide service within 24 hours of a request, however, is inconsistent with this criterion and with the recipient's obligations under this criterion.

The Department intends that this criterion be administered with reasonable administrative flexibility, for the benefit of both users and providers. For example, it may not be reasonable for a recipient to insist that a user call the recipient at 7:30 a.m. on Monday in order to get service at 7:30 a.m. Tuesday, even though this insistence would be literally consistent with the 24-hour response time criterion. A call at any point on Monday morning should usually be sufficient to permit the recipient to do the advance planning necessary for its morning trips on Tuesday.

Likewise, a recipient with no weekend bus service might not provide special service on weekends. Literally interpreted, the 24-hour criterion would force the recipient to open its call-in reservation office on Sunday to take reservations for Monday trips. The Department intends, in such a situation, that the recipient be able to keep its office closed on the weekend, taking reservations for Monday on the previous Friday.

The Department, then, interprets the 24-hour criterion to mean "a reasonable time on the previous business day" in many cases. In addition, this criterion is not intended to prohibit advance sign-up requirements for special-purpose trips (e.g., for a group field trip). Nor is it intended to prohibit a recipient from allowing a user to make a reservation for more than a day in advance (e.g., from calling on Monday to reserve a trip for Thursday).

(3) Restrictions or priorities based on trip purpose. This criterion is intended to prohibit recipients from determining that they will not provide service for certain sorts of trips, which they have determined to be of relatively low importance, or from providing trips for such purposes only after requests for the trips they deem to be of higher importance have been fulfilled. This criterion, however, is not intended to preclude recipients from establishing subscription services. Trips on the subscription service may be limited to certain purposes (e.g., recurring work or medical trips). However, a recipient which operates a subscription service may not deny or delay transportation to other individuals, for other purposes, on the ground that all capacity is exhausted by subscription service and still meet this criterion.

If a recipient cannot provide service that fully meets the criteria without exceeding its limit on required expenditures, it may make tradeoffs concerning trip purpose restrictions or priorities. For example, if after serving subscription work trips and medical trips, the recipient does not have enough other capacity to serve persons wishing trips for other purposes during peak hours, the recipient could "time-shift" the trips for other purposes to non-peak hours. The "time-shifted" trips would still be served during the requested day, at a non-peak time convenient for the user.

(4) Fares. The fare charged for a trip to a user of the special service is required to be comparable to a trip of similar length, at a similar time of day, on the recipient's bus system. We recognize that, in most cases, a trip taken on special service will not be identical, in route or in length, to similar trip taken on the regular bus system. We recognize also that the cost and convenience characteristics of special service systems differ from those of bus systems.

The key to determining an appropriate fare for the special service trip would be to calculate the cost of a similar trip on the regular bus system that the individual would take to get from his origin to his destination, if he or she were not handicapped, including the cost of transfers, if any (or zone change charges, express bus fares, etc.). Should there not be any reasonably equivalent trip that a user of the bus system could take, then the bus fare used for purposes of comparison would be derived by comparing the special service trip taken by the handicapped person to a bus trip of similar length elsewhere in the recipient's bus system.

Determining "comparability" between the bus fare for a similar trip and the special service fare is not an exact science. Decisions must be made on a case-by-case basis, taking into account such factors as the relative costs of providing the service, the time and convenience factors affecting users, and the Department's policy against pricing service out of the reach of users. It is likely, for example, that a $1.50 fare for special service would not be out of line, compared to a basic 80 cent fare for a similar bus trip, in most cases. At the other end of the scale, charging a special services user $20 for the same trip would be far removed from "comparability," because it would be grossly disproportionate to the bus fare and would deter disabled persons from using the service.

In doubtful cases falling in the middle of the scale, recipients should consult with UMTA. Fare levels for special service are, of course, one of the items that recipients should cover in their program submissions. While determinations are case-by-case, it is likely that UMTA would question fare levels that rose above two or three times the bus fare for a similar trip at a similar time of day.

This criterion deals with the fare charged the individual disabled user of the special service. If the bus fare between Point A and Point B is 60 cents, then the recipient can charge a special service user no more than a comparable fare for a similar bus trip. However, this requirement is not intended to preclude the common arrangements between recipients and social service agencies in which the social service agency subsidizes a considerable portion of the cost of a trip. The amount of such a subsidy is a matter between the recipient and the agency.

(5) Hours and days of service. If a recipient operates its bus service from 6:00 a.m. to midnight, seven days a week, then special service (e.g., paratransit or user-side subsidy) must be available throughout at least the hours 6:00 a.m. to midnight, seven days a week. By saying "throughout" this period, the Department intends that service be available at any time during these hours. Providing service only during peak hours, or only from 6–7 a.m. and 10–11 p.m. would not be consistent with this requirement.

This criterion is subject to "tradeoff" in a situation in which a recipient cannot meet all applicable service criteria without exceeding its limit on required expenditures. For example, a tradeoff (affecting the service area as well as the hours of service standard) might involve providing service to an area smaller than the urbanized area late at night and on Sundays, even though the regular bus system was operating at those times.

(6) Service area. A recipient must provide special service "throughout" the "circumferential" service area in which it provides regular bus service. This means that the recipient must provide this service not just along transportation corridors served by buses, but to all points of origin and destination within this area. (This is not intended to literally require door-to-door service, however. As long as the service is from the building or other location of origin to the building or other destination location, the criterion would be satisfied. Actually assisting a handicapped person from the door to the curb, for example, is not required.) A "many-to-few" system, with limited origins or destinations within the urbanized area, would not be consistent with the requirement to provide service "throughout" the area.

The recipient could determine the extent of the "circumferential" service area in a number of ways. As the term implies, the recipient could simply draw on a map a circle encompassing the area in which all its regular bus routes operate. Alternatively, a recipient could take the outer termination points of its routes and "connect the dots," resulting in boundaries for the service area that more precisely follow the contours of the actual bus service area. Where the normal service is within the urbanized area, the Department would also have no objection, in many cases, to a recipient using the urbanized area as a service area for this purpose. Particularly for a recipient that already provided bus service

to most parts of the urbanized area, this approach could be administratively simpler.

In determining the extent of its service area, the recipient need not encompass extended commuter or express bus routes. For example, many recipients may have a city/suburban service area that is served regularly during peak and non-peak hours. In addition, the recipient may have peak-hour express commuter service to more distant exurban points. These commuter bus "spokes" do not extend the circumferential "hub" area that the recipient must serve with origin-to-destination special service.

For service (e.g., commuter bus) extending outside the basic service area, the recipient is required to provide service to handicapped persons only to and from the same points (e.g., bus stops) served by its buses for the general public. This service could be by special service following the bus route or accessible commuter bus, and would have to run only at the times when the commuter buses operated. Service to other origins and destinations outside the basic service area is not required.

The circumferential service area need not necessarily be the same at all times of the day or week. For example, some recipients might not offer any late-night or weekend bus service on many routes outside the central city. The service area for special service could shrink proportionately at these times.

The service area criterion is subject to "tradeoff" in the event that the recipient could not meet all applicable service criteria without exceeding its limit on required expenditures. As part of a tradeoff, a many-to-few system, a fixed route-deviation system, or another variation on special service that did not serve all origins or destinations could be employed.

(c) *Service criteria for accessible bus systems.* The final rule does not contain any specific requirement for the number of accessible buses a recipient must own and operate. Rather, subparagraph (1) of this paragraph says that the recipient must operate, on the street, enough buses to ensure that it meets the service criteria of subparagraphs (2) and/or (3).

To operate this number of buses on the street, recipients will need to consider the number of accessible buses they need in their reserve fleets. It is clear that in order to maintain the appropriate number of accessible buses on the street, a recipient will need to have some accessible buses in reserve in order to cover maintenance down time and other contingencies. A recipient would not comply with this subparagraph (or with § 27.87) if it owned sufficient accessible buses to meet the service criteria when all wer operating, but, for lack of reserve accessible buses, was unable to keep enough buses actually on the street to meet the criteria at all times.

Subparagraph (2) sets forth the other service criteria for scheduled accessible bus systems. A scheduled accessible bus system is simply one in which accessible buses are scheduled to be used for (and are used for) certain runs on certain routes. This use must be regular and consistent.

Subparagraph (2)(i) requires the scheduled accessible bus service to be available throughout the same days and hours as the recipient's bus service for the general public. For example, if a recipient's regular bus service runs from 6 a.m. to 12 midnight, then the scheduled accessible bus service must be available throughout this 18-hour period. Running accessible buses only during peak hours, or having only the first and last bus runs on a route accessible, would not be consistent with this criterion.

The scheduled accessible bus service running throughout this 18-hour period would have to be provided at reasonable intervals that make readily practicable the use of the service by handicapped persons. The regulation does not establish a specific requirement for what these intervals must be. The recipient's judgment about appropriate intervals, which should be informed by the rule's public participation and planning process and which is subject to UMTA review as part of the recipient's program submission, may vary according to such factors as demand for accessible service on a particular route and the time of day.

Every interval on evey route in the system need not be the same. But intervals so wide or irregular as to provide merely token or perfunctory service, or which are significantly inconsistent with demand for accessible service, would not comply with this criterion.

Subparagraph (2)(ii) requires accessible bus service to be provided on all routes throughout the recipient's service area on which a need for service has been established through the rule's planning and public participation process. By saying "throughout the service area," this provision is not limited to service within the basic circumferential service area. Any route on which the recipient provides regular bus service (including extended commuter routes and express bus service) is potentially required to have accessible service.

Whether the potential requirement for accessible service on a given route becomes actual depends on whether the planning and public participation process shows that a need exists for accessible service on that route. The Department intends that a need for accessible service on a route be regarded as having been established when it is shown that one or more handicapped persons are likely to make reasonably regular use of bus service along some part of the route.

For example, bus routes serving centers for independent living, important transportation terminals, major medical facilities, universities, major employment centers, and other origins and destinations that are likely to generate trips by handicapped persons would probably need to have accessible service. However, a need for accessible service could also arise on a suburban route because one or more handicapped persons wished to use that route for trips to work, shopping, or other purposes on a reasonably regular basis.

The Department believes that it would be desirable for recipients choosing a scheduled accessible bus system to make some provision for providing services to disabled persons whose origin or destination is not on an accessible route. The form of such service is up to the recipient, however.

As with service intervals, the routes served by accessible bus service may change over time, as new service needs arise and former service needs disappear. Changes in the route structure of accessible service are also appropriate subjects for consultation through the continuing public participation process.

Subparagraph (2)(iii) provides that the fare for a handicapped person using the accessible bus system cannot be higher than the bus fare paid by other passengers. Everyone who gets on the bus to go from Point A to Point B pays the same fare, except that the elderly and handicapped half-fare program of 49 CFR § 609.23 continues to apply in the accessible bus context.

Subparagraph (3) contains service criteria for on-call bus service. An on-call accessible bus system is one in which accessible buses are not regularly scheduled on any particular routes or runs. Instead, handicapped persons wanting to use accessible buses call the transit provider and arrange for an accessible bus to come by a particular bus stop on a given route at a certain time.

Some of the criteria for on-call accessible bus service are virtually identical to the special service criteria. The eligibility (subparagraph (3)(i)), response time (subparagraph (3)(ii)), and the restrictions and priorities based on trip purpose criterion (subparagraph (3)(iii) are in this category. The fares criterion (subparagraph (3)(iv)) is identical to the fares criterion for scheduled accessible bus service.

Subparagraph (3)(v) concerns days and hours of service. Like its counterpart in the scheduled accessible bus service context, it requires service to be provided throughout the same days and hours as the recipient's bus service for the general public. This means that a handicapped person can request that any bus run the recipient makes, during any time the run is made for the general public, be made with an accessible bus. The recipient is obligated to fulfill the request. There is no provision concerning the intervals at which service is to be provided. Service is provided in response to all requests made for it.

The service area criterion (subparagraph (3)(vii)) requires accessible service to be provided on all the recipient's routes, on request. This means that when the recipient receives a request from a handicapped person for accessible service, the recipient must fulfill this request regardless of the route on which the service is requested (including extended commuter routes and express bus runs).

There is, however, no reference to establishing the need for bus service on particular routes through the planning process. This is because, in an on-call accessible bus system, need for service is established by each individual request for it, rather than on a generic basis for scheduled service on a route.

This subparagraph also specifies that "all buses needed to complete the handicapped person's trip" have to be provided. For example, suppose a handicapped person has to take a bus on route A to a given stop, and then transfer to a route B bus, in order to reach his or her destination. The recipient

must ensure that the B bus, as well as the A bus, is provided at the appropriate time.

A recipient may comply with the rule by setting up an accessible bus system incorporating elements of both scheduled and on-call accessible service. For example, the recipient could operate scheduled accessible bus service during peak hours while using on-call service during off-peak hours. A recipient could operate scheduled service on certain heavily-used corridors while using on-call service elsehwhere. The scheduled and on-call components of the service would each have to meet the service criteria for the respective types of service, and there could not be "gaps" in the overall service that left some routes, times, etc. unserved for handicapped persons.

For purposes of this rule, an accessible bus is one of that a handicapped person, including a wheelchair user, can enter and use. Currently, an accessible bus usually means a bus equipped with a lift. The Department does not intend to mandate the use of a particular piece of technology, however. If a device or bus design other than a lift-equipped standard transit bus can produce the same or better results for handicapped persons than present technology, then the Department will be willing to consider regarding it as meeting the accessible bus requirement.

(d) Service criteria for mixed systems. A mixed system is simply one in which some parts of the service area, or some days or times of day, are served by an accessible bus system, and others are served by a special service system. The key thing to remember about a mixed system is that each component must meet all criteria pertaining to that component. The overall system cannot have "gaps" that leave some areas, times, etc., unserved by service for handicapped persons.

In a mixed system, the special service and accessible bus components are not required to duplicate each other's efforts. Consequently, the special service system would not have to provide parallel service along accessible bus corridors. For example, the special service system would not have to honor a request from a handicapped person to be picked up at his home, situated reasonably close to a bus stop on an accessible corridor, and be transported to a destination served by a bus route using that stop.

The recipient might also reduce the scope of the special service it had to provide by linking the ends of or other strategic points on accessible routes with an accessible shuttle service, so that someone wanting to travel from a point along Route A to a destination at the end of Route B could complete his trip using only accessible buses and the shuttle. Except where it would duplicate accessible bus service, however, the recipient's special service would have to meet all service criteria applicable to any special service system (e.g., the special service system would have to pick up the same handicapped person from his or her home if he or she were going to a location not on the nearby accessible route or one accessibly connected with it).

The recipient is responsible for coordinating the components of its mixed system so as to minimize inconvenience to handicapped users. This coordination should include consideration of transfers between components. The coordination of mixed system components is one of the features UMTA will evaluate as it reviews the program submissions of recipients planning mixed systems.

(e) Services of other providers and through other modes. Paragraph (e) states the principle, for all service modes, that a recipient may count the services of other providers toward meeting the full performance level. This is true even though the expenditures of these other providers are not eligible expenses under § 27.99.

For example, suppose that a social service agency operates a subscription service that transports wheelchair users who need kidney dialysis to medical facilities where the treatment takes place. As part of a coordinated transportation system for handicapped persons in the urbanized area, the recipient is able to refer persons in this category to the social service agency, which provides the dialysis trips instead of the recipient itself. The recipient can count this service as part of the service meeting its full performance level.

This paragraph also provides that service provided through other modes of transportation may be counted toward meeting the service criteria. For instance, suppose a transit authority operates an accessible rail system. The recipient chooses to meet the full performance level through making its bus system accessible. Like many bus/rail operators, however, the recipient uses its buses to feed passengers into and out of the rail system. The recipient could feed disabled passengers into the accessible rail system in the same manner as it did other passengers, and would not have to run bus service that duplicated the rail lines. The recipient could treat both its bus service from Point A to a rail station and the accessible rail service from the station to Point B as contributing to meeting the service criteria.

The key is coordination by the recipient of these services into a coherent whole. The mere facts that a social service organization may be providing some transportation somewhere in the urbanized area, or that there may be an accessible rail system in the same area, unless these services are in a system coordinated by the recipient, are irrelevant to the recipient's ability to meet the full performance level.

Section 27.97 Limit on required expenditures.

Paragraph (a) sets forth the method recipients will use to calculate the limit on their required expenditures. First, the recipient calculates its average operating expenditures. It adds the operating costs reported to UMTA for the previous two fiscal years under section 15 to its projected operating costs for the current fiscal year and divides by three.

The estimate of operating costs for the current fiscal year must be a reasonable one, consistent with the budget estimates the transit authority makes for other purposes. (Obviously, the projection must concern the costs that will be reported under section 15.) An unrealistically low estimate, one at odds with the transit authority's recent operating cost experience, or one that differs significantly from estimates prepared for other local budgetary purposes, is not acceptable for this purpose.

Paragraph (b) concerns the effect of the cost limit. If a recipient can meet all the service criteria, for an amount less than the cost limit, then the cost limit is ignored during the fiscal year in question. However, the recipient is not required to spend more than the cost limit amount, even if, as a result, it cannot meet all the service criteria for the mode of service it has chosen.

For example, suppose a transit authority determined that meeting all the service criteria for its paratransit system would cost $800,000. If its cost limit is $650,000, it can voluntarily spend the entire $800,000 to meet all service criteria. However, this regulation does not require it to do so.

After consulting through the public participation mechanism established under § 27.83 of the final rule, the recipient could make decisions about the respects in which it paratransit service would fall short of one or more of the service criteria. For example, the recipient in the above example might determine that it could save $150,000 by not running the paratransit service on Sunday, raising fares above the level charged for similar bus trips, and not providing service to one segment of the service area which has relatively low demand for trips by handicapped persons. (In making tradeoffs, the recipient would have to act reasonably. For example, a recipient would not act reasonably in a tradeoff situation by raising fares to $30.00 a trip or restricting service to a 2 square block area.) These changes, though they result in service that does not fully meet the criteria, are allowed under the rule since the recipient need not spend more than $650,000 to comply with the rule.

Section 27.99 Eligible expenses.

To be eligible to count in determining whether the recipient has exceeded the § 27.97 limitation on required expenditures, an expenditure must meet two basis criteria. First, it must be an expenditure by the recipient of its own funds (including the UMTA assistance it receives). The total expenditures the recipient makes, not just the net expenditures after farebox revenues are considered, are counted. Second, it must be an expenditure specifically to comply with the requirements of 49 CFR Part 27, Subpart E.

This means that expenditures by other agencies (e.g., state and local government agencies, private social service organizations) on transportation services for handicapped persons cannot be counted for this purpose. As described in the discussion of § 27.95(e), the transportation services for disabled individuals that these other agencies provide can be "counted" by the recipient as part of the transportation services meeting the service criteria, however.

The same principle applies to the costs of operating an accessible rail system. No recipient need operate an accessible rail system to comply with this rule. However, a rail recipient may use an accessible rail

system to help meet its service requirements. But the expenses of building and operating the accessible rail system are not attributable to meeting these regulatory requirements, and they are not, therefore, eligible expenses.

Subparagraph (b)(6) provides, however, that the incremental cost of construction of modification of facilities to enable handicapped persons to transfer between accessible modes of transportation is an eligible expense, if the improvement is approved as part of the recipient's program. For example, suppose that a recipient is voluntarily making a rail line or station accessible. The cost of making the rail line or station accessible is not an eligible expense, since this cost is not incurred to meet the requirements of this rule. However, the incremental cost of a new or relocated bus stop to serve the station or line, together with curb cuts, signs for the use of handicapped persons, or other accessibility-related improvements that help disabled persons transfer between the accessible rail and accessible bus systems would be eligible. It is important to emphasize that only the incremental costs of such improvements, attributable to features specifically related to service for disabled persons, are eligible. In reviewing recipients' programs, UMTA will scrutinize closely plans for "interface" improvements of this sort to ensure that only eligible costs are claimed for purposes of the limit on required expenditures.

Only expenditures specifically to comply with the requirements of this regulation are eligible. If a recipient chooses to provide service above and beyond what this regulation requires, only the expenditures actually needed to meet the Federal regulatory requirements are eligible.

For example, the rule does not require non-handicapped elderly persons to receive service from a special service system. If a recipient provides service to non-handicapped elderly persons, in addition to eligible handicapped persons, only the costs of the special service system attributable to carrying the latter may be counted.

Only those items necessary to meet the full performance level for the mode of service selected by the recipient will be eligible expenses. "Gold-plating" (the practice of attributing to service for handicapped persons the cost of items that generally improve the recipient's entire service to the public or loading down the service to handicapped persons with features or facilities not essential to meeting the service criteria) will not be permitted to drive up the reported eligible expenses service for handicapped persons to the detriment of providing service meeting the criteria.

This provision applies even if the things the recipient does above and beyond the regulation's requirements are required by another legal authority, such as the Architectural Barriers Act of 1968 or state or local law. For example, a recipient might, as the result of the Architectural Barriers Act, install an elevator in an existing subway station where it has otherwise modified the means of vertical access. Such an expenditure would not be the result of the requirements of this rule; the cost of installing the elevator would not be a financial burden imposed by the Department of Transportation in order to comply with section 504 and section 317(c). Consequently, the cost of the elevator could not be counted in determining whether the recipient had exceeded the § 27.97 limitation on required expenditures by recipients.

Section 27.99(b) mentions that the capital and operating costs for special service systems, and the incremental capital and operating costs of accessible bus systems, are eligible expenditures. The language of the section does not explicitly mention mixed systems. A mixed system is, by definition, a system made up of accessible bus and special service components. In determining whether the costs of a mixed system exceed the limitation on required recipient expenditures, the recipient would add the capital and operating costs for the special service component of its system and the incremental capital and operating costs of the accessible bus component of its system.

By "incremental" capital and operating costs of an accessible bus system, we mean those costs of meeting the service criteria for accessible bus systems that are in addition to the costs of operating an inaccessible bus system. For example, suppose a lift-equipped bus costs $120,000. Without a lift, and other equipment necessary to make the vehicle safe and accessible for handicapped persons (e.g., wheelchair tiedowns), the bus costs $108,000. The incremental cost of buying the accessible bus is $12,000. Only that amount, not the entire cost of the bus, is an eligible expense. The same principle applies to operating costs. If maintaining the lift on an accessible bus can be demonstrated to take 20 work hours in a certain period of time, the wages of the mechanics for those 20 hours can be counted, but not the wages of the mechanics for the total number of work hours required on the entire bus during that period.

Section 27.99(b)(3) specifies that administrative costs of coordinating services are eligible. In addition, reasonable administrative costs of a special service system or an accessible bus system may be considered as a part of the eligible operating costs of such systems. UMTA will consider, on a case-by-case basis, whether specific administrative costs are eligible, following the general rule that if a cost is generally an allowable cost for reimbursement with UMTA funds, that part of it directly attributable to providing service for handicapped persons can be counted for purposes of this section.

Section 27.99(b)(4) specifies that the incremental cost of training personnel to provide service to handicapped persons is an eligible item. Again, by "incremental cost" we mean the portion of the cost of training directly attributable to service for handicapped persons. For example, if four hours of a bus driver training course are devoted to operating the lift and otherwise accommodating handicapped persons on an accessible bus system, the cost of those four hours of training, but not the cost of the entire course, is eligible.

Section 27.99(d) requires recipients to annualize the cost of capital expenditures, such as the purchase of vehicles, over the expected useful life of the item. This provision would also apply to other major capital items (e.g., a new fixed facility specifically devoted to the garaging and maintenance of special service vehicles), but not to minor or routine purchases of supplies, parts, and other equipment. In doubtful cases, recipients should contact their UMTA regional office for guidance.

The Department is aware that there may be a number of methods, of varying degrees of accounting sophistication, for annualizing a capital expenditure. In the interest of simplicity, however, the Department intends that recipients simply divide the number of years in the expected useful life of the item into its cost, and then count the result toward the cost limit in each of the years involved.

For example, suppose that the incremental cost of a lift-equipped bus is $12,000, and that the expected useful life of a bus is 12 years. The annualized cost of the bus would be $1,000. Therefore, the recipient would count $1,000 in its calculation of eligible expenses for year 1, year 2, and so forth, through year 12.

Where there is not a generally accepted industry standard (e.g., 12 years for buses) for a given capital item, recipients should consult with their UMTA regional office for guidance on how many years should be regarded as the item's expected useful life.

Section 27.101 Technical exemptions.

This provision permits any recipient to request a technical exemption from any provision of this Subpart. Such a request can be made at any time, as an independent request. It is also possible for a recipient to submit a technical exemption request as part of, or in connection with, the recipient's program submission. Section 27.101(b) clearly sets forth the standards for granting exemptions under this rule. These standards are consistent with the standards DOT has applied to requests for exemptions in the past. First, there must be special local circumstances. That is, the reasons specified for the requested exemption must be, if not literally unique, quite specific to the local area requesting the exemption. The Department will not grant an exemption based on circumstances common to a broad class of recipients. An exemption from a regulatory requirement based on circumstances common to many recipients would constitute, in effect, a rulemaking of general applicability, which may be made only through normal rulemaking procedures.

Second, the circumstances used to support the exemption request must involve matters not contemplated, or taken into account, as part of the rulemaking process for this rule. The Department is aware that it probably has not thought of all possible issues or situations that can arise. This exemption procedure is intended to apply to matters not dealt with in this rulemaking. If, on the other hand, the Department has received and considered comments on how a certain issue or situation has been handled, and then made a decision, the exemption process is not a mechanism for reconsidering a regulatory decision the Department has made.

Third, the applicant for an exemption must demonstrate that the circumstances cited

make compliance with the rule unduly burdensome or unreasonable. The undue burdens or unreasonableness, consistent with the two standards discussed above, must be specific to the particular grantee, and not something affecting grantees, or a broad class of them, in common.

Fourth, the recipient must show that, if it is granted the exemption, it will take some alternate action that will substantially comply with the regulation. The grant of an exemption is not a license for noncompliance; it is agreement by the Department and the recipient that the recipient will take action adequate to provide transportation services to handicapped persons, even though it is, in some respects, excused from following the letter of the regulation. It should be emphasized, however, that the exemption provision is not intended to permit recipients to fashion "do-it-yourself" modifications of the requirements of the regulation.

The Department may grant a request for a technical exemption, in whole or in part, or deny it. The Department may also place any reasonable conditions on the grant of the exemption. The UMTA Administrator will sign grants or denials of exemption requests, and such requests should be addressed to the Administrator. In keeping with existing DOT practice, the Assistant Secretary for Policy and International Affairs must concur in grants or denials of exemption requests under this rule.

Section 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs

Section 27.103 provides a slightly different procedure for submitting documents under this Subpart if a state has elected to administer UMTA's sections 5, 9, and 9A programs for UMTA. This procedure applies to urbanized areas of under 200,000 population. If a state has made this election, the designated state agency is the actual recipient of the UMTA funds and the state agency, in turn, passes them through to the urbanized area. This is similar to the section 18 program.

If the election is made, the local recipient must send the program required under § 27.85, the slippage report under § 27.89(c), the certification and report under § 27.91(f), and any compact under § 27.93(c) to the designated state agency and not to UMTA. (The state would have to inform UMTA when a slippage report was received). The designated state agency acts for UMTA to review and, as necessary, approve these documents. In doing so, any deadlines which the regulation imposes on UMTA apply to the designated state agency. For example, the designated state agency would, under § 27.85(b), have to complete its review of the local recipient's program within 120 days of its submission. Similarly, the time extensions under § 27.85(c) would also apply to the designated state agency.

Section 27.103(b) requires the designated state agency to certify to UMTA that the recipients in its state are in compliance with this Subpart. This certification can cover more than one recipient, but it is due to UMTA no later than 30 days after the designated state agency approves the recipient's program.

It is important to note that the state's election to administer these programs is voluntary. Any recipient located in a state not so electing must send its material to UMTA. Also, the provisions in this section do not apply to small recipients covered by § 27.91.

Enforcement Procedures

Subpart F (§§ 27.121–27.129) of 49 CFR Part 27 concerns enforcement of the obligations of recipients under Subpart E, the mass transit program requirements, as well as all the other Subparts of this regulation. Briefly, Subpart F provides that when, as a result of a complaint investigation or compliance review, the Department learns that a recipient appears to be in noncompliance, the Department first attempts to resolve the problem informally.

This informal resolution step is the most important part of the enforcement process, from the Department's view. At this stage, the Department works with the recipient to solve the planning, management, or operational problems that led to the enforcement action. The aim of the process is not to impose sanctions on the recipient, but to correct the situation so that the recipient provides service to handicapped persons as the regulation requires. Only if informal resolution fails does the Department resort to formal enforcement proceedings.

If there is reasonable cause for the Department to believe that the recipient is in noncompliance, and that the noncompliance cannot be resolved informally, the Department notifies the recipient that it proposes to suspend, terminate, or refuse to provide Federal financial assistance to the recipient. The recipient has the opportunity to present its case at a hearing before an administrative law judge. The judge makes a recommended decision to the Secretary, who may accept, reject, or modify the recommended decision. The Secretary's decision is administratively final (it may be reviewed by a Federal court under the Administrative Procedure Act) and the sanctions the Secretary orders remain in effect until the recipient comes into compliance with the regulation.

Any person who wishes to submit a complaint alleging that a recipient is in noncompliance with this regulation should send the complaint to the following address: Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Noncompliance should be understood simply as the failure by a recipient to do what the regulations require of it, or action by a recipient contrary to regulatory prohibitions. The following are examples (not intended to be an exhaustive or exclusive list) of conduct under Subpart E that could be regarded as noncompliance, for recipients to which the various requirements apply:

- Failure to have a program consistent with the requirements of § 27.81;
- Failure to follow any of the public participation requirements of § 27.83;
- Failure to submit the program documents to UMTA within the time frames of § 27.85;
- Failure to make timely changes in a program UMTA did not approve as submitted under § 27.85, such that UMTA can approve the program as consistent with this regulation;
- Failure to provide service, as required under § 27.87;
- Failure to submit a "slippage report" in the circumstances in which § 27.89(c) requires one;
- Failure by a small recipient to certify, provide for public participation, or provide reports as required under § 27.91.

The OMB Paperwork Reduction Act number for the information collection requirements in Subpart E is 2132–0530.

[FR Doc. 86–11571 Filed 5–20–86; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27 and 609

[Docket No. 56d; Notice 86-5]

Nondiscrimination on the Basis of Handicap in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) requests comment on proposed requirements for service to handicapped persons on commuter rail systems. The proposed rule would implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)) in commuter rail programs receiving financial assistance from the Department. The notice also proposes to remove 49 CFR Part 609 and incorporate certain of its provisions into 49 CFR Part 27.

DATE: Comments should be received by August 21, 1986.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 56d, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC, 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426-4723 (voice) or (202) 755-7687 (TDD). The Department of Transportation is currently installing a new telephone system. As a result, the voice number is expected to change, during July 1986, to (202) 366-9305. The TDD number is not expected to change. This NPRM has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION: The purpose of this NPRM is to request comments on several actions the Department is considering taking that are related to the final rule published today on mass transit services for handicapped persons. The September 3, 1983, NPRM that led to the final rule did not request comments on these specific proposals, and we received few comments relating to them. In addition, with respect to requirements for commuter rail systems, the Department does not have, at the present time, the information and analysis we need to decide whether to promulgate a final rule.

Commuter Rail

The preamble to the NPRM asked what, if any, provisions the regulation should include concerning commuter rail operations. The preamble also asked what form such a provision should take (e.g., a requirement for key station accessibility, special service, or a choice between the two).

Virtually all the handicapped commenters on this issue objected to the absence of specific commuter rail provisions from the NPRM, saying that commuter rail systems should be required to be fully accessible or that some alternative service be mandated. Some of these comments suggested that commuter rail services be required to meet the same criteria as other urban mass transit services. Others said that the interface between commuter rail and urban mass transit systems should also be required to be accessible, lest transfers from one to the other be precluded. A few social service organizations and other commenters took similar positions.

The relatively few transit industry comments suggested either that there be no commuter rail provisions in the final rule or that, if there were such requirements, the type of service be determined locally. Some transit industry comments also favored being able to count commuter rail accessibility costs toward the cost cap.

A few comments, from commenters in various categories, favored the "key stations/accessible rail vehicles" approach to commuter rail service. Others favored alternative service as a substitute for, or addition to, accessible mainline service.

In the final rule published today, the Department decided against requiring recipients to make urban mass transit rail systems, such as subways, other rapid rail systems, and light rail systems, accessible. Urban subway, rapid rail, and light rail systems provide service within an urbanized area which, in most cases, is also served by a recipient's bus system. An accessible bus system, or a special service system meeting service criteria keyed to the bus system, can provide service to handicapped persons throughout the area in which rail service is available to the general public.

Commuter rail may be a different case. While portions of commuter rail lines obviously lie within urbanized areas served by urban mass transportation systems, the major function of commuter rail lines is to bring commuters to an urban center from exurban areas often far outside the area served by urban mass transit bus or rail systems. A handicapped commuter living outside the urban mass transit service area would have no UMTA-assisted commuter rail service available to him or her at all, unless the commuter rail service itself were accessible or some substitute were provided for it. Consequently, the Department has decided to consider adding commuter rail requirements.

It should be emphasized that the Department has not made a decision concerning what, if any, commuter rail requirements we should promulgate. Therefore, we are proposing for comment various alternative provisions on important commuter rail issues. These options include mainline accessibility with all stations or with key stations made accessible, substitute service, and a provision that would allow recipients to choose between mainline accessibility and substitute service. The Department also seeks comment on other alternatives. If it appears that there is not sufficient justification for imposing commuter rail requirements, the Department could also decide not to promulgate a final rule on this subject.

The commuter rail provisions proposed in this NPRM include the following:

Section 27.5 Definitions. The definition of commuter rail, originally published as part of the Department's 1979 section 504 rule, and deleted by the July 1981 interim final rule (since it did not refer to commuter rail systems), would be restored. Because the vehicle standards proposed for incorporation from 49 CFR Part 609 (see discussion below) refer to "rapid rail" and "light rail," those definitions would likewise be restored.

Section 27.81 Program Requirement. A new paragraph (b) added to the end of this section would make the requirement to have a program under Subpart E of 49 CFR Part 27 applicable to recipients of financial assistance from the Department for commuter rail systems.

Section 27.85 Submission and Review of Program. A sentence added to paragraph (a) of this section would provide that commuter rail operators

would make their program submissions by 12 months from the effective date of this admendment to Subpart E.

Section 27.95 Full Performance Level. The NPRM proposes a new paragraph (e) to this section, setting forth requirements for commuter rail service. The NPRM proposes five alternatives for comment.

The first alternative is to make key stations, and at least one car per train, accessible to handicapped persons. The "key station" idea was developed as part of the Department's 1979 section 504 rule, and its purpose is to result in the most important stations being made accessible without causing the recipient to incur the expense of making all stations accessible. The key station criteria are also drawn from the 1979 rule. The Department estimated, for purposes of the 1979 rule, that these criteria would result in about 40 percent of stations becoming accessible. The Department seeks comment on whether, if this alternative is adopted, these criteria should be modified.

Because making a commuter rail line accessible is likely to be a relatively capital-intensive effort, this option would give recipients 30 years, rather than six, to meet the service criteria. This lengthened compliance period, which also was drawn from the 1979 rule, is intended to make compliance through this approach financially less burdensome. However, the recipient would, as some comments suggested, have to provide interim service (e.g., by demand-responsive motor vehicle) during the 30-year phase-in period. The Department seeks comment on whether this phase-in period is appropriate for commuter rail.

The second alternative is similar to the first, except that all stations, rather than only key stations, would have to be accessible. This would result in greater convenience for disabled users, possibly increasing ridership. However, costs for recipients would also be higher than under the first option.

The third proposed approach to meeting commuter rail requirements is substitute service. Substitute service would involve providing service by accessible motor vehicle from the commuter rail station nearest or most convenient to the person's point of origin to the station nearest or most convenient to his or her destination. There would be the same maximum six-year phase-in period as for other modes of mass transit. As some commenters to the September 1983 NPRM suggested, this station-to-station service would have to meet the same six service cirteria that apply to other modes of service under Subpart E of the regulation. The language of the criteria would be modified slightly to fit the commuter rail context (e.g., to refer to commuter rail lines and stations).

The fourth option would allow recipients to choose between substitute service and accessible mainline service. This approach would let each recipient choose, for each of its commuter rail lines, to comply either by meeting the requirements for accessible mainline service (as in option 1 or 2) or the requirements for substitute service (as in option 3). The only constraint on the recipient's discretion would be that all of any given commuter rail line would have to comply in the same way. Under all of the options, a commuter rail line that already met the requirements of § 27.73 (requirements for intercity rail systems) would be deemed to comply with the commuter rail requirements.

The Department also seeks comment on other options or variations of the options described above. For example, should the Department require feeder service to transport handicapped persons to accessible commuter rail stations? To improve cost-effectiveness of service, should recipients be able to terminate their accessible rail or substitute service at the first connecting point with other urban mass transit services that handicapped persons can use? On the other hand, would requiring handicapped persons to transfer in this situation be too inconvenient? Other suggestions are welcome.

The fifth option under consideration is a no-action alternative, under which no commuter rail provision would be added to the rule.

It is the Department's understanding that, like other mass transit programs, Federally-assisted commuter rail systems use their UMTA assistance to support overall operations. The Federally-assisted program or activity, therefore, is the entire commuter rail system. Section 504 of the Rehabilitation Act of 1973 is a basis for imposing requirements only on the specific program or activity for which Federal assistance is provided. If a particular commuter rail line, for example, does not receive Federal financial assistance, it is not covered under section 504. This is true even if the operator receives Federal assistance for other activities.

Section 27.97 Limit on Required Expenditures. A number of commenters on the September 1983 NPRM suggested that the limit on required expenditures apply to commuter rail systems, or that costs of commuter rail services for handicapped persons count toward recipients' overall cost limit. For the same reasons that we applied a cost limit to other modes of service for disabled persons, we are proposing that a cost limit should apply to commuter rail. For purposes of this NPRM, we are proposing two options for how the cost limit would apply to commuter rail.

We are concerned that counting costs of both commuter rail accessibility or substitute service and urban accessible bus or special service toward the same limit on required expenditures could create problems, such as a lack of balance between commuter rail and urban transit expenditures, that could impede progress toward the full performance level in one of the systems. Consequently, the Department's first option is that recipients which have both commuter rail and other urban mass transit systems would calculate the limit on required expenditures separately for each.

The Department's second option would modify this approach somewhat. It is possible that, for some recipients who operate both commuter rail and other urban mass transit systems, it would be more cost-effective to divert resources from commuter rail accessibility to other transit services for handicapped persons. A provision permitting recipients to lower their commuter rail cost limit by an amount equivalent to expenditures above their urban mass transit cost limit could give recipients greater flexibility in such situations. The Department also seeks comment on whether, if such a system were put into place, there should be a limit to "transfers" of this kind.

Section 27.99 Eligible Expenses. This section would be amended to provide that the capital and operating expenses of substitute service systems for commuter rail, and the incremental capital and operating expenses of accessible commuter rail systems, are eligible expenses. They would be eligible with respect to the separate commuter rail cost limit. This section would also regard costs of compliance with the facility and vehicle standards of §§ 27.105 and 27.107 as eligible.

Questions for Regulatory Analysis. In preparing a regulatory impact analysis or evaluation concerning commuter rail service for disabled persons, the Department will seek information to answer the following questions, among others:

1. How many handicapped persons live in corridors now served by commuter rail systems?

2. How many of these persons are unable, by reason of handicap, to use the existing commuter rail service?

3. How many of these persons now use other means of transportation for

destinations served by commuter rail service (e.g., private cars, van pools)?

4. How many of these persons would be likely to use an accessible commuter rail service in which (a) key stations, or (b) all stations, were accessible?

5. How many of these persons would be likely to use a motor vehicle-based substitute service system?

6. Given the likely user population, how many annual trips by handicapped persons who cannot now use the commuter rail system would be generated by (a) an accessible commuter rail system with key stations accessible, (b) an accessible commuter rail system with all stations accessible, or (c) a motor vehicle-based substitute service system?

7. What are likely to be the incremental capital and operating costs (per year and over 30 years) of the three alternatives described in question 6?

8. What is the likelihood that the benefits (i.e., usage) of the various alternatives under discussion will justify the costs?

The Department requests assistance from commenters in providing information to help answer these and other relevant questions. The Department is aware of two significant studies on commuter rail accessibility that are now underway. The Department hopes to make use of these studies and, to the extent still relevant, data from studies the Department has conducted in the past (e.g., the so-called "321 Studies" conducted some years ago). If the information from these studies is not sufficient to enable the Department to make a final decision on this subject, we anticipate performing a study (analogous to those used in the Regulatory Impact Analysis for the final rule published today) that would provide the information needed as a basis for a final decision.

Withdrawal of 49 CFR Part 609

49 CFR Part 609 contains a variety of standards for vehicles and fixed facilities, as well as procedural sections concerning special efforts to be made in providing transportation services to handicapped persons. There has been some confusion about the legal status of this Part. The preamble to the Department's 1979 section 504 rule mentioned that Part 609 had been "superseded," but Part 609 was never withdrawn from the Code of Federal Regulations. The Department's July 1981 interim final rule withdrew the mass transit portion of the 1979 rule, noting that Part 609 had never been withdrawn but not otherwise clarifying its status.

The Department believes that many of the provisions of Part 609 are obsolete and/or cover matters now covered by the new Subpart E. For these reasons, these provisions should be withdrawn. On the other hand, as discussed below, the provisions of Part 609 concerning vehicle and facility standards and the reduced fare program are still important. They should be retained and any uncertainty about their legal status ended (it is the Department's position that they remain in effect). For these reasons, the Department is proposing to withdraw Part 609 and to add to the new 49 CFR Part 27, Subpart E, revised and updated versions of Part 609's vehicle and facility standards and reduced fare program provision.

Facility and Vehicle Standards; Reduced Fare Program

The Department proposes to add a new § 27.105 to the regulation, which would incorporate fixed facility standards now found in § 609.13. This inclusion responds to requests by commenters on the September 1983 NPRM for fixed facility standards in the rule. These standards have been in place for some time, are familiar to recipients, and are not onerous or costly to comply with. This section would contain a provision concerning the station-rail car interface, which a commenter cited as a continuing problem in some new rail systems.

The proposed § 27.107 would contain standards related to accessibility features for bus, rapid rail, light rail, and other vehicles. The four paragraphs of this section would incorporate the substance of §§ 609.15–609.21.

There would be only one substantive change in these provisions. The NPRM would delete § 609.15(a) through (c), which deals with the so-called "Transbus" specifications, which the Department determined, in 1979, could not practically be implemented, and a requirement for an accessibility option on all transit buses, which is obsolete in light of the publication of the new Subpart E. It should be pointed out that the standards of § 27.107 would apply to all new vehicles in the categories covered by the section, not just those that are purchased specifically to meet the full performance level of § 27.95.

The Department seeks comment on any additional accessibility features which should be included in these provisions, or any modifications or deletions which the Department should make to these provisions.

The current 49 CFR 609.23 requires recipients to provide half fares for elderly and handicapped persons during off-peak travel times. This provision would be incorporated in the new 49 CFR 27.109. The only change between the present and proposed version of the provision involved the substitution of a reference to the current section 9 program for a reference to the section 5 program, which it replaced.

Definition of "Accessible"

The Department is proposing to delete, from § 27.5, the definition of "accessible." The rationale for this proposal is that the specific requirements for various modes of transportation and facilities, together with the references to the Uniform Federal Accessibility Standards (UFAS) now incorporated in Part 27, make this definition unnecessary. The Department seeks comment on whether there is any remaining need for this definition.

Regulatory Process Matters

This NPRM is a significant regulation under the Department's Regulatory Policies and Procedures, since its commuter rail provisions may be costly and controversial. The rule may be a major rule under Executive Order 12291; because the Department does not have sufficient data concerning the costs of compliance with its proposed commuter rail requirements, we are unsure of whether it would result in costs of over $100 million per year. The Department does not have sufficient information on which to base a regulatory evaluation or impact analysis, and we have not prepared such a document at this time. If we decide to promulgate a final rule on commuter rail systems, we intend to prepare a regulatory evaluation or impact analysis, as appropriate.

The other proposals in this NPRM—concerning the withdrawal of Part 609 and incorporation of some of its provisions in Part 27—are not expected to have any significant economic impacts. They basically involve moving existing provisions to a different part of the Code of Federal Regulations. We do not anticipate preparing a regulatory impact analysis or evaluation on these subjects.

The Department certifies under the criteria of the Regulatory Flexibility Act that this proposal, if promulgated as a final rule, would not have a significant effect on a substantial number of small entities. Only the commuter rail portion of this NPRM would have a significant economic effect. There are no commuter rail operators, to our knowledge, that could be considered small entities.

This NPRM has been reviewed and approved by the Department of Justice under Executive Order 12250 and by the Office of Management and Budget under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons described in the preamble, the Department proposes the following:

PART 609—[REMOVED]

1. To amend Title 49, Code of Federal Regulations, by removing Part 609 thereof.

PART 27—[AMENDED]

1a. The authority citation for Part 27 continues to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

§ 27.5 [Amended]

2. To amend § 27.5 ("Definitions"), in Title 49, Code of Federal Regulations, by adding the following paragraphs, to be inserted among the existing paragraphs in alphabetical order:

"Commuter rail" means that portion of mainline railroad transportation operations which encompasses urban passenger train services for local short-distance travel between a central city and adjacent suburbs and which is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices, and usually only one or two stations in the central business district.

"Light rail" means a streetcar type transit vehicle railway operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

"Rapid rail" means a subway-type transit vehicle railway operated on exclusive rights-of-way with high-level platform stations.

3. To amend § 27.5 ("Definitions") in Title 49, Code of Federal Regulations, by deleting the definition of "accessible."

4. To amend § 27.81 ("Program Requirement"), in Title 49, Code of Federal Regulations, by designating the existing paragraph of this section as paragraph (a) thereof, and by adding the following paragraph (b):

§ 27.81 [Amended]

* * * * *

(b) Recipients of financial assistance from the Department of Transportation for commuter rail systems shall establish a program meeting the requirements of paragraph (a) of this section. However, a recipient is not required to establish such a program concerning any commuter rail line which, on the date the program would otherwise be due, is in full compliance with the requirements of 49 CFR 27.73.

5. To amend § 27.85 ("Submission and Review of Program"), in Title 49, Code of Federal Regulations, by adding the following paragraph (d):

§ 27.85 [Amended]

* * * * *

(d) (1) With respect to commuter rail systems, commuter rail operators shall submit their programs and supporting materials within 12 months of the effective date of this paragraph.

(2) A commuter rail operator which, because a commuter rail line is in full compliance with 49 CFR 27.73 within 12 months of the effective date of this paragraph, is not required to establish a program with respect to that line shall submit, in lieu of a program, a certification of its compliance with § 27.73.

(3) If a commuter rail operator receives its federal financial assistance from the Federal Railroad Administration (FRA) rather than from UMTA, the recipient shall submit all required materials to FRA.

6. To amend § 27.95 ("Full Performance Level"), in Title 49, Code of Federal Regulations, by adding a new paragraph (f), to read as follows:

§ 27.95 [Amended]

* * * * *

Option 1

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps, and key stations shall be accessible to wheelchair users. For purposes of commuter rail service, key stations are those that are:

(i) Transfer points on a rail line or between rail lines;

(ii) Major interchange points with other transportation modes;

(iii) End stations, unless an end station is close to another accessible station;

(iv) Stations serving major activity centers, including government and employment centers, institutions of higher education, and hospitals or other major health care facilities;

(v) Stations that are special trip generators for large numbers of handicapped persons; and

(vi) Stations that are distant from other accessible stations.

(2) Existing key stations shall be deemed to be accessible for purposes of this paragraph if they—

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in § 27.67(d) of this Part; and

(ii) Include the features described in § 27.73(a)(1)(ii) of this Part.

(3) Existing non-key stations shall be deemed to be accessible if they meet the requirements applicable to key stations, except that otherwise accessible routes that do not comply with section 4.3.8 of the standards referenced in § 27.67(d) of this Part shall comply with sections 4.9.2—4.9.6 of those standards.

(4) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(5) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(6) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 2

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps and to wheelchair users.

(2) Stations shall be deemed to be accessible for purposes of this paragraph if they

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in § 27.67(d) of this Part; and

(ii) Include the features described in § 27.73(a)(1)(ii) of this Part.

(3) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(4) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(5) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 3

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall provide, on the request of an eligible handicapped person, substitute service by accessible motor vehicle from the commuter rail station nearest or most convenient to the handicapped person's point of origin to the commuter rail station nearest or most convenient to the person's destination. The substitute service shall meet the following service criteria:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's commuter rail system shall be eligible to use the recipient's substitute service.

(2) *Response Time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or Priorities Based on Trip Purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the substitute service.

(4) *Service Area.* Substitute service shall be provided, upon request, among all stations served by the recipient's commuter rail service.

(5) *Fares.* The fare for a trip charged a handicapped person using the substitute service shall be comparable to that charged other users of the recipient's commuter rail service for a trip between the same stations at the same time.

(6) *Hours and Days of Service.* Substitute service shall be available throughout the same days and hours as the recipient's commuter rail service for the general public.

Option 4

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall consist of meeting the criteria of either subparagraph (1) [i.e., requirements for mainline accessibility] or subparagraph (2) [i.e., requirements for substitute service] of this paragraph. Each line shall meet the requirements of the applicable subparagraph for its entire length. A commuter rail line which is in full compliance with the requirements of § 27.73 shall be deemed to comply with this paragraph.

Option 5

No further regulatory action.

7. To amend § 27.97 ("Limit on Required Expenditures") in Title 49, Code of Federal Regulations, by adding a new paragraph (d), to read as follows:

§ 27.97 [Amended]

* * * * *

Option 1

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means.

Option 2

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means. *Provided,* that such a recipient may reduce the amount of its commuter rail limit on required expenditures for a given fiscal year by the amount in excess of its limit on required expenditures for other mass transit services for handicapped persons it expended for such services in the previous fiscal year.

§ 27.99 [Amended]

8. To amend § 27.99 ("Eligible Expenses") in Title 49, Code of Federal Regulations, by removing, in paragraph (b)(5) thereof, the words "49 CFR 609.23." and substituting the words "49 CFR 27.109."

9. To amend § 27.99 ("Eligible Expenses"), in Title 49, Code of Federal Regulations, by adding new subparagraphs (b)(7) and (b)(8) thereof, to read as follows:

(b) * * *

(7) Capital and operating costs of substitute service systems for commuter rail; incremental capital and operating costs of accessible commuter rail systems.

(8) Incremental costs of compliance with §§ 27.105 and 27.107 of this Subpart.

10. To amend Subpart E, in Title 49, Code of Federal Regulations, Part 27, by adding new §§ 27.105, 27.107, and 27.109, to read as follows:

§ 27.105 Standards for fixed facilities.

(a) Except as otherwise provided in paragraph (c) of this section, every fixed facility—including every station, terminal, building or other facility—designed, constructed, or altered after the effective date of this section with UMTA assistance, the intended use for which either will require that such fixed facility be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed, constructed, or altered in accordance with the accessibility standards referenced in § 27.67(d) of this Part.

(b) In addition to the standards of paragraph (a) of this section, the following standards apply to rail facilities covered by that paragraph:

(1) *Travel distance for wheelchair users.* In designing new underground or elevated transit stations, careful attention should be given to the location and number of elevators or other vertical circulation devices in order to minimize the extra distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to nonhandicapped persons.

(2) *International accessibility symbol.* The international accessibility symbol shall be displayed at wheelchair accessible entrance(s) to buildings that meet the standards.

(3) *Fare vending and collection systems.* Transit fare vending and collection systems shall be designed so as not to prevent effective utilization of the transportation system by elderly and

handicapped persons. Each station shall include a fare control area with at least one entrance with a clear opening at least 32 inches wide when open.

(4) *Boarding platforms.* All boarding platform edges bordering a drop-off or other dangerous condition shall be marked with a warning device consisting of a strip of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms for level-entry vehicles shall be coordinated with the vehicle design in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(c) The standards established in paragraphs (a) and (b) of this section do not apply to:

(1) The design, construction, or alteration of any portion of a fixed facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing fixed facility to the extent that the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installation or improvements to accommodate the physically handicapped (the standards do not apply to unaltered elements or spaces of an existing fixed facility except as called for by section 4.1.6(3), of the standards referenced in § 27.67(d)(2);

(3) The alteration of an existing fixed facility, or of such portions thereof, to which application of the standards is not structurally possible; and

(4) The construction or alteration of a fixed facility for which a recipient has, prior to the effective date of this section, issued a formal invitation for bids to perform such construction or alteration.

(d) The final project application for any project that includes the design, construction, or alteration of a fixed facility subject to paragraph (a) of this section shall contain one of the following: (1) An assurance that the standards of paragraph (a) of this section will be adhered to in the design, construction, or alteration of such facility; (2) a request for a finding that the project is within one of the exceptions set out in paragraph (c) of this section (the specific exception being identified), with appropriate supporting material; or (3) a request pursuant to § 27.101 for the technical exemption from the standards of paragraphs (a) and (b) of this section, with appropriate supporting material (including, where applicable, a request for a waiver of the requirements of the Architectural Barriers Act of 1968, as amended).

§ 27.107 Standards for vehicles.

(a) *Buses.* The following standards apply to all new transit buses exceeding 22 feet in length for which procurement solicitations are issued after the date this section becomes effective:

(1) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that seats in the front of the vehicle are priority seats for elderly and handicapped persons, and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(2) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection processes. The configuration of the passenger assist system shall include a rail across the front of the interior of the vehicle which shall serve both as an assist and as a barrier to reduce the possibility of passengers sustaining injuries on the fare collection device or windshield in the event of sudden deceleration. The rail shall be located to allow passengers to lean against it for security while paying fares.

(ii) Overhead handrails shall be provided which shall be continuous except for a gap at the rear doorway.

(iii) Handrails and stanchions shall be provided which shall be sufficient to permit safe onboard circulation, seating and standing assistance, and upboarding by elderly and handicapped persons.

(3) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) All step edges shall have a band of bright contrasting color(s) running the full width of the step.

(4) *Lighting.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(5) *Fare collection.* The farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule.

(6) *Destination and route signs.* Each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) *Rapid Rail Vehicles.* The following standards apply to all rapid rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible rapid rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) Where the vehicle will operate in a wheelchair accessible station, the design of vehicles shall be coordinated with the boarding platform design in order to minimize the gap between vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(ii) Handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) *Floor surfaces.* All floors shall have slip-resistant surfaces.

(c) *Light Rail Vehicles.* The following standards apply to all light rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible light rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) The design of level-entry vehicles shall be coordinated with the boarding platform design in order to minimize the gap between the vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) On vehicles which require use of steps in the boarding process, handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process.

(ii) On level-entry vehicles, handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) On all vehicles, handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(4) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) Any step edges shall have a band of bright contrasting color(s) running the full width of the step.

(5) *Lighting in step-entry.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside lights which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(d) *Other Vehicles.* Requirements for vehicles not covered by this section will be determined by UMTA on a case-by-case basis as part of the project approval process.

§ 27.109 Reduced fares.

Applicants for or recipients of financial assistance under section 9 of the Urban Mass Transportation Act of 1964, as amended, shall, as a condition of receiving such assistance, give satisfactory assurances, in such manner and form as may be required by the Urban Mass Transportation Administrator, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under section 9 will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.

[FR Doc 86-11572 Filed 5-20-86; 8:45 am]
BILLING CODE 4910-62-M

Appendix B

SUMMARY OF COMMENTS MADE AT PUBLIC
HEARING ON THE KENOSHA TRANSIT SYSTEM PUBLIC
TRANSIT PROGRAM FOR HANDICAPPED PERSONS

Mr. Edward A. Jenkins, Director, Kenosha Department of Transportation, called the public hearing to order at 3:37 p.m. He stated that the purpose of the public hearing was for the City of Kenosha to accept comments from any interested persons concerning the City's proposed public transit program for transportation handicapped persons. The proposed program was documented in a draft of SEWRPC Memorandum Report No. 23 entitled, A Public Transit Program for Handicapped Persons--City of Kenosha, which was prepared with the assistance of the Southeastern Wisconsin Regional Planning Commission. The draft report is available for public review during a 60-day public comment period from April 11, 1987 through June 9, 1987, at a number of public locations throughout the City of Kenosha. Mr. Jenkins read the notice for the public comment period and the public hearing which had appeared in The Kenosha News and the Kenosha Labor.

Mr. Jenkins said that a tape recording of this public hearing was being made so that a summary of the proceedings can be prepared for, and included in, the final version of SEWRPC Memorandum Report No. 23, as required by the federal Urban Mass Transportation Administration (UMTA) regulations. Mr. Jenkins then asked for any comments concerning the proposed program from those in attendance at this public hearing.

Comment: Mr. Fred M. Jacobson asked whether seat belts instead of the C-clamp locks could be used to secure wheelchairs in the lift-equipped buses.

Response: Mr. Jenkins replied that there is still a divided opinion among physically handicapped user groups and transit operators as to whether or not the use of seat belts if as good as, or better than, the C-clamp locks for securing wheelchair users in the buses. The clamps prevent the wheelchair from moving when the bus is in motion, while the use of seat belts may hold the passenger but may not keep the wheelchair from rolling. There is also a question as to the best way for individuals with certain infirmities to properly use seat belts.

Comment: Ms. Betty J. Anderson asked what the C-clamps were and how they worked, as she was not familiar with them.

Response: Mr. Jacobson advised that the clamps lock onto the wheelchair wheels to keep the wheelchairs from rolling when the bus is moving.

Comment: Ms. Anderson asked how many wheelchairs can be accommodated on each bus.

Response: Mr. Jenkins replied that one wheelchair can be handled on each bus. There are five buses equipped with wheelchair lifts.

Comment: Ms. Anderson asked if advance notice must be given by individuals using wheelchairs to use the regular buses.

Response: Mr. Jenkins confirmed that advance notice is required so that the transit system can make sure a wheelchair lift-equipped bus is available for the route and schedule that the passenger required. The transit system requests, but does not necessarily require, that an advance notice of 24 hours be given by the passenger so that the proper buses are scheduled for the proper route, especially if the passenger must transfer between routes to get from his or her origin to a destination. The advance notice can be provided simply by calling the transit system.

Comment: Ms. Anderson asked if this hearing is to support continued funding from UMTA, and if the program received any state funding.

Response: Mr. Jenkins answered yes to both questions, and noted that all sources of funding--that is, federal, state, and local--are grouped together to provide the service.

Comment: Mrs. Anderson asked how much the lift-equipped buses are used by wheelchairbound persons.

Response: Mr. Jenkins replied there are five to six rides per day that require the use of wheelchair lifts. He stated the goal is to get good utilization of both the city transit lift-equipped buses and the door-to-door Care-A-Van service provided jointly by the Kenosha Achievement Center and the City. In fact, of all the buses in the Kenosha transit system fleet, the ones with wheelchair lifts are used the most and put on the most mileage in a typical year.

Comment: Ms. Joyce Otto said bus service in recent years has been very good and had no complaints. She asked if there was sensitivity training for the bus drivers, so handicapped people aren't treated as "different." She noted that sensitivity training should not only address physically handicapped persons, but also people with other handicaps--such as the hearing or visually impaired.

Response: Mr. Jenkins explained that sensitivity training is an on-going effort whenever driver meetings are held, or on a one-on-one basis when it becomes necessary.

Comment: Ms. Joyce Otto expressed appreciation for the vast improvement in service and attitudes. The audience expressed their satisfaction for the new bus stop signs put up on all regular transit routes.

Comment: Ms. Anderson asked if there had been a cutback in funding for the specialized transportation services in 1987.

Response: Mr. Jenkins said no, there hadn't. However, the City's involvement in funding the operation of its transit system had increased substantially over the past year. Mr. Jenkins stated the Transit Commission will keep an open mind toward bettering their funding of additional services for the handicapped.

Comment: Mrs. Anderson complimented the City's transit system performance amd wondered how well the wheelchair lifts operated in regular service.

Response: Mr. Jenkins replied that the transit system experiences few problems with the lifts primarily because they receive good continuing maintenance, although winters are hardest on the mechanisms.

Comment: Ms. Siegel from the Kenosha County Department of Aging noted that a particular individual who uses the transit system's wheelchair lift-equipped buses and the Care-A-Van service to get to and from work has problems securing the wheelchair into the clamps on city buses and wondered if the installation of seat belts on the buses could help this situation.

Response: Mr. Jenkins suggested that this person contact the the City's Department of Transportation office to see if special arrangements can be made to accommodate these needs. Also, Mr. Jenkins noted, this person must be able to use the Care-A-Van service. Mrs. Siegel said she would contact the person so that efforts are made to solve this problem. Ms. Siegel and Mr. Jenkins agreed that once the particulars of this individual's problems are determined, both the Kenosha transit system and the Care-A-Van program should be able to make arrangements so that this person has adequte transportation services available.

(Note: The City of Kenosha has directly contacted the handicapped individual in question and has made arrangements to attempt to correct any problems he has had in the past in using the wheelchair clamps on the city buses. The individual is now able to use the wheelchair lift-equipped buses).

There being no further comments, Mr. Jenkins acknowledged that this hearing may have seemed repetitive since two similar public hearings were conducted in October 1986 concerning virtually the same subject matter.

The hearing was adjourned at 4:02 p.m.

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Exhibit 1

ATTENDANCE RECORD
PUBLIC HEARING ON THE KENOSHA TRANSIT SYSTEM
PUBLIC TRANSIT PROGRAM FOR HANDICAPPED PERSONS

Kenosha Municipal Office Building, Room 302
625 52nd Street, Kenosha, Wisconsin
May 19, 1987; 3:30 p.m.

Attendees

Betty J. Anderson	Member, Advisory Committee on Transportation for Disabled Persons in the City of Kenosha
Barbara Axelson	Reporter, WQTD Radio, Kenosha
Armado Bras	Citizen, Kenosha
Otto P. Dobnick	Principal Planner, Southeastern Wisconsin Regional Planning Commission
John J. Frost, Jr	Member, Kenosha Transit Commission
Fred M. Jacobson	5800 3rd Avenue, Kenosha
Edward A. Jenkins	Director of Transportation, City of Kenosha
Arvo Mattson	Vice-Chairman, Kenosha Transit Commission
Joyce A. Otto	712 57th Street, Kenosha
Deborah Siegel	Project Assistant, Kenosha County Department of Aging

Exhibit 2

LEGAL NOTICE OF PUBLIC HEARING

(This notice appeared in The Kenosha News on April 12, 1987, and in the Kenosha Labor on April 17, 1987

COPY OF NOTICE

NOTICE
NOTICE OF PUBLIC COMMENT PERIOD AND PUBLIC HEARING ON THE KENOSHA TRANSIT SYSTEM PUBLIC TRANSIT PROGRAM FOR TRANSPORTATION HANDICAPPED PERSONS

The City of Kenosha, operator of the Kenosha transit system, has with the assistance of the staff of the Southeastern Wisconsin Regional Planning Commission completed a preliminary draft of a report describing the City's plan for a public transit program for transportation handicapped persons. The draft plan will be available for public inspection during a public comment period - from Saturday, April 11, 1987 through Tuesday, June 9, 1987. During this public comment period, the draft plan will be reviewed by the Advisory Committee on Transportation for Disabled Persons in the City of Kenosha, and will be the subject of a public hearing. Interested persons are invited to submit relevant oral or written comments concerning the draft plan during the public comment period, or at the public hearing. The draft plan, after considering several alternatives, recommends the continuation of the existing program of transportation services for handicapped persons who are unable to use the City's regular fixed route bus service. Under the existing program, the City of Kenosha provides on-call, accessible bus service over the regular fixed routes of the Kenosha transit system and participates in the Care-A-Van program, a specialized door-to-door transportation service that operates throughout the City of Kenosha on an advance-reservation basis. The draft report documents the City of Kenosha's public transportation program for transportation handicapped persons, as required by U. S. Department of Transportation regulations for recipients of federal transit assistance.

Copies of the report describing the draft plan will be available for public inspection during business hours throughout the public comment period at:

City of Kenosha
Municipal Building
625 52nd Street, Room 104
Kenosha, Wisconsin

Kenosha County
Clerk's Office
912 56th Street
Kenosha, Wisconsin

Kenosha Achievement Center
1218 79th Street
Kenosha, Wisconsin

City of Kenosha
Southwest Library
7979 38th Avenue
Kenosha, Wisconsin

City of Kenosha
North Side Library
2053 22nd Avenue
Kenosha, Wisconsin

City of Kenosha
Simmons Library
711 59th Place
Kenosha, Wisconsin

City of Kenosha
West Branch Library
2419 63rd Street
Kenosha, Wisconsin

Anyone who has other specialized needs in order to comment on the draft plan should contact the City of Kenosha Department of Transportation, Room 115, Kenosha, Wisconsin. Telephone: (414) 656-8151.

The public hearing for the draft plan will be held at 3:30 p.m. on Tuesday, May 19, 1987, in Room 102 of the City of Kenosha Municipal Building, 625 52nd Street, Kenosha, Wisconsin. The City of Kenosha Municipal Building is accessible to the handicapped. Parking will be available for attendees in the Municipal Building parking lot. An interpreter will be present to assist the hearing impaired.

Persons may comment on the draft plan in writing or orally in person or by recorded cassette. All comments should be submitted to Mr. Edward A. Jenkins, Director, Department of Transportation, City of Kenosha, Room 115, 625 52nd Street, Kenosha, Wisconsin 53140. All comments must be received at this office by 4:30 p.m. on June 9, 1987, the last day of the public comment period.

Edward A. Jenkins, Director
Department of Transportation
City of Kenosha
April 12, 1987

STATE OF WISCONSIN }
COUNTY OF KENOSHA } ss.

Paula Spodick

Being duly sworn, on oath says, that he is one of the printers of THE KENOSHA NEWS, a daily newspaper printed and published in the City of Kenosha, County and State aforesaid, and that a notice, of which the annexed printed slip is a true copy, has been published in the said KENOSHA NEWS for the term of 1 day ~~weeks, once each week successively~~, commencing the 12 day of April, A. D. 19 87 and ending April 12, A. D. 19 87.

Paula Spodick

Subscribed and Sworn To before me this 12 day of April, A. D. 87.

Delia C. Chiappetta
Notary Public,
Kenosha, Wis.

My Commission expires June 10, 1990

SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION STAFF

Kurt W. Bauer, PE, AICP, RLS. . . . . Executive Director

Philip C. Evenson, AICP . . . . . .Assistant Director

Kenneth R. Yunker, PE . . . . . .Assistant Director

Robert P. Biebel, PE . . . . . Chief Environmental Engineer

John W. Ernst. . . . . .Information Systems Manager

Gordon M. Kacala . . . . . Chief Economic Development Planner

Leland H. Kreblin . . . . . .Chief Planning Illustrator

Donald R. Martinson . . . . . Chief Transportation Engineer

Bruce P. Rubin . . . . . .Chief Land Use Planner

Roland O. Tonn, AICP . . . . . .Chief Community Assistance Planner

Joan A. Zenk . . . . . .Administrative Officer

Special acknowledgement is due Mr. Albert A. Beck, Principal Planner, and Mr. Otto P. Dobnick, Principal Planner, for their contributions to the preparation of this report.