

of the San Diego situation. * * * we have already, during our preliminary review of the City's application, disallowed about \$150,000 of the proposed project cost which was allocated to the purchase of eight charter-type buses.

"The final application of the City of San Diego is presently under active consideration by this Department. In particular, we have requested the City to furnish additional information as to the nature and extent of the proposed use, if any, of project facilities and equipment in charter service, so that we can further evaluate the application under the criteria above set forth. We have also requested similar information from Mr. Fredrick J. Ruane, who has filed a taxpayers' suit (Superior Court for San Diego County Civil #297329) against the City, contesting its authority to engage in charter bus operations."

As indicated above, it is clear that under the Act in question grants may not legally be made to purchase buses to be used "exclusively" in the operation of charter bus service. However, in view of the purposes of the Act involved it is our opinion that a city which has purchased with grant funds buses needed for an efficient mass transportation system, is not precluded by the act from using such buses for charter service during idle or off-peak periods when the buses are not needed for regularly scheduled runs. As indicated above, such a use would appear to be an incidental use.

The fourth question is answered accordingly.

As requested, the correspondence enclosed with your letter is returned herewith.

Sincerely yours,

FRANK H. WEITZEL,
*Assistant Comptroller General
of the United States.*

Enclosures:

The Honorable Bob Wilson, House of Representatives.

MARCH 29, 1976.

INFLATIONARY IMPACT STATEMENT
FINAL REGULATIONS ON SCHOOL BUS
OPERATIONS

I certify that, in accordance with Executive Order 11821, dated November 27, 1974, and Departmental implementing instructions, an Inflationary Impact Statement is not required for final regulations on School Bus Operations.

ROBERT E. PATRICELLI,
*Federal Mass Transit
Administrator.*

**PART 609—TRANSPORTATION FOR
ELDERLY AND HANDICAPPED
PERSONS**

Sec.

- 609.1 Purpose.
- 609.3 Definitions.
- 609.5 Applicability.
- 609.23 Reduced fare.

APPENDIX A TO PART 609—ELDERLY AND
HANDICAPPED

AUTHORITY: 49 U.S.C. 5307(d) and 5308(b); 23 U.S.C. 134, 135 and 142; 29 U.S.C. 794; 49 CFR 1.51.

SOURCE: 41 FR 18239, Apr. 30, 1976, unless otherwise noted.

§ 609.1 Purpose.

The purpose of this part is to establish formally the requirements of the Federal Transit Administration (FTA) on transportation for elderly and handicapped persons.

§ 609.3 Definitions.

As used herein:

Elderly and handicapped persons means those individuals who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semi-ambulatory capabilities, are unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected.

§ 609.5 Applicability.

This part, which applies to projects approved by the Federal Transit Administrator on or after May 31, 1976, applies to all planning, capital, and operating assistance projects receiving Federal financial assistance under sections 5307 or 5308 of the Federal transit laws (49 U.S.C. Chapter 53), and non-highway public mass transportation projects receiving Federal financial assistance under: (1) Subsection (a) or (c) of section 142 of title 23, United States Code; and (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code. However, under certain circumstances evident in

§§ 609.13 through 609.21, the latter sections apply to fixed facilities and vehicles included in projects approved before May 31, 1976. Sections in this part on capital assistance applications, fixed facilities, and vehicles apply expressly to capital assistance projects receiving Federal financial assistance under any of the above statutes.

[41 FR 18239, Apr. 30, 1976, as amended at 61 FR 19562, May 2, 1996]

§ 609.23 Reduced fare.

Applicants for financial assistance under section 5307 of the Federal transit laws (49 U.S.C. Chapter 53), must, as a condition to receiving such assistance, give satisfactory assurances, in such manner and form as may be required by the Federal Transit Administrator and in accordance with such terms and conditions as the Federal Transit Administrator may prescribe, that the rates charged elderly and handicapped persons during non-peak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under this section 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.

[41 FR 18239, Apr. 30, 1976, as amended at 61 FR 19562, May 2, 1996]

APPENDIX A TO PART 609—ELDERLY AND HANDICAPPED

The definitions of the term *elderly and handicapped* as applied under FTA's elderly and handicapped half-fare program (49 CFR part 609) shall apply to this rule. This permits a broader class of handicapped persons to take advantage of the exception than would be permitted under the more restrictive definition applied to the non-discrimination provisions of the Department's section 504 program (49 CFR 27.5), which includes only handicapped persons otherwise unable to use the recipient's bus service for the general public.

Accordingly, for the purposes of this part, the definition of *elderly persons* may be determined by the FTA recipient but must, at a minimum, include all persons 65 years of age or over.

Similarly, the definition of *handicapped persons* is derived from the existing regula-

tions at 49 CFR 609.3 which provide that *Handicapped persons* means those individuals who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semi-ambulatory capabilities, are unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected.

To assist in understanding how the definitions might be applied to administration of the charter rule, the following questions and answers previously published by FTA for the half-fare program in FTA C 9060.1, April 20, 1978, are reproduced:

1. *Question:* Can the definition of *elderly or handicapped* be restricted on the basis of residency, citizenship, income, employment status, or the ability to operate an automobile?

Answer: No. Section 5(m) is applicable to *elderly and handicapped persons*. It is FTA's policy that such categorical exceptions are not permitted under the Act.

2. *Question:* Can the eligibility of *temporary handicaps* be restricted on the basis of their duration?

Answer: Handicaps of less than 90 days duration may be excluded. Handicaps of more than 90 days duration must be included.

3. *Question:* Can the definition of *handicap* be limited in any way?

Answer: FTA has allowed applicants to exclude some conditions which appear to meet the functional definition of *handicap* provided in section 5302(a)(5) of the Federal transit laws (49 U.S.C. Chapter 53). These include pregnancy, obesity, drug or alcohol addiction, and certain conditions which do not fall under the statutory definition (e.g., loss of a finger, some chronic heart or lung conditions, controlled epilepsy, etc.). Individuals may also be excluded whose handicap involves a contagious disease or poses a danger to the individual or other passengers. Other exceptions should be reviewed on a case-by-case basis.

4. *Question:* Is blindness considered a handicap under Section 5(m)?

Answer: Yes.

5. *Question:* Is deafness considered a handicap under section 5(m)?

Answer: As a rule, no, because deafness, especially on buses, is not considered a disability which requires special planning, facilities, or design. However, deafness is recognized as a handicap in the Department of Transportation's ADA regulation, and applicants for Section 5 assistance are encouraged to include the deaf as eligible for off-peak half-fares.

6. *Question:* Is mental illness considered a handicap under section 5(m)?