

Subpart B—Airport Traffic Control Towers**§ 170.11 Scope.**

This subpart sets forth establishment and discontinuance criteria for Airport Traffic Control Towers.

§ 170.13 Airport Traffic Control Tower (ATCT) establishment criteria.

(a) The following criteria along with general provisions specified in *Airway Planning Standard Number One, Terminal Air Navigation Facilities and Air Traffic Control Services*, FAA Order, 7031.2C, must be met before an airport can qualify for an ATCT:

(1) The airport whether publicly or privately owned must be open to and available for use by the public as defined in the Airport and Airway Improvement Act of 1982.

(2) The airport must be recognized by and contained within the National Plan of Integrated Airport Systems.

(3) Airport owners/authorities must have entered into appropriate

assurances and covenants to guarantee that the airport will continue in operation for a long enough period to permit the amortization of the ATCT investment.

(4) The FAA must be furnished appropriate land without cost for construction of the ATCT.

(5) An airport meets the benefit-cost ratio criteria specified herein utilizing three consecutive FAA annual counts and projections of future traffic during the expected life of the tower facility. (An FAA annual count is a fiscal year or a calendar year activity summary. Where actual traffic counts are unavailable or not recorded, adequately documented FAA estimates of the scheduled and nonscheduled activity may be used.)

(b) An airport meets the establishment criteria when it satisfies paragraphs (a)(1) through (a)(5) of this section and its benefit-cost ratio calculated according to procedures described in *FAA Report number FAA-APO-88-12, Establishment and Discontinuance*

Criteria for Airport Traffic Control Towers, dated December 1988, equals or exceeds one. As defined in § 170.3 of this part, the benefit-cost ratio is the ratio of the present value of the ATCT life-cycle benefits (BPV) to the present value of ATCT life-cycle costs (CPV).

BPV/CPV > 1.0

(c) The satisfaction of all the criteria listed in this section does not guarantee that the airport will receive a ATCT.

§ 170.15 ATCT Discontinuance criteria.

An ATCT will be subject to discontinuance when the continued maintenance costs less termination costs (CMPV) of the ATCT exceed the present value of its remaining life-cycle benefits (BPV):

BPV/CMPV < 1.0

Issued in Washington, DC on May 18, 1989.

Dale E. McDaniel,

Acting Associate Administrator for Policy, Planning and International Aviation.

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pesticide register

Thursday
May 25, 1989

Part IV

Environmental Protection Agency

**Pesticides Required To Be Reregistered;
List B; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34002; FRL 3575-9]

Pesticides Required To Be Reregistered; List B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List B) of pesticides active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the second in a series of four such lists required by the Act. In addition to listing the pesticides, this notice describes the criteria which the Agency used in assigning pesticide active ingredients to List B, and discusses the significance of inclusion on List B. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List B in the *Federal Register* initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for reregistration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5)(C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and

restrictions. Under this process, begun in 1980, EPA has evaluated approximately 25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete data bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. IFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticides registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the *Federal Register* of February 22, 1989 (54 FR 7740). This notice contains List B, which was issued by order on April 24, 1989, containing 150 active ingredient cases. Since the issuance of List B, the Agency has discovered that one act ingredient registered after November 1, 1984 (and therefore not subject to reregistration) was inadvertently included. This active ingredient (dimethazone) has been deleted from List B. Lists C and D will be issued by the Agency on or before July 24, 1989, and October 24, 1989, respectively.

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA section 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registrants of summaries of previously submitted studies and reforms of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable data requirements identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification of registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the *Federal Register* four lists of pesticides active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the *Federal Register* of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) will include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists are to be issued by the Agency in groups of 150 active ingredient cases in April and July 1989 (Lists B and C) with a final list or remaining active ingredients in October 1989 (List D). Each list will be published in the Federal Register, and a copy with be sent by certified mail to each registrant having a product containing a chemical on each list.

B. Statutory Priorities for Listing

FIFRA section 4(c)(1) sets out the priorities that the Agency must include in considering which pesticide active ingredients are to be included on List B. An active ingredient need only meet one criterion in order to be included on List B.

The statutory criteria that EPA must include in setting priorities for inclusion on List B are as follows (numbers in brackets indicate how many active ingredient cases meet that criterion):

1. *Food/feed use.* An active ingredient used on food or feed, or which may result in residues on food or feed, must be given priority. EPA has included on List B active ingredients having tolerances or exemptions from tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), and other active ingredients which may result indirectly in residues in or on food or feed, such as active ingredients used in food processing. A substantial number of chemicals on List B are included because they meet the food/feed residue criterion [119].

2. *Potential ground water contaminants of toxicological concern.* Active ingredients that meet the criterion were drawn from an Agency document, "Pesticides in Ground Water Data Base: 1988 Interim Report, December 1988." Active ingredients listed in Table 1-1 of that report as having confirmed detections in ground water were considered for inclusion on List B [13].

3. *Potential residues in fish or shellfish.* Active ingredients meeting this criterion were identified from a data base maintained by the Agency's Office of Water Regulations and Standards of residues found in fish tissue. This list was augmented by identification of active ingredients having particular use patterns that may result in residues in fish because of application to or use in water, including antifouling uses, mosquito abatement, and aquatic industrial uses such as cooling towers and pulp and paper mills [28].

4. *Active ingredients with significant data gaps.* EPA identified active ingredients as meeting this criterion if:

- a. A Registration Standard was scheduled for fiscal year 1989, but the Registration Standard had not been issued as of the effective date of FIFRA-88 (December 24, 1988). These active ingredients are considered to have significant data gaps. Such active ingredients could not be included on List A, and were therefore transferred to List B [30].

- b. A Data Call-In notice has been issued under FIFRA section 3(c)(2)(B) for significant data gaps, including comprehensive Data Call-In notices issued during the last years [10].

- c. The Agency-established Reference Dose (RfD) for the active ingredient has substantial uncertainty because of missing or inadequate chronic feeding, reproduction, or teratology studies. The source of these active ingredients is the Office of Pesticide Programs data base entitled the "RfD Tracking Report," which is updated monthly. If an active ingredient is listed in that report with an uncertainty factor of greater than 100 (higher uncertainty factors are assigned because of deficiencies in the data base), EPA considers that active ingredient to have significant data gaps [21].

5. *Active ingredients of concern for worker exposure because of agricultural, greenhouse, or nursery use.* Active ingredients meeting this criterion were identified from a list developed by the Office of Pesticide Programs of 406 pesticides used on farms, in greenhouses, and nurseries or in forests. The list, entitled "Active Ingredients in Agricultural Pesticides Potentially Subject to Reentry Restrictions Under Proposed Regulations," was developed in conjunction with the Agency's proposed rule on Worker Protection Standards for Agricultural Pesticides (53 FR 25970, July 8, 1988) [31].

C. Additional Criteria for Inclusion on List B

Although FIFRA section 4(c) establishes priorities that the Agency must include in deciding upon List B, it does not limit the Agency solely to those criteria. EPA has identified additional criteria which highlight Agency concerns not addressed by section 4(c). Therefore, EPA also used the following criteria in identifying active ingredients for inclusion in List B:

1. Active ingredients currently in Special Review [13].
2. Active ingredients whose use is restricted to certified applicators [8].
3. Active ingredients of concern because of potential dibenzodioxin or dibenzofuran contamination. These active ingredients were the subject of

special Data Call-In notices issued in June and October 1987 [8].

4. Active ingredients of concern for possible effects on non-target or endangered species, drawn from PR Notices 87-4 and 87-5 issued in May 1987 and Agency scientific determinations [23].

The effect of applying additional criteria is to advance certain chemicals onto List B which might otherwise have been included on either List C or List D, thereby requiring earlier Phase II, III and IV responses.

Because each criterion used to create List B is broadly applicable to a large number of active ingredients, there is substantial overlap of the criteria. Many active ingredients on List B meet more than one criterion. For the same reason, the pool of candidates for List B exceeded the cutoff of 150 active ingredient cases established by the Act. The 149 active ingredient cases currently contained on List B include 229 individual chemicals. Remaining active ingredients meeting the criteria will be included on Lists C and D.

It should be emphasized that a number of active ingredients that meet the criteria are already the subject of a Registration Standard, and therefore appear on List A and not on List B. The priorities for listing in FIFRA section 4 do not apply to List A chemicals.

D. Format of List B

List B includes 149 active ingredient cases, some of which are single active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the single active ingredient, if brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.

2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.

3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List B. In a few cases, CAS numbers have not been assigned and so are not given.

4. The acceptable common name (or chemical name if there is no acceptable common name) of each individual chemical included within each case.

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ACTIVE INGREDIENTS, LIST B

Case Name	Case	CAS No.	Chemical/Common Name
Acrolein	2005	107-02-8	Acrolein
Ametryn	2010	834-12-8	2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-s-triazine
Aminocarb	2015	2032-59-9	4-(Dimethylamino)-m-tolyl methylcarbamate
Arsenates and arsenites	2020	7778-44-1 7784-46-5	Calcium arsenate Sodium arsenite
Barban	2025	101-27-9	4-Chloro-2-butynyl meta-chlorocarbanilate
Benfluralin	2030	1861-40-1	N-Butyl-N-ethyl-a,a,a-trifluoro-2,6-dinitro-p-toluidine
Bensulide	2035	741-58-2	S-(O,O-Diisopropyl phosphorodithioate) ester of N-(2-Mercaptoethyl)benzenesulfonamide
N6-Benzyladenine	2040	1214-39-7	N-(Phenylmethyl)-1H-purin-6-amine
o-Benzyl-p-chlorophenol, and salts	2045	120-32-1 35471-49-9 3184-65-4	2-Benzyl-4-chlorophenol Potassium 2-benzyl-4-chlorophenolate Sodium 2-benzyl-4-chlorophenolate
Biphenyl	2050	92-52-4	Biphenyl
Bis(trichloromethyl)sulfone	2055	3064-70-8	Bis(trichloromethyl)sulfone
Bomyl	2060	122-10-1	Dimethyl 3-hydroxyglutaconate dimethyl phosphate
Brodifacoum	2755	56073-10-0	3-(3-(4'-Bromo-(1,1'-biphenyl)-4-yl)-1,2,3,4-tetrahydro-1-naphthalenyl)-4-hydroxycoumarin
Bromadiolone	2760	28772-56-7	3-(3-(4'-Bromo-(1,1'-biphenyl)-4-yl)-3-hydroxy-1-phenylpropyl)-4-hydroxycoumarin
Bromethalin	2765	63333-35-7	N-Methyl-2,4-dinitro-N-(2,4,6-tribromophenyl)-6-(trifluoromethyl)benzenamine
Bromonitrostyrene	2065	7166-19-0	beta-Bromo-beta-nitrostyrene
Bromoxynil, and esters	2070	1689-84-5 3861-41-4 1689-99-2	3,5-Dibromo-4-hydroxybenzonitrile Bromoxynil butyrate Bromoxynil heptanoate Bromoxynil octanoate
Bronopol	2770	52-51-7	2-Bromo-2-nitropropane-1,3-diol
Butralin	2075	33629-47-9	4-(1,1-Dimethylethyl)-N-(1-methylpropyl)-2,6-dinitrobenzenamine
Cacodylic acid, and salts	2080	75-60-5 124-65-2	Cacodylic acid Sodium cacodylate
Cadmium chloride	2085	10108-64-2	Cadmium chloride
Chlorfenvinphos	2090	470-90-6	2-Chloro-1-(2,4-dichlorophenyl)vinyl diethyl phosphate
Chlorflurenol, methyl ester	2095	2536-31-4	Methyl 2-chloro-9-hydroxyfluorene-9-carboxylate
Chlorophacinone	2100	3691-35-8	2-((p-Chlorophenyl)phenylacetyl)-1,3-indandione
Cloprop, salts and amide	2110	101-10-0 53404-22-1 5825-87-6	2-(m-Chlorophenoxy)propionic acid 2-(m-Chlorophenoxy)propionic acid, sodium salt 2-(m-Chlorophenoxy)propionamide
4-CPA, and salts	2115	122-88-3 53404-23-2	4-Chlorophenoxyacetic acid Diethanolamine 4-chlorophenoxyacetate

Crotoxyphos	2120	7700-17-6	Dimethylphosphate ester of alpha-methylbenzyl-3-hydroxy-cis-crotonate
Cycloate	2125	1134-23-2	S- Ethyl N-ethylcyclohexanecarbamothioate
Cypermethrin	2130	52315-07-8	alpha- Cyano(3-phenoxyphenyl)methyl (+-)cis,trans-3- (2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarbox ylate
Cythioate	2775	115-93-5	O,O- Dimethyl O-p-sulfamoylphenyl phosphorothioate
Dazomet, and salts	2135	533-74-4 53404-60-7	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2- thione Sodium tetrahydro-3,5-dimethyl-2H-1,3,5- thiadiazine-2-thione
DDT	2140	50-29-3	Dichlorodiphenyl trichloroethane
DEF (*)	2145	78-48-8	S,S,S- Tributyl phosphorotriothioate
Desmidipham	2150	13684-56-5	Ethyl meta-hydroxycarbanilate carbanilate
Diamidofos	2155	1754-58-1	Phenyl N,N'-dimethylphosphorodiamidate
Dibromodicyanobutane	2780	35691-65-7	1- Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile
Dicapthon	2785	2463-84-5	O-(2- Chloro-4-nitrophenyl) O,O-dimethyl phosphorothioate
Diclofop-methyl	2160	51338-27-3	Methyl 2-(4-(2,4-dichlorophenoxy)phenoxy)propionate
Dichlorophenylphenol, and salts	2165	5335-24-0 53404-30-1	4,6- Dichloro-2-phenylphenol Potassium 4,6-dichloro-2-phenylphenate
Diethatyl ethyl	2170	38727-55-8	N- Chloroacetyl-N-(2,6-diethylphenyl)glycine, ethyl ester
Dimethyldithiocarbamate salts	2180	14484-64-1 128-03-0 128-04-1 137-30-4 16509-79-8	Ferric dimethyldithiocarbamate Potassium dimethyldithiocarbamate Sodium dimethyldithiocarbamate Zinc dimethyldithiocarbamate Ziram - cyclohexylamine complex
Dinitramine	2185	29091-05-2	N3,N3- Diethyl-2,4-dinitro-6-(trifluoromethyl)-1,3- benzenediamine
4,6-Dintro-o-cresol, and salts	2190	534-52-1 2312-76-7	4,6- Dinitro-o-cresol Sodium 4,6-dinitro-o-cresylate
Dinitrophenol	2195	51-28-5	2,4- Dinitrophenol
Dinocap, and its components	2200	39300-45-3 49794-90-3 49794-91-4 37224-61-6	Mixed dinitrooctylphenylcrotonates and dinitrooctylphenols 2,4- Dinitro-6-octylphenyl crotonate 2,6- Dinitro-4-octylphenyl crotonate Isocetyl dinitrophenol, isomer unspecified
Diphacinone, and salts	2205	82-66-6 42721-99-3	2-(Diphenylacetyl)-1,3-indandione Sodium diphacinone
Diphenylamine	2210	122-39-4	Diphenylamine
Dipropyl isocinchomeronate	2215	136-45-8	Di-n-propyl isocinchomeronate
Ditalimfos	2790	5131-24-8	O,O- Diethyl (1,3-dihydro-1,3-dioxo-2H-isindol-2-yl) phosphonothioate
Dodemorph, and salts	2225	1593-77-7 31717-87-0 59145-63-0	4- Cyclododecyl-2,6-dimethylmorpholine 4- Cyclododecyl-2,6-dimethylmorpholine acetate 4- Cyclododecyl-2,6-dimethylmorpholine benzoate
Dowacil-A40 (*)	2230	38827-35-9 85847-73-0	2,3,5- Trichloro-4-(propylsulfonyl)pyridine 2,3- Dichloro-4-(propylsulfonyl)pyridine

Duraset (*)	2795	85-72-3	N-meta-Tolyl)phthalamic acid
EDB	2235	75-09-2	Ethylene dibromide
EDC	2240	107-06-2	Ethylene dichloride
Endothall, and salts	2245	145-73-3 2164-07-0 129-67-9	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid Mono[N,N-dimethyl(coco alkyl)amine] endothall Dipotassium endothall Disodium endothall
Endrin	2250	72-20-8	Hexachloroepoxyoctahydro-endo,endo-dimethano naphthalene
Ethalfuralin	2260	55283-68-6	N-Ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine
Ethofumesate	2265	26225-79-6	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate
Ethylan	2270	72-56-0	1,1-Dichloro-2,2-bis(p-ethylphenyl)ethane
Ethylene oxide	2275	75-21-8	Ethylene oxide
Fenvalerate	2280	51630-58-1	alpha-Cyano-(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate
Fluazifop butyl, isomers	2285	69806-50-4 79241-46-6	Butyl (RS)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate Butyl (R)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
Flucythrinate	2290	70124-77-5	(+)-Cyano-(3-phenoxyphenyl)methyl (+)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate
Fluvalinate	2295	69409-94-5	N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine, (+)-cyano(3-phenoxyphenyl)methyl ester
Fosamine ammonium	2355	25954-13-6	Ammonium ethyl carbamoylphosphonate
Fospirate	2300	5598-52-7	O,O-Dimethyl O-(3,5,6-trichloro-2-pyridyl) phosphate
Furfural	2305	98-01-1	Furfural
Glutaraldehyde	2315	111-30-8	Glutaraldehyde
Hexachlorophene, and salts	2320	70-30-4 5736-15-2	2,2'-Methylenebis(3,4,6-trichlorophenol) Monosodium 2,2'-methylenebis(3,4,6-trichlorophenolate)
Imazalil	2325	35554-44-0	1-(2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole
Indole-3-butyric acid	2330	133-32-4	Indole-3-butyric acid
Iprodione	2335	36734-19-7	3-(3,5-Dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
Irgasan (*)	2340	3380-34-5	5-Chloro-2-(2,4-dichlorophenoxy)phenol
Isofenphos	2345	25311-71-1	Isopropylsalicylate, O-ester with O-ethyl isopropylphosphoramidothioate
Lead arsenate	2360	7784-40-9	Lead arsenate
MCPB, and salts	2365	94-81-5 6062-26-6	4-(2-Methyl-4-chlorophenoxy)butyric acid Sodium 4-(2-methyl-4-chlorophenoxy)butyrate
Mefluidide, and salts	2370	53780-34-0 53780-36-2 83601-83-6	N-(2,4-Dimethyl-5-(((trifluoromethyl)sulfonyl)amino)phenyl)acetamide Diethanolamine mefluidide Mefluidide, potassium salt
Mepiquat chloride	2375	24307-26-4	N,N-Dimethylpiperidinium chloride

2-Mercaptobenzothiazole, and salts	2380	149-30-4 2492-26-4 155-04-4	2-Mercaptobenzothiazole Sodium 2-mercaptobenzothiazolate Zinc 2-mercaptobenzothiazolate
Merphos	2385	150-50-5	Tributyl phosphorotrithioite
Methyldithiocarbamate, salts	2390	137-41-7 137-42-8	Potassium N-methyldithiocarbamate Sodium N-methyldithiocarbamate
Methanearsonic acid, salts	2395	5902-95-4 144-21-8 53404-47-0 2163-80-6 6379-37-9	Calcium methanearsonate Disodium methanearsonate Dodecylammonium methanearsonate Monosodium methanearsonate Octylammonium methanearsonate
Methazole	2400	20354-26-1	2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione
Methyl isothiocyanate	2405	556-61-6	Methyl isothiocyanate
Methylene bis(thiocyanate)	2415	6317-18-6	Methylene bis(thiocyanate)
Mexacarbate	2425	315-18-4	4-(Dimethylamino)-3,5-xylyl methylcarbamate
MCK-264 (*)	2430	113-48-4	N-Octyl bicycloheptenedicarboximide
Molinate	2435	2212-67-1	S-Ethyl hexahydro-1H-azepine-1-carbothioate
MV-678 (*)	2440	53905-38-7	1-(8-Methoxy-4,8-dimethylnonyl)-4-(1-methylethyl)benzene
(b-Naphthoxy)acetic acid	2445	120-23-0	(2-Naphthoxy)acetic acid
Napropamide	2450	15299-99-7	N,N-Diethyl-2-(1-naphthalenyloxy)propionamide
Niclosamide	2455	1420-04-8	2-Aminoethanol salt of 2',5-dichloro-4'-nitrosalicylanalide
Nicotine, and derivs	2460	54-11-5 65-30-5 84961-66-0	Nicotine Nicotine sulfate Tobacco dust
4-Nitrophenol	2465	100-02-7	4-Nitrophenol
Octhilinone	2475	26530-20-1	2-n-Octyl-4-isothiazolin-3-one
Omadine salts	2480	33079-08-2 13463-41-7	tert-Butylamine 2-pyridinethiol-1-oxide Zinc 2-pyridinethiol-1-oxide
Oxadiazon	2485	19666-30-9	2-tert-Butyl-4-(2,4-dichloro-5-isopropoxyphenyl)-delta2-1,3,4-oxadiazoline-5-one
Oxyfluorfen	2490	42874-03-3	2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene
Oxythioquinox	2495	2439-01-2	6-Methyl-2,3-quinoxalinedithiol cyclic S,S-dithiocarbonate
Pebulate	2500	1114-71-2	S-Propyl butylethylthiocarbamate
Pentachlorophenol, salts and esters	2505	87-86-5 3772-94-9 7978-73-6 131-52-2	Pentachlorophenol Pentachlorophenyl laurate Potassium pentachlorophenate Sodium pentachlorophenate
Permethrin	2510	52645-53-1	(3-Phenoxyphenyl)methyl (+)-cis,trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate
Phenothiazine	2515	262-20-4	10H-Phenothiazine
Phenthoate	2800	2597-03-7	Ethyl alpha-((dimethoxyphosphinothioyl)thio)benzeneacetate

Phenylmercury salts	2805	27236-65-3 62-38-4 53404-67-4 122-64-5 55-68-5 23319-66-6 104-60-9 53404-68-5	Di(phenylmercury) dodecenylsuccinate Phenylmercuric acetate Phenylmercuric ammonium acetate Phenylmercuric lactate Phenylmercuric nitrate Phenylmercuric triethanolammonium lactate Phenylmercuric oleate Phenylmercuric ammonium propionate
Phosacetim	2520	4104-14-7	O,O- Bis(p-chlorophenyl) acetimidoylphosphoramido thioate
Piperonyl butoxide	2525	51-03-6	(Butylcarbityl)(6-propylpiperonyl)ether
Pirimiphos-ethyl	2530	23505-41-1	O-[2-(Diethylamino)-6-methyl-4-pyrimidinyl] O,O-diethyl phosphorothioate
Pirimiphos-methyl	2535	29232-93-7	O-[2-(Diethylamino)-6-methyl-4-pyrimidinyl] O,O-dimethyl phosphorothioate
Pival (*), and salts	2810	83-26-1 6120-20-3	2- Pivalyl-1,3-indandione Sodium 2-pivalyl-1,3-indandione
Profenofos	2540	41196-08-7	O-(4- Bromo-2-chlorophenyl) O-ethyl S-propyl phosphorothioate
Prometon	2545	1610-18-0	2,4- Bis(isopropylamino)-6-methoxy-s-triazine
Propetamphos	2550	31218-83-4	1- Methyl-ethyl (E)-3-(((ethylamino)methoxyphosphino thioyl)oxy)-2-butanolate
Propoxur	2555	114-26-1	o- Isopropoxyphenyl methylcarbamate
Propylene oxide	2560	75-56-9	Propylene oxide
n-Propyl isome	2565	83-59-0	Di-n-propylmaleate isosafrole condensate
Pyrazon	2570	1698-60-8	5- Amino-4-chloro-2-phenyl-3(2H)-pyridazinone
2-Phenylphenol, and salts	2575	90-43-7 52704-98-0 13707-65-8 132-27-4	2- Phenylphenol Ammonium 2-phenylphenate Potassium 2-phenylphenate Sodium 2-phenylphenate
Pyrethrin, and derivs	2580	121-21-1 8003-34-7	Pyrethrin I Pyrethrin coils Pyrethrum powder other than pyrethrins
Pyrimidinone	2585	67485-29-4	(Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone) (1,5-bis(a,a,a-trifluoro-p-tolyl)-1,4-pentadien-3-one) hydrazone
Ronnel	2590	299-84-3	O,O- Dimethyl O-(2,4,5-trichlorophenyl) phosphoro thioate
Ryanodine, and derivs	2595	15662-33-6	Ryanodine Ryania speciosa, powdered stems of
Sethoxydim	2600	74051-80-2	2-(1-(Ethoxyimino)butyl)-5-(2-(ethylthio)propyl)-3-hydroxy-2-cyclohexen-1-one
Sodium acifluorfen	2605	62476-59-9	5-(2- Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt
Starlicide (*)	2610	7745-89-3	3- Chloro-p-toluidine hydrochloride
TBT-containing compounds	2620	56-35-9 22330-14-9 4419-22-1 56-36-0 4342-36-3 56573-85-4 24124-25-2 53466-85-6	Bis(tributyltin) oxide Bis(tributyltin) salicylate Bis(tributyltin) sulfosalicylate Tributyltin acetate Tributyltin benzoate Tributyltin chloride complex of ethylene oxide condensate of abietylamine Tributyltin linoleate Tributyltin monopropyleneglycol maleate

	28801-69-6	Tributyltin neodecanoate
		Tributyltin resinate
	53404-82-3	Tributyltin isopropyl succinate
	7437-35-6	Bis(tributyltin) adipate
	14275-57-1	Tributyltin maleate
	2155-70-6	Tributyltin methacrylate
	13331-52-7	Tributyltin acrylate
	1461-22-9	Tributyltin chloride
	1983-10-4	Tributyltin fluoride
TCMB	2625 21564-17-0	2-(Thiocyanomethylthio)benzothiazole
TCNB	2630 117-18-0	1,2,4,5-Tetrachloro-3-nitrobenzene
Terbucarb	2640 1918-11-2	2,6-Di-tert-butyl-p-tolyl methylcarbamate
Terbutylazine	2645 5915-41-3	2-(tert-Butylamino)-4-chloro-6-(ethylamino)-s-triazine
Tetradifon	2655 116-29-0	4-Chlorophenyl 2,4,5-trichlorophenyl sulfone
Tetramethrin	2660 7696-12-0	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
Thiobencarb	2665 28249-77-6	S-((4-Chlorophenyl)methyl) diethylcarbamothioate
Thiabendazole, and salts	2670 148-79-8 28558-32-9	2-(4-Thiazolyl)benzimidazole 2-(4-Thiazolyl)benzimidazole, hypophosphite salt
Thiodicarb	2675 59669-26-0	Dimethyl N,N'-(thiobis((methylimino)carbonyloxy)) bis(ethanimidothioate)
Thiophanate-methyl	2680 23564-05-8	Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl)) bis(carbamate)
Toxaphene	2685 8001-35-2	Technical chlorinated camphene
TPTF	2690 379-52-2	Triphenyltin fluoride
Triallate	2695 2303-17-5	S-(2,3,3-Trichloroallyl) diisopropylthiocarbamate
Triadimefon	2700 43121-43-3	1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone
Triclopyr, salts and esters	2710 55335-06-3 64700-56-7 57213-69-1	3,4,5-Trichloro-2-pyridinyloxyacetic acid Butoxyethyl triclopyr Triethylammonium triclopyr
2,4,5-Trichlorophenol, and salts	2815 95-95-4 136-32-3	2,4,5-Trichlorophenol Sodium 2,4,5-trichlorophenate
Triforine	2720 26644-46-2	N,N'-(1,4-Piperazinediyl-bis(2,2,2-trichloroethylidene)) bis(formamide)
Troysan CMP Acetate (*)	2820 1319-86-4	Acetato(chloromethoxypropyl)mercury
Troysan KK-108A (*)	2725 55406-53-6	3-Iodo-2-propynyl butylcarbamate
Valone (*), and salts	2825 83-28-3 23710-76-1	2-Isovaleryl-1,3-indandione Calcium 2-isovaleryl-1,3-indandione
Vernolate	2735 1929-77-7	S-Propyl dipropylthiocarbamate
Vinclozolin	2740 50471-44-8	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
Zineb	2750 12122-67-7	Zinc ethylenebisdithiocarbamate

* Trademark

BILLING CODE 6560-50-C

IV. Significance of Inclusion on List B

Active ingredient cases included on List B are subject to FIFRA sections 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration scheme.

The publication of List B is required by FIFRA section 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List B as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List B must respond to the Agency in accordance with FIFRA section 4(d). Registrants will be sent by certified mail specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. An 18-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient,

publish in the Federal Register a notice of outstanding data requirements, and notify registrants under FIFRA section 3(c)(2)(B) of any additional requirements.

In addition, fees are to be collected for each List B active ingredient in accordance with FIFRA section 4(i)(2). The Agency has determined that, for the purpose of reregistration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List B, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986-88 period, in accordance with FIFRA section 4(i)(7). On April 19, 1989, the Agency requested the submission of market share information from registrants; this information will form the basis for allocation of reregistration fees. Registrants will be notified separately of the fees that must be paid and the due dates for fee payment.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active

ingredients on List B, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0102), Washington, DC 20503.

Dated: May 22, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-12572 Filed 5-24-89; 8:45 am]

BILLING CODE 6560-50-M

Test Report

Thursday
May 25, 1989

Part V

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 665

Bus Testing; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION**Urban Mass Transportation Administration****49 CFR Part 665**

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: Section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 provides that no funds appropriated or made available under the Urban Mass Transportation Act of 1964, as amended, may be obligated or expended for the acquisition of a new model bus after September 30, 1989, unless a bus of such model has been tested at a facility to be established in Altoona, Pennsylvania. The purpose of the testing is not to set a standard or grade the performance of the buses, but to provide performance information to the transit authorities that can be used in their purchase or lease decision. The facility is to be operated by a contractor chosen by UMTA, and the operator is to establish and collect fees for the testing of vehicles at the facility. This notice seeks comment on this proposed rule to implement this new statutory provision.

DATES: Comments should be received by July 24, 1989. UMTA will issue guidance on any transition period procedures within three weeks of the close of the comment period, that is to say by August 14, 1989.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, Docket No. 89-B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090, or, for legal issues, Daniel Duff, Assistant Chief Counsel, (202) 366-4011.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 317 of the Surface Transportation and Uniform Relocation Assistance Act, Pub. L. 100-17 (STURAA), directs the Secretary of

Transportation to establish a bus testing facility at Altoona, Pennsylvania. This responsibility has been delegated to the Urban Mass Transportation Administration (UMTA).

STURAA provides that, after September 30, 1989, no funds obligated by UMTA or expended by an UMTA recipient may be used to purchase a "new bus model", unless a bus of such model has been tested at the Altoona facility. The facility will be operated under contract with UMTA. The operator must establish fees for the vehicle testing, which are approved by UMTA and collected by the operator. Section 317 further specifies that each vehicle is to be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. The purpose of the testing is not to set a standard or grade the performance of the buses, but to provide performance information to the transit authorities that can be used in their purchase or lease decisions. (Although not a part of this rulemaking, we note that this facility, when operational, will be available to all manufacturers for the whole range of tests described in this NPRM. Thus, it is possible for a manufacturer of an "old" model bus to use the resources of this facility, even though the manufacturer's bus model is not required to be tested under the provisions of this program.)

The statute defines the term "new model bus" as " * * a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components."

The Conference Report accompanying the 1987 STURAA states that guidelines on the bus testing facility " * * shall be promulgated through the formal regulatory process." In developing this rule, the agency met with industry and grantee groups. Minutes of these meetings as well as two Reports on the agency's options regarding the implementation of this rule are part of the docket of this rule, and are available for public inspection at the place and during the hours noted in the "ADDRESS" section of this preamble.

This NPRM proposes one way to implement this statutory directive, and requests comment from interested persons on several specific provisions of the proposal. The agency recognizes that for many of the proposed provisions there are a variety of options available. This proposal reflects the agency's tentative decision for each provision. Where there is a broad range of

alternatives for a specific issue the agency has flagged the area particularly for public comment. The key provisions of the proposed rule are discussed in some detail in the following section of this preamble.

B. The Proposed Regulation**1. Key Issues**

This section discusses and analyzes some of the key issues under the NPRM. These are issues on which UMTA particularly seeks comment. In addition, each of the regulatory provisions is summarized in the next section ("Section-By-Section Analysis").

• **Definition of "Bus."** One of the most significant threshold questions is what type or types of vehicle should be tested at the facility, that is, what is the definition of "bus". The rule's scope could include only the typical standard-size 35-40 foot bus, and similar vehicles, or it could encompass essentially every vehicle funded by UMTA which is used in mass transportation service. (Mass transportation service is defined as the operation of a vehicle, which provides general or special service to the public, on a regular and continuing basis.)

In considering how to define bus, UMTA examined the basic definition of "bus" used by two other Federal agencies in the Department of Transportation. The National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, for example, define "bus" as " * * a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons." The Federal Highway Administration Federal Motor Carrier Safety Regulations define "bus" as " * * any motor vehicle designed, constructed, and used for the transportation of passengers, including taxicabs" and also limits this definition under the statutory definition of commercial motor vehicles to vehicles designed to carry more than 15 passengers, including the driver.

Another consideration in developing the definition of bus concerns small transit authorities and uniquely designed vehicles. For example, many small and rural operators have expressed concern about the fitness of vans and other smaller vehicles for mass transportation purposes. Similar questions have been raised at congressional oversight hearings on UMTA's rural program. On the other hand, the potential exists for the testing requirement to impose a significant burden on the very small "manufacturer"—the businessperson who custom alters vehicles for transit

authorities to meet specific paratransit needs, for example. Small volume operations do not have the same kind of overhead flexibility that large bus manufacturers do.

In light of the broad definition of "bus" adopted by agencies of the Department, and additional ongoing durability and reliability concerns about smaller vehicles, UMTA in this NPRM has adopted a definition of bus that would require virtually any new model of a vehicle to be used in mass transportation revenue service and purchased with UMTA funds to be first tested at the bus testing facility. Thus, any new model of a vehicle from the smallest-sized van to the largest heavy-duty articulated transit bus would have to be tested at the bus testing facility if it is purchased or leased with UMTA funds obligated or expended after September 30, 1989.

The STURAA also provides that any major change in configuration or components made to an existing model would require such modified vehicle to be tested at the facility before it could be purchased or leased with UMTA funds. Examples of changes in configuration or components are provided in the definitions section of the proposed rule and include such things as changes in the design or configuration of the propulsion system, changes in the fuel or energy source, and changes involving structural modifications. In this connection, we believe that what is known in the industry as a remanufactured bus probably would trigger the requirements for bus testing, while a rehabilitated bus probably would not. (A remanufacturing generally involves an overhaul of a vehicle while a rehabilitation generally involves a refurbishing or upgrading of a vehicle.) The agency specifically requests comments on what specific types of changes should be considered a "major change in configuration or components" for purposes of this rule.

It is important to note that the vehicles proposed to be covered by this regulation are revenue (passenger-carrying) vehicles that are placed in mass transit service by a grantee. The regulation would not apply to vehicles that provide support functions such as service cars, tow trucks and the like.

The agency also seeks comment on whether significant changes in personnel working on a particular bus model is an event that would trigger the requirements of this regulation and require a bus model manufactured by such new personnel to be considered a "new bus model."

While the NPRM thus proposes to cover all vehicles regardless of size,

UMTA recognizes that there is a significant difference between the relative size of firms engaged in the manufacture and sale of heavy duty transit buses, and final stage manufacturers of small paratransit vehicles. Final stage manufacturing involving vans for use in elderly and handicapped service, for example, may only require limited modification to raise the roof or add a wheelchair lift. UMTA anticipates that many small final stage manufacturers of such vehicles have a very limited annual production volume. In this connection, UMTA requests public comment on the pros and cons of establishing annual volume production thresholds below which no testing under this regulation would be required, types of vehicles such thresholds would apply to, and what thresholds might be employed. UMTA also seeks comments on whether there should be other bases that would constitute appropriate grounds for exemption from the requirements of this rule—either on grounds of undue hardship on the manufacturer, or duplication of testing, etc.

• *New Bus Model Covered by the NPRM.* The law provides that UMTA funds may not be obligated or expended after September 30, 1989, for the acquisition of a new bus model unless a model of such bus has been tested at the bus testing facility. The law also defines a "new bus model" as "a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components." (The scope of the definition was discussed in the previous section of this preamble). However, the law does not state when a bus is a new model for purposes of the provision.

On the one hand, it could be argued that only a new bus model introduced after September 30, 1989, would be subject to the bus testing provision, since it is after the date that UMTA funds may not be obligated or expended on the acquisition of a new bus model that has not been tested at the bus testing facility. On the other hand, the drafters of the legislation may have meant to have the provision apply to any new bus model introduced after the 1987 STURAA was enacted into law, April 2, 1987. Choosing such a date would preclude manufacturers from trying to rush a new bus model into production before some later effective date.

UMTA is proposing tentatively to establish April 2, 1987, as the effective

date for a new bus model to be covered by the regulation. We recognize that this is the broadest possible approach that could be taken, and could mean that some vehicles to be tested already will have been in mass transportation service for a period of time. In the alternative, should the regulation only apply to a new bus model introduced after September 30, 1989, or some date in between? The agency seeks comments on this provision.

It is important to note that only new bus models purchased with UMTA funds obligated or expended after September 30, 1989, are subject to this regulation, and this issue is discussed in more detail below.

• *Funds "obligated or expended" after September 30, 1989.* The bus testing provision provides that "[n]o funds appropriated or made available pursuant to this Act after September 30, 1989, may be obligated or expended for the acquisition of a new bus model unless a bus of such model has been tested at * * * the Altoona facility.

The "obligation" of funds is the formal action by UMTA that signifies when Federal funds are available for a particular project and may be drawn down by a recipient. Each grant agreement entered into by UMTA and a recipient specifically states the "obligation date" of Federal funds. Thus, any funds obligated by UMTA after September 30, 1989, will be subject to this regulation, and a recipient readily knows on the basis of the UMTA grant agreement when UMTA funds are obligated.

The provision, however, also provides that it applies to any funds "expended" after September 30, 1989. Since the provision covers the obligation of funds, a Federal action, this expenditure language appears clearly to have been meant to apply to an action by a recipient.

We recognize that this could lead to situations in which, for example, half of a fifty bus order involving a new bus model would have been paid for in the summer of 1989, and thus not subject to this regulation, while the other half of the buses are not delivered until after September 30, 1989, in which case a bus of the model to be purchased would first have to have been tested at the facility before the recipient could expend UMTA funds to complete the bus purchase order.

In other regulations affecting procurement matters, UMTA generally has had any new requirements apply to funds obligated by UMTA after the rule's effective date, or to procurements initiated after that date so that the new

requirements do not affect or interrupt ongoing procurements. In this case, however, the statute specifically states that it applies to any expenditure of funds by a recipient after September 30, 1989, and would appear to preclude the possibility of applying the regulation only to procurements initiated after that date. Recipients should be particularly aware of this provision in any procurements that may involve the purchase of a new bus model and the expenditure of UMTA funds after September 30, 1989. We seek specific comment on the implementation of this aspect of the requirement.

• *"Acquisition" of a New Bus Model.* The statute provides that UMTA funds may not be used for the "acquisition" of a new bus model unless it first has been tested at the facility. We propose acquisition to include either purchase or lease of a bus, since in either case UMTA funds are being used to "acquire" a bus. In connection with leasing, the regulation should be easy to administer when a grantee leases a vehicle itself since the grantee can require that any leased buses comply with this regulation.

While the statute was intended, presumably, to cover any lease or purchase involving UMTA funds, the agency sees potential compliance problems when a grantee leases services to be provided by, for example, a private operator. If the agency were to adopt a broad approach, it could require that vehicles used by a private company under service contract with the recipient comply with the provisions of this regulation. In such cases, can the grantee require the private operator's vehicles to be in compliance with this regulation? On the other hand, if the agency were to construe the program more narrowly, it could determine that only those vehicles under the direct control of the recipient (owned or leased by the recipient) would be covered. We seek comment on whether a lease for service with a private operator is appropriately included in the coverage of this regulation.

• *Certifications.* In order to minimize the administrative burdens associated with this regulation, UMTA proposes to require that a recipient certify compliance with the regulation. In this regard, the operator of the facility will provide the manufacturer or entity having the test conducted with a Test Report upon completion of all testing at the facility. The entity in turn can provide this Test Report to the purchaser of the bus, and in so doing certify that the bus to be purchased is the same model as the new bus model

subject to the Test Report from the bus testing facility.

Recognizing that some minor changes may be made to a vehicle, the NPRM provides that the manufacturer's certification also should describe any changes that have been made to the vehicle since the new bus model was tested at the bus testing facility, along with an explanation of why it believes these changes are not major and therefore do not require new testing at the facility. If a recipient or a manufacturer is not certain whether a particular change is "major," UMTA on a case-by-case basis will so decide.

These certification procedures are designed to strike a balance between administrative burden and adequate assurance of compliance with the provisions. The fact that a failure to comply with the certification process required by the final regulation may trigger criminal sanctions should prove adequate to assure compliance with the provisions. However, UMTA specifically seeks comment on whether something beyond this certification process is necessary to ensure compliance by manufacturers with these provisions.

The recipient certification generally would be made in any application to UMTA for the purchase of buses. If a recipient does not have such an application before UMTA, and is to expend UMTA funds after September 30, 1989, for the purchase of a new bus model, the recipient would have to make the certification directly to UMTA before it can acquire such a bus.

• *Testing Requirements.* In accordance with section 317 of STURAA, the agency proposes that each new bus model be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. (The specific tests are discussed in greater detail in the section-by-section analysis of this preamble.) It is important to point out that the agency has no authority to duplicate or enforce the Federal Motor Vehicle Safety Standards, the corporate average fuel economy level determinations, or the Federal Motor Carrier Safety Regulations.

Accordingly, the tests identified in this proposed rule are to be distinguished from those of Federal agencies with enforcement responsibility in these areas. In one case where the proposed test is similar to an existing Federal standard—the noise test of the Federal Motor Carrier Safety Regulation—the agency proposes a standard which is consistent with the FHWA requirement. However, UMTA stresses, again, that the tests proposed

in this regulation are designed for a purpose different from that of the traditional "safety" agency. The purpose of this bus testing program is not to pass or fail vehicles, but to provide information to potential purchasers of mass transit vehicles who are using UMTA funds for this purpose.

The agency is proposing to run only one vehicle of each model through the test facility. The vehicle may not be a test prototype, but must be the actual vehicle that is being or will be produced by the manufacturer. The vehicle must be fabricated and assembled by techniques and tooling that will be used in the production of subsequent buses of that model. The agency will rely on the fact that the manufacturer must certify under DOT's National Highway Traffic Safety Administration's regulations that it meets all applicable Federal motor vehicle safety standards, and the manufacturer must be able to make this certification before any vehicle may be tested at the Altoona facility.

The agency believes that the regulation must provide for tests which are consistent with the performance features identified in the legislation. It is also the agency's preliminary determination that on-site physical performance testing is required by the legislation. Further, it is important to note that the testing process is expected to be lengthy, and in some cases a bus could remain at the facility for a number of months. On the other hand, the agency seeks comments on whether actual performance data on vehicles could be analyzed at the facility in some cases in lieu of physical testing. Any comments should be specific concerning which performance feature is being documented and the method used to verify the performance characteristic.

In accordance with the legislative history of this provision, UMTA, in developing the various tests, is taking into consideration a report, "First Article Transit Bus Test Plan." The new bus model Test Plan ultimately will be developed by the operator of the facility, subject to approval by UMTA. It is expected that the Test Plan will evolve over time in light of experience gained by the operator of the facility. We want to emphasize that while we seek general comment on the seven tests outlined in the NPRM, the actual Test Plans are not subject to the regulatory process and can and will be updated and revised from time-to-time. Both the agency and the operator, however, will be open to the recommendations and suggestions of those who have had a vehicle tested at the facility. Moreover, the tests discussed below in the "Section-by-

Section" part generally apply to larger buses. Tests for smaller vehicles will be modified accordingly to address the unique characteristics of such vehicles. Test procedures will be made available to manufacturers and the agency seeks comment on how this should be done.

- *Facility Procedures.* The facility will be operated by an UMTA contractor, who will set fees, subject to UMTA approval. These fees collected by the contractor will be used to pay for the costs of the tests and the maintenance of the test facility.

UMTA in particular seeks comment on whether and to what extent a manufacturer's representative should have the opportunity to be available at the facility to provide, for example, routine maintenance. A vehicle may be at the site for several months and it is anticipated that manufacturers will want to maintain their vehicles themselves during that period. Should this be permitted? If so, what should be the extent of contact between the manufacturer's representative and the operator of the facility?

We also are proposing that the entity should have the right at any time before the Test Report is completed to withdraw its vehicle from testing at the facility. In such a case, the manufacturer would have to pay a pro rata share of the testing that had been done up to the point of withdrawal, but no records of that bus testing would be made available. Upon completion of testing, the contractor will provide the entity a copy of the test results for its vehicle. The agency also has decided preliminarily that the trigger for the test information becoming available to the public is at the point the manufacturer decides to respond initially to a procurement bid by an UMTA recipient. These tentative decisions raise several issues concerning confidentiality and disclosure of information on which the agency seeks comment.

The agency specifically seeks comment on whether this proposal is in the best interest of recipients and meets a legitimate privacy need of the manufacturers. The agency recognizes that there may be other Federal agencies, such as the Environmental Protection Agency or the National Highway Traffic Safety Administration, which may have an interest in any and all data that is generated by the testing facility. Should all testing data be made available to such agencies? For example, under the UMTA's proposal, any data collected by the contractor on a vehicle which is withdrawn by the manufacturer before the completion of testing is not available to anyone except the manufacturer. It may aid NHTSA in its

enforcement efforts to have access to any and all raw data collected at the test site, since safety related defects may be identified either by NHTSA or the manufacturer itself. (Irrespective of any information collected at the bus testing facility, under the law administered by NHTSA, manufacturers of vehicles that contain a safety-related defect must notify purchasers of the vehicle and remedy the defect free of charge.) UMTA requests comments on how NHTSA's interest in obtaining Test Reports on vehicles tested at the facility, including those on vehicles withdrawn by their manufacturers before the completion of testing, can be balanced with the interest manufacturers might have in restricting the availability of the Test Report on withdrawn vehicles.

It is important to note, moreover, that UMTA's function under the legislation is different from that of the safety enforcement agencies, and the agency does not seek to inflate the significance of the data collection of this facility beyond that anticipated by Congress. In our view, the Altoona facility is intended to develop information on new models that can be reviewed by recipients when the recipient is choosing among alternative vehicles to purchase or lease with UMTA funds. The results of the tests are not pass/fail; they are informational.

The statute further provides that the testing will not be done by the agency, but by a contractor. The contractor will make the report available to the manufacturer and will have all publicly available reports at the test facility for distribution. UMTA does not see itself in the role of distributing the information, although it will analyze the reports and review activities at the facility as part of its general oversight role.

It is important to emphasize again that the Test Report is not a pass/fail document. Rather, the statute clearly provides only that a new bus model is to be tested at the facility. Thus, it contemplates that a purchaser will take into consideration the results of the tests in making a decision to purchase a particular vehicle. This means that the Test Report becomes an important document. We recognize that the manufacturer of the vehicle has an interest in the Test Report, and in some circumstances may want to keep it confidential. Since the legislation is designed only to make information available in connection with the use of Federal funds in vehicle acquisition, only that action should trigger the necessity of the manufacturer to make the Report public initially.

On the other hand, the tests will have been conducted at a facility to

implement a Federal statute, and potential purchasers in the industry may well have a keen interest in reviewing all Test Reports. And as just discussed, other Federal agencies may have an interest in the data, whether or not directly related to this proposed program. Accordingly, we have attempted to strike a balance between these interests and tentatively propose that a Test Report may be kept confidential until the model of the bus tested is offered for sale to an UMTA grantee. UMTA believes that once such a model is in the procurement process, the Test Report from that time forward should be available publicly. UMTA seeks particular comment on this issue.

- *Transition Period.* Because of the time it may take to implement the modifications required to be made to the existing facilities in Altoona, the Bus Testing Facility may not be in full operation by September 30, 1989, and may not therefore be capable of supporting the performance of all bus tests required by this regulation. During the transition period before the facility is in full operation, only tests that can be conducted at the facility will be performed at the facility.

UMTA is considering a number of possibilities regarding testing during the transition period. Should the tests be limited only to those that can be performed at the Bus Testing Facility? Or should UMTA require the manufacturer to conduct those tests that cannot yet be done at the facility, and provide the resulting data to the operator of the facility for inclusion in the Test Report?

Or is there some other option that could be considered for purposes of the transition period? One possible way to implement this program would be to phase in the types of vehicles tested at the facility. For example, the contractor may complete the test procedures for one type of vehicle—say the large 35–40 foot passenger bus before it completes the procedures for smaller volume vehicles, such as vans. Arguably, the agency could implement the program for large buses (for example) and have a staggered implementation schedule for other types of vehicles.

UMTA will issue its specific guidance on this transition period by August 14, 1989.

2. Section-by-Section Analysis

The proposed regulation is divided into three subparts. Subpart A sets out the purpose and scope of the regulation, defines important terms, and describes how certifications of compliance with the regulation are to be made. Subpart B

sets forth the procedures to be used at the bus testing facility, and describes the Test Report that will be issued at the completion of testing. Finally, Subpart C describes how the bus facility will be operated.

Subpart A includes general information about the NPRM. Section 665.1 explains the underlying intent of the statutory provision. Section 665.3 provides that the regulation will apply to the purchase of vehicles under sections 3, 9, 16(b)(2), and 18 of the UMT Act. While vehicles occasionally may be acquired under other sections of the UMT Act—the section 6 research program, for example—UMTA does not think it was the intent of Congress to subject such demonstration vehicles to the bus testing requirement, and such programs accordingly are not proposed to be covered by this rule.

Section 665.5 contains definitions of terms used frequently in the regulation. As discussed above, "bus" is defined to include virtually any automotive vehicle purchased with UMTA funds and used for mass transportation purposes but does not include for example, an electrically powered trolley coach—which is not an "automotive" vehicle. "Bus Testing Facility" is defined as the site at Altoona, Pennsylvania as specified in the statute, as well as proving grounds under the jurisdiction of the operator of the facility.

"New Bus Model", also described above, is a bus model that has not been used in mass transportation service in the United States before April 2, 1987, or a bus model which has been used in such service but which after April 2, 1987, is being produced with a major change in configuration or components. While new bus model is defined in the statute, we have added a list of items that details what constitutes a major change in configuration or components. These include changes of the engine by the manufacturer; of fuel or energy source; in the design and configuration of the propulsion system; in the steering system; structural modifications; in location of or addition of a wheelchair lift; in manufacturing or assembly methods; of the center of gravity; in gross vehicle weight and weight distribution between axles; of wheelbase or tread width; or of the suspension system. A change of model year designation, absent any other change, would not trigger the testing requirements.

This list, while not necessarily all-inclusive, does provide a detailed description of the types of things that would be considered a major change in configuration or components, and would thus require a bus to be tested at the

facility. We particularly seek comment on whether there are other aspects that might be considered major changes in components or configurations that we did not address.

Also discussed in detail earlier in the preamble, the agency seeks comment on the appropriate date to trigger the application of this statute.

"Recipient" is defined as a recipient of funds under section 3, 9, 16(b)(2), or 18 of the UMT Act. Thus, any such recipient would have to certify compliance with the regulations. In its broadest application, this would require that a recipient who contracts out its operation, still would have to certify that any public or private operator for it would comply with the regulation. This section also defines the "Test Report," the document prepared for each vehicle that has completed testing at the bus testing facility.

The final section of Subpart A describes the certification a recipient must make to be in compliance with the rule. In general, a recipient must certify in each application to UMTA for the acquisition of vehicles that any new model bus to be purchased or leased with UMTA funds obligated after September 30, 1989, or expended by the recipient after that date, shall be tested at the bus testing facility before final acquisition by the recipient.

If the recipient has not made this certification and will expend UMTA funds after September 30, 1989, for the purchase or lease of a new bus model, the recipient must separately certify to UMTA that such bus model will have been tested at the facility. Finally, it is possible that a recipient could purchase or lease a bus that is not a new bus model and then have it modified in such a way that—if it were a manufacturer modification—it would be considered a vehicle produced with a major change in configuration or components. Such a manufacturer change would require the vehicle to be tested at the facility. Since the recipient already has purchased the vehicle, would this modification trigger the requirements of the statute? On the one hand it could be an enormous burden on small transit agencies if UMTA decided that every "major change in configuration or components" made by the transit agency triggered the provisions of the statute. On the other hand, if the agency allows small transit agencies to make modifications to vehicles that in other circumstances would require testing at the facility, would this be an obvious way to try and circumvent the intention of the statute? If we did require testing after the vehicle was purchased with UMTA funds, the recipient also would have to separately

certify to UMTA that the bus had been tested at the facility before it could be placed in revenue service.

Subpart B sets forth the bus testing procedures. Only a single model of a new bus model needs to be tested at the facility. Any such model cannot be a prototype vehicle. Rather, it must be a model that is fabricated and assembled substantially in the same way that production of subsequent vehicles are to be manufactured. The vehicle also must meet all relevant Federal Motor Vehicle Safety Standards before it can be tested at the facility. Certification in accordance with NHTSA regulations is sufficient to indicate that such Standards have been met. Once the operator of the facility has been provided such certification, the vehicle may be tested at the bus testing facility. The testing will be thorough and may require a vehicle to remain at the facility for a number of months.

The seven tests to be performed on each vehicle are required by the bus testing legislation and are based in part on tests described in the UMTA report "First Article Transit Bus Test Plan", which is mentioned in the legislative history of Section 317. When appropriate, SAE test procedures and other procedures accepted by the transit industry will be used, but many of the seven tests have not been addressed by a generally acceptable and valid testing procedures other than those described in the "First Article Transit Bus Test Plan". Most of the bus tests to be performed at the facility will produce information that is usually not obtained until a vehicle has been in revenue service for a year or more. The seven tests are discussed in the following paragraphs.

This discussion of testing in this proposed rule provides comments with information on what UMTA currently is anticipating the tests will be like and provides a basis for comments on the scope of the rule. Nor will the final rule present a definitive final test plan. Rather, it will outline the seven tests. The basic purpose of the regulation is to identify broadly the areas of testing required by section 317.

The current discussion, moreover, essentially covers *large* vehicles. UMTA recognizes that the tests will have to be adjusted for smaller vehicles and that, most likely, UMTA and the operator will from time to time adjust those plans as necessary to reflect ongoing experience and information. Again, the discussion is being presented to afford commenters as much information as possible in this NPRM. The test plans ultimately used

may vary significantly from those discussed here.

- **Maintainability.** The agency proposes that the maintainability test include bus servicing, preventive maintenance, inspection, and repair. It also will include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus' normal life cycle. Much of the maintainability data will be obtained during the bus durability test at the proving ground. Twenty-five percent of the bus life will be simulated and there will, obviously, be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff. We do not expect that the operator will become familiar with the detailed design of all new bus models that are tested. Therefore, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components will require that either the bus manufacturer provide personnel to perform such work or provide very detailed instructions and have staff on site during the testing to provide consultation and support.

The maintainability test report will include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user will be included in the report.

- **Reliability.** The question of reliability will be addressed by recording all bus breakdowns (equipment, structure, etc.) during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests, but bus availability for operation during the proving ground test will tell much about the bus and its design. It is anticipated that bus operation on the durability course should reveal the problems that would otherwise not be detected until much later during scheduled transit service. The bus failures, repair time and the actions required to get the bus back into operation will be recorded in the report.

- **Safety.** The safety test will be a handling and stability test. The test is an obstacle avoidance or double-lane change test that will be performed at the proving ground. The double-lane change course will be different for each type of bus and the speed could be different for each type of bus. In a safety test for a heavy-duty 35-to 40-foot bus the double-lane change test course will be set up using pylons set with 100-foot-long gates and 12-foot center-to-center adjacent

lanes. That is, a longitudinal distance of 100 feet will be available for the coach to change from one lane to an adjacent lane with a 12-foot center-to-center distance. The coach will run for 100 feet in the adjacent lane and then return to the original lane within a third 100 feet. Coach speed will be held constant throughout a given test run. Individual test runs will be made at increasing speeds up to 45 mph or until the coach can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes will be tested. The 45 mph maximum speed was selected because it is a reasonable speed at which to expect this bus type to maneuver safely. Tests from smaller vehicles will be adapted from this basic procedure, although we seek comment on how this test could be adapted for smaller vehicles, such as vans.

- **Performance.** The performance test will be performed on the proving ground and will measure acceleration and gradeability. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel and associated instrumentation. The test vehicle will be operated at seated load weight on a smooth level track. The test will be set up to use a straight part of the track when possible. The bus will be accelerated at full throttle from standstill to maximum safe speed on the track. The report will include a table of time required to accelerate to each 10 mph increment of speed and when possible, the top speed. The gradeability capabilities will be calculated from the test data.

- **Structural Integrity.** Two structural integrity tests will be performed. The first is a structural strength and distortion test that will be performed at the testing facility in Altoona and a durability test that will be performed at the proving ground.

The structural strength and distortion test will be different for each type of bus. For example, for a heavy-duty 35-to 40-foot bus it is anticipated that the following procedures will be used.

- (1) Shakedown the bus structure by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. Gross load is 150 lb for every passenger seating position, for the driver, and for each 1.5 sq. ft. of free floor space. For a distributed load equal to 2.5 times gross load, place a 375-lb load on each passenger and driver seat (i.e., seating position) and on each 1½ sq. ft. of free floor space. Then load the bus with a distributed load to gross vehicle weight. Gross vehicle weight is curb weight plus

gross load. Measure the increase in floor deflection as the bus weight is increased from curb weight to gross vehicle weight. Then load the bus with a distributed load equal to 2.5 times gross load. Unload and bus and inspect for any permanent deformation of the floor and/or coach structure.

- (2) With the bus loaded to gross vehicle weight, first locate all four wheels on a flat, horizontal surface. Then locate one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. Repeat for all four wheels. For all nine conditions, verify: (a) Normal operation of the steering mechanism and (b) operability of all passenger doors (including sensitive edges, if so equipped), passenger escape mechanisms, side windows, and service doors. With a garden hose and nozzle, leak check windows, passenger doors, and escape hatches.

- (3) Using a load-equalizing towing sling, statically apply a tension load equal to 1.2 times the bus curb weight at an angle of 20 degrees with the longitudinal axis of the bus, first to one side then the other in the horizontal plane and then upward and downward in the vertical plane, to the front towing fixtures. Remove the load. Visually inspect tow eyes and adjoining structure for damage or permanent deformation after each loading condition. Repeat for rear towing fixture(s).

- (4) With the bus at curb weight, use the tow bar provided for the bus and a heavy wrecker truck to lift the front wheels clear of the ground. Tow the bus 5 miles at 20 mph. Release the bus from the wrecker. Inspect visually for structural damage or permanent deformation. Operate all doors, windows, and passenger escape mechanisms to assure that the surrounding structures are not deformed.

- (5) With the bus at curb weight on a level hard surface, deflate the tire(s) at one corner. Then jack up the coach to a height sufficient to provide 3 inches clearance between an inflated tire and the hard surface. Reinflate the tire(s) and release the jack. Inspect visually for structural damage or permanent deformation. Repeat the test at all four wheel locations.

- (6) With the bus at curb weight, hoist the coach with an appropriate two-post hoist system. Use the bus axles or jacking plates to accommodate the lifting pads of the hoist. Note failure of the bus to interface properly with the hoist and any instability of raised bus on hoist. Lower the bus and inspect visually for structural damage or permanent deformation of jacking plates. Repeat the test supporting the

bus on jack stands independent of the hoist.

The report on this test would include floor deflection and permanent deformation; operability of steering, doors and windows while structure is deformed; structural damage or deformation by lifting, towing, and jacking.

The structural durability test also will be different for each type of bus, but all tests will be performed on the durability course at the proving ground. The test will be an accelerated life test that simulates twenty-five percent of the vehicle's normal service life. During the test, there will be inspections of the bus structure. Once each week, the bus will be washed and its entire underside, including all structural members, will be steam cleaned. All structural members will be inspected visually for damage, cracks, permanent deformation, and/or excessive corrosion. The entire outside and inside surfaces of the body, doors, windows, and openings will be inspected for signs of structural deterioration. At each inspection, bus mileage will be recorded along with any structural or deterioration identified.

• **Fuel Economy.** This test will be run to determine the fuel economy in miles per gallon of the new bus model. The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. For example, a heavy-duty 35- to 40-foot bus would be operated over the Advanced Design Bus duty cycle which calls for four phases of operation: central business district, arterial, commuter, and idle. The test for heavy-duty buses would be based on currently applicable SAE procedures. The methods of fuel use measurement for different fuels and bus types have not been determined since fuels could include diesel, gasoline, alcohol, natural gas, etc. The fuel measurement devices under consideration include volumetric, gravimetric, flow, and pressure.

The agency notes that this fuel economy test bears no relation to the calculations done by the Environmental Protection Agency (EPA) to determine fuel economy levels for the Corporate Average Fuel Economy Program. EPA's calculations are based on tests conducted under laboratory conditions intended to simulate city and highway driving. UMTA's fuel economy test, as proposed here, is a measurement of the mileage per gallon of gasoline expended by a vehicle travelling a track. In most likelihood, UMTA's test results will not represent actual mileage, as is the goal of the EPA calculations. UMTA's test will provide data, however, which can be compared by recipients in their

deliberations concerning purchase decisions. Moreover, to the extent the UMTA test covers vehicles not tested by EPA (vehicles with gross vehicle weight ratings of greater than 8,500 pounds), the test will provide to the recipient some information in the fuel economy area, where none previously existed.

• **Noise.** The noise test area will include two tests: Interior Noise and Vibration and Exterior Noise. It is recognized that different levels of noise are expected and acceptable with different types of vehicles and different test procedures might be required. The following are tests for heavy-duty 35- to 40-foot buses. Obviously, the tests could be significantly different for other types of buses.

The heavy-duty bus interior noise and vibration that will be performed at the proving ground and will measure internal noise levels and check for reasonable vibration. The test conditions will be:

- (1) With a noise generator and load speaker system create a white noise level of 80 dBA at the outside skin on the left side of the bus (i.e., the side opposite the doors). Measure the noise level at various points throughout the interior of the bus. All openings, including doors and windows, will be closed and the engine and all accessories switched off during the test.
- (2) Accelerate the bus at full throttle from a standing start to 35 mph on level commercial asphalt or concrete pavement in an area free of large reflecting surfaces within 50 ft of the bus path. Measure bus-generated noise level at ear height of a seated 50th percentile male in the rear most passenger seats, at the middle of the passenger compartment or engine-transmission location for buses with under-floor engines, and at the driver's seat. All openings will be closed and all accessories will be operating during the test.

- (3) Operate the bus at various speeds from 0 to 55 mph on various road conditions with and without A/C on. Record any abnormal audible or visible resonant vibrations or rattles within the bus.

The heavy-duty bus exterior noise test will measure exterior noise levels when the new bus model is operated under various test conditions. The test conditions will be:

- (1) Bus stationary with the engine at high idle and neutral gear.
- (2) Bus pulling away from a stop at full throttle.
- (3) Bus accelerating at full throttle at or below 35 mph and just prior to transmission upshift.

Airborne noise generated by the bus will be measured on both sides of the bus at points 50 feet from the perpendicular to centerline of the coach with all accessories operating. Instrumentation, test sites, and other general requirements will be in accordance with SAE Standard J366. The curb idle test will be conducted with the microphone located longitudinally in line with the rear bumper. The pull-away test will begin with the microphone located longitudinally in line with the front bumper.

Section 663.13 describes the Test Report that the operator of the facility provides to the entity that is having the test performed. The Test Report is not a "pass/fail" document, but rather records the vehicle's performance during the testing. A manufacturer who is bidding on a contract for purchase or lease must provide a copy of this Report to a potential purchaser of a bus to show that the bus model has been tested at the facility. The manufacturer must certify that the bus model is the same as the one tested, or describe changes to the bus that have been made and explain why they are not major changes under UMTA regulations.

In addition, § 663.13 provides that the operator of the facility will have available for distribution all publicly available reports. The section also requires that the manufacturer notify the operator when it makes a report available to a grantee for the first time.

We particularly seek comment on when the Test Report should be made public. We are proposing that it may be kept confidential by the manufacturer until such time as the manufacturer attempts to sell a bus model like the one tested. At that point, the clear intent of the law would be to make the information available publicly so that potential purchasers could themselves review the vehicle's performance at the facility. The other options under review were discussed earlier in this preamble.

Subpart C explains how the facility is to be operated. UMTA will choose the operator, who will have proving grounds available. The operator will establish the fees to be charged for the bus testing, subject to UMTA approval. The operator also shall prepare, with UMTA review and concurrence, the detailed test plan procedures implementing the seven tests discussed above.

A bus may be removed from testing at any point by the entity having the tests performed, and no record shall be kept or made available with respect to such bus. Any such bus model that is to be retested must start from the beginning.

All testing at the site is to be conducted by staff of the operator of the facility, or those under contract to the operator. Those having a vehicle tested may observe all tests.

C. Request for Comments

This agency seeks comment on this proposed regulation to establish a bus testing facility.

Commenters wishing acknowledgement of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

D. Regulatory Impacts

1. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of \$100 million or more.

2. Regulatory Evaluation

This regulation is significant under the Department's Regulatory Policies and Procedures, because of the potential high level of public interest. UMTA has prepared a preliminary regulatory evaluation in support of this rulemaking. This preliminary regulatory evaluation is on file as part of the docket to this rulemaking. A final regulatory evaluation will be prepared before this proposed rule becomes final. UMTA particularly seeks specific data regarding the cost of the proposed rule, both in terms of costs to the manufacturer and the recipient, so that such information may be reflected in the final regulatory evaluation. The actual process of testing the bus would exact wear and tear on the vehicle. Since the tests will attempt to simulate a fourth of a bus' life, it is not unreasonable to expect that there will be some cost in the form of depreciation. A fourth of the value for a large bus could be up to \$50,000, and for a van as little as \$5,000.

3. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in the preliminary regulatory evaluation. The agency is concerned and particularly seeks comment on the potential impact of this rule on the small manufacturer—of vans, paratransit vehicles and the like. Purchasers of

these vehicles also are the most likely beneficiaries of this program, since the market is so diffuse.

4. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 95-511, 44 U.S.C. Chapter 35. Section 317 of the Surface Transportation and Uniform Relocation Assistance Act specifically requires the creation of the facility and, in effect, the Test Reports. The Reports reflected in this rule are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for approval.

5. Federalism—Executive Order 12612

UMTA has reviewed this proposed rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule would have definite Federalism implications because it would impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking in formulating this proposal, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local governments, and UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly UMTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended as follows:

49 CFR is proposed to be amended by adding a new Part 665, as set forth below:

PART 665—BUS TESTING

Subpart A—General

Sec.

665.1 Purpose.

665.3 Scope.

665.5 Definitions.

665.7 Grantee certification of compliance.

Subpart B—Bus Testing Procedures

665.11 Testing requirements

665.13 Test report and manufacturer certification.

Subpart C—Operations

665.21 Operations.

665.23 Transition period.

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 et seq., 1608(h), and 49 CFR 1.51.

Subpart A—General

§ 665.1 Purpose.

This part provides that an applicant for Federal financial assistance under the UMT Act for the purchase or lease of buses must certify to UMTA that any new bus model so acquired with such assistance has been tested in accordance with this part.

§ 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

§ 665.5 Definitions.

As used in this part—

"Administrator" means the Administrator of the Urban Mass Transportation Administration or designee.

"Bus" means a rubber-tired automotive vehicle used for the provision of mass transportation service by or for a recipient.

"Bus Model" means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

"Bus Testing Facility" means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes any proving ground facilities operated in connection with the facility.

"Major changes in configuration or components" a significant impact on bus performance, reliability, maintainability, structural integrity, safety, fuel

economy, or noise of the vehicle, including changes—

- (1) Of major components such as engine, transmission, axle, and the like (other than routine repairs);
- (2) Of fuel or energy source;
- (3) In the design or configuration of the propulsion system;
- (4) In the steering system;
- (5) Involving structural modifications;
- (6) In location of or addition of a wheelchair lift;
- (7) In manufacturing or assembly methods;
- (8) Of the center of gravity which could affect the dynamics and/or the handling characteristics;
- (9) In gross vehicle weight and weight distribution between axles;
- (10) In location of the driving axle;
- (11) Of wheelbase or tread width, including a change in the number of axles or number of tires; or
- (12) Of the suspension system.

"Mass Transportation Service" means the operation of a vehicle which provides general or special service to the public on a regular and continuing basis.

"New Bus Model" means a bus model which—

- (1) Has not been used in mass transportation service in the United States before April 2, 1987; or
- (2) Has been used in such service but which after April 2, 1987, is being produced with a major change in configuration or components.

"Recipient" means a direct recipient of funds under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

"Test Report" means the final document prepared by the operator of the Bus Testing Facility stating the results of the tests performed on each bus.

"UMT Act" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. app. 1601 et seq.).

§ 665.7 Grantee certification of compliance.

- (a) In each application to UMTA for the purchase or lease of buses, a recipient will certify that any new bus model to be acquired with funds obligated by UMTA or expended by the recipient after September 30, 1989, will be tested at the Bus Testing Facility before final acceptance by the recipient.
- (b) If a recipient has not made the certification required under paragraph (a) of this section and will expend UMTA funds after September 30, 1989, for the purchase of a new bus model, the recipient shall certify directly to UMTA that such bus model will have been tested at the Bus Testing Facility before final acceptance by the recipient.

(c) If a recipient purchases or leases a bus not subject to this part with funds obligated by UMTA or expended by the recipient after September 30, 1989, but a major change in configuration or components of such bus is made after April 2, 1987, the recipient shall certify directly to UMTA that any such bus has been tested at the bus testing facility before it is placed in revenue service.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the Bus Testing Facility shall—

- (1) Be a single model;
- (2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in Part 571 of this title;
- (3) Be substantially fabricated and assembled by techniques and tooling that will be used in production of subsequent buses of that model.
- (b) The model shall be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise, and detailed test procedures shall be developed generally for the following bus categories—

- (1) Heavy duty standard size (35 to 40 foot);
- (2) Heavy duty small size (generally, 30 foot);
- (3) Heavy duty, articulated (55 to 60 foot);
- (4) Medium duty; and
- (5) Vans (regular and modified).

(c) The operator of the facility shall develop a test plan, approved by UMTA, generally following these guidelines—

- (1) *Maintainability.* This test records the accessibility and maintainability of the bus during servicing, preventive maintenance, inspections, simulated repairs, and repairs during the time the vehicle is at the Bus Testing Facility.
- (2) *Reliability.* Bus failures, repair time and actions required to get the bus back into operation will be tracked as the bus is taken through the various tests. Each failure of the vehicle during testing will be documented.

(3) *Safety.* The handling and stability of the vehicle is determined by using such methods as obstacle avoidance tests.

(4) *Performance.* This test records the acceleration, gradeability, and top speed (where possible) of the vehicle.

(5) *Structural Strength.* The structural strength and distortion test includes towing and hoisting tests and operation of subassemblies such as of the steering mechanism, doors, escape mechanisms, and windows, and leak testing of the vehicles on a flat surface and also

distorted to simulate wheels on curbs and in potholes. The vehicle will be subject to static loads to measure for permanent deformation and damage.

(6) *Structural Durability.* The structural durability test is performed on the proving ground durability course and will simulate twenty-five percent of the vehicle's normal service life.

(7) *Fuel Economy.* The vehicle fuel economy in miles per gallon is measured at normal seated load conditions on a course and with operating duty cycle appropriate to the type of bus being tested.

(8) *Noise.* The interior noise and vibration tests measure interior noise created by an external source; noise level at the driver, middle and rear passenger positions during various operating conditions.

(9) The exterior noise test measures airborne noise generated by the vehicle during various operating conditions.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide a Test Report to the entity that has had the bus tested.

(b)(1) A manufacturer may provide a copy of this Report to a recipient as proof of completion of testing, and shall certify that a new bus model to be purchased or leased by the recipient is the same as the bus that is the subject of the Test Report.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a Test Report has a change in configuration or component that is not a major change under this part, the manufacturer shall include in its certification a description of the change and its basis for concluding that it is not a major change.

(d) A Test Report shall be available publicly once the owner of the Report submits a bid involving a bus subject to the Report. Each manufacturer shall make copies available to interested persons. In addition, the operator of the facility will have available for distribution copies of all of the publicly available reports.

(e) The Test Report is the only information or documentation that will be made available publicly in connection with any bus model tested at the facility.

Subpart C—Operations**§ 663.21 Operations.**

(a) The bus testing facility is located in Altoona, Pennsylvania, and includes proving ground facilities operated by the operator of the facility.

(b) The facility is operated by a person under contract with UMTA.

(c) Fees charged by the operator for the testing of the vehicles will be according to a schedule and will be approved by UMTA.

(d) The entity having a new bus model tested may terminate the test program at any time before the completion of testing, and shall be charged a pro rata fee for the tests performed as well as a termination fee.

(e) The operator performs all testing. Bus manufacturer staff may be requested to support and advise during some of the tests.

(f) The bus manufacturer may observe all tests. The manufacturer may not provide maintenance or servicing of a

bus after the start of the durability test unless requested by the operator.

§ 665.23 Transition period.

Because the bus testing facility may not be fully operational for a period of time, the operator, with UMTA approval, shall prepare an interim test plan.

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Alfred A. DelliBovi,
Administrator.

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