

In addition, the DOT manual indicates that the placement of signs warning of a change in road direction or attitude where speeds are relatively low should allow for an advance distance of about 250 feet. MSHA believes that delineators should be spaced at intervals sufficient to indicate the edges and attitude of the roadway to provide the driver with the necessary guidance to safely travel on the elevated roadway. MSHA particularly solicits comment on the appropriate spacing of delineators along a straight portion of an unbermed elevated mine road, and whether a specific distance should be set in the standard.

MSHA also recognizes that closer delineator spacing would be necessary on curved portions of unbermed elevated roadways to provide the driver with the guidance needed to safely negotiate these areas. A minimum of three points are necessary to indicate departure from a straight line to a curve. Therefore, to keep the driver constantly aware of approaching changes in road direction and edge location, it is necessary for the operator to have at least three delineators visible to him along each edge of an elevated roadway at all times. In light of this, MSHA proposes that at least three delineators be visible to the driver at all times on each elevated shoulder of an elevated roadway and spaced at intervals necessary to sufficiently indicate the direction and attitude of the roadway. The driver is thereby provided with feedback to maintain safe control of the vehicle.

Paragraph (d)(4) sets a speed limit of 15 MPH on unbermed roadways. Although §§ 56.9101 and 57.9101 require that operating speeds be consistent with the conditions of roadways, they contain no specific limits on speeds. In this alternative to berms or guardrails, a physical barrier to over-travel is not present. In order to assure safety, MSHA proposes to adopt a specific speed limit of 15 MPH at unbermed areas. This additional precaution is necessary to assure that the operator has sufficient time to react and avoid the edge of the elevated roadway in unexpected circumstances.

Paragraph (d)(5) assures proper traction on unbermed elevated roadways. The hazards to travel on an unbermed elevated roadway are significantly increased when weather conditions impair the traction. These roadways could be used only if corrective action, such as tire chains,

plowing, or sanding is used to improve traction.

#### *Executive Order 12291 and the Regulatory Flexibility Act*

This proposed rule would revise one previously issued standard to require that delineators shall be installed along the perimeter of elevated roadways so that the reflective surfaces of at least three delineators are always visible to the driver along each elevated shoulder for both directions of travel. In comparison with the stayed rule, the proposed rule would involve a minor cost reduction to some mine operators. Accordingly, the Agency has determined that this rule would not result in a major cost increase or have an incremental effect of \$100 million or more on the economy. Therefore, a regulatory impact analysis is not required.

#### *Regulatory Flexibility Analysis*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

The proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

#### **List of Subjects in 30 CFR Parts 56 and 57**

Mine safety and health, Metal and nonmetal mining, Safety standards for berms or guardrails.

Dated: August 16, 1989.

David C. O'Neal,

*Assistant Secretary for Mine Safety and Health.*

Title 30, chapter I, subchapter N, parts 56 and 57 of the Code of Federal Regulations are proposed to be amended as set forth below:

#### **PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES**

1. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

2. In § 56.9300 paragraph (d) is revised to read as follows:

#### **§ 56.9300 Berms or guardrails.**

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms

or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

#### **PART 57—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES**

3. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

4. In § 57.9300 paragraph (d) is revised to read as follows:

#### **§ 57.9300 Berms or guardrails.**

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

The text on this page is extremely faint and illegible. It appears to be a multi-column layout, possibly containing a list or a series of entries. The content is too light to transcribe accurately.

# Federal Register

Wednesday  
August 23, 1989

## Part V

## Department of Education

### 34 CFR Part 303

### Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule

## DEPARTMENT OF EDUCATION

## 34 CFR Part 303

RIN 1820-AA49

## Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final rule; Correction.

**SUMMARY:** On June 22, 1989, final regulations for 34 CFR part 303, titled "Early Intervention Program for Infants and Toddlers with Handicaps", were published at 54 FR 26306. The regulations are corrected as set forth below.

EFFECTIVE DATE: September 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4618 M/S 2313-4600), Washington, DC 20202. Telephone: (202) 732-1114.

## § 303.4 [Corrected]

1. On page 26310, in the third column, under § 303.4 Applicable regulations, paragraph (a)(1)(ii), the second line, is corrected to read "Department Regulations);".

2. On page 26311, in the first column, paragraph (a)(1)(v) is corrected to read "(v) Part 81 (General Education Provisions Act—Enforcement); and".

3. On the same page, same column, under *Definitions*, the twelfth listed word is corrected to read "Method (§ 303.344(d)(2)(iii))".

## § 303.12 [Corrected]

4. On page 26312, in the second column under paragraph (d)(7)(ii), the fifth line is corrected to read "paragraph (d)(7)(i) of this section; and".

## § 303.13 [Corrected]

5. On page 26313, in the second column, in the Note, the thirteenth line is corrected to read "this part. (See § 303.344(e), and the note 2".

## § 303.15 [Corrected]

6. On the same page, in the second column, the authority citation under § 303.15 is corrected to read "(Authority: 20 U.S.C. 1483)".

## § 303.19 [Corrected]

7. On page 26314, in the first column, in § 303.19(b)(2), the second line is corrected to read "developmental delay" (see 303.300);".

## § 303.22 [Corrected]

8. On the same page, in the second column, in § 303.22, the first line is

corrected to read "Except as provided in § 303.200(b)(3)". Also, the citation of authority for this section is corrected to read "(Authority: 20 U.S.C. 1401(a)(6))".

## § 303.121 [Corrected]

9. On page 26315, in the second column, in § 303.121(b), the first line is corrected to read "Keeping such records and affording such".

## § 303.122 [Corrected]

10. On the same page, in the same column, in § 303.122(a), the third line is corrected to read "acquired with those funds, will be in a public". Also in § 303.122(b), the first line is corrected to read "(b) A public agency will administer the".

## § 303.123 [Corrected]

11. On the same page 26315, in the same column, in § 303.123, the fourth line of the first paragraph is corrected by removing the word "the" at the end of the line.

## § 303.200 [Corrected]

12. On page 26318, in the third column, the second line is corrected to read "most recent satisfactory data as".

## § 303.202 [Corrected]

13. On the same page, in the same column, under § 303.202, the authority citation is corrected to read "(Authority: 20 U.S.C. 1484(c)(1))".

## § 303.203 [Corrected]

14. On the same page, in the same column, in § 303.203, the first line is corrected by adding the word "the" to the end of the line.

## § 303.300 [Corrected]

15. On page 26319, in the first column, the first line of the Note under § 303.300 is corrected to read "Note: Under § 303.322(c)(2), States are".

## § 303.321 [Corrected]

16. On the same page, in the third column, in § 303.321(c)(1), the designation of the fourth paragraph is corrected to read "(iv)".

## § 300.322 [Corrected]

17. On page 26320, in the first column, the section designated "§ 300.322" is corrected to read "§ 303.322".

## § 303.341 [Corrected]

18. On page 26321, in the first column, in § 303.341(a)(1), the end of the second line is corrected by adding ",".

## § 303.344 [Corrected]

19. On page 26322, in the second column, in Note 2 the second paragraph, first line, is corrected to read "The

"other services" in paragraph (e) of this".

## § 303.361 [Corrected]

20. On page 26323, in the second column, in § 303.361(b)(2), the seventh line is corrected to read "certification, licensing, registration, or other".

## § 303.402 [Corrected]

21. On page 26324, in the first column, in § 303.402, the eighth line is corrected to read "assessments, eligibility determinations".

## § 303.404 [Corrected]

22. On the same page, in the second column, in Note 1, the seventh and the eighth lines are corrected to read "300.571, and in 34 CFR part 99 (Family Educational Rights and Privacy), both of".

## § 303.423 [Corrected]

23. On page 26325, in the third column, the Note is corrected in the thirteenth line to read "the timeline for the due process hearing".

## § 303.460 [Corrected]

24. On page 26326, in the first column, in the Note, the second paragraph, third line is corrected to read "(Family Educational Rights and Privacy);".

## § 303.522 [Corrected]

25. On page 26328, in the first column, in the Note, the second paragraph, seventh line is corrected to read "states, in effect, that nothing in that title shall". Also in the same paragraph, the eleventh line is corrected to read "payment under subsection (a) of section 1903 of the Social Security Act for medical".

## § 303.600 [Corrected]

26. On the same page, in the second column, in the Note, the seventh line is corrected to read "appoint additional members on an ex officio".

## § 300.601 [Corrected]

27. On the same page, in the second column, the section number "§ 300.601" is corrected to read "§ 303.601".

## § 303.604 [Corrected]

28. On page 26329, in the first column, the authority citation for § 303.604 is corrected to read "(Authority: 20 U.S.C. 1482(f))".

Authority: 20 U.S.C. 1471-1485, unless otherwise noted.

Dated: August 16, 1989.

Robert R. Davila,

Assistant Secretary for Office of Special Education and Rehabilitative Services.

[FR Doc. 89-19649 Filed 8-22-89; 8:45 am]

BILLING CODE 4000-01-M

# **federal register**

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**Wednesday  
August 23, 1989**

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## **Part VI**

### **Department of Transportation**

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**Urban Mass Transportation  
Administration**

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**49 CFR Part 665  
Bus Testing; Rule**

## 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, DOT.

ACTION: Interim final rule.

**SUMMARY:** On May 25, 1989, the Urban Mass Transportation Administration published a proposed rule on its bus testing facility program. At the time of the proposal, the agency indicated that it would issue interim guidance to ensure timely implementation of the program. Today's document contains those interim procedures for the bus testing facility program.

**DATES:** *Effective date:* These procedures are effective from October 1, 1989, up to September 30, 1990.

*Comment due date:* Comments must be submitted by November 21, 1989.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Daniel Duff or Susan Schrueth, (202) 366-4011. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863-1889.

**ADDRESSES:** For comments, UMTA, Department of Transportation, Office of the Chief Counsel, Rules Docket Clerk, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. For UMTA staff, UMTA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. For the bus testing facility, Penn State Automotive Research Division, Research Building B, University Park, PA 16802.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) on May 25, 1989, to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). (See 54 FR 22716). The NPRM's comment period ended on July 24, 1989.

Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds appropriated or made

available under the Urban Mass Transportation Act, as amended, after September 30, 1989, may be used to purchase a "new bus model", unless a bus of such model has been tested at the facility.

Section 317 also specifies that UMTA is to contract with a "qualified person" for the maintenance and operation of the facility. The agency has entered into an agreement with Pennsylvania State University to operate and maintain the bus testing facility. Penn State will operate the bus testing facility from two locations: first, its own test track and related facilities at State College, Pennsylvania; and, second, the former rail personnel training center at Altoona, Pennsylvania.

The agency's NPRM was expansive—proposing coverage of *all* vehicles used in mass transit and any new bus model used in mass transit after April 2, 1987 (the effective date of STURAA). In addition, the agency specifically requested comment on several issues.

To ensure that there are bus testing procedures in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. This document contains the interim guidance.

The preamble includes an overview of the comments received and an overview of the interim program, followed by specific procedural information on how the facility will operate and how a manufacturer can obtain information.

The agency has made the preliminary determinations needed to issue these procedures and to ensure that the bus testing facility is operational by October 1, 1989. While the interim guidance indicates the agency's position regarding testing at the facility during the interim period, these are only interim procedures and the agency in the final rule may decide to change certain of these procedures once it has some experience with the test facility and it has had the opportunity to analyze the comments in depth. Accordingly, actions and procedures provided for during the interim period do not necessarily represent decisions that will be reflected in the final rule.

The next section contains a brief summary of the comments submitted on the NPRM. Where appropriate, the preamble to this interim rule contains a discussion of the comments. As just indicated, however, the decisions made to implement the interim program are not necessarily the same as those that will be made at the time of the final rule.

The agency will provide a complete analysis of and response to the comments at the time of the final rule.

The agency anticipates that the final rule will be issued before the end of the interim procedure period. Among other things, information gained during this interim period will be useful to UMTA as it develops its final rule.

**II. Public Comments**

Fifty-one comments were submitted to the bus testing docket, although not all were received by the July 25, 1989, close of the comment period. As indicated earlier, a complete discussion of the comments, as well as the agency's response to the comments, will be provided in the final rule issued by the agency sometime before the end of the interim period. While a general indication of the comments are noted in the various program issues discussed in the next section of the preamble, the agency provides the following general information about the comments.

Comments were submitted by transit bus operators (22), state and local governments (12), bus manufacturers (including a component manufacturer and a final stage manufacturer) (12), one member of Congress, one test facility operator, one association, and one UMTA regional office.

Nineteen commenters submitted views on the interim period, and their views were as varied as the range of options presented by the agency in the NPRM. Five commenters recommended that *no* testing be done until the test facility is completed. Several others indicated that they objected to testing at or results from a source other than the Altoona facility.

Five commenters recommended a two-year transition period, allowing manufacturers to perform their own testing during this period. A few commenters indicated that these test results should be submitted to Altoona as a substitute for the facility tests.

In response to the agency's query about testing some but not all vehicle types initially, three commenters recommended that small vehicles be phased in for testing first, while one commenter recommended that 40-foot buses be phased in first.

Of specific concern to the agency is determining the cost of this program to the manufacturers, and ultimate purchasers of these tested vehicles. Several commenters submitted opinions concerning the cost of this program. One transit agency estimated the cost of testing a 40-foot bus to range between \$750,000 and \$1,250,000, while a bus manufacturer estimated the cost for this size bus to be approximately \$250,000. One bus manufacturer estimated that the requirement will impose "excessive

although presently incalculable costs on each bus funded with UMTA money." While few commenters provided the data to support their conclusions, the agency is carefully examining the information provided in preparing its final regulatory analysis for the final rule.

### III. Overview of the Interim Program

This section contains a discussion of a number of the key issues concerning interim period procedures at the bus testing facility. To set the framework for the discussion, we provide the following summary of key interim period requirements:

- The interim period is October 1, 1989 up to September 30, 1990. The agency may shorten the interim period, with Federal Register notice.
- A recipient of UMTA funds cannot lease or purchase a new model bus with any grants (including amendments) approved by UMTA after September 30, 1989, unless a model of such bus has been tested at the facility in accordance with these interim procedures.
- A new model bus is a bus put into mass transportation service in the United States after September 30, 1988, or a bus that has had a major change in components or a significant structural modification after September 30, 1988.
- During the interim period three categories of buses are subject to the bus testing procedures. (The agency may, after appropriate notice, expand the types of vehicles to be tested during the interim period.)
- A manufacturer that wants to have a bus tested contacts the facility, at which time the manufacturer will be told the fee for the testing, the specific tests to be conducted on the vehicles, and other facility procedures.
- The Test Report applicable to each vehicle will not become available publicly until the manufacturer provides an UMTA recipient with the Test Report as part of a procurement of an UMTA-funded vehicle.

**A. Federal Funds Subject to Interim Procedures.** (§ 665.1) In the NPRM, UMTA sought comment on its view that the bus testing facility requirements would apply to any funds "obligated or expended" by UMTA or a recipient after September 30, 1989. UMTA pointed out that this could affect ongoing recipient procurements, since funds "expended" by a recipient would be from grants made available by UMTA before October 1, 1989.

A significant number of commenters opposed this point of view noting, among other things, that it could disrupt ongoing procurement cycles, thereby

causing delay, increased costs, and reduced mass transit services.

In response to these concerns UMTA has reviewed its initial position, the statute, and its legislative history. On the basis of this review, the agency has determined that there appears to be no intent in the statute or its legislative history for the provision to be implemented in a fashion that would disrupt ongoing procurements. Moreover, the language of the statute dealing with Federal funds—"[n]o funds appropriated or made available pursuant to this Act after September 30, 1989 \* \* \*"—has been interpreted by the agency in the same or similar contexts to apply to grants made after the date specified, not to the expenditure of funds by a recipient after that date.

Accordingly, these interim procedures apply only to grants (or amendments to existing grants) made after September 30, 1989. It is important to point out that funds for such grants may come from any fiscal year, not just fiscal year 1990. That is, any grant made after September 30, 1989, or any amendment to an existing grant made after that date, would be subject to these interim procedures regardless of the fiscal year from which the grant funds are made available. Stated another way, these interim procedures apply to all funds obligated by UMTA after September 30, 1989.

**B. Length of Transition Period.** (§ 665.3) The transition period for the bus testing facility will be from October 1, 1989, up to September 30, 1990. Before the end of this transition period, the agency will publish a final rule containing the final requirements for the bus testing program that will go into effect on October 1, 1990. The agency will use the information acquired during the transition period, in addition to the comments received in response to the NPRM, to make final determinations on the program.

If at any time during this transition period, however, UMTA determines that the facility is ready for full operation, UMTA reserves the right to end the interim period earlier than the twelve month period currently projected. Before doing so, however, the agency will publish a final rule outlining the specific final requirements applicable to this program, and establish the effective date for full operation at the facility in accordance with traditional notice requirements. Furthermore, the agency may, after appropriate notice, expand the scope of the interim period procedures to include vehicle types beyond those covered in this notice.

**C. Types of Vehicles Covered in Interim Program.** (§ 665.11) One of the key issues identified in the proposed rule was the definition of bus, which determines the vehicles to be tested at the facility. The agency had proposed a comprehensive definition, including small vans. During this start-up phase of the facility, however, the agency recognizes that there are certain limitations affecting the ability of the facility to test comprehensively all vehicles. Accordingly, for purposes of the transition period, a vehicle under one of the following categories is covered by the interim procedures:

- (1) Heavy duty large buses, approximately 35-40 foot, as well as articulated buses, with a minimum service life of 12 years or 500,000 miles.
- (2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.
- (3) Purpose-built medium duty buses approximately 25-35 foot with a minimum service life of seven years or 200,000 miles.

By limiting the transition program to these vehicle types we are excluding from testing both body on chassis medium duty buses with a service life of seven years or 200,000 miles as well as vans, purpose-built paratransit vehicles and other light duty chassis vehicles with a service life of four years or 100,000 miles.

For purposes of the interim transition period, the three categories of vehicles noted above vary somewhat from the categories described in the proposed rule. Specifically, the proposed rule contained a category of bus called medium duty, which the agency now has split into purpose-built medium duty buses and body on chassis medium duty buses. Again, the purpose-built medium duty buses are subject to testing during the interim period, as are the two categories of heavy-duty buses, but body on chassis medium duty buses with a service life of seven years or 200,000 miles, vans, purpose-built paratransit vehicles, and other light duty chassis vehicles with a service life of four years or 100,000 miles are not subject to testing during the interim period.

The agency may, after appropriate notice, expand the scope of vehicles to be tested at the facility during the interim period.

**D. New Bus Model.** (§ 665.5) The law provides that funds appropriated or made available after September 30, 1989, may not be obligated or expended 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."

On the one hand, as UMTA noted in the NPRM, 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 that date that UMTA funds appropriated or made available 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 also sought comment on whether some date in between these two dates might be appropriate.

After consideration of this issue, UMTA has decided that a new bus model is one that is put in mass transportation service in the United States after September 30, 1988. UMTA believes that this date strikes a reasonable balance between the two other dates. For example, many commenters opposed an April 2, 1987, date as being inconsistent with the statute. Any such bus will have been in service for such a period of time that testing it at the facility probably would not provide any new information about its bus performance characteristics.

A bus model placed in service only on October 1, 1988, or later, would in the agency's view have insufficient operating experience such that testing at the facility would prove beneficial. Any such vehicle would be considered new for purposes of these procedures, and in conformance with the underlying purpose of the statute. Among other things, this approach also prevents a new bus model from being rushed into service, say, by September 25, 1989, to avoid a possible effective date of October 1, 1989.

**E. Major Changes in Configuration or Components.** (§ 665.5) Section 317 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 were provided in the definitions section

of the NPRM, and included twelve different items.

Because of the start up nature of the interim period, UMTA has decided to limit the types of change in component or configuration triggering testing to two specific categories. Accordingly, during the interim period only changes of major components or significant structural modifications will require testing at the facility. The final rule will address this issue in detail.

Examples of changes in components include, but are not necessarily limited to, changes in engine, transmission, or axles. Examples of significant structural modification include a dimensional change or the introduction of new structural materials.

The agency recognizes that in some cases a manufacturer may not be certain whether, for purposes of the interim period, a change is a type that would require testing at the facility. Accordingly, UMTA will respond to specific inquiries on this matter. In this connection, a manufacturer should write the Office of Technical Assistance and Safety at the address provided in the Addresses section of this Preamble.

It is important to note that the effective date of any such change is the same as that for a new model bus, as discussed above. That is, any change in major components or any significant structural modifications made to a bus after September 30, 1988, would require a model of that bus to be tested at the facility before a recipient could take final acceptance of such a model using funds from grants (including amendments) made after September 30, 1989.

**F. Acquisition of a New Bus Model.** (§ 665.7) 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. In the NPRM UMTA stated that acquisition included 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 program should be easy to administer when a grantee leases a vehicle itself, since the grantee can require that any leased buses comply with these procedures. For the interim procedures, acquisition will apply to any purchase or lease of a bus.

UMTA noted in the NPRM that the agency saw 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

program. UMTA is not covering such contracted for services under the interim procedures, but will address this issue in the final rule.

**G. Certification of Compliance.** (§ 665.7) A recipient must certify in each application to UMTA for the acquisition of vehicles that any new model bus or a bus produced with a major change in components to be purchased or leased with UMTA funds obligated after September 30, 1989, will be tested at the bus testing facility, and a Test Report provided, before final acceptance of the first vehicle by the recipient.

It is the responsibility of the recipient, in dealing with the manufacturer, to establish whether a vehicle to be acquired is subject to these interim procedures.

**H. Tests in Operation During Transition Period.** (§ 665.11) The test facility will conduct the following types of tests: maintainability; reliability; safety; performance; structural integrity; fuel economy; and noise. These tests are described in Appendix A to Part 665. As the agency indicated in the NPRM, we anticipate that the contractor running the test facility will modify the different tests as it gains more experience with the tests and the vehicles coming through the test facility. In the NPRM the agency indicated that the manufacturer will receive notice of these changes when the manufacturer registers for testing at the facility. It is important to note that such test changes are not subject to notice and comment rulemaking. More specifically, during the interim procedure a manufacturer will receive specific information of the test procedures to be conducted on its specific vehicle type when the manufacturer begins discussions with the operators of the facility to submit its vehicle to the facility for testing, as well as at contract execution.

The agency anticipates that the durability test in particular will be changed during the interim period. While the contractor has developed a modified test to simulate durability, current plans include the construction of a final "durability track." Once the track is complete (which the agency anticipates will be some time during the transition period) the contractor will update the tests procedures to indicate this, and provide manufacturers with the information about the expanded durability tests.

#### IV. Procedural Information for the Transition Period

**A. Scheduling a vehicle to be tested at the facility.** (Subpart C). A manufacturer may schedule a vehicle for testing by

contacting Penn State's Transportation Institute, the contractors for the bus testing facility program. In this connection, a manufacturer should contact James C. Wambold, Director of Automotive Research, The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802, (814) 863-1889.

When a manufacturer contacts Penn State, it will be provided with a draft contract for the testing, a fee schedule, and the test procedures that will be conducted on the vehicle. A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of testing. (§ 665.27) Penn State will process vehicles for testing in the order in which the contracts are signed. The length of time to complete the testing will vary according to vehicle type, although actual testing time is not expected to exceed three months.

**B. Fees.** (§ 665.25) Section 317 provides that the contractor is to develop a fee schedule and is to collect the fees from the manufacturers. Section 317 also requires that UMTA approve the fee schedule. The agency anticipates that the fee schedule will be developed and approved by September 15, 1989. After this time a manufacturer may contact Penn State at the above address and request fee information.

**C. Administration of Tests.** (§ 665.29) The tests will be conducted at the facility, consistent with established procedures and will be consistent with the testing procedures provided to the manufacturer at the time of contract execution. As indicated in the test descriptions, Penn State will perform all normal maintenance and repair work on the vehicles. However, there also will be an office available to the manufacturer for on-site personnel to observe testing.

If at any time during the testing the manufacturer determines that it is in its best interest to withdraw its vehicle, the manufacturer may do so, without prejudice. No information about the tests will be made available in such cases. However, the manufacturer will be responsible for fees incurred up to the point of withdrawal.

**D. Release of Test Data.** (§ 665.13) The interim period procedures provide, consistent with the NPRM, that a manufacturer will be able to withdraw a vehicle from testing at any time before the completion of the tests, and no record of the partial tests will be kept. After vehicle testing is complete, Penn State will provide the entity with a copy of the Test Report for its vehicle.

For the interim period, the agency has decided that the trigger for the Test

Report becoming available to the public is at some point during the procurement process when a manufacturer responds to a procurement bid by an UMTA recipient. The specific time when that information is to be made available is a local option, but it must be made available no later than the point at which the recipient is to take final acceptance of the first vehicle. That is, a recipient is free to develop bid specifications that require the Test Report to be available, for example, when a manufacturer bids in response to the specifications, but in any event the Test Report must be made available no later than at the final acceptance of the first vehicle. From that point, on the Test Report will be available to the public.

The agency requested comment on this issue in the proposed rule, since there may be some entities interested in obtaining the information generated at the test center. A distinct majority favored maintaining the confidentiality of the material until the manufacturer decides that the bus actually will be the subject of a bid response. However, as already noted, this issue as well as all other issues are open for comment and subject to further analysis before the agency issues its final rule. In any event, once a Test Report becomes public, the facility will keep it and all other publicly available Test Reports available.

#### V. Regulatory Analyses and Certifications

**A. Executive Order 12291.** This action has been reviewed under Executive Order 12291, and UMTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of \$100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

**B. Regulatory Evaluation.** This regulation is significant under the Department's Regulatory Policies and Procedures, because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program. To some extent commenters responded to the agency's request for specific data, although estimates were not accompanied by any underlying analysis or information. The agency has docketed an Addendum to its

preliminary regulatory evaluation, outlining the data available to date. The agency will issue a final regulatory analysis at the time the final rule is issued.

**C. Regulatory Flexibility Act.** In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 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 its preliminary regulatory evaluation. The NPRM sought comment on the potential impact on this rule on the small manufacturer—of vans, paratransit vehicles and the like.

**D. Paperwork Reduction Act.** The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35). Section 317 of STURAA specifically requires the establishment of the facility, as well as the Test Reports. The paperwork requirements contained in this rule have been or will be submitted to the Office of Management and Budget for approval.

**E. Federalism—Executive Order 12612.** UMTA has reviewed this 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 will have definite Federalism implications, because it will 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 during its development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this 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 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 is 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 Bus testing facility.  
665.23 Scheduling.  
665.25 Fees.  
665.27 Transportation of vehicles.  
665.29 Procedures during testing.

#### Appendix A—Tests To Be Performed at the Bus Testing Facility

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

#### Subpart A—General

##### § 665.1 Purpose.

An applicant for Federal financial assistance under the UMT Act for the purchase or lease of buses with funds obligated by UMTA after September 30, 1989, must certify to UMTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

##### § 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. These interim procedures shall be in effect from October 1, 1989, up to September 30, 1990, unless the agency, with appropriate notice, expands the scope of this rule to cover additional vehicles or makes the interim rule final.

##### § 665.5 Definitions.

As used in this part—  
*Administrator* means the Administrator of the Urban Mass

Transportation Administration or his or her 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 proving ground facilities operated in connection with the facility.

*Major changes in configuration or components* means a change of major components or significant structural modifications.

*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 October 1, 1988; or
- (2) Has been used in such service but which after September 30, 1988, is being produced with a change of major components or significant structural modifications.

*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 certificate of compliance.

(a) In each application to UMTA for the purchase or lease of buses, a recipient will certify that any new bus model, or any bus model with a major change in configuration or components, to be acquired or leased with funds obligated by UMTA after September 30, 1989, will be tested at the Bus Testing Facility, and a Test Report provided before final acceptance of the first vehicle by the recipient.

(b) It is the responsibility of the recipient in dealing with a manufacturer, to establish whether a vehicle to be acquired is subject to these procedures.

### 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.

The following vehicle types shall be tested:

- (1) Heavy duty large buses, approximately 35–40 foot, as well as articulated buses, with a minimum service life of 12 years or 500,000 miles.
- (2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.
- (3) Purpose-built medium duty buses approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

(c) The operator of the facility shall develop a test plan for the testing of vehicles at the facility, which is approved by UMTA, and which generally follows the guidelines set forth in appendix A of this part.

#### § 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 of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the Test Report to a recipient during the point in the procurement process specified by the recipient.

(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 that is not a major change under this part, the manufacturer shall advise the recipient during the procurement process and shall include 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 makes it available during the recipient's procurement process. The operator of

the facility will have available for distribution copies of all 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

#### § 665.21 Bus testing facility.

(a) *Location.* The bus testing facility is located at Altoona, Pennsylvania, and includes proving ground facilities.

(b) *Operator.* The facility is operated by Penn State University under contract with UMTA.

#### § 665.23 Scheduling.

(a) A manufacturer may schedule a vehicle for testing by contacting Penn State's Transportation Institute (PSTI) at the following address: The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802 (814) 863-1889.

(b) Upon contacting PSTI, the manufacturer will be provided the following:

- (1) A draft contract for the testing;
- (2) A fee schedule; and
- (3) The draft test procedures that will be conducted on the vehicle.

(c) PSTI will provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) PSTI will process vehicles for testing in the order in which the contracts are signed.

#### § 665.25 Fees.

(a) Fees charged by the operator are according to a schedule approved by UMTA.

(b) Fees will be prorated for a vehicle withdrawn from the facility before the completion of testing.

#### § 665.27 Transportation of vehicle.

A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of the testing.

#### § 665.29 Procedures during testing.

(a) The facility operator shall perform all testing, consistent with established procedures at the facility and with the test procedures provided the manufacturer at the time of contract execution.

(b) The manufacturer of a bus being tested may terminate the test program at any time before the completion of testing, and shall be charged a fee for the tests performed.

(c) The operator shall perform all maintenance and repairs on the test

vehicle, consistent with manufacturers specifications.

(d) The manufacturer may observe all tests. The manufacturer may not provide maintenance or service.

#### Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

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. The seven tests are described in general terms in the following paragraphs.

1. *Maintainability.* The maintainability test includes 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. Up to twenty-five percent of the bus life will be simulated and there will be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff, although manufacturers will be allowed to maintain a representative on site during the testing. Since the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance will be carried out by the test operator in accordance with the manufacturer's specifications.

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.

2. *Reliability.* The question of reliability will be addressed by recording all bus breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. 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.

3. *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. 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.

4. *Performance.* The performance test will be performed on the proving ground and will measure acceleration and gradeability with the test vehicle operated at seated load weight. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel or equivalent and associated instrumentation. 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 both from the test data and a test from a dead stop on a minimum of a 15 percent grade.

5. *Structural Integrity.* Two different structural integrity tests will be performed. Structural strength and distortion tests will be performed at the testing facility in Altoona and structural durability tests will be performed at the proving ground.

#### a. Structural Strength and Distortion Tests

(1) The structural strength and distortion tests will be conducted and will be different for each type of bus. For example, a shakedown of the bus structure will be conducted by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. The bus then will be loaded with a distributed load to gross vehicle weight. (Gross vehicle weight is a curb weight plus gross load.) Increase in floor deflection will be measured as the bus weight is increased from curb weight to gross vehicle weight. Then the bus will be loaded with a distributed load equal to 2.5 times gross load. The bus then will be unloaded and inspected for any permanent deformation on the floor or coach structure.

(2) The bus will be loaded to gross vehicle weight, with one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. This test will be repeated for all four wheels. The test will verify: (a) Normal operation of the steering mechanism and (b) operability of all passenger doors, passenger escape mechanisms, windows, and service doors. In addition, a water leak test will be conducted.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the bus curb weight will be applied to the bus towing fixtures (front and rear). The load will be removed and the tow eyes and adjoining structure will be inspected for damages or permanent deformations.

(4) The bus at curb weight will be towed with a heavy wrecker truck for several miles after which it will be inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages due to tire deflating and jacking will be tested.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands will be assessed.

*b. Structural Durability*

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, simulating up to twenty-five percent of the vehicle's normal service life. During the test there will be inspections of the bus structure and the mileage and identification of possible structural anomalies.

8. *Fuel Economy.* This test will be run to determine the fuel economy in miles per gallon or equivalent of the new bus models.

The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. (The methods of fuel use measurement for different fuels have yet to be determined) 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. However, the test will provide data

which can be used by recipients in their purchase decisions.

7. *Noise.* There will be two noise tests: (1) Interior noise and vibration and (2) 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.

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**Roland J. Mross,**

*Deputy Administrator.*

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