DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1310

RIN 0970–AB24

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Final rule.

SUMMARY: This final rule implements the statutory provision for establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport children participating in Head Start programs.

DATES: 45 CFR 1310.11 and 1310.15(c) are effective January 20, 2004. 45 CFR 1310.12(a) and 1310.22(a) are effective January 18, 2006. 45 CFR 1310.2(c) and 1310.12(b) are effective February 20, 2001. The other provisions of this part are effective January 18, 2002.

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SUPPLEMENTARY INFORMATION

I. Program Purpose

Head Start is authorized under the Head Start Act (the Act), Title VI, Subtitle A, Chapter 8 of the Public Law 97–35, the Omnibus Reconciliation Act of 1981 (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive child development services primarily to low-income children, predominantly age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services.

Additionally, section 645A, of the Head Start Act provides authority to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs. Programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start regulations permit up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special educational and related services.

The Head Start Improvement Act of 1992 contained a provision that requires the Head Start Bureau to develop regulations for the safe transportation of Head Start children. In addition, the Final Report of the Advisory Committee on Head Start Quality and Expansion included in its recommendations the development of ''* * * regulations to assure that safe and effective transportation services are available.'' Finally, In July 1999 the National Transportation Safety Board (NTSB) sent a letter to the Department of Health Human Services reporting findings from the investigation of four accidents in which children being transported in non-conforming vans were killed. One of the fatalities was a Head Start child. The NTSB issued clear recommendations to Head Start based on its findings. The NTSB's letter stated that ''when States allow children to be transported in vehicles not meeting Federal school bus construction standards, NHTSA's intent of protecting school children is undermined * * *. The Safety Board is firmly convinced that the best way to maximize pupil transportation safety is to require the use of school buses or buses built to equivalent occupant crash protection standards.'' The NTSB commented that the release of the Head Start Transportation ''* * * rulemaking should be expedited to prevent future injuries and fatalities to children enrolled in Head Start programs''. The specific recommendations included that ''Head Start children be transported in vehicles built to Federal school bus structural standards or the equivalent'' and that guidelines provided by the National Highway Traffic Safety Administration's Guideline for the Safe Transportation of Preschool Age Children in School Buses be mandated in the rule. The guidelines are related to child passenger restraint systems. The development of ''Performance Standards'' for Head Start transportation supports the goal of ensuring that children and families receive high quality Head Start services.

II. Background and Purpose of the Rule

The authority for this final rule is found in sections 640(i) and 644(a) and (c) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*). Section 640(i) directs the Secretary to issue regulations establishing requirements for the safety features and the safe operation of vehicles used to transport children participating in Head Start programs. Section 645A(b)(9) requires that Early Head Start agencies comply with requirements established by the Secretary concerning design and operation of such programs. Sections 644(a) and (c) require the issuance of regulations setting standards for organization, management, and administration of Head Start programs.

Since the inception of the program, most Head Start agencies have routinely provided transportation for some Head Start children to and from the classroom when needed, although there has never been a requirement to do so. To date, information on transportation provided to Head Start programs has been limited to a series of Information Memoranda which provide guidance to programs on issues around transportation safety, but which do not require any action on the part of Head Start agencies. The following is a summary of that information:

ACYF–IM–82–01, ''Bus Safety,'' issued on January 19, 1982. This Information Memorandum addresses the applicability of The National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (45 CFR Part 571) to school buses with a seating capacity of eleven (11) or more. The Administration for Children, Youth and Families suggested that all buses purchased or leased to transport Head Start children meet the NHTSA standards.

ACYF–IM–83–06, ''Transportation Safety,'' issued March 24, 1983. This Information Memorandum provided notification to Head Start programs of a Highway Accident Report prepared by the National Transportation Safety Board (NTSB) on an accident involving a Head Start vehicle. As a result of their

investigation, the NTSB recommended that ACYF advise all Head Start programs of the circumstances of the accident in hopes that the report would draw attention to the importance of transportation safety. The Information Memorandum also notified programs of the NTSB's recommendation that ACYF adopt, and emphasize the need for adherence to, the policies and guidelines provided by the National Highway Traffic Safety Administration's (NHTSA) Pupil Transportation Safety Standards, Highway Safety Program Standard Number 17 (now Guideline 17). A copy of Standard 17 was included and programs were ''urged'' to use the Standard to assess the adequacy of their transportation systems.

ACYF–IM–93–10. ''Transportation,'' issued on March 18, 1993. This Information Memorandum replaced ACYF–IM–82–01 and ACYF–IM–83–06, since both the Federal Motor Vehicle Safety Standards (FMVSS) and NHTSA's Pupil Transportation Safety Standards had been revised. The Information Memorandum provided Head Start programs with a copy of the new Guideline 17 and again encouraged programs to purchase only vehicles that meet the FMVSS for school buses. The Information Memorandum also provided Head Start programs with new information regarding the Federal Highway Administration's (FHWA) Commercial Motor Vehicle Safety Act and the Commercial Driver's License (CDL) program.

As these issuances have been advisory and not legally binding, there have been differing degrees of implementation. Not all Head Start agencies offer transportation services and, among the agencies that do provide transportation, there are varying degrees of quality and safety.

Because of the impact on the overall quality of services provided to children and families and to assure them access to services, we strongly believe that transportation services in Head Start must meet safety and quality regulations. Many low income families who enroll children in Head Start have limited, if any, access to regular transportation. They often do not own, or cannot afford to operate, a vehicle. They frequently are geographically isolated from, or unable to afford, public transportation. Some communities do not provide any public transportation. Head Start transportation services may be required to ensure the enrollment and attendance of the highest need children.

When Head Start children are transported to and from the program, it is important that the time spent in transit be safe and support Head Start learning experiences. In a typical rural Head Start program some children are transported over long distances and spend a significant part of their day en route to and from the classroom. Therefore, the time children spend on the vehicle should be treated with the same level of importance as the time the children spend in the classroom and in other program activities.

We know from experience and documentation that significant variation exists among States in terms of whether or not drivers and vehicles that transport Head Start children are included under the purview of State school bus requirements.

In developing this rule, the Head Start Bureau commissioned a survey of the States to determine whether and the extent to which, the requirements in the State's pupil transportation safety plan applied to Head Start programs. Of the 48 States that responded to the survey, 14 of them stated that their Head Start programs are covered by the State regulations governing pupil transportation, 23 States responded that their Head Start programs are not covered, 10 States gave a conditional response and one (1) State did not know. The survey also indicated significant variation among the States in the amount of training required for school bus drivers. Of the 45 States that responded to this question, 39 have some mandated training requirements for school bus drivers, three States reported that driver training was handled at the local level, and three States reported no mandated training requirements for school bus drivers. More significantly, only 13 States reported mandated driver training for Head Start bus drivers.

This variation, both in the way Head Start programs are viewed by the States as well as differing requirements among the States, limits reliance on the States as the sole source of transportation safety standards for Head Start programs.

Variation among the States in regulation of Head Start transportation services and oversight, was one of the primary determinants of our decision to develop minimum standards for all Head Start programs, regardless of the State or jurisdiction in which they operate.

We have substantially revised the proposed rule by providing that within five years of the date of publication of these regulations, Head Start agencies must use for activities defined as ''transportation services'', either a school bus or an ''Allowable Alternate Vehicle.'' These two classes of vehicles are defined in the regulations under section 1310.3. The term ''Allowable Alternate Vehicle'' is used to describe a vehicle which complies with the FMVSS applicable to school buses related to crash survivability and mirrors, but does not meet the other FMVSS which apply to crash prevention, such as the requirements for flashing school bus lights and stop arms, or the provisions in Guideline 17 relating to the color of the vehicle and the use of lights and stop arms. All other parts of the regulation, with the exception of Section 1310.11 and Section 1310.15(a) which are effective three years from the date of publication and Sections 1310.2(c) and 1310.12(b) which are effective 30 days from the date of publication, are effective one year from the date of publication.

The provisions that are effective in one year are important to child passenger safety and pose less burden to grantees than the vehicle, safety restraint, and monitor provisions. The Notice of Proposed Rulemaking included a three year phase-in period for all of the provisions with the exception of driver training. The NPRM invited comments about the feasibility of the three year period. The implementation periods that were selected for each provision resulted from review of the comments and analysis of current Head Start requirements. To improve transportation safety as quickly as possible where it was reasonable the implementation period was changed to one year.

The additional category of vehicle was added to address two significant issues raised during the NPRM comment period. The first issue related to the fact that some States prohibit Head Start and other community based programs from using school buses. The second issue related to concerns raised by Community Transportation Agencies (CTAs) about their ability to continue serving Head Start programs if all Head Start agencies providing transportation services were required to use only school buses. Some CTAs operate vehicles which serve both Head Start grantees and other community organizations, and believe that using only school buses to provide transportation for Head Start programs would interfere with their ability to use the same vehicles to meet the needs of other segments of the community. Other groups, such as senior citizens, might object to the use of school buses to meet their needs, and it would be prohibitively expensive for the CTAs to have separate vehicles to meet the needs of Head Start programs and those of

other groups. Reconciling the opposing issues related to vehicle structural safety took several years of painstaking work. Significant progress was accomplished through the contributions of the Joint Department of Health and Human Services and Department of Transportation Coordinating Council on Human Services Transportation (now known as the Coordinating Council on Access and Mobility). The development of the allowable alternate vehicle evolved through information exchange, inclusion of multiple perspectives, and willingness to compromise in order to improve the safety of children.

We believe that recognizing an additional class of vehicle without the exterior crash avoidance features is appropriate since those features are not necessary to serving Head Start children. Under Section 1310.20(b)(6), children who must cross the street or highway to board or after exiting the vehicle because curbside drop-off or pick-up is impossible, must be escorted across the street by a bus monitor or other adult. The crash avoidance features are therefore unnecessary to ensure the safety of children being transported to and from Head Start programs.

Formerly, NHTSA interpreted the statutes it is charged with enforcing to prohibit vendors from selling vehicles for use in transporting children enrolled in Head Start programs that do not meet the standards adopted pursuant to those statutes for school buses. The basis for this position was its interpretation of the term ''school'' in the definition of ''schoolbus'' appearing in 49 U.S.C. 30125(a)(1) to include Head Start programs.

At the suggestion of the Head Start Bureau, NHTSA reconsidered its interpretation in light of the new wording added to the Head Start Act by the Coats Human Service Reauthorization Act of 1998, Section 102, Pub. L. 105–285, 112 Stat. 2702, 2703. The statute amended Section 636 of the Head Start Act (42 U.S.C. 9831) to provide that ''[i]t is the purpose of this subchapter to promote *school readiness* by enhancing the social and cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments to be necessary.'' (Emphasis added.) In view of the rewording of the statute, NHTSA agreed that it was no longer appropriate to consider the Head Start program to be a school program.

The change in NHTSA's position made it possible for the Head Start program to authorize use of a separate category of vehicle, the ''Allowable Alternate Vehicle'', to transport children enrolled in Head Start programs. The Allowable Alternate Vehicle symbolizes the cooperative approach adopted by the Departments of Transportation and Health and Human Services, over the course of nearly a decade, to solve the complicated problems related to improving the safety of Head Start transportation services.

Vehicles meeting the specifications of Allowable Alternate Vehicles are currently in use in some States that prohibit Head Start programs from using school buses. These vehicles also may be used in States where Head Start is not included under pupil transportation regulations and a program chooses a vehicle with the structural features, but not the appearance, of a school bus. The Head Start Bureau anticipates that manufactures will be able to meet the increased demand for alternate vehicles because school bus manufacturers currently produce such vehicles.

In the development of the rule, we have, with only minor variations, adopted a number of the relevant provisions of Guideline 17 and have referenced several of the Federal Motor Vehicle Safety Standards applicable to school buses. This final rule was developed through ongoing consultation with the National Highway Traffic Safety Administration on the application of the FMVSS and Guideline 17 to Head Start programs.

It should be noted that we do not want to place Head Start agencies in conflict with State requirements. On the contrary, it is our intention to continue to work with the States beyond the implementation of the rule to enhance the relationship between Head Start programs and the State agencies responsible for pupil transportation safety. Toward that end, we consulted with the National Association of State Directors of Pupil Transportation throughout the development of this rule.

Where Guideline 17 lacked specificity or was silent on some aspect that is important for transporting Head Start children, we relied on other resources, such as the National Standards for School Bus Operations, in determining regulatory criteria. For example, the regulation includes requirements for the content of driver training and rules for trip routing. The Transportation Research Board's (TRB) Special Report 222 provided valuable information regarding the use of seat belts on school buses, the need for strict rules for trip routing, and the need to train children in safe riding practices both on and off the bus.

The TRB's examination of the use of seat belts on school buses in Special Report 222, along with NHTSA's recommendation in Guideline 17 that passengers in vehicles with a gross vehicle weight rating of less than 10,000 pounds (which is the class of vehicle most frequently used by Head Start programs) use occupant restraints, raises an issue of special significance to the safe transportation of Head Start children. The use of standard Type I (lap) and Type II (lap and shoulder) seat belts is inappropriate for children who weigh 50 pounds or less, because of the potential for injury from the seat belt itself. Children weighing 50 pounds or less should be seated in child restraint systems designed in accordance with FMVSS No. 213, ''Child Restraint Systems.'' Since almost all Head Start children fall into this lower weight category, we have included such a requirement in the rule. Our decision to include this requirement is based on consultation with organizations such as the American Academy of Pediatrics, the Children's National Medical Center in Washington, DC and the Riley Hospital for Children, Automotive Safety for Children Program in Indianapolis, Indiana. The regulation provides that within three years of its publication, all vehicles must be equipped for use of child restraint systems. In some instances, this may require replacement of existing vehicles. While the regulation allows up to five years to use school buses or allowable alternate vehicles, the full five years will not be available if vehicles are being used that cannot accommodate, or be safely retrofitted to accommodate child restraint systems. We recognize the financial effect that a three year versus a five year implementation period may have for some grantees. We urge grantees to evaluate existing vehicles for capacity to accommodate child restraint systems and plan accordingly. The use of child restraint systems for children weighing 50 pounds or less is critical to their safety.

We have excluded the transportation provided under the Head Start and Early Head Start home-based program option from the requirement for use of school buses or allowable alternate vehicles, and the requirements on driver qualifications and bus monitors. In the home-based option, it may only be necessary to transport parents and children to twice monthly group socializations and other program activities. Usually, the transportation is provided in a vehicle other than a school bus driven by the home visitor, although many programs already use

school buses to transport children enrolled in home-based programs. We anticipate that programs already using school buses will continue the practice. Programs will also need to comply with other requirements of the regulations when transporting children enrolled in home-based programs. We also expect that as more grantees acquire school buses and allowable alternate vehicles for use in transporting children enrolled in other program options, they will make available to children enrolled under the home-based option the same transportation services provided to children enrolled under other program options. We are, however, reluctant at this time to apply the same requirements under the home-based option as other options because local circumstances may at times make it impossible to comply fully with the requirements of the regulations. There may be situations, for example, in rural communities with widely dispersed populations when it will not be possible for a grantee to coordinate its use of vehicles to provide the necessary services using school buses or allowable alternate vehicles to meet the needs of children enrolled in the home-based option as well as those enrolled under the other options that it operates.

It should be noted that the requirements in the regulation which are generally applicable to Head Start, Early Head Start and delegate agencies, such as the requirements for safety education in 45 CFR 1310.21, the requirement for release of a child to a parent, legal guardian, or other individual identified in writing by the parents in 45 CFR 1310.10(g) and the use of appropriate child restraint systems in 45 CFR 1310.11, apply to services under the home-based option.

We recognize that implementing this regulation will require programs to learn its provisions and determine their application in reference to existing State regulations. There are a variety of resources available to support agencies. The Head Start Act requires that an allotment of Head Start and Early Head Start funding be dedicated to training and technical assistance for staff and parents. This is accomplished through a variety of avenues, many of which will be instrumental in supporting grantees as they adopt the provisions of the transportation regulation. The training and technical assistance network consists of local, regional, and national resources. Each region has a Quality Improvement Center (QIC) which supplies the Head Start and Early Head Start programs in its region with a variety of training opportunities that are responsive to program needs and emerging issues. Several of the QIC staff have become experts in transportation issues based on the current needs of grantees they serve. The Head Start Publications Management Center provides the vehicle for distributing information material to all of the Head Start and Early Head Start Grantees and delegate agencies. Materials offered by the Publications Center include the ''Transportation Tool Kit'' which was developed to provide Head Start programs with resources and information related to transportation services. There are also various training opportunities available through each State's Department of Transportation and several national organizations, including the International Center for Injury Prevention and the Community Transit Assistance Program, have volunteered to participate in providing training to Head Start programs. The National Highway Traffic Safety Program offers extensive training resources and has already been involved in providing materials to Head Start programs. The NHTSA document entitled ''Guideline for the Safe Transportation of Pre-school Age Children in School Buses'' was distributed to all grantee and delegate agencies in 1999.

III. Summary of the Major Provisions of the Rule

A summary of the major provisions of the final rule follows. The rule:

- Establishes requirements for transportation services for all Head Start, Early Head Start and delegate agencies that transport children to and from program activities;
- Requires that, beginning five years from the publication of the regulation, vehicles used to provide transportation services to Head Start, Early Head Start, and delegate agency program activities be either ''school buses'' or ''allowable alternate vehicles'' as those terms are defined in the regulation;
- Requires that children receiving Head Start, Early Head Start and delegate agency transportation services be seated in height and weight-appropriate child restraint systems when the vehicle is equipped for use of such devices.
- Describes the minimum qualifications for operators of vehicles that are used to provide transportation services to children enrolled in Head Start, Early Head Start and delegate agency program activities;
- Describes the training requirements for operators of vehicles that are used to provide transportation service to children enrolled in Head Start, Early Head Start and delegate agencies;
- Describes the vehicle and pedestrian safety training requirements for parents and children;
- Describes the requirements for transportation of children with disabilities; and
- Defines the role of Head Start, Early Head Start and delegate agencies in local efforts to plan and implement coordinated transportation systems in order to achieve greater overall cost effectiveness in providing safe transportation.

The contents of this rule include aspects of the following Department of Transportation guidelines and standards:

- Highway Safety Program Guideline No. 17, ''Pupil Transportation Safety,'' referred to in this text as Guideline 17, published in the **Federal Register** (56 FR 19270, April 26, 1991) and (57 FR 56991, December 2, 1992);
- 49 CFR part 571—Federal Motor Vehicle Safety Standards;
- 49 CFR part 383—Commercial Driver's License Standards: Requirements and Penalties; 49 CFR part 391—Qualifications of Drivers;
- 1990 National Standards for School Buses and School Bus Operations, National Safety Council; and
- Special Report 222, ''Improving School Bus Safety,'' Transportation Research Board, National Research Council, 1989.

We also reviewed the National Highway Traffic Safety Administration's ''1999 Guideline for the Safe Transportation of Pre-school Age Children in School Buses.'' This document confirms that, based on conclusive crash testing research results, preschool age children are most safely transported on school buses when seated using weight-appropriate child safety restraint systems.

IV. Rulemaking History

On June 15, 1995, the Department published a Notice of Proposed Rule Making (NPRM) in the **Federal Register** (60 FR 31612), proposing regulations establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport enrolled children, safety education, and transportation coordination. Copies of the proposed rule were mailed to all Head Start grantee and delegate agencies. Interested individuals were given 60 days in which to comment on the proposed rule. During the 60-day comment period the Department received more than 800 comments from more than 300 respondents. The respondents included Head Start grantees and public and private agencies and individuals

interested in Head Start transportation services.

V. Section-by-Section Discussion of Comments

The comments were analyzed and categorized according to regulatory section and again by nature of comment. Only those sections for which comments were made or to which changes were made are discussed below. The discussion of the sections follows the order of the NPRM table of contents and a notation is made wherever the section designations have been changed or deleted from the final rule.

Subpart A—General

Section 1310.1—Purpose

There were no significant comments submitted in response to this section. Language was added to the final rule to clarify that training in pedestrian safety is an included element of the regulation. Language was also added to the effect that agencies must make reasonable efforts to coordinate resources in order to control costs and improve the quality and availability of transportation services.

Section 1310.2—Applicability

Section 1310.2(a) (re-designated as Section 1310.2(c) in the final rule)

This section described the rule's applicability to all Head Start grantees, Early Head Start grantees and delegate agencies.

Comments. Paragraph (a) in the proposed rule specified the rule's applicability to all Head Start grantees and delegate agencies that provide transportation to children. Several respondents objected on the grounds that a school bus would not be able to safely navigate the challenging terrain encompassed within their program area.

Response. We recognize that there are rare circumstances when programs may use non-traditional forms of transportation (*e.g.,* boats for some island programs) to bring children to and from the program. Waiver authority has been added to the final rule under Section 1310.2(c) so that, on a case-by-case basis, the Department of Health and Human Services official may permit exclusion from one or more requirements of the final rule based on ''good cause''. Good cause will exist only if adherence to a requirement of the Part itself causes a safety hazard in the circumstances faced by the Head Start, Early Head Start or delegate agency. The waiver provision will take effect 30 days after publication of the regulation.

We have excluded home-based program transportation from the vehicle, drive qualification, and bus monitor provisions of the regulation. Home-based Head Start programs may provide transportation to small groups of children and their parents twice per month. Many home-based programs currently use school buses for such transportation and home-based programs are strongly encouraged to use school buses or allowable alternate vehicles whenever possible. When the State in which a Head Start or Early Start program operates sets a higher standard than this regulation, agencies shall comply with the State regulation.

The rule is applicable to all Head Start and Early Head Start grantees and delegate agencies regardless of whether they offer transportation services or not. Some provisions are not applicable if an agency does not provide any transportation services, either directly of through another organization. This includes sub-parts related to vehicles, drivers and trip routing. Other sections are applicable regardless of whether the program provides transportation services or not. Sections which provide requirements for all grantees and delegate agencies include, Section 1310.10(a), (b) and (g), Section 1310.21(a), (c)(2), and (e) and Section 1310.22(c).

Section 1310.3 Definitions

This section supplied definitions for the relevant terms used in the regulation. There were no comments submitted in response to this section of the proposed rule. We have deleted several definitions for terms that were either deleted from the regulation or are self-explanatory and added clarifying language to several others. The term ''Transportation'' is redefined under ''Transportation Services'' in the final rule. We added definitions for the terms ''Agency'', ''Agency Providing Transportation Services'', ''Delegate Agency'', ''Early Head Start Agency'', ''Early Head Start Program'', ''Head Start Agency'', ''Head Start Program'' and ''seat belt cuter'' to clarify the use of these terms in the regulation. We also added a definition of the ''Allowable Alternate Vehicle'' because it is a term used in the final rule. We added a definition for ''school bus'' as the term is used throughout the regulation. Deleted definitions were: ''coordinated transportation'', ''crossing control arm'', ''stop signal arm'', ''driver'', ''winter packs'', ''driver qualifications'', ''Guideline 17'', ''transportation supervisor'', ''training'', ''school bus loading zone'', and ''vehicle''. The remaining terms are listed alphabetically in the final rule.

Subpart B—Transportation Requirements

Section 1310.10 General

Section 1310.10(a) (re-designated in the final rule as Section 1310.10(c))

This section required that programs providing transportation to Head Start children comply with the applicable requirements of this Part.

Comments. The majority of letters were supportive and indicated that adoption of the NPRM would yield safer and higher quality transportation services for children in Head Start. Some other respondents expressed concern that the requirement jeopardizes some transportation services provided for Head Start children by public school districts, regional transit authorities and contractors. Many writers expressed support for the increased safety the regulation affords, but are concerned about the cost of compliance. For example, respondents wrote that the increased costs associated with bus monitors, driver certification and training, child safety restraints, using vehicles that meet the identified safety standards, and providing communication equipment would be prohibitive without additional grant funds. Several also objected that the three-year phase in period was unrealistic with respect to replacement of existing vehicles. Some respondents recommended that waivers be allowable for all or most of the rule's requirements.

Response. The requirements of the regulation are essential in assuring the safe transportation of preschool age children. However, waivers under section 1310.2(c) of the final rule shall be granted on a case-by-case basis where adherence to a specific provision would cause a safety hazard in the circumstances faced by the Head Start, Early Head Start, or delegate agency. Requests for waivers should be made to the responsible official of the Department of Health and Human Services.

In response to comments that three years is not a reasonable period for replacement of existing vehicles in order to comply with the regulations, the effective date of sections 1310.12(a) and 1310.22(a), which now provide that children enrolled in Head Start agencies be transported in either school buses or allowable alternate vehicles, will be five years from the date of publication of this part in the **Federal Register**. This change will provide additional time for

necessary financial planning and upgrading and replacing vehicles.

The requirement which appeared in the NPRM at section 1310.11(i) that children are seated in child safety restraint systems is addressed in the final regulation sections 1310.11 and 13.10.15(a) and (d). Those provisions require that beginning on the date three years from publication in the **Federal Register**, each vehicle used to transport children enrolled in Head Start must be equipped for use of height and weight appropriate child restraint systems which conform to the performance requirements (49 CFR 571.213) for use by children weighing fifty pounds or less who will be transported in the vehicle. This requirement can be met either by retrofitting vehicles already in service or by acquiring new vehicles. For an additional explanation of the reasons for the change in the requirements regarding child safety restraint systems, see the discussion of section 1310.11 in this preamble.

Section 1310.10(b)

Paragraph (b) required that Head Start programs assess and document annually decisions about providing transportation to some, all, or none of the enrolled children.

Comments. Several respondents interpreted the requirement to mean programs are required to transport all children. Others feared they would not be allowed to enroll children they could not transport. Respondents objected to the requirement on the basis that additional transportation requirements are too expensive and they would need to reduce their enrollment to meet the transportation requirements.

Response. The requirement's intent is that programs provide transportation services to the degree possible when the lack of such services would preclude an eligible child from participating in Head Start. It requires programs to consider the most efficient and appropriate service provision. The language in the final rule was clarified to make sure that Head Start agencies assist as many children as possible to obtain transportation, either by providing it directly or through some other means, but are not required to transport every child in the program. We deleted the requirement for specified documentation of Head Start agencies' efforts under this section as unnecessarily burdensome.

Section 1310.10(c) (re-designated as Section 1310.10(a) in the final rule)

The section required Head Start agencies that do not provide transportation to some or all of the enrolled children to provide reasonable assistance to help families arrange transportation for their children to and from the program.

Comments. One respondent expressed concern that an implied liability would exist for a Head Start agency that recommended or arranged child transportation services.

Response. We agree that child safety is a primary concern and that programs must be cautious in assisting families in making alternative transportation arrangements. The regulation requires Head Start agencies to assist as many children as possible who need transportation to attend the program to get that transportation. Parents and guardians are responsible for the safety of children in their care when they bring those children to or from Head Start program activities. When the grantee or delegate agency cannot provide transportation services, possible alternative arrangements may be suggested to parents. This is consistent with Head Start Performance Standard 1304.41(a)(2) which requires grantees and delegates agencies to support collaborations that promote the access of children and families to resources that are responsive to their needs.

Section 1310.10(d) (deleted from the final rule)

Paragraph (d) required each Head Start program providing transportation services to have designated full or part-time transportation supervisor to ensure compliance with the requirements of this Part.

Comments. Some respondents objected that if the transportation services are provided contractually or via a school district, a Head Start employed transportation supervisor is not necessary. The objection most frequently cited was that an additional staff position could not be accommodated through existing grant funds.

Response. The requirement for a designated transportation supervisor reflected recognition of the critical nature of safe transportation services and the time and expertise required to ensure safety. Upon consideration of the comments and given the variety of Head Start staffing patterns, we determined that a separate dedicated staff position may not always be necessary to ensure safe and effective transportation services. The language in the final rule specifies transportation regulation oversight and compliance with he applicable requirements of this part in section 1310.10(c). Head Start agencies providing transportation through another organization or individual must monitor the compliance of the transportation provider with the requirements of this part.

Section 1310.10(e) (re-designated as Section 1310.15(c) in the final rule)

Paragraph (e) required vehicles providing Head Start transportation be staffed with at least one bus monitor in addition to the driver.

Comments. The objections to this paragraph related mainly to the cost of employing bus monitors or the belief that monitors are not necessary for small groups of children. Some respondents indicated that finding volunteer monitors is too difficult. Several writers objected to requiring bus monitors to wear seatbelts as they felt this would negatively impact the monitor's ability to assist children during the ride. Several writers recommended additional monitors for larger groups of children.

Response. The final rule maintains the requirement of at least one bus monitor on vehicles transporting Head Start children. Preschool children require adult supervision and assistance to safely board and exit the vehicle, fasten safety restraints, and to evacuate the vehicle in the event of emergencies. The driver's attentions must be primarily focused on safe operation of the vehicle. The final regulations provide in section 1310.15(d) that, except for bus monitors while they are assisting children, all occupants of the vehicle must be seated and wearing seat belts while the vehicle is in motion. As necessary based on passenger needs, programs may elect to assign more than one monitor to a vehicle. Although the term ''bus monitor'' is being used in the regulations, the requirement in 45 CFR 1310.15(c) applies to all vehicles, except for those used to transport children served under the home-based option, used to provide transportation services after the effective date of the provision.

Section 1310.10(f)

Paragraph (f) required that all accidents involving Head Start vehicles, with or without children on board, must be reported in accordance with State regulations for reporting school bus accidents. There were no specific comments to this section. The language in the final rule was changed to reference ''applicable State requirements'' to improve clarity.

Section 1310.10(g) (re-designated as Section 1310.10(d)(1) in the final rule)

Paragraph (g) required that vehicles transportation Head Start children be equipped with a communication system for use in the event of emergencies. The

NPRM referenced a citizen band radio as an example of a communication system.

Comment. Many writers understood the NPRM to require citizen band radios on vehicles that transport Head Start children and objected on several grounds. Notably, some State police departments have advised against this device fearing it could inform potential criminals of the location of a stranded bus load of children and staff. Most respondents were supportive of equipping vehicles that transport Head Start children with communication capacity.

Response. The final rule continues to require a communication system on vehicles, but defers to grantees to select the most appropriate equipment.

Section 1310.10(h) (deleted from the final rule)

Paragraph (h) required the use of special equipment (*e.g.,* winter packs and air conditioning) as necessary for vehicles transporting Head Start children in extreme climatic conditions.

Comments. Some writers requested a definition ''extreme climatic conditions.'' Others stated that the approporiate outfitting of buses should be a local decision.

Response. It was not our intent that this section be prescriptive. We agreed with the respondents who stated that the appropriate outfitting of vehicles should be a local decision and have deleted the special equipment for climate extremes from the final rule.

Section 1310.10(i) (re-designated as Section 1310.10(g), in the final rule)

Paragraph (i) specified that children must be released only to authorized individuals.

Comments. There were few comments in response to this section of the proposed regulation. Two writers recommended clarifying the section to stipulate that child release procedures be required even if the Head Start program is not directly providing the transportation services. One respondent was concerned that a parent with a disability might be unable get outside to put their child on the vehicle and meet the child at the end of the day.

Response. The language in the final rule contains clarification to reinforce that all providers of Head Start, Early Head Start and delegate agency services, including transportation services, must abide by the child release regulation. The provision allows for a child's parent or legal guardian to designate, in writing, other individuals authorized to pick up the child.

Section 1310.11—Vehicles (re-designated as Sections 1310.12–1310.15 in the final rule)

Section 1310.11(a) (re-designated as Section 1310.12(a) in the final rule)

Paragraph (a) specified that vehicles used to transport Head Start children must comply with the recommendations regarding ''school buses'' as provided in Guideline 17 and prohibited the use of vans in transporting Head Start children.

Comments. This NPRM section elicited the largest number of comments. A number of respondents strongly objected to the prohibition against using vans. While a few writers advocated the use of buses over vans for safety advantages, most stated that programs would not be able to afford to replace vans with school buses and that buses are an inefficient method to transport individual or small groups of children. There were also comments that in some regions of the country, roads are unpaved and require four wheel drive vehicles. Many individuals cited very geographically large service areas as an impediment to reasonably efficient school bus use. One writer cited a State rule permitting the use of qualified vans and drivers if the number of children is fewer than ten and the route would be excessively long if a regular school bus was used.

Response. Substantial effort was devoted to creating a solution that would both improve the safety of vehicles providing Head Start transportation services, not contradict existing State regulations, and be reasonable for use by various transportation providers. The solution provides for the use of either a vehicle that qualifies as a ''school bus'' or an ''Allowable Alternate Vehicle'' which is not a school bus but does meet the structural, or crash protection, standards of a school bus. This decision to require that Head Start transportation service providers only use vehicles with the interior safety features required for school buses reflects the research demonstrating that school buses are safer than other vehicles.

The National Highway Traffic Safety Administration confirms that based on research, ''school buses have been and remain the safest form of highway transportation'' *(School Bus Safety: Safe Passage for America's Children* (1998), p. 5). NHTSA based its conclusion in part on data documenting that the school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is much lower than the rates for passenger cars (1.5 per 100 million VMT) or light trucks and vans (1.3 per hundred million VMT). NHTSA established the Federal Motor Vehicle Safety Standards (FMVSS) to make school buses stronger and to provide improved occupant protection (p. 7).

Further evidence of serious safety hazards posed by the use of vans is provided by the National Transportation Safety Board's Highway Special Investigation report titled ''Pupil Transportation In Vehicles Not Meeting Federal School Bus Standards'' (June 1999). The report's findings are based on the investigation of child fatalities in four accidents where children were being transported in vehicles that did not meet the crash protection standards of school buses. One of the accidents involved children being transported to a Head Start program. The report includes detailed analysis of the crashworthiness of the nonconforming vehicles and provides a table describing the crash protection attributes of different vehicle types. Fifteen-passenger vans do not possess the joint strength or roof rollover protection provided by school buses. Federal school bus standards require that body panel joints be strong enough to resist separation during a crash that can cause sharp cutting edges and openings through which children can be ejected. The Safety Board included a comparison of two accidents, one involving a school bus and one involving a fifteen-passenger van. Although the bus was struck by a much larger, heavier truck it suffered far less intrusion damage than the fifteen-passenger van. The Board found that if the children involved in the van accident had been on a bus, they would have had more ''survivable space.'' The report concludes that ''given their better crashworthiness and occupant protection, had school buses or buses providing equivalent occupant crash protection been used in the four accidents * * * the vehicles probably would have suffered less damage and the passengers may have suffered fewer and less severe injuries.''

Based on its report, the National Transportation Safety Board issued a letter to the Department of Health and Human Services (July, 1999) recommending the expedition of the rule requiring that Head Start Children be transported in vehicles built to Federal school bus structural standards or the equivalent and that the guidelines from the National Highway Safety Administration's Guideline for the safe Transportation of Preschool Age Children in School Buses regarding child passenger restraint systems be incorporated in the regulation. Both of the Safety Board's recommendations are reflected in the final rule.

Because all children attending Head Start must be accompanied by an adult if they cross a street or highway to board or exit a vehicle, the final regulation permits the use of an ''Allowable Alternate Vehicle'' which would not be identified as a ''school bus,'' be painted yellow or equipped with flashing lights and a stop arm. The final regulation provides for waiver of one or more of its specific requirements when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the Head Start, Early Head Start, or delegate agency, such as when use of a school bus or allowable alternate vehicle is ruled out because of terrain in the area served by the grantee or some other safety factor. In response to the concern about navigating unpaved roads, it should be noted that four wheel drive school buses are currently available.

Section 1310.11(b) (re-designated as Section 1310.12(a) in the final rule)

Section 1310.11(b)(1)(deleted from the final rule)

Paragraph (b)(1) stated that vehicles used for Head Start transportation must comply with all of the Federal Motor Vehicle Safety Standards (FMVSS) for school buses.

Comments. Some respondents objected that Head Start should not be required to use vehicles meeting the FMVSS if Head Start is not included in the State's pupil transportation regulations. Many people asked for additional clarification regarding the definition of allowable exceptions. For example, are medical visits considered incidental and do they require a vehicle complying with the FMVSS for school buses? Cost was again a major topic and several writers suggested a gradual implementation period to reasonably replace existing vehicles with school buses. One writer was concerned that school buses do not include the proper safety restraint systems for young children. Again, several respondents said that school buses cannot navigate rural roadways, which may be unpaved, or very narrow. One comment noted that some States prohibit transit authorities from using school buses and the rule would effectively prevent those agencies from providing Head Start transportation services.

Response. Under section 1310.12(a) the final rule requires that when school buses, as defined in the rule, are used for the planned transportation of Head Start children, they must comply with the FMVSS for school buses, including both crash prevention and crash survivability standards.

In response to the concern that school buses may not be the most practical vehicle to provide transportation in certain circumstances, an alternative acceptable vehicle has been defined in the rule for the purpose of Head Start transportation. The alternative vehicle, called the ''allowable alternate vehicle,'' is defined in these regulations as one which must meet the FMVSS applicable to school buses for crash survivability and mirrors (49 CFR part 571), but is not required by these regulations to meet the standards related to visibility and traffic control. The latter are collectively called crash prevention standards and they include the color of the vehicle, flashing school bus lights, and a stop arm. Crash prevention standards are related to the appearance of vehicles. They include FMVSS 49 CFR 571.108 and 571.131. Requiring the allowable alternate vehicle to meet the crash survivability standards, but not the crash prevention standards, permits greater flexibility in vehicle appearance while maintaining the structural safety features afforded by school buses.

Because Head Start children must be accompanied by an audit when they must cross the street before boarding or after exiting the vehicle, the crash avoidance features are not required for allowable alternate vehicles.

Incidental transportation, which is the unplanned, necessary, transportation of a single child or small group of children for some exceptional purpose, is not required to meet the requirements of the rule relating to transportation services. The distinction between planned and unplanned transportation is designed to allow transportation of children to occur as necessary in unanticipated or exceptional situations. Programs should make every effort to use school buses or allowable alternate vehicles whenever possible. Section 1310.11(b)(1) was deleted in the final rule as it duplicated provisions already specified.

Section 1310.11(b)(2) (re-designated as Section 1310.10(d)(2) and (3) in the final rule)

Proposed paragraph (b)(2) described the requirement that vehicles that transport Head Start children be properly equipped with a fire extinguisher and a first aid kit with location signs for both visibly posted.

Comment. One comment was submitted suggesting most standard first aid kits do not contain adequate supplies for conditions such as shock or severe bleeding.

Response. The final rule maintains the requirement that vehicles transporting Head Start children must be equipped with a fire extinguisher and first aid kit. Seat belt cutters were added to the required safety devices in response to concerns that child safety restraints might slow evacuation of children in an emergency. Grantees are reminded to follow applicable State agency guidelines concerning contents of first aid kit.

Section 1310.11(b)(3) (re-designated under Section 1310.12(a) in the final rule)

Paragraph (b)(3) required that vehicles used to transport Head Start children be equipped with mirrors complying with 49 CFR 571.111.

Comments. There were not comments in response to this section of the proposed regulation.

Response. The specific provision regarding mirrors was deleted as its content is included within the definitions for school buses and allowable alternate vehicles.

Section 1310.11(b)(4) (deleted from the final rule)

Paragraph (b)(4) required that bus steps be equipped with a lower step panel at the primary access point to permit children to step on and off the bus unassisted.

Comments. Several respondents objected to the lower step panel on the grounds that it is too prescriptive and may be unsafe on certain terrain. Further, it was noted that Head Start children vary in size and physical ability and are expected to always have adult assistance when boarding or exiting a Head Start vehicle.

Response. The requirement was deleted from the final rule because we agree with comments that it was more prescriptive than necessary.

Section 1310.11(b)(5) (re-designated as Section 1310.12(a) and (b)(2) in the final rule)

Proposed paragraph (b)(5) stated that vehicles providing Head Start transportation services must be equipped with reverse beepers.

Comments. Writers regarded the reverse beepers as unnecessary because the proposed rule prohibited backing up.

Response. The rule specifies that ''vehicles must not be required to back up * * * [on their routes] except when necessary for reasons of safety or because of physical barriers.'' This requirement reflects that it is not safe for school bus routes to be mapped so that backing up is necessary. A bus, however, may need to back up for reasons of safety or physical barrier. In either instance the reverse beepers notify pedestrians of the driver's

intention and could prevent accidents and injury. Therefore, the provision was retained.

Section 1310.11(b)(6) (provision addressed in Section 1310.22 in the final rule)

Paragraph (b)(6) specified that vehicles that transport Head Start children must be equipped to accommodate children's special needs (*e.g.,* wheelchair lifts).

Comments. Many respondents interpreted the section to mean that every Head Start vehicle must be equipped to meet the potential needs of children with disabilities and were concerned about unnecessary effort and prohibitive expense. Several respondents asked for clarification regarding the definition of ''special equipment'' and the portion of an agency's fleet that should be so equipped.

Response. The language in the final rule, section 1310.22(b), specifies that Head Start agencies must meet the requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and the Head Start Performance Standards for Children with Disabilities. It is not necessary, or advisable, that every vehicle transporting Head Start children be equipped with a wheelchair lift. We emphasize that Head Start programs must be prepared to meet the special transportation needs of children with disabilities who enroll in the program. Agencies must consider the needs of children with disabilities when arranging for transportation services using school buses or allowable alternate vehicles. Whenever possible, children with disabilities must be transported along with their peers who do not have disabilities.

Section 1310.11(c) (deleted from the final rule)

Paragraph (c) specified that, to the extent allowable within State requirements, vehicles that transport Head Start children must comply with the following recommendations for identification and equipment of a school bus contained in Guideline 17: (1) Be identified with the words ''School Bus'' printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle except as required by Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR part 571; (2) be painted National School Bus Glossy Yellow, in accordance with the specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching Nist Federal Standard No. 595a, Color 37038; (3) have bumpers of glossy back, matching NIST Federal Standard 595a, Color 17038, unless, for increased visibility, they are covered with a reflective material; (4) be equipped with a stop signal arm as specified in FMVSS No. 131 (49 CFR 571.131) and a crossing control arm; and (5) be equipped with a system of signal lamps that conforms to the performance requirements of FMVSS No. 108 (49 CFR 571.108).

Comments. No significant comments were received in response to paragraphs (c)(1)–(2). There were, however, a few respondents objecting to the bumper color requirement on the grounds it would require expensive retrofitting of existing vehicles. There were also respondents who objected to paragraphs (c)(4) and (5) which required that vehicles comply with the FMVSS for stop signal arms, crossing control arms, and signal lamps. Several respondents indicated that crossing control arms are unnecessary because Head Start children should only enter or exit buses curbside. There were objections to increased costs for all safety features.

Response. The safety features that would have been required by the proposed Section 1310.11(c)(1)–(5) were deleted from the final regulations because they are not necessary in view of the requirement that children using Head Start vehicles be accompanied by a bus monitor or other adult when they must cross the street before boarding or after exiting the vehicle. The final rule identified the required features for allowable alternate vehicles and school buses under its definitions, Section 1310.3.

Section 1310.11(d) (re-designated as Section 1310.14 in the final rule)

Section 1310.11(d)(1) (re-designated as Section 1310.14 in the final rule)

Paragraph (d)(1) required Head Start agencies to assure that vehicle specifications are correctly provided and that the intended use is identified in bid announcements.

Comments. Respondents requested that bus specifications and purchase procedures be provided by the Head Start Bureau.

Response. Requirements for vehicles to be used in Head Start transportation services are defined in the final rule either explicitly or through reference to other requirements, such as provisions of the FMVSS. Grantees can comply with the requirement to ensure that bid solicitations include correct vehicle specifications by citing or restating the relevant requirements of these regulations, as well as any applicable State requirements. Since the relevant Federal specifications are set forth in the regulations, no changes were made to the final rule.

Section 1310.11(d)(2) (re-designated as Section 1310.14 in the final rule)

Section 1310.11(e) (re-designated as Sections 1310.12(a) and (b) in the final rule)

Paragraph 1310.11(e) specified that existing vehicles not compliant with the FMVSS and the minimum capacity requirement must be replaced within a three-year period. It also reminded readers that, in accordance with 42 U.S.C. 9839(g)(2)(c), Head Start funds may be used for capital expenditures to purchase buses.

Comments. Many respondents objected to the three-year phase in period as far shorter than the useful life of some vehicles. Several individuals suggested periods between five and ten years as more accomplishable and reasonable.

Response. Head Start agencies that are transporting children enrolled in their programs in vehicles which do not meet the requirements under Section 1310.12 should consider replacing those vehicles with compliant vehicles as soon as possible. The allowable limit for vehicle replacement has been extended to five years in order to accommodate the useful life of vehicles that are relatively new at the time the rule is published. Also, the wording of the final regulation has been changed to require that each agency providing transportation services must transport children enrolled in its programs in school buses or allowable alternate vehicles that are equipped for use of height and weight appropriate child restraint systems, and that have reverse beepers. It should be noted that existing vehicles which cannot be equipped to safely accommodate child restraint systems must be replaced within three years of publication of the final rule. We recognize that in a minority of cases this could necessitate vehicle replacement before the full five year period expires or the vehicle's useful like is completely exhausted. This constitutes a reasonable compromise because it will affect relatively few vehicles, three years is an adequate amount of planning time, and restraint systems are essential to child passenger safety. The implementation of child restraint systems should occur as quickly as is reasonably possible.

Paragraph (b) was added to the final rule to clarify that, beginning thirty days after publication of the rule, vehicles purchased with Head Start funds for use transporting children must meet the requirements of paragraph (a).

The language reminding readers that Head Start funds may be used for capital expenditures including buses was deleted as it appears elsewhere (as referenced above) and it is not directly a part of this regulation.

Section 1310.11(f) and (h) (combined and re-designated as Section 1310.15(a) in the final rule)

Paragraph (f) proposed that all passengers on a Head Start vehicle be seated while it is in motion. Paragraph (h) proposed that bus drivers, monitors and other passengers must wear seat belts when the vehicle is in motion.

Comments. Two respondents stated that bus monitors may need to attend to children while the bus is moving and therefore might not be able to remain seated.

Response. While the vehicle is in motion, all children and adults must be wearing appropriate safety restraints. In the event of an emergency while the bus is moving, the monitor may need to unfasten his or her seatbelt and move to assist a child. The language in the final rule was changed slightly to require that, other than a monitor assisting a child, all passengers must remain seated and use appropriate safety restraints while the vehicle is in motion.

Section 1310.11(g) (re-designated as Section 1310.10(e) in the final rule)

Paragraph (g) stated that the use of auxiliary seating was prohibited.

Comments. Several respondents objected to the prohibition against auxiliary seating in wheelchair lift equipped vehicles or adjacent to an emergency door.

Response: The NPRM did to intend to prohibit correctly installed auxiliary seating. The final rule clarifies that all seats must be permanent and pass inspection.

Section 1310.11(i) (re-designated as Section 1310.15(a) in the final rule)

The NPRM indicated that children weighing less than 50 pounds should be seated using child safety restraint seats.

Comments. There were few responses to this item. One respondent objected to the cost and space implications of child safety seats, saying that installing the seats would reduce seating capacity by a third. Another respondent suggested that transportation staff training in the correct use of transportation safety seat use be required in the final rule. A final respondent expressed concern that use of child restraint systems would delay the evacuation of children in an emergency.

Response. Because the National Highway Traffic Safety Administration Guideline for the Safe Transportation of Preschool Children in School Buses concludes that children weighing 50 pounds or less are most safely transported on school buses when they are seated in age- and weight-appropriate restraint systems, this requirement was retained with explicit reference to the 50-pound requirement (National Highway Traffic Safety Administration, 1999). It is expected that programs will make sure transportation staff receive instruction in the correct use of the child restraint system. There are more child restraint systems and more vehicle configurations than were available when the NPRM was published in 1995. The three year implementation period for child safety seats and the five year period for vehicle implementation was designed to provide planning time for grantees with regard to issues such as seat spacing. The final rule requires vehicles transporting Head Start children to be equipped with seat belt cutters which could be used to speed the evacuation of children in an emergency.

Section 1310.11(j) (re-designated as Section 1310.15(b) in the final rule)

Section 1310.11(k) (re-designated as Section 1310.13 in the final rule)

Section 1310.11(k)(1) (re-designated as Section 1310.13(a) in the final rule)

This standard proposed a thorough safety inspection of each vehicle at least annually through a State licensed or operated inspection system.

Comments. One response objected that the requirement is too prescriptive, another suggested it should specifically identify inspection components, a third voiced concern that the rule would conflict with State regulations and a final respondent stated unconditional support.

Response. Regular vehicle inspections are an integral element of safe transportation services. As provided in section 1310.2(a) of the final rule, this provision will apply except when there is an applicable State or local requirement that sets a higher standard.

Section 1310.11(k)(2) (re-designated as Section 1310.13(b) in the final rule)

Section 1310.11(k)(3) (re-designated as Section 1310.13(c) in the final rule)

Section 1310.12—Driver Qualifications (re-designated as Section 1310.16 in the final rule)

Section 1310.12(a) (re-designated as Section 1310.16(a) in the final rule)

Section 1310.12(a)(1) (deleted from the final rule)

Paragraph (a)(1) addressed Head Start transportation service driver qualifications. The proposed requirement was that drivers be at least 21 years of age.

Comments. Several people wrote that they currently use drivers who are eighteen or nineteen years and older as is allowable in their States. Others strongly supported that drivers be at least 21 years old.

Response. The minimum age requirement was removed from the final rule. The final regulation requires that all drivers of vehicles providing Head Start transportation possess Commercial Drivers Licenses and meet physical and other requirements.

Section 1310.12(a)(2) (re-designated as Section 1310.16(a)(1) in the final rule)

Paragraph (a)(2) listed the requirement that drivers providing Head Start transportation possess a Commercial Driver's License (CDL).

Comments. The majority of objections were to the cost implications of having current drivers obtain and meet the ongoing requirements for the CDL. Several respondents were also concerned that the wages paid to Head Start drivers are not competitive with public school bus drivers or commercial truck drivers. One writer objected that the CDL requirement is ''just a way to ensure that all Head Start drivers are drug and alcohol tested.'' A few respondents were concerned about the implications of the CDL requirement for the Home-based program option.

Response. The Commercial Driver's License requirements establish a driver's qualifications to operate the appropriate class of passenger vehicle. The CDL is viewed as the best assurance that drivers will meet essential minimum standards. The final rule retains the CDL requirement in States where such licenses are granted. All operators of commercial motor vehicles are required to have CDLs. Commercial motor vehicles include vehicles designed to carry 16 or more passengers, including the driver. Many States have extended the inclusion to all vehicles used to provide pupil transportation. To

obtain a CDL, vehicle operators must pass written and driving tests in accordance with Federal Standards for the vehicle the person intends to operate. The knowledge test includes such topics as proper procedures for loading and unloading passengers, proper response to emergencies, proper response at railroad crossings and proper braking procedures. The skills test requires applicants to demonstrate basic vehicle control, safe driving, and air brake skills. The topics addressed by the CDL tests are deemed essential for operators of vehicles transporting children. The cost of transportation services may increase as current transportation providers employ drivers with CDLs to meet the requirements of this part. However, many providers already employ CDL drivers as is required by their State. Grantees and delegate agencies will need to assess current practice and make training and budget plans accordingly.

Home-based programs are encouraged to use drivers with CDL's to provide child transportation services, however, home-based programs are excluded from the vehicle type, driver qualification and bus monitor provisions of this regulation. Incidental transportation is not included under the provisions of this Part.

Section 1310.12(a)(3) (re-designated as Section 1310.16(a)(2) in the final rule)

Paragraph (a)(3) proposed that drivers meet physical, mental, moral, and other requirements established by Federal and State regulations, including rules regarding drug and alcohol use.

Comments. The majority of respondents emphasized the importance of drug and alcohol testing. Some objected to the term ''moral requirements'' as too subjective.

Response. We agreed with writers that the word ''moral'' is subject to variable interpretation and it was deleted from the final rule.

Section 1310.12(b) (re-designated as Section 1310.16(b) in the final rule)

Paragraph (b) proposed that each Head Start agency establish its own applicant screening procedure and system for informing applicants of required background checks. Criteria for the rejection of applicants not meeting the requirements would also be established.

Comments. There were two respondents who indicated that their current background check procedures are adequate. Several comments supported the importance of background checks as part of applicant screening.

Response. Driver background checks are an important element of safe transportation services. Some agencies will find that they already meet the requirements of the rule and others will need to establish or improve their systems. This section remains unchanged in the final rule.

Section 1310.12(c) (re-designated as Section 1310.16(b)(1) in the final rule)

Section 1310.12(c)(1) (re-designated under Section 1310.16(b) in the final rule)

Paragraph (c)(1) proposed that applicant screening procedures include an application that provides employment history, educational background, and personal references. There were no significant comments to this section. However, paragraph (c)(1) was removed and the introductory language in (c) edited to include a reference to 45 CFR 1304.52(b)(1), which contains requirements for staff recruitment and selection.

Section 1310.12(c)(2) (re-designated under Section 1310.16(b) in the final rule)

This paragraph required an interview and screening procedure to help establish that an applicant is ''of good moral character'' and does not abuse drugs or alcohol.

Comments. Writers objected to the phrase ''good moral character'' as subjective and ambiguous.

Response. We agree that the term ''good moral character'' is difficult to define and it was deleted from the final rule. The required physical, interviews and background checks will help identify any candidate who fails to meet established employment criteria. In the interest of accuracy and inclusiveness, the term ''State Department of Motor Vehicles'' was changed to the final rule to ''appropriate State agency.''

Section 1310.12(c)(4) (re-designated as Section 1310.16(b)(3) in the final rule.)

This section proposed that drivers have physical examinations.

Comments. Writers were generally supportive of physical examinations for bus drivers.

Response. This provision has been rewritten to require that after a conditional offer of employment and before the applicant begins work as a driver, a medical examination must be performed by a licensed doctor of medicine or osteopathy to establish that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations. The wording of the provision was changed to make the provision consistent with the requirements of the Americans with Disabilities Act.

Section 1310.13—Driver Training (re-designated as Section 1310.17 in the final rule)

Section 1310.13(a) (re-designated as Section 1310.17(a) in the final rule)

Paragraph (a) in the NPRM required that driver training plans include both pre-service and annual in-service training programs.

Comments. There were not comments specifically applicable to paragraph (a). Comments on other sections reflected a need to clarify the requirements in this section.

Response. The provision was re-worded in the final rule to clarify that drivers must receive training prior to operating a vehicle and annually thereafter. The words ''pre-service'' and ''in-service'' were replaced to reflect the growing number of twelve month programs.

Section 1310.13(b)(1) (re-designated as Section 1310.17(b) in the final rule).

The section proposed that drivers transporting Head Start children receive a minimum of 40 hours of skills training prior to providing transportation and outlined specific skill areas.

Comments. This area attracted multiple comments objecting to the 40 hour pre-service requirement on the grounds it is excessive and unreasonable. Others stated that the pre-service training regulation is substantially more than their State requires for public school drivers. Another respondent raised the practical difficulty of providing 40 hours of pre-service training to a driver hired during the program year, rather than at the beginning.

Response. We agree with the respondents who wrote the 40 hours of pre-service training may, in some cases, be more than necessary. Per respondent recommendation, the language in the final rule has been changed to require training topics, rather than hours. Each program will decide on the number of hours necessary to effectively cover the required material. The required content of training remains unchanged and programs are expected to design training plans that will include the required skill areas.

Section 1310.13(b)(1)(i)–(vii) (re-designated as Section 1310.17(b)(1)–(7) in the final rule)

Section 1310.13(b)(2)(i)–(iii) (re-designated as Section 1310.17(b)(2) and (c) in the final rule)

Paragraphs (b)(2)(i)–(iii) specified pre-service training in addition to the previously listed skills training.

Comments. Respondents again objected to the time requirement for pre-service training.

Response. The final rule has been modified to allow the non-skills based training to occur in accordance with the agency's driver training plan. This allows programs to design and deliver training that is effective and efficient in meeting individual program needs.

Section 1310.13(c)(2) (re-designated under Section 1310.17 in the final rule)

Section 1310.13(c)(1) and (2) (deleted from the final rule)

These items proposed eight hours of in-service training annually to maintain and enhance driver skills.

Comments. Respondents were evenly split on whether eight hours would constitute too much or too little in-service driver training.

Response. The final rule specifies content requirements for in-service training and leaves decisions concerning the number of hours of training to individual Head Start agencies. Sections 1310.13(c)(1) and (2) were deleted from the final rule.

Section 1310.13(d) (re-designated as Section 1310.17(e) in the final rule)

Section 1310.13(e) (re-designated as Section 1310.17(f) in the final rule)

Section 1310.13(f) (Re-designated as Section 1310.17(a) in the final rule)

Paragraph (f) stated that drivers of vehicles that transport Head Start children employed on the effective date of this regulation must meet the pre-service training as new drivers within three months of that date.

Comments. There were several comments suggesting that three months is insufficient to provide the required training for existing drivers.

Response. There are two changes in the final rule that address the above concerns and provide time requirement relief. The first is that the rule identifies training topic requirements, but leaves decisions about the amount of training time necessary to the grantee. The second is that the time to train currently employed drivers has been extended from three months from the provisions' effective date to one year and 90 days from that date. This change will allow agencies to use their regularly scheduled staff training to provide the required driver training. Programs are expected to provide the required training to drivers as quickly as possible.

Section 1310.13(g) (re-designated as Section 1310.17(f)(1) in the final rule)

Paragraph (g) specified that Head Start drivers must be evaluated annually by the transportation supervisor and that the evaluation must include an on-board observation of driving performance.

Comments. Respondents requested that the wording be changed from ''transportation supervisor'' to ''supervisor'' to allow local flexibility in performing this function.

Response. While the supervisory functions outlined for transportation services in the NPRM remain, the requirement for a ''transportation supervisor'' has been deleted. We anticipate that most programs directly providing transportation services will employ a full- or part-time person to supervise transportation services. Some programs may elect to assign the supervisory responsibilities to an existing position. Agencies that use another organization or an individual for transportation services will monitor a contract or agreement that requires the contractor to perform driver supervision.

Section 1310.13(h) (re-designated as Section 1310.17(f)(2) in the final rule)

Paragraph (h) proposed that programs should provide the same pre- and in-service training to bus monitors that they provide for drivers.

Comments. Many respondents objected to this requirement on the basis that bus monitors are often volunteers who would not be amenable or available for this training. Some respondents also indicated that it is not necessary that bus monitor training be as rigorous as driver training.

Response. The final rule was changed to state that programs must specifically provide bus monitors with training in the areas of: child boarding and exiting procedures, use of child restraint systems, responding to emergencies, emergency evacuation procedures, use of special equipment, required paperwork, child pick up and release procedures and pre- and post-trip vehicle checks (*e.g.,* ensure that there are no safety hazards and that no child is left on the bus). The burden of the requirement has been eased by eliminating the requirement that monitors receive exactly the same training as drivers. The provisions identifies types of training that monitors must receive to ensure that safety-related topics are included.

Section 1310.20—Trip Routing

Section 1310.20(b)(1)

This paragraph proposed limiting the transit time for a child to or from Head Start to no more than one-hour unless there is express written approval from the Regional Office.

Comments. Several writers stated that the one-hour limit is unrealistic or even impossible in rural areas.

Response. We acknowledge that limiting bus routes to one-hour is problematic in some areas. We wish to stress that children should spend the shortest amount of time possible on the Head Start vehicle given the routing safety parameters outlined in Section 1310.20(a) and the geography of the service area. The language in the final rule has been modified to allow greater flexibility.

Section 1310.20(b)(2)

The NPRM proposed that vehicles transporting Head Start children may not be loaded beyond capacity at any time.

Comments. A few respondents proposed that, because preschool children are ''small,'' three could be seated per bench even though this exceeds the vehicle's posted capacity.

Response. All children receiving Head Start transportation must be seated with a size-appropriate safety restraint in a manufacturer designated seat. The final rule retains the stipulation that at no time may vehicle capacity be exceeded. The wording of the provision has been changed by eliminating the first sentence of the proposed rule to clarify the requirement.

Section 1310.20(b)(3)

The proposed rule stated that vehicles should not be required to back up or perform ''U'' turns during routes.

Comments. Some respondents objected on the grounds that there may be situations (*e.g.,* roads with no outlet) when a three-point or ''U'' turn is required. It as noted that prohibiting ''U'' turns could result in more need for children to cross the street. Finally, a contradiction between the preamble's prohibition of ''U'' turns and this section's use of the term ''should not'' was identified.

Response. The final rule emphasizes that vehicles must not be required to back up on their routes or make ''U'' turns, except when necessary for reasons of safety or because of physical barriers. Every effort to avoid these maneuvers must be made through route planning. Extreme caution must be used

in negotiating ''U'' turns, backing up, or three point turns.

Section 1310.20(b)(4)–(6)

These paragraphs proposed that Head Start vehicle stops should: be located to minimize traffic disruptions and allow the driver a good field of view in front of and behind the vehicle; and minimize the need for children to cross the street to board or leave the vehicle. In addition, the section proposed that if children must cross the street or highway after boarding or exiting the vehicle, they must be escorted across the street by the driver, bus monitor, or another adult, and that under no circumstances may a school bus stop be located in a way that children must cross the street or highway unless the vehicle is equipped to stop traffic as described in the proposed section 1310,.11(c)(1)–(5).

Comments. Respondents strongly objected to a driver leaving the vehicle to accompany a child across the street. It was also noted that some States prohibit flashing red lights in urban areas.

Response. We agree that under no circumstance should a driver leave the vehicle to escort a child across the street and have changed the final rule to so state. The requirement for equipping school buses with flashing red lights and other exterior features proposed in section 1310.11(c)(1)–(5) has been withdrawn from the final regulation. The bus monitor or another adult must accompany every child boarding or exiting the bus. The word ''should'' which appeared in the NPRM was changed to ''must'' to clarify that this is a requirement and not a recommendation.

Section 1310.20(b)(7)

The section proposed establishment of specific procedures in the event alternate routes are required by hazardous weather or other situations.

Comments. Respondents requested clarification of the NPRM phrase ''or other situations which may arise that could affect the safety of the children en route.''

Response. The final rule, while recognizing that every contingency cannot be anticipated, has listed several events that could lead to the need to find a different route. The intent is to assure that there are specific procedures in place in the event unplanned re-routing is required by any situation. Possible hazards, in addition to weather conditions such as ice or water build up, include water or natural gas line breaks, emergency road repair, natural disaster damage caused by earthquake, tornado, or flood, a motor vehicle accident, a building fire, or a crime scene.

Section 1310.21—Safety Education

Section 1310.21(a)

This requirement proposed that Head Start programs should provide pedestrian safety training to caregivers and children who do not receive Head Start transportation.

Comments. All respondents supported this section. It was noted that programs will need to use careful practices to emphasize that preschool age children should not be crossing the street alone. Also, there was a suggestion that the phrase ''as developmentally appropriate'' be included in the section.

Response. We have re-worded the final rule slightly to emphasize that preschool children must not cross the street alone. We have also specified that pedestrian safety teaching must be appropriate for each child's development. Finally, we removed specific content requirements so grantees may design training to meet individual community needs and conditions.

Section 1310.21(b)(1)–(5)

Paragraph (b) identified the safety instruction that Head Start programs would be required to provide to children transported to and from the program.

Comments. Comments were submitted suggesting the safety education be included in the daily lesson plan and that nationally produced videos be supplied for programs to use for safety instruction.

Response. The final rule remains unchanged except that the term ''bus'' is changed to ''vehicle'' to clarify applicability to various transportation possibilities. The rule defines the content safety teaching must include, but leaves the method to the local program.

Section 1310.21(c) (re-designated Section 1310.21(c)(1) in the final rule)

Section 1310.21(e) (re-designated as Section 1310.21(c)(2) in the final rule)

Paragraph (e) proposed that child and caregiver safety training should occur within the first five days of the program year.

Comments. There were many objections that the five-day time limit is unreasonable and, in some cases, impossible.

Response. As suggested by respondents, the final rule was modified to allow that safety instruction must occur within the first thirty days of the program year.

Section 1310.21(f) (re-designated as Section 1310.21(d) in the final rule)

This section proposed that a minimum of two bus evacuation drills per year in addition to the one required under section 1310.21 (b)(5) be required.

Comments. The comments ranged from recommending monthly evacuation drills to suggesting that the drills themselves could pose a safety risk and are unnecessary.

Response. The requirement is consistent with the pupil transportation regulations in many States and, therefore, remains unchanged in the final rule.

Section 1310.21(g) (re-designated as Section 1310.21(e) in the final rule)

Paragraph (g) proposed that teachers should develop daily activities to remind children of the safety procedures.

Comments. Some respondents questioned the need for daily lessons.

Response. The final rule requires staff to make safety reminders an integral, developmental and individualized part of program experiences rather than a discrete, daily, directly instructed lessons. The word ''should'' was replaced by ''must'' because passenger and pedestrian safety awareness are essential elements of safe transportation service. Based on data indicating that most school bus related fatalities occur when a child is in the loading zone, NHTSA states that ''educating children on how to be safe pedestrians is fundamental to school bus safety'' (*School Bus Safety: Safe Passage for America's Children,* p.7)

Section 1310.22—Children With Disabilities

This section of the NPRM specified that transportation services to children with disabilities enrolled in Head Start comply with the Head Start performance Standards on Service for Children with Disabilities.

Comments. There were no significant comments to this section of the regulation. Other sections provoked concerns that the proposed rule would require all vehicles used for Head Start transportation be wheelchair accessible.

Response. Head Start and Early Head Start programs are currently obligated to meet the requirements of the Americans with Disabilities Act, Head Start Performance Standards on Services for Children with Disabilities and Section 504 of the Rehabilitation Act of 1973. Under these regulations they must accommodate the special needs of

children with disabilities. Paragraph (a) of this section in the final rule was amended to clarify that Head Start transportation services must be accessible and that children with disabilities should be transported on vehicles that meet the requirements for school buses or allowable alternate vehicles. Transportation provided under the home-based option is excepted from this provision unless the agency uses school buses or allowable alternate vehicles to transport other children enrolled in the home-based option. This exception has been created because it may not always be possible to ensure that when the agency does not regularly use school buses or allowable alternate vehicles to transport children receiving home-based services that an accessible school bus or allowable alternate vehicle will be available from another source when needed. The rule also specifies that, whenever possible, children with disabilities should be transported on the same vehicles used to transport other children in the program.

Section 1310.23—Coordinated Transportation

Section 1310.23 (a)(1) (re-designated under Section 1310.23(a) and 1310.23(b)(1) in the final rule)

Paragraphs (a) and (a)(1) proposed that Head Start grantees coordinate transportation resources with other human service agencies whenever possible to maximize access and efficiency. Agencies would be required to provide an analysis of the cost of providing transportation directly versus contracting for the service.

Comments. Many respondents cited examples of difficulties obtaining transportation services from other providers. In particular, it was noted that while public schools might like to transport Head Start children, they rarely have space available on their buses. Finally, respondents noted that the vehicles used by other human service agencies would likely not meet Head Start vehicle requirements.

Response. The NPRM was prefaced with the phrase ''whenever possible and to the extent feasible.'' It is understood that the opportunities for coordinated transportation services will vary across communities. The final rule was changed to clarify transportation coordination activities in which Head Start transportation providers will participate whenever possible. The phrase ''coordinate transportation services as follows'' was deleted from the final rule as it is unnecessary.

Section 1310.23(a)(3) (re-designated as § 1310.23(b)(3) in the final rule)

The NPRM stated that where no coordinated transportation system exists in a community, the Head Start grantee should make every effort to provide the impetus for the formation of a transportation coordinating council.

Comments. Respondents suggested that the language needs to more strongly emphasize recognition that, with the exception of the local education agency (LEA), Head Start may be the only transportation service provider operating in some communities.

Response. The phrases ''make every effort'' and ''where feasible'' in the NPRM were intended to reflect responsiveness to individual community needs. The requirement in the final rule specifies that when there is no coordinated transportation system, Head Start agencies will identify any other agencies providing transportation and support the establishment of a local transportation coordinating council where reasonable.

Section 1310.23(a)(4) (deleted from the final rule)

This item specified that records be maintained to document compliance with the coordination requirements.

Comments. Respondents objected to keeping additional records.

Response. We agree with the respondents that this paragraph posed an unnecessary burden and have deleted it from the final rule. However, programs are expected to support the continuity and efficiency of community transportation whenever possible.

VI. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in this Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rule implements the statutory authority to promulgate regulations for the safe transportation of Head Start children.

Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the purchase of vehicles, additional personnel, training or other purposes related to this regulation is money that would have been spent otherwise by the program or other programs from the same appropriation amount. We believe that we have focused these rules in ways that encourage maximum cost-effectiveness in transportation spending decisions.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism impacts as defined in the Executive Order.

The Head Start Bureau surveyed the States to determine the applicability of State pupil transportation regulations to the Head Start program and learn about each States pupil transportation system. The Bureau also consulted extensively with Head Start programs and the Department of Transportation in the development of the regulation.

Family Well-Being Impact

As required by Section 654 of the Treasury and General Government Appropriation Act of 1999, we have assessed the impact of this final rule on family well-being. This rule will improve the safety of preschool children being transported to and from Head Start programs and promote pedestrian and passenger safety training to adults and children.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations would affect small entities. However, it should be noted that many Head Start agencies already provide transportation services in accordance with State and local requirements. Furthermore, the increased costs associated with implementing this regulation's provisions are small and well within grantees' capacity to manage. The total estimate of $18.9 million, less than one-third of one-percent of Head Start's annual budget, is comprised of three requirements. These are: $4.8 million to employ additional bus monitors for those relatively few programs currently operating vehicles without monitors;

$10 million to recruit and retain qualified bus drivers with Commercial Driver's Licenses for programs currently using drivers without the credential; and $4.1 million to purchase child safety restraint systems. ACF acknowledges that compliant vehicles can, in some cases, be more costly than non-compliant vehicles. However, these additional costs are generally offset by the fact that compliant vehicles may last longer, accommodate more children, and incur lower insurance costs than non-compliant vehicles.

Currently, approximately 75 percent of all programs offer transportation services to some or all of their enrolled children and about 53 percent of all Head Start enrolled children receive transportation services. It is not anticipated that the implementation of the rule will cause any significant change in the numbers of children being transported.

We believe that meeting the requirements of this regulation is feasible and will not impose excessive burden because we are providing a five-year phase-in period for compliance with vehicle requirements, a three-year compliance period for child safety restraint systems, and a twelve-month compliance period for other provisions of the rule. The five-year implementation period was adopted in response to comments elicited by the NPRM indicating that the useful life of a vehicle may be longer than the three years proposed in the NPRM. Therefore, the potential financial burden posed by the regulation will be significantly offset by avoiding the premature replacement of vehicles. The five-year period is further supported by the fact that 20–30 percent of the vehicles operated by Head Start are replaced each year. The rule offers ample margins to absorb the useful life of most existing vehicles. The financial burden on Head Start agencies that acquire vehicles meeting the standards in these regulations is further eased by a provision in the Head Start Act which authorizes the Secretary to allow Head Start grantees to use grant funds to pay the cost of amortizing the principal and the interest on loans to finance the purchase of vehicles (42 U.S.C. 9839(g)(2)(C)). Finally, grantees have been instructed for several years to purchase only conforming vehicles with Federal funds, so the majority of vehicles in the existing fleet are school buses or qualify as allowable alternate vehicles. For the reasons outlined above, no additional costs are anticipated related to vehicle replacement.

The potential burden imposed by the transportation regulation's requirement for bus monitors is lessened by the fact that Head Start agencies that directly operate transportation services already employ more than 7,500 bus monitors. Many other organizations providing transportation services to children enrolled in Head Start also currently, either voluntarily or in response to State or local regulation, staff vehicles providing transportation to Head Start and Early Head Start agencies with bus monitors in addition to the driver. This part of the regulation has a three-year implementation period to ease the impact by providing planning time for transportation providers not currently employing or using volunteer bus monitors. In addition, many bus monitors fulfill dual roles, such as kitchen aide or teacher aide and bus monitor. This may be financially advantageous to both the employee and the employer and represents a mechanism to further reduce the impact of the provisions.

The regulation specifies that agencies must offer transportation assistance to families when transportation services are not provided through the Head Start program. This requirement is consistent with section 1304.41(a)(2) which directs grantee and delegate agencies to ''promote the access of children and families to community services that are responsive to their needs * * *'' Because such assistance is an integral element of the ongoing work of grantees and delegate agencies, the provision poses no additional burden.

The decision to require two-way communication capacity on vehicles was carefully weighed in consideration of both its contributions to improved safety and increased cost. Many vehicles that transport children are now supplied with two-way communication devices. While the requirement represents an expense for some operators, the flexibility regarding type of equipment and the steadily decreasing cost for communication equipment suggest a minimal financial burden.

Head Start and Early Head Start grantees and delegate agencies that currently rely on drivers who do not possess Commercial Drivers Licenses (CDLs) may find an increased cost associated with recruiting and retaining drivers with that license or retaining transportation services from another organization that supplies drivers with CDLs. However, in 1993, the Administration for Children and Families issued an Information Memorandum (ACYF–IM–9310) advising Head Start grantees and delegate agencies of the requirement that any vehicle designed to carry 16 or more passengers must be operated by a driver with a CDL. Many drivers providing Head Start transportation services currently possess CDLs and there is not an anticipated increase in the overall number of drivers, therefore; the burden of the provision is diminished.

Substantial attention was dedicated to assessing alternative methods for improving transportation safety through channels other than the provisions of this regulation. Extensive research, the strongly worded recommendations of the National Transportation Safety Board and Head Start's 35-year history providing transportation services to very young children guided development of each of the regulation's provisions.

For example, some respondents suggested that the adult-to-child ratio while children are being transported should be the same as the one required in Head Start classrooms. That would result in, depending on the children's ages, between one adult for every nine children and one adult for every four children. Another commenter indicated that bus monitors are not necessary at all as the driver can handle vehicle operation and child safety needs without assistance. The decision to require a minimum of one bus monitor per vehicle ensures that children's safety needs will be met, the driver can focus primarily on operating the vehicle, and that the burden is reasonable. One monitor is considered adequate during transportation, but not in the classroom, because children are not mobile while riding the vehicle and the space is contained. The NPRM provisions required the exclusive use of vehicles meeting the Federal standards for a school bus in providing Head Start transportation services. The provision was modified in the final rule to permit the use of an allowable alternate vehicle. The alternate vehicle provides a higher degree of flexibility for transportation providers and is responsive to many of the comments elicited by the NPRM.

We believe that as Head Start agencies become more familiar with these requirements, any additional burden will be rendered less significant through the improved transportation safety for Head Start children. For these reasons, the Secretary certifies that these rules will not have a significant impact on substantial numbers of small entities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments,

in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100,000,000 or more in any one year. Resources presently allocated by Head Start programs for transportation services are substantial and may be supplemented as necessary to meet additional requirements posed by the rule over the course of the implementation period.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule contains no new information collection requirements.

List of Subjects in 45 CFR Part 1310

Head Start, Reporting and recordkeeping requirements, Transportation.

(Catalog of Federal domestic Assistance Program Number 93.600, Project Head Start)

Dated: September 6, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 11, 2000.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR Chapter XIII is amended by adding Part 1310 as follows:

PART 1310—HEAD START TRANSPORTATION

Subpart A—General

Sec.

1310.1 Purpose.
1310.2 Applicability.
1310.3 Definitions.

Subpart B—Transportation Requirements

1310.10 General.
1310.11 Child Restraint Systems.
1310.12 Required use of School Buses or Allowable Alternate Vehicles.
1310.13 Maintenance of vehicles.
1310.14 Inspection of new vehicles at time of delivery.
1310.15 Operation of vehicles.
1310.16 Driver qualifications.
1310.17 Driver and bus monitor training.

Subpart C—Special Requirements

1310.20 Trip routing.
1310.21 Safety education.
1310.22 Children with disabilities.
1310.23 Coordinated transportation.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1310.1 Purpose.

Under the authority of sections 640(i) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*), this part prescribes regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programs. Under the authority of sections 644(a) and (c) and 645A(b)(9) of the Head Start Act, this part also requires Head Start, Early Head Start, and delegate agencies to provide training in pedestrian safety and to make reasonable efforts to coordinate transportation resources to control costs and to improve the quality and the availability of transportation services.

§ 1310.2 Applicability.

(a) This rule applies to all Head Start and Early Head Start agencies, and their delegate agencies (hereafter, agency or agencies), including those that provide transportation services, with the exceptions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider. Transportation services to children served under the home-based Option for Head Start and Early Head Start services are excluded from the requirements of 45 CFR 1310.12, 1310.15(c), and 1310.16. Except when there is an applicable State or local requirement that sets a higher standard on a matter covered by this part, agencies must comply with requirements of this part.

(b) Sections 1310.12(a) and 1310.22(a) of this part are effective January 18, 2006. Sections 1310.11 and 1310.15(c) of this part are effective January 20, 2004. Paragraph (c) of this section and § 1310.12(b) of this part are effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective February 20, 2001 an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. ''Good cause'' for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency. Under no circumstance will the cost of complying with one or more of the specific requirements of this part constitute good cause. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

§ 1310.3 Definitions.

Agency as used in this regulation means a Head Start or Early Head Start or delegate agency unless otherwise designated.

Agency Providing Transportation Services means an agency providing transportation services, either directly or through another arrangement with a private or public transportation provider, to children enrolled in its Head Start or Early Head Start program.

Allowable Alternate Vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Bus monitor means a person with specific responsibilities for assisting the driver in ensuring the safety of the children while they ride, board, or exit the vehicle and for assisting the driver during emergencies.

Child Restraint System means any device designed to restrain, seat, or position children who weigh 50 pounds or less which meets the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213.

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Delegate Agency means a local public or private not-profit or for-profit agency to which a Head Start or Early Head Start agency has delegated all or part of its responsibility for operation of a Head Start program.

Early Head Start Agency means a public or private non-profit or for-profit agency or delegate agency designated to operate an Early Head Start program

pursuant to Section 645A of the Head Start Act.

Early Head Start Program means a program of services provided by an Early Head Start Agency funded under the Head Start Act.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Head Start Agency, means a local public or private non-profit or for-profit agency designated to operate a Head Start program pursuant to Section 641 of the Head Start Act.

Head Start Program means a program of services provided by a Head Start agency or delegate agency and funded under the Head Start Act.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the vehicle is engaged in reverse.

School Bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Seat Belt Cutter means a special device that may be used in an emergency to rapidly cut through the seat belts used on vehicles in conjunction with child restraint systems.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Transportation Services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Trip routing means the determination of the fixed routes to be traveled on a regular basis for the purpose of transporting children to and from the Head Start or Early Head Start program or activities.

Subpart B—Transportation Requirements

§ 1310.10 General.

(a) Each agency must assist as many families as possible who need transportation in order for their children to attend the program in obtaining that transportation.

(b) When an agency has decided not to provide transportation services, either for all or a portion of the children, it must provide reasonable assistance to the families of such children to arrange transportation to and from its activities. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.

(c) Each agency providing transportation services is responsible for compliance with the applicable requirements of this Part. When an agency provides transportation through another organization or an individual, the agency must ensure the compliance of the transportation provider with the requirements of this part.

(d) Each agency providing transportation services, must ensure that each vehicle used in providing such services is equipped with:

(1) a communication system to call for assistance in case of an emergency:

(2) safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat and a sign indicating its location;

(3) a first aid kit and a sign indicating the location of such equipment; and

(4) a seat belt cutter for use in an emergency evacuation and a sign indicating its location.

(e) Each agency providing transportation services must ensure that any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under § 1310.13(a) of this subpart.

(f) Each agency providing transportation services must ensure that all accidents involving vehicles that transport children receiving such services are reported in accordance with applicable State requirements.

(g) Each agency must ensure that children are only released to a parent or legal guardian, or other individual identified in writing by the parent or legal guardian. This regulation applies when children are not transported and are picked up from the classroom, as well as when they are dropped off by a vehicle Agencies must maintain lists of the persons, including alternates in case of emergency, and up-to-date child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the vehicle at the end of the route.

§ 1310.11 Child Restraint Systems.

Effective January 20, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

§ 1310.12 Required use of School Buses or Allowable Alternate Vehicles.

(a) Effective January 18, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(b) Effective February 20, 2001, each Head Start and Early Head Start agency receiving permission from the responsible HHS official to purchase a vehicle with grant funds for use in

providing transportation services to children in its program or a delegate agency's program must ensure that the funds are used to purchase a vehicle that is either a school bus or an allowable alternate vehicle and is equipped

(1) for use of height- and weight-appropriate child restraint systems; and

(2) with a reverse beeper.

(c) As provided in 45 CFR 1310.2(a), paragraph (b) of this section does not apply to vehicles purchased for use in transporting children served under the home-based option for Head Start and Early Head Start.

§ 1310.13 Maintenance of vehicles.

Each agency providing transportation services must ensure that vehicles used to provide such services are maintained in safe operating condition at all times. The organization operating the vehicle must establish and implement procedures for:

(a) a thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;

(b) systematic preventive maintenance on such vehicles; and

(c) daily pre-trip inspection of the vehicles by the driver.

§ 1310.14 Inspection of new vehicles at the time of delivery.

Each agency providing transportation services must ensure that bid announcements for school buses and allowable alternate vehicles for use in transporting children in its program include the correct specifications and a clear statement of the vehicle's intended use. Such agencies must ensure that there is a prescribed procedure for examining such vehicles at the time of delivery to ensure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

§ 1310.15 Operation of vehicles.

Each agency providing transportation services, either directly or through an arrangement with another organization or an individual, to children enrolled in its program must ensure that:

(a) On a vehicle equipped for use of such devices, any child weighing 50 pounds or less is seated in a child restraint system appropriate to the height and weight of the child while the vehicle is in motion.

(b) Baggage and other items transported in the passenger compartment are properly stored and secured and the aisles remain clear and the doors and emergency exits remain unobstructed at all times.

(c) Effective January 20, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(d) Except for bus monitors who are assisting children, all vehicle occupants must be seated and wearing height- and weight- appropriate safety restraints while the vehicle is in motion.

§ 1310.16 Driver qualifications.

(a) Each agency providing transportation services must ensure that persons who drive vehicles used to provide such services, at a minimum:

(1) in States where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and

(2) meet any physical, mental, and other requirements established under applicable law or regulations as necessary to perform job-related functions with any necessary reasonable accommodations.

(b) Each agency providing transportation services must ensure that there is an applicant review process for use in hiring drivers, that applicants for driver positions must be advised of the specific background checks required at the time application is made, and that there are criteria for the rejection of unacceptable applicants. The applicant review procedure must include, at minimum:

(1) all elements specified in 45 CFR 1304.52(b), with additional disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) a check of the applicant's driving record through the appropriate State agency, including a check of the applicant's record through the National Driver Register, if available in the State; and

(3) after a conditional offer of employment to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(c) As provided in 45 CFR 1310.2(a), this section does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

§ 1310.17 Driver and bus monitor training.

(a) Each agency providing transportation services must ensure that persons employed to drive vehicles used in providing such services will have received the training required under paragraphs (b) and (c) of this section no later than 90 days after the effective date of this section as established by § 1310.2 of this part. The agency must ensure that drivers who are hired to drive vehicles used in providing transportation services after the close of the 90 day period must receive the training required under paragraphs (b) and (c) prior to transporting any child enrolled in the agency's program. The agency must further ensure that at least annually after receiving the training required under paragraphs (b) and (c), all drivers who drive vehicles used to provide such services receive the training required under paragraph (d) of this section.

(b) Drivers must receive a combination of classroom instruction and behind-the-wheel instruction sufficient to enable each driver to:

(1) operate the vehicle in a safe and efficient manner;

(2) safely run a fixed route, including loading and unloading children, stopping at railroad crossings and performing other specialized driving maneuvers;

(3) administer basic first aid in case of injury;

(4) handle emergency situations, including vehicle evacuation procedures;

(5) operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints;

(6) conduct routine maintenance and safety checks of the vehicle; and

(7) maintain accurate records as necessary.

(c) Drivers must also receive instruction on the topics listed in 45 CFR 1304.52(k)(1), (2) and (3)(i) and the provisions of the Head Start Program Performance Standards for Children with Disabilities (45 CFR 1308) relating to transportation services for children with disabilities.

(d) Drivers must receive refresher training courses including the topics listed in paragraphs (b) and (c) of this section and any additional necessary training to meet the requirements applicable in the State where the agency operates.

(e) Each agency providing transportation services must ensure that drivers who transport children receiving

the services qualify under the applicable driver training requirements in its State.

(f) Each agency providing transportation services must ensure that:

(1) the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance; and

(2) before bus monitors assigned to vehicles used to provide such services begin their duties, they are trained on child boarding and exiting procedure, use of child restraint systems, any required paperwork, responses to emergencies, emergency evacuation procedures, use of special equipment, child pick-up and release procedures and pre- and post-trip vehicle check.

Subpart C—Special Requirements

§ 1310.20 Trip routing.

(a) Each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration.

(b) The agency must also ensure that the following basic principles of trip routing are adhered to:

(1) The time a child is in transit to and from the Head Start or Early Head Start program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical.

(2) Vehicles must not be loaded beyond the maximum passenger capacity at any time.

(3) Vehicles must not be required to back up or make ''U'' turns, except when necessary for reasons of safety or because of physical barriers.

(4) Stops must be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.

(5) When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle.

(6) If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult.

(7) Specific procedures must be established for use of alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing. In selecting among alternatives, transportation providers must choose routes that comply as much as possible with the requirements of this section.

§ 1310.21 Safety education.

(a) Each agency must provide training for parents and children in pedestrian safety. The training provided to children must be developmentally appropriate and an integral part of program experiences. The need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children. The required transportation and pedestrian safety education of children and parents, except for the bus evacuation drills required by paragraph (d) of this section, must be provided within the first thirty days of the program year.

(b) Each agency providing transportation services, directly or through another organization or an individual, must ensure that children who receive such services are taught:

(1) safe riding practices;

(2) safety procedures for boarding and leaving the vehicle;

(3) safety procedures in crossing the street to and from the vehicle at stops;

(4) recognition of the danger zones around the vehicle; and

(5) emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(c) Each agency providing transportation services must provide training for parents that:

(1) emphasizes the importance of escorting their children to the vehicle stop and the importance of reinforcing the training provided to children regarding vehicle safety; and

(2) complements the training provided to their children so that safety practices can be reinforced both in Head Start and at home by the parent.

(d) Each agency providing transportation services must ensure that at least two bus evacuation drills in addition to the one required under paragraph (b)(5) of this section are conducted during the program year.

(e) Each agency providing transportation services must develop activities to remind children of the safety procedures. These activities must be developmentally appropriate, individualized and be an integral part of the Head Start or Early Head Start program activities.

§ 1310.22 Children with disabilities.

(a) Effective January 18, 2006 each agency must ensure that there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) Each Head Start, Early Head Start and delegate agency must ensure compliance with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), the HHS regulations at 45 CFR part 84, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they apply to transportation services.

(c) Each agency must specify any special transportation requirements for a child with a disability when preparing the child's Individual Education Plan (IEP) or Individual Family Service Plan (IFSP), and ensure that in all cases special transportation requirements in a child's IEP or IFSP are followed, including:

(1) special pick-up and drop-off requirements;

(2) special seating requirements;

(3) special equipment needs;

(4) any special assistance that may be required; and

(5) any special training for bus drivers and monitors.

§ 1310.23 Coordinated transportation.

(a) Each agency providing transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(b) At a minimum, the agency must:

(1) identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;

(2) explore the option of participating in any coordinated public or private transportation systems existing in the community; and

(3) where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where reasonable, to participate in the establishment of a

local transportation coordinating council.

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