

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Part 665**

[Docket No. FTA-2011-0015]

RIN 2132-AB01

**Bus Testing; Calculation of Average Passenger Weight and Test Vehicle Weight****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Transit Administration (FTA) is proposing to amend its bus testing regulation to more accurately reflect average passenger weights and actual transit vehicle loads. Specifically, FTA is proposing to change the average passenger weight from 150 lbs to 175 lbs. In addition, FTA is proposing to change the floor space occupied per standing passenger from 1.5 to 1.75 square feet, and updating the Structural Strength and Distortion test procedures.

**DATES:** Comments must be received no later than May 13, 2011. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number FTA-2011-0015) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** For technical information, Gregory Rymarz, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366-6410, [gregory.rymarz@dot.gov](mailto:gregory.rymarz@dot.gov). For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366-0675, [richard.wong@dot.gov](mailto:richard.wong@dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The Federal Transit Administration (FTA) is issuing a Notice of Proposed Rulemaking (NPRM) to update its bus

testing protocols to carry out the bus testing program authorized at 49 U.S.C. 5318 and implemented by 49 CFR part 665. On October 5, 2009, FTA published a Final Rule in the **Federal Register** (74 FR 51083) that incorporated brake performance and emissions tests into FTA's bus testing program as required by 49 U.S.C. 5318, as well as several other non-statutory changes that will improve the program, including the establishment of protocols to determine the appropriate loading of vehicles during test procedures and addressing buses that exceeded weight limits when fully loaded.

During the comment period leading to the Final Rule, FTA received two comments outside the scope of the notice recommending that FTA increase the simulated ballast weight from the proposed 150 lbs per passenger provided in the definitions of "gross vehicle weight" and "seated load weight" (the value that had been in use since the beginning of the program) to an amount that more accurately reflects the changes to the average weight of Americans over the last several decades. FTA acknowledged that the suggestion was well taken, but noted that the establishment of a more accurate average passenger weight was of Department-wide interest, and committed itself to initiate a new rulemaking to amend Part 665 only after consultations within the Department. FTA has consulted within the Department, and as a result of those consultations, is issuing this NPRM.

In its previous rulemaking action, FTA made note of the fact that a number of buses tested at the Bus Testing Center had not been tested in their fully loaded condition (*i.e.*, with all seats and standee positions occupied) because doing so would have caused their actual weight to exceed either their gross vehicle weight ratings (GVWR) or a front or rear gross axle weight rating (GAWR). Instead, buses were loaded to the maximum weight rating and a notation was made in the vehicle's final test report.

In its earlier NPRM, FTA noted that the test data might not reflect the actual performance of these buses in real-life service, particularly during rush hour when operators frequently allow all seats and aisles to be filled without regard to the GVWR or GAWR to avoid leaving passengers behind at a stop. FTA sought comment on three possible approaches for addressing this situation: (1) Performing tests on the test track (which is not a public roadway) with all seats and standee positions ballasted, (2) deleting ballast until the vehicle does not exceed its GVWR and noting such

fact in the test report (which had been the policy up to that time), or (3) declining to test a bus that exceeds its GAWR or GVWR when loaded to full capacity.

FTA determined that declining to test a vehicle whose GVW exceeds its GVWR is impractical, noting that the entire purpose of the bus testing program is to carry out the statutory mandate of verifying that the bus can withstand the rigors of regular transit service, and testing a bus up to its GVWR but no higher, despite the inability to embark the equivalent of a full complement of passengers, is unrealistic and may not accurately reflect rush-hour operating conditions when every available seat is filled and drivers commonly allow "crush loads" of standees in the aisle.

Under FTA's revised testing protocol, buses are now ballasted with a fully loaded passenger complement of seated and standee passengers during the gross vehicle weight portion and with all seats filled during the seated load weight portion of the testing because FTA believes data on how a bus performs under fully loaded conditions is essential to the purchaser in supporting acquisition decisions, developing preventive maintenance schedules, and budgeting for unscheduled maintenance. In addition, purchasing a vehicle appropriate for actual operating conditions will lessen premature structural fatigue and assist in avoiding catastrophic failures caused by overstressed and overworked structural and operational components, ensuring the availability of such vehicles for passenger service.

This NPRM is based on modern scientific data. FTA's earlier selection of the 150 pound passenger weight assumption was based on the number established by FTA's sister DOT mode, the National Highway Traffic Safety Administration (NHTSA), in its calculation of the Gross Vehicle Weight Rating at 49 CFR 567.4(g)(3). Although NHTSA did not provide an explanation for this figure in its 1971 rulemaking documents, NHTSA staff believes their average was based on data derived from the National Health Examination Survey for 1960-1962. That survey has been continued by the Centers for Disease Control and Prevention (CDC) through the National Health and Nutrition Examination Survey (NHANES). In its October 22, 2008, National Health Statistics Report (<http://www.cdc.gov/nchs/data/nhsr/nhsr010.pdf>), the CDC's National Center for Health Statistics calculated a mean average weight of 194.7 pounds for male adults 20 years of age and older, and a median weight

of 188.8 pounds. For women 20 years of age and older, the CDC calculated a mean weight of 164.7 pounds, and a median weight of 155.8 pounds.

Based on the suggestions from the commenters and confirmation using the statistical NHANES data from the CDC, FTA believes that 175 pounds is an appropriate average weight to assume for testing buses. This is also within the range of average passenger weights used by other transportation modes with regulatory authority such as the Federal Aviation Administration's 190 lb. summer weight and 195 lb. winter weight passenger weight averages (*See*, Advisory Circular 120-27E, "Aircraft Weight and Balance Control," June 10, 2005) and the United States Coast Guard's 185 lb Assumed Average Weight Per Person (*See*, "Passenger Weight and Inspected Vessel Stability Requirements: Final Rule, 75 FR 78064, December 14, 2010).

Because of the increase in passenger weight, FTA is also commensurately proposing to increase the assumed dimensions for a standing passenger from 1.5 square feet of free floor space to 1.75 square feet of free floor space to acknowledge the expanding girth of the average passenger. FTA also seeks comments on this figure.

FTA wishes to emphasize that it is not proposing the increase to 175 pounds in order to "toughen" the testing protocol. Rather, this action is being proposed in order to ensure that the Bus Testing protocols better reflect the actual loads that buses are already carrying in service today.

To avoid conflicts with NHTSA's regulatory definition of gross vehicle weight in 49 CFR part 567 and elsewhere, FTA is proposing to remove the definition of "gross weight" or "gross vehicle weight" from the definitions in section 665.5 and inserting a new definition, "fully loaded weight," which incorporates the heavier and wider dimensions of an average bus rider. FTA is also proposing to amend Appendix A, Section 5, replacing "gross weight" and "gross vehicle weight" with "full load weight" when conducting the structural integrity portions of the test.

### Grandfathering

Similar to the approach taken by FTA in the October 2009 Final Rule, FTA is proposing that the date on which a bus testing contract was signed will determine the applicability of the new testing procedures. New bus models for which testing contracts were signed before the effective date of the final rule and that continue to be produced without major changes in any structure or systems will not be required to return

to the Bus Testing Center to undergo additional testing using the new fully loaded weight procedures. Buses required to undergo full or partial testing after the effective date would be subjected to the new procedures.

### Implementation Period

FTA is proposing to delay the effective date of the final rule for one year after publication. FTA believes this will give bus manufacturers adequate time to review the advertised passenger capacities of their product lines, to identify chassis suitable for the advertised passenger loads, and if necessary to redesign their vehicles to reduce passenger capacity and/or accommodate a heavier-duty chassis. FTA seeks comment regarding the adequacy of the phase-in period.

### Regulatory Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5318 and 49 U.S.C. 1.51.

#### B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect 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 action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this action will not have sufficient federalism implications to warrant additional consultation. FTA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional governmental functions.

#### C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. FTA has analyzed this action under Executive Order 13175 and believes that this will not have substantial, direct effects on one or more Indian tribes; will not impose

substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal impact statement is not required.

#### D. Regulatory Flexibility Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. FTA does not expect this action will have a significant economic impact on a substantial number of small entities.

#### E. Executive Orders and DOT Regulatory Policies and Procedures

FTA has determined that this action is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). Executive Order 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Consistent with Executive Order 13563 (76 FR 3821, January 21, 2011), FTA has assessed the benefits of the NPRM against potential costs, has attempted to minimize any potential economic burdens, has based its determination on modern scientific data, and provides flexibility and freedom of choice for the affected entities.

The bus testing program itself is statutorily mandated and cannot be eliminated as a means of minimizing an economic burden. Under 49 U.S.C. 5318, FTA funds may not be used to acquire a new bus until a bus of that model has completed testing at a statutorily prescribed facility, with approximately 15 to 20 new bus models completing testing every year. These buses are tested in 4-, 5-, 7-, 10-, or 12-year service life categories as set forth in 49 CFR 665.11(e). In preparing this NPRM, FTA reviewed the data from ten recent test reports and found that one of the buses exceeded their GVWR at their seated load weight using either the 150 pound figure or the 175 pound figure. When tested at the gross vehicle load, *i.e.*, carrying a full complement of

seated and standing passengers, five bus models would have exceeded their GVWR using the 150 pound figure, with two more exceeding the GVWR using the 175 pound figure.

Testing buses using the 175 pound figure will not result in any mandatory additional costs on transit vehicle manufacturers or the public transit operators that purchase such vehicles. Rather, FTA is attempting to modify its testing procedures to more accurately reflect a bus model's expected usage based on demonstrable scientific data, namely, the 2008 CDC Report and the most recent bus testing reports.

In addition to providing more accurate test data to assist buyers of public transit vehicles, the NPRM attempts to maximize flexibility and freedom of choice for transit operators who may refuse to carry standees to avoid exceeding a vehicle's GVWR now that the vehicle's carrying capacity has been identified in a test report, buyers may order vehicles with more durable components, or purchase a lighter-duty vehicle if they do not expect to carry capacity passenger loads. Transit vehicle manufacturers similarly have the flexibility and freedom of choice to continue using the same components to meet buyers' needs, or they may choose to upgrade individual components, such as chassis, wheels, tires, brakes, or suspensions.

For those manufacturers that choose to upgrade their buses to a more robust configuration, FTA estimates the cost of upgrading a vehicle's components could be as low as \$2,500 per vehicle in the 4- to 5-year paratransit-type vehicle categories, between \$5,000 and \$7,000 in the minibus categories, to as high as \$25,000 per vehicle in the 10- to 12-year full-size bus categories. But as noted above, any necessary upgrades are not mandated by the NPRM, but rather, would be negotiated between the buyer and the manufacturer. FTA notes that any cost increase due to a decision to upgrade components would be offset by FTA's financial assistance program which covers at least 80% of a vehicle's capital costs, minimizing any economic impact of this rulemaking on public transit vehicles manufacturers and their customers.

This NPRM's benefits outweigh potential costs because the new testing protocol will allow transit agencies to more accurately identify vehicles that are more likely to meet service life expectations, advertised passenger capacities, and actual loading conditions. The acquisition of sturdier vehicles will decrease maintenance and replacement costs, ensure that vehicles meet their anticipated service lives, and

thereby enhance the availability and reliability of transit vehicles for the riding public.

Although the result of this proposed rule may have the effect of encouraging transit agencies to modify their specifications on future procurements to reflect projected passenger loads or transit vehicle manufacturers to upgrade vehicle components to more accurately reflect advertised service loads, this proposed new testing procedure rule will affect only data collected for those vehicles procured with FTA financial assistance and will not directly affect vehicles acquired using private funds or funds from Federal agencies other than FTA, although non-FTA purchasers are likely to be indirect beneficiaries through reviewing the publicly-available bus testing reports prior to purchasing their vehicles and if vehicle manufacturers decide to use the FTA bus testing results as a basis to upgrade components across their full product line.

This action is not expected to adversely affect any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

#### *F. Unfunded Mandates Reform Act of 1995*

This action will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). This action rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532).

#### *G. Executive Order 13211: Energy Effects*

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001, and determined that this is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### *H. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This action does not propose

any new information collection burdens.

#### *I. Regulation Identifier Number (RIN)*

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### *J. Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may view the U.S. DOT Privacy Act Statement by visiting <http://docketsinfo.dot.gov/> or at 65 FR 19477 (April 11, 2000).

#### **List of Subjects in 49 CFR Part 665**

Buses, Grant programs—transportation, Motor vehicle safety, Public transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, 49 CFR part 665 is proposed to be amended as follows:

#### **PART 665—BUS TESTING**

1. The authority citation for part 665 continues to read as follows:

**Authority:** 49 U.S.C. 5318 and 49 CFR 1.51.

2. Amend § 665.5 as follows:
  - a. By removing the definition for *Gross weight*, also *gross vehicle weight*;
  - b. In the definition of “*Seated load weight*” by removing “150 pounds of ballast” and adding in its place “175 pounds of ballast”; and
  - c. By adding a definition for *Fully loaded weight*.

The addition reads as follows:

#### **§ 665.5 Definitions.**

\* \* \* \* \*

*Fully loaded weight* means the curb weight of the bus plus passengers simulated by adding 175 pounds of ballast to each seating position and 175 pounds for each standing position (assumed to be each 1.75 square foot of free floor space).

\* \* \* \* \*

3. Amend Appendix A to part 665 by revising the introductory text and paragraphs a.(1) and (2) of section 5 to read as follows:

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

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### 5. Structural Integrity

Two complementary structural integrity tests should be performed. Structural strength and distortion tests should be performed at the Bus Testing Center, and the structural durability test should be performed at the test track.

#### a. Structural Strength and Distortion Tests

(1) A shakedown of the bus structure should be conducted by loading and unloading the bus with a distributed load equal to 2.5 times the fully loaded weight. The bus should then be unloaded and inspected for any permanent deformation on the floor or coach structure. This test should be repeated a second time, and should be repeated up to one more time if the permanent deflections vary significantly between the first and second tests.

(2) The bus should be loaded to its fully loaded weight, with one wheel on top of a curb and then in a pothole. This test should be repeated for all four wheels. The test verifies:

- (i) Normal operation of the steering mechanism; and
- (ii) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test should be conducted in each suspension travel condition.

\* \* \* \* \*

Issued on: March 8, 2011.

**Peter M. Rogoff,**  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110210132-1133-01]

RIN 0648-BA65

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments; notice of public hearings.

**SUMMARY:** NMFS proposes to modify Atlantic bluefin tuna (BFT) base quotas for all domestic fishing categories; establish BFT quota specifications for the 2011 fishing year; reinstate pelagic

longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amend the Atlantic tunas possession at sea and landing regulations to allow removal of Atlantic tunas tail lobes; and clarify the transfer at sea regulations for Atlantic tunas. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

**DATES:** Written comments must be received on or before April 14, 2011.

The public hearing dates and times are:

1. March 21, 2011, 3 to 5 p.m., Gloucester, MA.
2. March 22, 2011, 6:30 to 8:30 p.m., Barnegat, NJ.
3. March 28, 2011, 7 to 9 p.m., Manteo, NC.
4. April 5, 2011, 5:15 to 7:15 p.m., Silver Spring, MD.

**ADDRESSES:** You may submit comments, identified by "0648-BA65", by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** 978-281-9340, Attn: Sarah McLaughlin.
- **Mail:** Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

• **Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>. Do not submit electronic comments to individual NMFS staff.

Supporting documents, including the draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, are available by sending your request to Sarah McLaughlin at the mailing address specified above. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>.

The public hearing locations are:

1. Gloucester—NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
2. Barnegat—Ocean County Library, 112 Burr Street, Barnegat, NJ 08005.
3. Manteo—Town Hall, 407 Budleigh Street, Manteo, NC 27954.
4. Silver Spring—Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as "Atlantic tunas") are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

#### Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has recommended a Total Allowable Catch of BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other BFT Contracting Parties.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) a final rule, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (*i.e.*, sharks, swordfish, tunas, and billfish)