# Appendix B: Federal and State Oversight of Over-the-Road Bus Service

## Federal Oversight

The private over-the-road bus (OTRB) industry is supervised by a complicated array of Federal and State agencies, no one of which devotes specific attention to OTRBs (see figure B-l). For some purposes of Federal oversight, OTRBs are treated as trucks, with regulatory control divided among the Federal Highway Administration (FHWA), the National Highway Traffic Safety Administration (NHTSA), and the Interstate Commerce Commission (ICC).[1] For other purposes, because OTRBs carry passengers, they are subject to other regulations that do not affect the trucking industry. In addition, private OTRB operators must deal with various State economic and safety regulations.

Federal oversight functions fall into three categories: 1) manufacturing and operational standards; 2) economic and environmental regulation; and 3) coordination and compliance. Few agencies deal specifically with issues of accessibility in transportation. The Federal Transit Administration (FTA) has regulations governing publicly assisted vehicles, and the Architectural and Transportation Barriers Compliance Board (ATBCB) has developed guidelines for accessibility technologies. Under the Americans with Disabilities Act (ADA), the U.S. Department of Justice (DOJ) participates in issues of discrimination, including any that might involve the OTRB industry.

### Manufacturing and Operational Standards

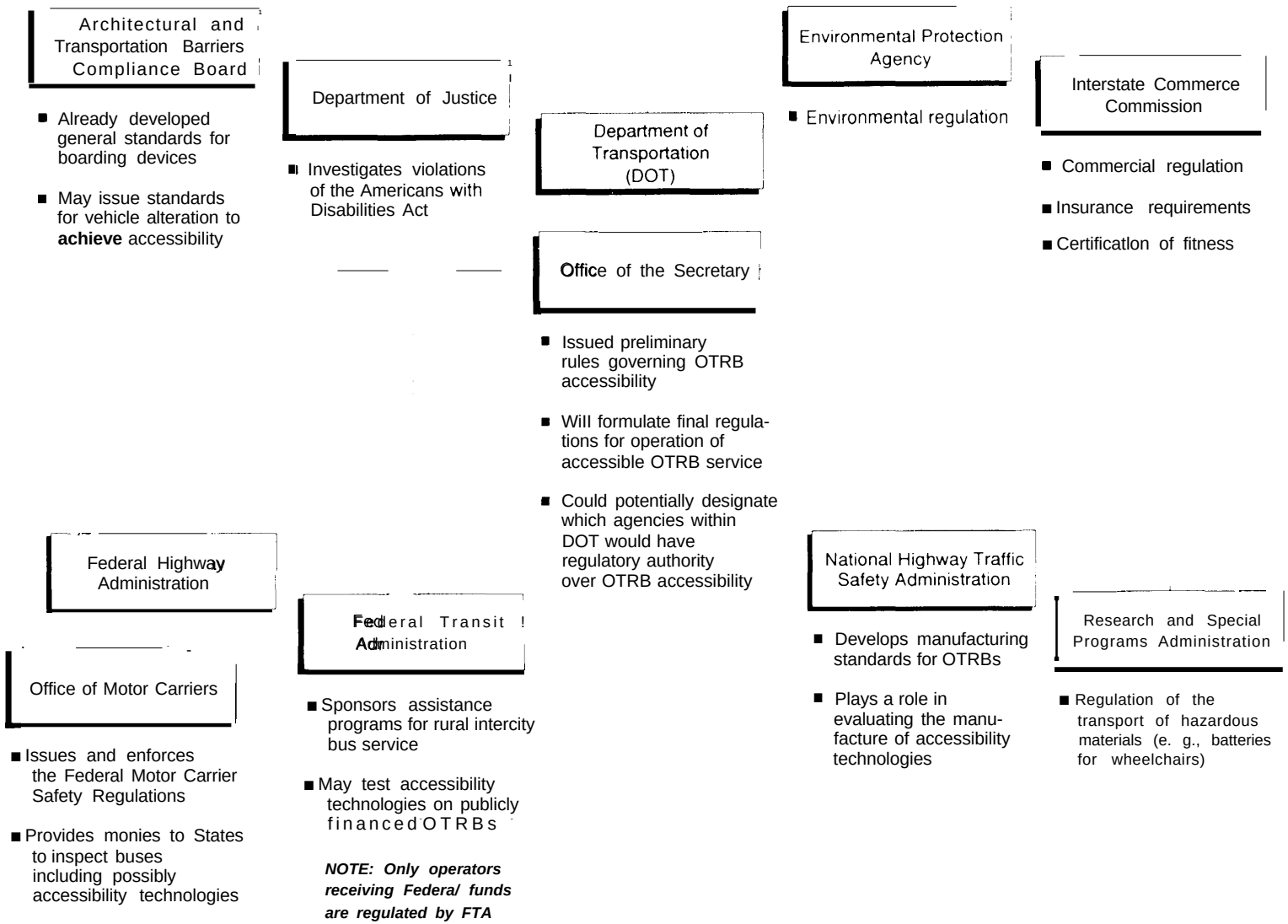
**National Highway Traffic Safety Administration**—NHTSA is charged with developing manufacturing standards for OTRBs; buses are subject to the same requirements as all other vehicles with a gross vehicle weight over 10,000 pounds. NHTSA has established more than 50 standards for such vehicles, most of which apply to OTRBSs These standards are organized into three series: crash avoidance, crashworthiness, and fire protection.[2]

Although its role has yet to be clearly defined, NHTSA may evaluate accessibility technologies, This could involve developing manufacturing standards for boarding designs and vehicle modifications aimed at facilitating accessibility.

Office of Motor Carriers—FHWA's Office of Motor Carriers (OMC) is responsible for the safe operation of motor carriers, defined as those vehicles weighing over 10,000 pounds that are designed to carry more than 15 passengers or transport placardable hazardous materials. OMC issues and enforces the Federal Motor Carrier Safety Regulations-the laws governing the safe operation and maintenance of trucks and buses. The four main components of the

[1] In addition, the Food and Drug Administration issues regulations governing OTRB galley service, restroom sanitation, and waste disposal.
[2] 49 CFR Part 571.100131, 200-222.

**Figure B-l—Federal Government Framework for Over-the-Road Buses (OTRBs)**




SOURCE: Office of Technology Assessment, 1993.

safety regulations are: driver qualifications, driver hours of service, vehicle maintenance, and accident reporting. OMC will play a small role in developing standards for the safe operation and maintenance of accessibility technology on OTRBs. Regulations might cover proper use of wheeled mobility aid tie-downs, and the routine maintenance and safe operation of accessibility technologies.

OMC safety investigators in each State review the performance of interstate motor carriers to ensure compliance with safety regulations; OMC's Motor Carrier Safety Assistance Program provides funds to States to inspect buses and trucks at roadside inspection stations and to conduct facility audits. OMC could include examinations of the operation of accessibility devices in standard roadside inspections.[3]

**Federal Transit Agency—FTA** has been enforcing accessibility requirements for public transit operators for a number of years. Private operators receiving Federal funds are subject to government regulations applying to public transit agencies, and to those provisions of the ADA dealing with public operators. Consequently, ADA provisions and subsequent regulations applying to the OTRB industry, particularly those involving Federal financial assistance, may require 1711A oversight.

FTA is the only Federal agency that sponsors assistance programs for intercity bus service. Under Section 18 of the Surface Transportation Act of 1978, some States have funded promotion of privately operated fixed-route service in rural areas. (See ch. 2 for a discussion of Section 18 and other sources of Federal assistance.)

Existing FTA regulations permit, but do not require, public transit agencies to lease their equipment to private operators for charter service if the private operator is unable to provide equipment accessible to individuals with disabilities.[4] Because most transit agencies with accessible OTRBs use them for commuter service, these vehicles are seldom available for private use except during nonrush-hour periods and on weekends.

FTA plays a limited role in Federal safety oversight. Created in 1989 and funded by FTA, the Altoona Bus Testing Center (Altoona, PA) tests all new model buses purchased with Federal assistance. FTA determines specific design changes or retrofits to be tested, and usually requires the manufacturer to arrange testing with the center, which subsequently prepares a report on the results. The Altoona Bus Testing Center will probably play a similar role for bus-based accessibility technologies.[5] FTA pays 80 percent of the cost of testing the vehicle to the Pennsylvania Transportation Institute, the operator of the facility; the vehicle manufacturer pays the remainder.[6]

**Research and Special Programs Administration, Office of Hazardous** Materials—Transportation of wet storage batteries of the type used to power wheeled mobility aids are subject to hazardous materials regulations administered by the Research and Special Programs Administration (RSPA). The general rule requires that this type of battery either be securely fastened in an upright position and protected against short circuits and leakage, or be removed and packaged separately. However, transportation of wheeled mobility aids equipped with wet storage batteries on passenger vehicles such as OTRBs are not subject to these requirements,[7] RSPA also regulates the transport of other hazardous materials carried on commercial passenger vehicles, such as explosive, poisonous, and radioactive materials.[8]

**The Architectural and Transportation Barriers Compliance Board—ATBCB** was established under the Rehabilitation Act of 1973 as an independent agency of the Federal Government. The Board's responsibilities involve creating an accessible environment, and include investigating andexamining alternative approaches to the architectural and transportation-related barriers confronting individuals with disabilities. ATBCB investigates citizen complaints about

---

[3] Susan Petty, chief, State Programs Division, Office of Motor Carriers, personat communication Dec. 13, 1991.

[4] Charter service is defined as ". . . transportation using buses or vans or facilities . . . for a group of persons who pursuant to a common purpose have acquired exclusive use of a vehicle or service to travel together. . . " (49 CFR Part 604.5e).

[5] Bob Reifsteck, facility manager, Altoona Bus Testing Center, personal communication Sept. 14, 1992.

[6] 57 *Federal Register* 8954 (Mar. 13, 1992). This financial assistance does not cover the costs of the vehicle or personnel.

[7] 49 CFR Part 173.222 (Dec. 31, 1991), p, 497. Transportation of wheeled mobility aids equipped with such batteries on passenger aircraft, however, are subject to specific requirements. Transportation of dry cell batteries is not regulated,

[8] 49 CFR Part 177.870 (Dec. 31, 1991), pp. 743-44.

these barriers and helps government agencies formulate general accessibility standards.

ATBCB has developed standards for boarding devices. These include manufacturing specifications and accommodations for persons with differing mobility impairments. ATBCB may release standards regarding the design, manufacture, and alteration of vehicles to achieve accessibility, but does not get involved in vehicle or boarding device operation.

### Economic and Environmental Regulation

The Interstate Commerce Commission—ICC was one of the first Federal agencies to deal with transportation regulation, including the economic regulation of the intercity bus industry. However, the Bus Regulatory Reform Act of 1982 (BRRA) almost completely deregulated the industry, so ICC's role with respect to OTRBs is now very limited. ICC will probably play no role in overseeing OTRB accessibility.

ICC examines applications from carriers for "fitness' to operate fixed-route or charter service.[9] Additionally, freed-route carriers must demonstrate to ICC that their service is in the public interest. If a State regulatory authority rules that a carrier cannot abandon a route, the operator may appeal directly to ICC. The burden then falls on those favoring continuation of the route to prove that discontinuance is *not in the* public interest and that continuation would *not* harm interstate commerce. [10]

ICC can preempt any State regulation of interstate bus service and can overrule State decisions regarding fare increases and exit of carriers. Some States, such as Massachusetts, have protested ICC's role by automatically refusing any request to raise fares, forcing operators to appeal to ICC each time they want a fare increase. ICC almost invariably grants the request.[11]

ICC now requires only Class I carriers, whose operating revenues total more than $5 million, to file annual and quarterly reports. Other bus companies, formerly designated Class II and Class III carriers, are no longer subject to reporting requirements (see ch. 2). Furthermore, Class I carrier reports are not as detailed as those required before deregulation. Consequently, far less information about the OTRB industry is available now than before enactment of the BRRA.[12]

Environmental Protection Agency—The Environmental Protection Agency (EPA) handles most environmental issues affecting OTRBs. Most important for the industry are EPA regulations on air emissions standards.[13] The Clean Air Act of 1990 significantly tightened Federal emissions standards for all motor vehicles, including OTRBs, but allowed States to establish standards higher than those promulgated by EPA. As a result, OTRBs that do not conform to the highest standards will not be able to operate in all States. Other EPA regulations of significance to OTRBs deal with noise pollution, bus storage facilities, and waste disposal.

### ADA Coordination and Compliance

office **of the Secretary of Transportation (OST)—** OST issued preliminary rules in September 1991 governing the accessibility of OTRBs and will formulate the final regulations based on the findings of this OTA study. Those regulations will address the types of boarding assistance required, as well as such operational issues as advance notice requirements. OST also may designate which agencies within the U.S. Department of Transportation will have regulatory authority over OTRB accessibility.

**Department of Justice—DOJ will** investigate violations of the ADA by all entities providing public transportation services. DOJ could order violators to alter their services in order to make them accessible. While an individual challenging the accessibility of a facility or service in court cannot be awarded punitive

9 Fitness consists of safety certification from the U.S. Department of Transportation and insurance coverage for vehicles and their operation.

10 John Duc et al., *Transportation Service to Small Communities: Effects of* **Deregulation** (Ames, IA: Iowa State University Press, 1990), p. 82.

11 Jeremy Kahn, "Stopping by the Bus Terminal on a Dark and Stormy Night: The U.S. Bus Industry Seven Years After Deregulation" *Transportation Law Journal*, vol. 18, No. 2, 1990, p. 259.

12 Econometrics, Inc., ' 'Background Paper on Accessibility for the Disabled and the Intercity Bus Industry," OTA contractor report, Mar. 31, 1991, p. 60.

13 An example of an operational requirement in EPA regulations pursuant to the Clean Air Act with direct implications for accessibility devices is that many lift technologies require the bus to run 10 to 15 minutes during a boarding cycle, while EPA regulations forbid bus idling for more than 3 minutes.

damages, a court can fine up to $50,000 for the first violation found by DOJ and up to $100,000 for each subsequent violation.[14]

## State Oversight

States play a prominent role in both the economic and safety regulation of OTRBs, but most States have not yet determined their roles in overseeing the bus industry's compliance with accessibility regulations. As with the Federal Government, State oversight of private operators of OTRBs is spread among a number of agencies.

California is the only State that, by fall of 1992, had a regulatory program aimed at accessibility technologies. The California Highway Patrol is the main regulatory body in California for wheelchair lifts. California Code of Regulations Title 13 contains specifications regarding lift operating features, design, and testing requirements. These regulations were the model for Federal standards governing accessibility technologies. The California Department of Transportation and Department of Motor Vehicles have smaller roles in regulating the use of wheelchair lifts.

### Safety

As is the case at the Federal level, regulation of bus safety has a relatively low profile in State governments. Only a few States have programs aimed at regulating the safety of OTRBs. OTRB inspections are now eligible for funding under the Motor Carrier Safety Assistance Program, and some States take advantage of this provision. These inspections could include examination of accessibility technologies.

Michigan's program is one of the most complete. The State conducts two types of inspections: an annual examination on the property of the bus company, and random inspections, usually carried out at major attractions such as sports stadiums or tourist facilities. Based on these inspections, companies receive permits for operation within the State. Because the State Department of Transportation contends that its bus inspection practices are more rigorous than those in other parts of the country, Michigan has limited reciprocity. Only buses with stickers from Michigan, Pennsylvania, New York and the Province of Ontario are considered acceptable to operate on Michigan roadways without further State inspection.[15]

Other States concentrate on random roadside inspections of buses. California aims these inspections at the "fly-by-night" companies that often operate tour buses to and from gambling facilities in Nevada. These companies' buses frequently have safety violations, often involving drivers' hours of service.[16]

In an attempt to standardize inspection practices, the Commercial Vehicle Safety Alliance (CVSA), an organization made up of almost all States and Canadian Provinces, has proposed uniform bus inspections guidelines. These proposed standards are due to be released early in 1993.[17] CVSA has worked closely with FHWA in the past, developing safety and inspection guidelines for other motor carriers.[18]

### Economic

**State economic regulatory authority has greatly** diminished since passage of the BRRA. Most States play a limited role in economic oversight of routes that operate completely within State borders. While carriers can appeal State decisions to ICC, where they are frequently overturned, many States continue such regulation to delay rural service abandonments while alternatives are sought.

Bus operators often face multi-State registration and fuel tax problems. Presently, buses can be required to register and pay a fuel tax in each State in which they operate. However, Title IV of the Intermodal Surface Transportation Efficiency Act (ISTEA) sought to eliminate this requirement. By September 1996, States must join the International Registration Plan and the Intenational Fuel Tax Agreement, which require operators to register and pay fuel tax only in their State of origin, ISTEA also requires that a system be

---

14 Paul Stephen Dempsey, "The Civil Rights of the Handicapped in Transportation: The Americans with Disabilities Act and Related Legislation," *Transportation Law Journal, vol. 19, No. 2, 1991,* p. 329.

15 Jerry Rudnick, Michigan Department of Transportation@ personal communication, Dec. 5, 1991.

16 U.S. Congress, Office of Technology Assessment *Gearing Up for Safety: Motor Carrier Safety in a Competitive Environment, OTA-SET-382* (Washington, DC: U.S. Government Printing Office, September 1988), p. 72.

17 Larry Stern, Commercial Vehicle Safety Alliance, personal communication, Jan. 12, 1992.

18 Office of Technology Assessment, op. cit., footnote 16, p. 72.

implemented to allow motor carrier operators to register their ICC operating authority and proof of liability insurance with one State. This State will then distribute the registration fees to other States in which the bus operator provides service.[19] Some States, including Connecticut, Florida, Kentucky, and New York, have adopted tax laws that require all companies operating within their boundaries to pay a ''corporate tax,'' even if they are based outside the State.[20]

A number of States go beyond economic regulation and offer operating and capital assistance to intercity operators (see ch. 2). Michigan, Massachusetts, Pennsylvania, and California have the most extensive programs and have additional regulations governing bus operations, as well, Both Michigan and Massachusetts, which support capital purchasing programs, restrict the operation of publicly funded coaches. In Massachusetts, 80 percent of the routes covered by OTRBs purchased with State assistance must be within the State. Because these buses are intended for fixed-route operation, no more than 15 percent of the bus-miles can be used in charter service, nor can these buses provide charter service during commuter peak hours.[21] Michigan requires that OTRBs purchased with State funds be used for fixed-route service only and return to the State within 24 hours of leaving. The State has further restrictions on purchasing OTRBs manufactured outside the United States.

19 U.S. Department of Transportation Federal Highway Administration, Office of Policy Development, *A Summary: Intermodal Surface Transportation Efficiency Act of 1991*, FHWA-PL-92-008 (Washington DC: U.S. Government Printing Office, 1992), p. 27.

20 Elaine Wade, Government Affairs, American Bus Association personal communication, Apr. 29, 1992.

21 Ecosometrics, Inc., "Overviewof Experience of Operators of Accessible Over-the-Road Coaches,' OTA contractor report, Jan. 28, 1992, pp. 70-72.