

Avenue SE., Washington, DC 20590, telephone (202) 493-0270.

**SUPPLEMENTARY INFORMATION:**

**Background**

A recent accident has highlighted the need for additional action by track owners and other entities and individuals responsible for compliance with the Track Safety Standards (49 CFR part 213). The following discussion provides a brief summary of the circumstances surrounding a recent train derailment, which appears to have involved a rail with severe rail head wear. Information regarding this incident is based on FRA's preliminary investigation and findings to date. The probable causes and contributing factors, if any, have not yet been determined by FRA. Therefore, nothing in this safety advisory is intended to attribute a cause to this incident or place responsibility for this incident on the acts or omissions of any person or entity.

On July 11, 2012, an eastbound Norfolk Southern Railway Company (NS) freight train, traveling at 23 mph, derailed in Columbus, OH. Of the 13 cars that derailed, 3 contained hazardous materials. Two of the cars, which contained ethanol, a flammable liquid, were compromised, causing a fire near the Columbus Fairgrounds. Residents and businesses within a 1-mile radius of the accident were evacuated. In addition to the damages to the track and to equipment in the train, CSX Transportation, Inc.'s Columbus Line (which runs parallel to the NS track in this area) was shut down due to heat from the fire.

FRA's preliminary investigation indicates that the derailment may have occurred because of accelerated defect development in the rail. During the derailment investigation process, FRA discovered that five rail failures had occurred on various portions of the track subsequent to the last nondestructive rail inspection at this location. FRA believes that this accelerated defect development was possibly influenced by the significant rail head wear, and attributed to the presence of the RCF.

Given this accident, FRA recommends that each entity responsible for the inspection and maintenance of track review, reemphasize, and adhere to the requirements of the track owner's (1) engineering instructions concerning rail wear limits that address inspecting track to identify internal rail flaws; and (2) programs for the management of rail that exhibits severe rail head wear and RCF. As the discussion above indicates, this is especially critical for track over

which large quantities of hazardous materials or passengers are transported due to the potential catastrophic impacts that can result from a derailment of these types of trains.

Rail head wear occurs primarily on the gage-side face when the rail is located on the high side of a curve, due to the exertion of wheel flange forces. Vertical rail head wear occurs on the rail head running surface from wheel/rail interaction during cyclical loading. The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. In practice, the growth rate of rail defects is considered highly variable and unpredictable. Moreover, heavy axle loading on worn rail can lead to the accelerated development of rail surface fatigue, and this may prevent detection of an underlying rail flaw by test equipment during the rail inspection process.

Under 49 CFR 213.237(a), FRA requires all Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, to be tested for internal rail defects at least once after every accumulation of 40 mgt of traffic or once a year, whichever is shorter. Class 3 track, over which passenger trains do not operate, is required to be tested at least once after every accumulation of 30 mgt of traffic or once a year, whichever is longer. However, as a result of the unpredictability of defect development, many railroads test for internal rail defects using a performance-based method that focuses on the rate of defect development, which typically results in testing for internal defects at a frequency shorter than required by FRA regulation. Yet, a nondestructive test system is typically designed to perform optimally on an ideal test specimen surface. Conditions, such as extreme cyclical loading, can result in rail head wear and RCF and thus affect the integrity of these rail flaw inspections.

*Recommended Action:* In light of the above, FRA recommends that each track owner:

1. Review with its employees the circumstances of the derailment identified above and ensure that the employees report any incidents where a sudden increase of rail failure occurs in a localized area.
2. Discuss with its employees the requirements of its own engineering instructions and ensure that the employees can identify locations that exhibit excessive rail head wear and RCF.
3. Review its current engineering instructions to ensure that the

procedures are consistent with the industry standard for rail replacement.

4. Ensure that its employees responsible for the rail inspection process have been adequately trained and are capable of performing proper inspection procedures.

5. Consider and use, as appropriate, recently developed rail inspection technology that is more capable of identifying transverse-oriented defects under RCF.

6. Review recent rail inspection records to identify any incidents involving sudden or accelerated broken rail for future inspection or replacement focus.

7. Apply appropriate slow orders at locations that exhibit rail head wear approaching the limits specified in its own respective engineering instructions until the rail is replaced.

8. Develop an internal software program on rail management that will assist in the identification of sudden or accelerated rail failure incidents, if such a program is not already in place.

FRA encourages railroad industry members and other track owners to take actions that are consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroads, its employees, and the general public. FRA may modify this Safety Advisory 2012-04, issue additional safety advisories, or take other appropriate actions it deems necessary under its rail safety authority to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on September 26, 2012.

**Jo Strang,**

*Associate Administrator for Railroad Safety/Chief Safety Officer.*

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**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

[Docket No. FTA-2012-0045]

**Americans With Disabilities Act:  
Proposed Circular Chapter, Vehicle  
Acquisition**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of proposed circular chapter and request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site proposed guidance in the form of a circular chapter to help transportation providers

ensure that the buses and rail cars they acquire meet the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations. This proposed chapter on vehicle acquisition is the first in a series of approximately 12 chapters that will compose a complete ADA circular. By public notice, FTA invites public comment on this proposed circular chapter and suggestions for specific issues to cover in future chapters.

**DATES:** Comments must be submitted by December 3, 2012. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments to Docket No. FTA-2012-0045 by any of the following methods:

*Federal eRulemaking Portal:* Go to [www.regulations.gov](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. Eastern time, Monday through Friday, except Federal holidays. *Fax:* (202) 493-2251.

*Instructions:* You must include the agency name (Federal Transit Administration) and Docket number FTA-2012-0045 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey

Avenue SE, Room E54-437, Washington, DC 20590, phone: (202) 366-4018, or email, [dawn.sweet@dot.gov](mailto:dawn.sweet@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, or email, [bonnie.graves@dot.gov](mailto:bonnie.graves@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The U.S. Department of Transportation (DOT) issues regulations implementing the transportation and related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR parts 27, 37, 38, and 39 set specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by people with disabilities. The body of regulations is vast, covering multiple modes of public transportation, including fixed route bus and rail (e.g., rapid, commuter, and light rail); ADA complementary paratransit; general public demand responsive service; and ferry service. The Federal Transit Administration (FTA), as an agency within DOT, is charged with ensuring that providers of public transportation comply with the regulations.

In 2010, FTA initiated a comprehensive management review of the agency's core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other programs. The current body of statutes and regulations in the ADA area can be imposing, and in some cases, extremely technical. FTA recognized value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format. A circular does not alter, amend, or otherwise affect the DOT ADA regulations themselves or replace the need for detailed information in the regulations. Its format, however, can provide a helpful outline of basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. Simply stated, a circular can be a starting point for understanding

ADA requirements in the transit environment.

Therefore, FTA is proposing the phased development of a new circular, FTA C 4710.1, with the initial chapter focused on vehicle acquisition. This notice provides a summary of the proposed chapter. The chapter does not contain any new requirements, policies, or directives. The chapter itself is not included in this notice; an electronic version may be found on FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov). Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865. After the summary of the current chapter, this notice describes FTA's approach for publishing subsequent chapters and seeks suggestions on specific issues to address in those chapters. FTA encourages stakeholders to provide comments on the content of the initial chapter on vehicle acquisition and suggestions for future chapters.

##### **II. Summary of Current Chapter**

The "Vehicle Acquisition" chapter begins with an introductory section that provides a brief background on the purpose of the circular and this chapter specifically. The chapter is designed to be a reference document for public entities acquiring vehicles to ensure these vehicles meet the requirements of the DOT ADA regulations in 49 CFR part 37, subpart D, and 49 CFR part 38. Importantly, this section also states what this circular project is not intended to accomplish—the circular is not a substitute for the DOT ADA regulations; public transportation providers are advised in this section to use this circular in addition to (not in lieu of) the regulations. The section then introduces in broad terms the DOT ADA regulations applicable to vehicle acquisition, explaining that 49 CFR part 38 sets the technical design specifications for accessible vehicles, while Part 37 defines the conditions under which vehicles must be purchased as accessible or made accessible. The section ends by emphasizing that although a public entity may use a contractor to provide service, it cannot contract away its ADA responsibility; the contractor "stands in the shoes" of the public entity and must meet the same requirements that would apply if the public entity were acquiring or remanufacturing its own vehicles.

After the introductory section, the chapter moves onto Section 2, "Acquisition Requirements for Public Entities." This section explains how the acquisition requirements vary in Part 37 depending upon the following factors: (1) Vehicle type (rail and non-rail); (2)

service type (fixed route bus, light or rapid rail, commuter rail, and demand responsive); and (3) vehicle condition (new, used, or remanufactured). In table and narrative format, the section explains that all new fixed route buses and all new light, rapid, and commuter rail cars must be accessible; that is, they must meet all the applicable specifications in Part 38. Certain exceptions to acquiring an accessible vehicle apply to used and remanufactured buses and rail cars, as well as to new buses and vans operating in a general public demand responsive system. These exceptions are likewise outlined in the section.

Section 3 is titled "The Main Elements of Accessible Vehicles" and summarizes the required design specifications in Part 38 by vehicle type. The section begins by emphasizing that an accessible bus or rail car involves much more than features for boarding and alighting individuals who use wheelchairs, which is how accessibility is commonly envisioned. Handrails, slip-resistant flooring, public address systems, and sufficient lighting, for example, are all part of an accessible vehicle, in addition to lifts, ramps, and securement systems. The section does not attempt to restate all of the Part 38 specifications but rather highlights the main points by vehicle type with accompanying photographs and diagrams, and refers the reader to the appropriate part of the regulations for more detail. For rail cars, the section highlights four areas that have been of particular interest to transit systems and members of the public: The platform gap, mobility aid accessibility, priority seating, and between-car barriers.

Section 4, "Ensuring that Vehicles Are Compliant," addresses ways a transportation provider can ensure that the vehicles it plans to acquire are accessible under Part 38 and useable to individuals with disabilities. Strategies presented include ensuring that bid packages spell out specific accessibility requirements in detail, seeking public input to ensure that the solicited vehicles can be used by as many persons with disabilities as possible, and inspecting the vehicles at the appropriate time in the procurement cycle.

Complementing Section 4 is an attachment titled "Sample Bus and Van Specification Checklist" that lists the design elements in Part 38 applicable to non-rail vehicles. It is a document FTA uses in its compliance reviews when assessing whether a transportation provider's buses comply with Part 38. The checklist is provided here as an example of a tool a transportation

provider could replicate to use in its factory inspections to ensure the vehicles it plans to acquire are compliant long before delivery. A grantee may decide to develop similar checklists to inspect rail cars.

The chapter ends with a list of definitions taken from the DOT ADA regulations, a list of statutory and regulatory authorities, and a reference list.

### III. Publication Approach

The Vehicle Acquisition chapter is the first in approximately 12 chapters that will compose FTA's ADA circular. Because of the breadth of the ADA, FTA is developing this circular in segments. The next chapter currently under development is "Equivalent Facilitation," which will outline how a grantee can depart from the regulations by demonstrating to FTA that an alternative design or technology provides individuals with disabilities equivalent or greater access to a vehicle or facility. FTA anticipates that the topics of subsequent chapters will largely mirror the major provisions in the DOT ADA regulations, for example: General nondiscrimination requirements, facility construction and alteration, fixed route bus and rail service, ADA complementary paratransit (eligibility and service delivery), general public demand responsive service, and ferries and other modes.

When issued in its final form, the circular is intended to provide guidance specifically for recipients of FTA financial assistance that provide public transit. As such, requirements found in the DOT ADA regulations, for example, related to intercity rail (i.e., Amtrak), private motor coach service (e.g., Greyhound), taxi service, and airport transportation will not be covered in the circular.

Going forward, it is anticipated that the chapters will be issued in groups. All chapters will be announced in the **Federal Register** for public notice and comment.

### IV. Conclusion

FTA seeks comments on the scope and content of the first chapter of the circular, "Vehicle Acquisition," specifically as to whether there are areas that need more clarification or explanation or topics that were overlooked. The chapter includes a section on practices a transit provider can use to help ensure the vehicles it acquires are compliant and useable. FTA seeks comment on whether there are other practices that have proven

effective that would be worth describing in the circular.

FTA also seeks suggestions on specific issues to cover in future chapters and which topics should be a priority to cover early on in the process of developing the ADA circular. For example, FTA seeks comments on which issues within the broad topic areas mentioned above (e.g., general nondiscrimination, facility construction and alterations, fixed route services, and ADA complementary paratransit) are most challenging to address by the industry. Further, FTA is interested in knowing in what areas guidance would be the most valuable to transportation providers.

Issued in Washington, DC, this 25th day of September 2012.

**Peter Rogoff,**  
*Administrator.*

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**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Clean Fuels Grant Program, Augmented With Discretionary Bus and Bus Facilities Program Funds

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Clean Fuels Grant Program: Announcement of Project Selections.

**SUMMARY:** The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects for the Clean Fuels Grant program enhanced with Section 5309 Bus and Bus Facilities program funds. On February 7, 2012, FTA published a Notice of Funding Availability (NOFA) for its Clean Fuels Grant program (77 FR 6178). The NOFA explained the requirements and procedures for eligible applicants to apply for the funds made available by the Surface and Air Transportation Programs Extension Act of 2011. In sum, the FY 2012 Clean Fuels Grant Program made available approximately \$51.5 million in unallocated Section 5308 Clean Fuels Grant Program funds. As outlined in the NOFA, the Section 5308 funds would be awarded to fund projects in non-attainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide and supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies. Projects in attainment areas were also eligible to